

A KHOKAN @ KHOKHAN VISHWAS

v.

STATE OF CHHATTISGARH

(Criminal Appeal No. 121 of 2021)

B FEBRUARY 11, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND  
M.R. SHAH, JJ.]**

- Penal Code, 1860: s.302 – Conviction of appellant u/s.302 – Prosecution case was that on the fateful evening when the victim-deceased was in the house of his neighbour, appellant had conversation with him regarding money – Thereafter, appellant started quarreling with him and pushed him down and stood up on his abdomen and crushed – Next day, in the evening when deceased had severe pain in abdomen, he was admitted in hospital for treatment and on the same night he was referred to another hospital – After two days, he died due to septicemia caused by injuries in small intestine – Courts below convicted appellant u/s.302 – Appeal confined to question whether conviction be altered to s.304-I – Held: From the evidence on record, and even as per the case of the prosecution, it cannot be said that the appellant-accused had the intention of such action on his part to cause death or such bodily injury to the deceased which was sufficient in the ordinary course of nature to cause the death of the deceased – There was no evidence that there was any premeditation on the part of the appellant – There was a sudden quarrel with respect to money and the appellant pushed the deceased and stood on his abdomen in the heat of passion – Therefore, case would fall under exception 4 to s.300 – As per explanation to exception 4 to s.300, it is immaterial in such cases which party offers the provocation or commits the first assault – Courts below materially erred in holding appellant guilty for offence punishable u/s.302 – Appellant held guilty for offence u/s.304-I.*

**Partly allowing the appeal, the Court**

**HELD: 1. Section 300 of the IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is the exceptions when the culpable homicide is**

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not murder. The relevant part of Section 300 IPC for this case would be clause 4 to Section 300 and exception 4 to Section 300 IPC. As per clause 4 to Section 300 IPC, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per exception 4 to Section 300, culpable homicide is not murder if it is committed without pre meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. [Para 7][540-H; 541-A-C]

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2. In the facts and circumstances of the case, it cannot be said that there was any intention on the part of the accused of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. There is no evidence that there was any premeditation on the part of the accused. There was a sudden quarrel with respect to money and the accused pushed the deceased and stood on the abdomen in the heat of passion upon a sudden quarrel. Therefore, the case would fall under exception 4 to Section 300 IPC. As per explanation to exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault. Therefore, both the courts below materially erred in holding the appellant-accused guilty for the offence punishable under Section 302 IPC. At the most, it can be said that the appellant-accused has committed the offence under Section 304-I IPC. [Paras 8, 9][541-F-H; 542-A-C]

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3. In the present case, though the deceased died due to septicemia, however, it is required to be noted that he died while taking treatment in the hospital and that too he died within three days from the date of occurrence of the incident. However, at the same time, it is also required to be noted that the deceased was admitted to the hospital after 24 hours and thereafter he died within three days due to septicemia. If he was given the treatment immediately, the result might have been different. In any case, there was no premeditation on the part of the accused; the accused

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- A did not carry any weapon; quarrel started all of a sudden and that the accused pushed the deceased and stood on the abdomen and therefore, the case would fall under exception 4 to Section 300 IPC and neither clause 3 of Section 300 nor clause 4 of Section 300 shall be attracted. Therefore, at the most, the accused can be said to have committed the offence under Section 304-I, IPC. The impugned judgment and order passed by the High Court as well as the judgment and order passed by the trial Court convicting the appellant-accused for the offence under Section 302, IPC are hereby modified to the extent convicting the appellant-accused for the offence under Section 304-I, IPC and sentencing him to the period already undergone by him i.e., 14.5 years. [Paras 10, 11][542-F-H; 543-A-D]

*Sanjay v. State of U.P., (2016) 3 SCC 62 – held inapplicable.*

<u>Case Law Reference</u>		
D	(2016) 3 SCC 62	held inapplicable Para 10
CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 121 of 2021.		
E	From the Judgment and Order dated 27.01.2014 passed by the High Court of Chhattisgarh at Bilaspur in Crl. Appeal No. 38 of 2009.	Rishi Malhotra, Adv., for the Appellant. Ms. Prachi Misra, AAG, Chaitanya and Ms. Aswathi M. K., Advs. for the Respondent.
F	The Judgment of the Court was delivered by	<b>M.R. SHAH, J.</b>
G	1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.01.2014 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No. 38 of 2009, by which the High Court has dismissed the said appeal preferred by the appellant – original accused and has confirmed the judgment and order of conviction passed by the learned trial Court convicting the accused for the offence punishable under Section 302 of the IPC and by which the appellant – accused was sentenced to undergo life imprisonment, the appellant – original accused H has preferred the present appeal.	

2. At the outset, it is required to be noted that by order dated 08.01.2021, this Court issued a limited notice confined to whether the conviction should be altered to Section 304-I IPC. Therefore, the present appeal is confined to the issue, whether in the facts and circumstances of the case, the conviction of the appellant-accused should be altered to Section 304-I, IPC or not.

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3. While deciding the aforesaid issue/question, the case of the prosecution and the manner in which the incident took place are required to be considered. According to the prosecution, on 08.08.2006 at about 6:30 p.m., the deceased was in the house of his neighbour Devan. At that very time, the accused had conversation with him regarding money and then accused quarrelled with him. The accused pushed him down and stood up on his abdomen and crushed. On the next day, i.e., on 09.08.2006 at about 6:30 p.m., son of one Channu Ram informed Manki, sister of Manku regarding the severe pain in the abdomen of Manku. Manki, sister of the deceased came to his house and after seeing him got him admitted in N.M.D.C. Apollo Central Hospital, Bacheli for treatment. On the night of 09.08.2006 itself, he was referred to Maharani Hospital, Jagdalpur for treatment. During treatment, Manku Ram died on 11.08.2006. As per the post mortem report conducted by Dr.(Smt.) J. Gupta (PW-3) the cause of death of the deceased Manku Ram was shock as a result of septicemia caused by injuries in small intestine.

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4. In light of the above facts and circumstances, it is required to be considered what offence the accused is said to have committed. The learned trial Court convicted the accused for the offence punishable under Section 302 IPC after observing and finding that the case would fall under Section 300 IPC and that the murder of Manku Ram committed by the accused does not come under the fourth exception of Section 300 IPC. Accordingly, after holding the accused guilty for the offence punishable under Section 302, IPC, the learned trial Court has awarded the life sentence to the accused. The same has been confirmed by the High Court, by the impugned judgment and order.

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5. Learned counsel appearing on behalf of the accused has vehemently submitted that in the present case the incident took place on 08.08.2006. There was a sudden quarrel between the accused and the deceased and the accused pushed the deceased and sat on the abdomen. It is submitted that there was no intention on the part of the accused to cause death of the deceased. It is submitted that though the incident had

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- A taken place on 08.08.2006 at about 6:30 p.m., the deceased was taken to the hospital on the next day, i.e., on 09.08.2006 at about 6:30 p.m. It is submitted that thereafter after a period of two days, the deceased died because of septicemia. It is submitted that therefore the case would fall under the fourth exception of Section 300 IPC and therefore it cannot be said that the appellant-accused has committed the offence punishable under Section 302 IPC. It is submitted that the accused at the best be convicted for the offence punishable under Section 304-I, IPC. It is submitted that the accused has already undergone 14.5 years of actual imprisonment.
- C 5.1 Making the above submissions and relying upon the decision of this Court in the case of *Sanjay v. State of U.P.*, reported in (2016) 3 SCC 62, it is prayed to alter the conviction of the appellant-accused from Section 302 IPC to Section 304-I IPC.
- D 6. The present appeal is opposed by the learned counsel appearing on behalf of the respondent – State of Chhattisgarh.
- E It is vehemently submitted that in the present case the deceased died while taking treatment in the hospital and within three days of occurring the incident. It is submitted that it may be true that as per the medical evidence the deceased died due to septicemia caused by injuries in small intestine. It is submitted that however the deposition of the doctor who initially treated the deceased and thereafter the deposition of the doctor who conducted the post mortem are required to be considered as a whole. It is submitted that in the present case the Dr. (Smt.) J. Gupta (PW-3) opined that the deceased received the injuries in abdomen by crushing. It is submitted that therefore the learned trial Court rightly observed and held that the murder of the Manku Ram committed by the accused does not come under the fourth exception of Section 300 IPC. It is submitted that the case would fall under clause 3/4 to Section 300 IPC. It is submitted that therefore the learned trial Court as well as the High Court did not commit any error in convicting the accused for the offence under Section 302 IPC.
- G 6.1 It is submitted that therefore in the facts and circumstances of the case, the decision of this Court in the case of *Sanjay (supra)*, relied upon by the learned counsel appearing on behalf of the accused shall not be applicable and/or shall not be of much assistance to the accused.
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6.2 Making the above submissions, it is prayed to dismiss the present appeal. A

7. We have heard the learned counsel for the respective parties at length.

As observed hereinabove, the sole question which is posed before this Court is, whether, in the facts and circumstances of the case, can it be said that the accused committed the murder of the deceased as defined under Section 300 IPC and therefore whether both the courts below rightly convicted the accused for the offence under Section 302 IPC or whether the conviction can be altered to Section 304-I, IPC. B

7.1 While answering the aforesaid question, when the culpable homicide can be said to be the murder and when the culpable homicide is not amounting to murder, Section 300 of the IPC is required to be referred to, which reads as under:

**“300. Murder.—**Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or— D

*Secondly.*—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or— E

*Thirdly.*—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or— F

*Fourthly.*—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. G

***Exception 1.—When culpable homicide is not murder.***— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:— H

- A      *First.*—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
- B      *Secondly.*—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
- C      *Thirdly.*—That the provocation is not given by anything done in the lawful exercise of the right of private defence.
- D      *Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.
- E      **Exception 2.**—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.
- F      **Exception 3.**—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.
- G      **Exception 4.**—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
- H      *Explanation.*—It is immaterial in such cases which party offers the provocation or commits the first assault.
- I      **Exception 5.**—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”
- J      Section 300 of the IPC is in two parts. The first part is when culpable homicide can be said to be the murder and the second part is

the exceptions when the culpable homicide is not murder. The relevant part of Section 300 IPC for our purpose would be clause 4 to Section 300 and exception 4 to Section 300 IPC. As per clause 4 to Section 300 IPC, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury, such culpable homicide can be said to be the murder. However, as per exception 4 to Section 300, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. As per explanation to exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault.

8. Coming to the facts of the present case, even as per the case of the prosecution on 08.08.2006 at about 6:30 p.m. when the deceased was in the house of his neighbour, at that very time, the accused had conversation with the deceased regarding money and then the accused quarrelled with him. As per the case of the prosecution, the accused pushed him down and stood up on his abdomen which resulted into the internal injuries.

At this stage, it is required to be noted that till the next day i.e., 09.08.2006 the deceased was not even taken to the hospital and only on 09.08.2006 at about 6:30 p.m., i.e., after a period of one day of the incident, the deceased was taken to the hospital. Therefore, it can be seen that the action of the appellant-accused to push the deceased down and stood up on his abdomen was preceded by a quarrel between the deceased and the accused. From the evidence on record, and even as per the case of the prosecution, it cannot be said that the appellant-accused had the intention of such action on his part to cause death or such bodily injury to the deceased which was sufficient in the ordinary course of nature to cause the death of the deceased. Even the case would not fall under clause 3 of Section 300 IPC. In the facts and circumstances of the case, it cannot be said that there was any intention on the part of the accused of causing bodily injury to the deceased and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

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- A        9. There is no evidence that there was any premeditation on the part of the accused. Considering the case of the prosecution as it is and as observed hereinabove, there was a sudden quarrel with respect to money and the accused pushed the deceased and stood on the abdomen in the heat of passion upon a sudden quarrel. Therefore, the case would fall under exception 4 to Section 300 IPC. As per explanation to exception 4 to Section 300 IPC, it is immaterial in such cases which party offers the provocation or commits the first assault. Therefore, both the courts below have materially erred in holding the appellant-accused guilty for the offence punishable under Section 302 IPC. According to us, at the most, it can be said that the appellant-accused has committed the offence under Section 304-I IPC.
- B        10. Now so far as the reliance placed upon the decision of this Court in the case of *Sanjay (supra)* by the learned counsel appearing on behalf of the appellant-accused is concerned, on considering the said decision, we are of the opinion that in the facts and circumstances of the case, the said decision shall not be applicable to the facts of the case on hand. In the said case, the death occurred 62 days after the occurrence due to septicemia. In between, the deceased was discharged from the hospital in good condition and he survived for 62 days. Therefore, having regard to the fact that the deceased survived for 62 days and that his condition was stable when he was discharged from the hospital, this Court was of the opinion that the Court cannot draw inference that intended injury caused was sufficient in ordinary course of nature to cause death so as to attract Section 300 Thirdly IPC. Thereafter, on facts, this Court modified the conviction from that of Section 302 IPC to Section 304-I IPC and sentenced the accused to undergo 10 years R.I.
- C        F        There is no absolute proposition of law laid down by this Court in the said decision that in all cases where deceased died due to septicemia, case would fall under Section 304-I IPC. In the present case, though the deceased died due to septicemia, however, it is required to be noted that he died while taking treatment in the hospital and that too he died within three days from the date of occurrence of the incident. Therefore, on facts, the said decision shall not be applicable.
- G        H        However, at the same time, it is also required to be noted that the deceased was admitted to the hospital after 24 hours and thereafter he died within three days due to septicemia. If he was given the treatment immediately, the result might have been different. In any case, as observed

hereinabove, there was no premeditation on the part of the accused; the accused did not carry any weapon; quarrel started all of a sudden and that the accused pushed the deceased and stood on the abdomen and therefore, as observed hereinabove, the case would fall under exception 4 to Section 300 IPC and neither clause 3 of Section 300 nor clause 4 of Section 300 shall be attracted. Therefore, as observed hereinabove, at the most, the accused can be said to have committed the offence under Section 304-I, IPC.

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11. In view of the above and for the reasons stated hereinabove, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as the judgment and order passed by the learned trial Court convicting the appellant-accused for the offence under Section 302, IPC are hereby modified to the extent convicting the appellant-accused for the offence under Section 304-I, IPC and sentencing him to the period already undergone by him i.e., 14.5 years. Rest of the judgment and order passed by the learned trial Court, confirmed by the High Court, is hereby confirmed.

12. The appellant-accused be set at liberty forthwith, if not required in any other case.

Devika Gujral

Appeal partly allowed.