

**HIGH COURT OF MADHYA PRADESH:**  
**MAIN SEAT AT JABALPUR**

(DIVISION BENCH: HON. SHRI S.K. SETH  
AND HON. SHRI RAJEEV KUMAR DUBEY, JJ)

**Criminal Appeal No.2521/2007**

Suryabhan Choudhary ... Appellant

V E R S U S

State of Madhya Pradesh ... Respondent

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Smt. D.K. Bohrey, Advocate for the  
appellant.

Shri Akshay Namdeo, Government  
Advocate for the respondent/State.

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**J U D G M E N T**

***(Delivered on 13<sup>th</sup> of October, 2017)***

**Per Seth, J.**

Appellant is in appeal against his conviction and sentence passed on 29.09.2007 by II<sup>nd</sup> Additional Sessions Judge, Satna in Sessions Trial No.104 of 2003. By the impugned judgment, appellant was found guilty of culpable homicide amounting to murder and he was convicted under Section 302 of the IPC and sentenced to undergo life imprisonment and under Section 324 of the IPC, he was sentenced to undergo one year imprisonment for causing simple injury to Jaimaniya together with fine and default stipulations.

{2} Appellant was brought before the Court to stand trial for the offences punishable under Section 302, 294, 324 of the IPC and Section 25 (1-B)(b) of the Arms Act.

{3} Prosecution case, in short, as unfolded before the trial Court was that on 8.12.2002 at about 8:00 p.m., appellant caused a knife injury to Laxman Choudhary (since deceased) without any provocation. Same night at about 10:00 p.m., Laxman Choudhary lodged the FIR (Exhibit P/19) in the Police Station Sabhapur, District Satna. The police registered a case under Sections 294, 307, 323 and 324 of the IPC and this set the investigation rolling. Injured persons were referred for their medical check-up and treatment. Appellant was arrested. Laxman Choudhary, who had suffered a stabbed injury in the stomach, died in the Hospital during the course of treatment. After investigation, police filed charge-sheet for offences punishable under sections 294, 302, 324 of the IPC and Section 25(1-B)(b) of the Arms Act against the appellant. At the trial, appellant abjured his guilt and claimed that he was falsely implicated.

{4} During investigation MLC (Exhibit P/12) of the deceased was done by Dr. Devendra Singh (P.W.-7). Dr. Singh found a

stab wound in the stomach and deceased was admitted in the hospital for further treatment. A dying declaration (Exhibit P/16) was recorded by Naib Tehsildar Raghuraj Nagar, District Satna. Deceased succumbed to death on 13.12.2002. Marg intimation was sent to the police and after the inquest, dead body was sent for post-mortem. An autopsy was conducted by Dr. R.K. Gupta (P.W.-9) and Dr. Pandey(P.W.10). The post-mortem examination report is Exhibit P/15 and in the opinion of both doctors, cause of death was on account of shock due to septicaemia and haemorrhage. On completion of the investigation, a charge-sheet was filed against the appellant. At the trial, appellant abjured his guilt.

{5} Learned trial Judge found that the prosecution evidence proved the guilt of the appellant beyond reasonable doubt and as such he was convicted and sentenced as stated above.

{6} We have heard counsel for the appellant and Government Advocate for the respondent/State. We have also carefully gone through the evidence available on record of the trial Court.

{7} Submission of the learned counsel for the appellant is that the trial Court erred in law in holding the appellant

guilty of an offence punishable under Section 302 of the IPC. According to her, the offence would not travel beyond Section 304 Part-II of the IPC in view of established facts in the case in hand.

{8} On the other hand, learned counsel for the respondent submitted that the trial Court committed no illegality in placing reliance on prosecution evidence and rightly convicted the appellant under Section 302 of the IPC and other allied sections. According to him, no interference is called for with the impugned judgment of conviction and order of punishment.

{9} In view of the submissions of learned counsel for the appellant, it is not necessary for us to discuss the evidence in detail. Suffice it to say that besides the eye-witnesses account of the incident which is duly corroborated by the prompt FIR lodged by the deceased himself and medical evidence, there is a dying declaration recorded by the Naib Tehsildar, the conclusion is unavoidable that the appellant caused knife injury to the stomach of the deceased. This injury turned out to be fatal due to septicaemia and haemorrhage resulting in death. Now the question that calls for our consideration is whether appellant is guilty of an offence punishable under section 302 or 304 part-II of the IPC.

{10} Section 304 deals with the punishment for culpable homicide not amounting to murder. It provides for two kinds of punishments applying to two different circumstances. Firstly, when an act is done with an intention of causing death or such bodily injury as is likely to cause death, punishment is the imprisonment for life or imprisonment of either description for a term which may extend to ten years and fine. Secondly, if the act is done with the knowledge that it is likely to cause death, but with any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term which may extend to ten years or fine or with both.

{11} On the facts established on record, it is clear that appellant thought that the deceased and eye-witnesses were talking ill about him, appellant without any premeditation inflicted a single knife injury to the stomach of the deceased. Thus, in view of the evidence on record, it is difficult to hold that the appellant had any intention to kill the deceased, therefore, he is not guilty of culpable homicide amounting to murder punishable under Section 302 of the IPC. On the contrary, he is guilty of an offence punishable under Section 304 part-II of the

IPC i.e. culpable homicide not amounting to murder. He has already suffered more than ten years of the jail sentence. We, therefore, **partly allow** the appeal to the extent indicated above and instead holding him guilty for murder not amounting to murder covered under Section 304 part-II of the IPC for which he has already undergone more than ten years of imprisonment that meets the ends of justice. The appellant should, therefore, be set at liberty forthwith, if not required in any other cause.

{12} Let a copy of this judgment along with record be transmitted to the trial Court immediate for taking necessary follow up action under intimation to this Court.

{13} Ordered accordingly.

**(S.K. SETH)**  
**JUDGE**

**(RAJEEV KUMAR DUBEY)**  
**JUDGE**

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