GAHC010012292018

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/2/2018

ARUP DAS @ KALAMANI
BARPETA

VERSUS

THE STATE OF ASSAM
GHC, GHY.

Advocate for the Petitioner : MS. M BARMAN, AMICUS CURIAE

Advocate for the Respondent : MS. B. BHUYAN(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE

JUDGMENT

Date : 24-04-2024

[Kardak Ete, J]

Heard Ms. M. Barman, learned Amicus Curiae. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam appearing for the State respondent.

2. This Criminal Appeal is preferred by the appellant Sri Arup Das @ Kalamani, from Jail, assailing the judgment and order dated 31.10.2017, passed by the learned Additional

Sessions Judge, Bajali at Pathsala in Sessions Case No.317/2016, under Section 302 of the Indian Penal Code, 1860, whereby the appellant has been convicted and sentenced to undergo Rigorous Imprisonment for life and a fine of Rs.10,000/-(Rupees ten thousand) only, in default of fine, to undergo Rigorous Imprisonment for six (6) months, for committing the murder of his father-in-law Rabin Das.

3. The case set up by the prosecution, in brief, is that informant Smti. Rita Das lodged an ejahar before the In-Charge of Baghmara Out Post under Patacharkuchi Police Station, stating that on 13.05.2016, at around 11:00 A.M., she along with her husband Rabin Das took their daughter Smti. Malaya Das and went to the house of accused Arup Das @ Kalamani, to drop their daughter in the house of the accused and had discussion so that accused would look after and treat well to his wife (their daughter). Thereafter, it is alleged, when her husband Rabin Das was coming out of the room, then, suddenly the accused got up and picked up an axe and assaulted on the head of her husband Rabin Das and dealt with several blows on him. As a result, her husband Rabin Das died instantaneously on the courtyard. Thereafter, the accused chased her and her daughter to hack them. However, they escaped and somehow saved their lives.

4. On receipt of the said ejahar, same was entered as Baghmara Out Post GDE No.225, dated 15.05.2016 and forwarded the same to the Patacharkuchi Police Station. Accordingly, a case was registered being Patacharkuchi Police Station Case No.288/2016, under Section 302 of the Indian Penal Code, 1860.

5. During the course of investigation, the Investigating Officer (in short 'the I.O.') visited the place of occurrence, recorded the statement of witnesses, inquest on the dead body was done and seized the axe. Post mortem examination of the deceased was done with the requisition at FAA Medical College and Hospital, Barpeta, collected the post mortem report and the accused/appellant was arrested. On completion of the investigation, charge sheet was filed against the accused under Section 302 of the Indian Penal Code, 1860.

6. After filing of the charge sheet, the SDJM (M), Bajali at Pathsala took cognizance of the case and after following the procedure, since the case was exclusively triable by the Court of Sessions, committed the case for trial to the Court of learned Sessions Judge. On appearance

of the accused person, the charge under Section 302 of the Indian Penal Code, 1860 was framed against the accused person and the contents of the charge was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

7. During the course of trial, the prosecution has examined in all eleven (11) witnesses. After completion of the examination of prosecution witnesses, the accused person was examined under Section 313 of the Code of Criminal Procedure, 1973 and the accused denied all the allegations and declined to adduce defence evidence.

8. After consideration and examination of the evidence, the learned trial Court concluded that the prosecution has been able to bring home the charge under Section 302 of the Indian Penal Code, 1860 against the accused beyond all reasonable doubt and accordingly convicted and sentenced the accused as mentioned here-in-above.

9. Ms. M. Barman, learned Amicus Curiae, extensively referred to the oral and documentary evidence adduced in the case and submitted that the learned trial court while convicting the accused has solely based on the evidence laid by the eye witnesses, i.e. PW-1, 2 and corroborated by PW-6 and 7. However, the clear admissions in the cross examination of PW-1 that the incident took place all of a sudden and she does not know why the accused got enraged, PW-2 that the incident took place all of a sudden; she also stated that the accused did not utter anything when her father was persuading him, PW-6 that he had not been talking terms with the accused since 2/3 months prior to the incident and they dine separately; he did not know under what circumstance Rabin Das sustained injury and that he did not see for what the argument took place amongst the complainant, deceased Rabin Das and the accused, and in respect of PW-7 that she did not know what the argument between the complainant, deceased Rabin Das and Malaya (on one side) and the accused (on the other side) was and that she did not know under what circumstance Rabin Das sustained injury, were not taken into account by the learned Trial Court. She has submitted that the so called eye witness, i.e. PW-1, 2, 6 and 7 are interested witnesses also and not an Independent witness. She submits that it is settled proposition of law that the version of interested witness can be trustworthy only when the said evidence is corroborated by an independent witness. In the present case though some other witnesses are there, but there is none to corroborate the version of the interested witness in respect of the circumstances of occurrence of the incident to substantiate the motive/intention of the murder of the deceased.

10. Ms. Barman further submits that PW-7 in her deposition clearly stated that argument took place among them and there was commotion. In her deposition under Section 164 Cr.P.C she stated that she heard the sound of quarrel and that quarrel ensued between her son and his father-in-law. i.e. the deceased Rabin Das. From the above, it can be seen that the conclusion of the learned Trial Court that the accused had intentionally assaulted Rabin Das to commit murder is not correct. None of the witnesses has proved the intentional act of the accused. Further, the witnesses PW-1, 2, 6 and 7 deposed that heated argument took place between the accused and deceased and PW-1 and 2 specifically stated that the incident took place all of a sudden and they do not know why the accused got enraged. She has submitted that there is no pre-meditation on the part of the accused to murder the deceased and hence it is a clear case to be considered under Section 304 Part- II of the Indian Penal Code, 1860 and the sentence of the accused may be reduced instead of life imprisonment.

11. Ms. Barman contends that the PW-5, who proved the Ext-1 seizure list and his signature, also proved the seized Material Ext-1 i.e. the Axe and Ext-2 i.e. the bicycle. In his cross examination, the PW-5 deposed that "this kind of bicycle and axe are available in all households and he does not know who was the owner of the bicycle. He also stated that he does not know how the bicycle and the axe appeared in the enclosed yard of Madhu Talukdar." The material exhibits i.e. seized axe was also not sent for any forensic examination on the basis of which it could have been proved the authenticity of the blood stain if it is of the deceased's or not and the axe is belonged to the accused or not. But this aspect of the PW-5 is not taken into account by the learned Court below. Besides, Madhu Talukdar in whose house the bicycle and the axe appeared, was also not examined by the prosecution. Hence, the discovery of murder weapon is belonged to accused only, is not established. Therefore, the impugned judgment is erroneous and benefit of doubt goes to the accused and same is liable to be interfered with.

12. Ms. Barman further submits that the finding of the learned Trial court convicting the accused on the sole basis of so called eye witness is not proved beyond reasonable doubt as the discrepancies created doubt on the credibility of the said witness. But at the same time death is proved by the medical witness and post mortem report according to which deceased succumbed to death due do 4 types of injuries which were ante mortem and caused by heavy

sharp cutting weapon which is homicidal in nature and the presence of the accused is proved. Hence, it is submitted that the finding of the learned Trial Court by judgment and order dated 31.10.2017, convicting the appellant under Section 302 of the Indian Penal Code, 1860, for life be interfered with and modified by reducing the sentence for a lesser period instead of life.

13. In support of her submissions, Ms. M. Barman, learned Amicus Curiae, has placed reliance on the following case laws:-

(1) **Jagriti Devi – vs - State of Himachal Pradesh**, reported in **(2009) 14 SCC 771,**

(2) **Singapagu Anjaiah – vs - State of Andhra Pradesh**, reported in **(2010) 9 SCC 799**, and

(3) **State of Uttarakhand – vs – Sachendra Singh Rawat**, reported in **(2022) 4 SCC 227**.

14. Ms. B. Bhuyan, learned Additional Public Prosecutor, has submitted that PW-2 is the daughter of the deceased and she is also an eye witness to the incident. PW-7 is the mother of the accused and she was also present at home while the incident took place. PW-7 deposed that at the time of the occurrence she was present at home and was cleaning dishes behind the house, when she heard hue and cry, she rushed there and saw that the victim was lying with his head towards verandah of the house with cut injuries. She further deposed that accused assaulted the victim with an axe. PW-10 is the doctor who had come up before the Hon'ble Trial Court to adduce evidence as regards the autopsy conducted by him and proved the contents of the post mortem report. PW-11 is the I.O. PWs-1 & 2 specifically deposed the role attributed by the accused appellant Arup Das @ Kalamani. PW-1 who is the informant of the case and wife of the victim and PW-2 is the daughter of the victim and they are the eye witnesses to the occurrence specifically deposed that accused Arup Das @ Kalamani has assaulted the victim by axe. The accused person had hacked the victim on his neck by axe. They deposed that while they entered into the room of the accused the accused was sleeping and when the victim asked the accused "why do you keep quarrelling, Baba?" immediately the accused appellant got up from the bed and about at that time as the deceased was coming out of the room of the accused, the accused took an axe and hacked the victim with it as a result victim immediately fell on the courtyard outside the room. The accused also

chased PW-1 & PW-2 with the intention to inflict cut to them, they raised hue and cry and somehow managed to escape from there. After chasing them, the accused again dealt cut blow on the victim. Thereafter, they took the victim to hospital in injured condition in an ambulance where the doctor declared him dead. PW-9 is the Executive Magistrate who had conducted the inquest of the deceased and submitted the report. PW-9 exhibited the contents of the inquest report and specifically stated that the deceased received injuries which are deep wound marks of back side and also beside the ear and front side of head.

15. Ms. Bhuyan, learned Addl. PP, submits that PW-10, the Doctor, exhibited the contents of the post mortem report specifically stated that the victim received injuries. According to the Doctor, death was due to hemorrhage and shock resulting from injuries sustained over neck. All injuries were ante mortem and caused by heavy sharp cutting weapon which is homicidal in nature.

16. Ms. B. Bhuyan, learned Addl. Public Prosecutor, submits that the injuries received by the victim are the result of the attack by the accused which has resulted into the death of the victim. In the case in hand when the victim and PW-1 & PW-2 went to the house of the accused, the accused assaulted the victim with an axe on the neck of the victim. There is no manner of doubt to disbelieve the evidence of eye witnesses i.e., PW-1 and 2. They saw the incident and specifically named the accused person and his active participation in the commission of crime. Thus, considering and taking into account the evidence of PW-1, PW-2 and PW-7, the evidence could not be shaken, the conviction and sentence awarded to the accused appellant vide Judgment dated 31.10.2017. At the same time, Ms. B. Bhuyan, learned Addl. Public Prosecutor submits that if this Court takes into account the evidence of PW-1, wife of the deceased and mother-in-law of the accused appellant and also taking Into account the evidence of PW-2 (daughter of the victim and wife of the accused appellant) that the incident had taken place soon after the parents of the wife of the accused asked him as to why he fights, the accused took an axe and hacked the husband of PW-1 and father of PW-2 and come to a conclusion that the occurrence had taken place soon after the statement was made by PW-1 and the victim which could be termed as provocation and because of which the accused person got provoked as a result of which he caused injury to the victim and also chased PW-1 and PW-2 and as such if Your Lordships desire, he may be convicted under section 304 Part-I as the injury was caused on the vital part of the body as a result of which

the victim died instantaneously and the conviction may be given for a period not less than 15 (Fifteen) years considering the age factor of the accused person who is aged about 22 (twenty two) years at the time of commission of crime.

17. We have given our anxious consideration to the submissions advanced by the learned counsel for the parties and also scrutinized the materials available on record.

18. To analyse and appreciate, we would refer to the evidence of the prosecution witnesses.

19. PW-1, Smti Rita Das, the informant, had deposed that accused Arup Das @ Kalamani is her son-in-law and deceased Rabin Das is her husband. Accused got married her younger daughter Smti Malaya Das (PW-2). She deposed that the occurrence took place in the house of the accused, at Daisingri gaon under Patacharkuchi Police station in the district of Barpeta on 30th Assamese month of Bohag at about 11 a.m. PW-1 further deposed that about two days before her daughter (wife of the accused) Smti Malaya Das came to her house and complained that accused did physical torture to her by assault. On the day of occurrence, she and her husband Rabin Das along with their daughter Malaya Das went to the house of the accused to drop her. When they reach the house of the accused then they found accused was sleeping and seeing them he got up from the bed. They talked with him inside the room. During the discussion, her husband Rabin Das asked the accused as to why he quarrel with his wife (Malaya Das PW-2). Then immediately accused got up and in the meantime her husband Rabin Das also about to move towards outside and then suddenly accused took up an axe, dealt a blow upon her husband. Rabin Das immediately fell on the middle part of the door. She and her daughter (PW-2) raised hue and cry. Then accused moved towards them to assault with the Axe. She and her daughter ran away towards outside of the house to the road and raised hulla. The accused moved towards the road and thereafter leaving them returned to his house and again assaulted Rabin Das with the Axe. The injured body of Robin Das was on pool of blood. At their hulla the neighbours rushed there and someone called Ambulance. Thereafter Injured Rabin Das was brought to Patacharkuchi Hospital wherein he was declared dead. The police came to the place of occurrence, brought the dead body for post mortem examination. The police took their statement. They took back the dead body and cremated in their Village. She deposed that she lodged the ejahar with the Police Station

wherein she put thumb impression. She deposed that the ejahar was written as per her version. In her cross-examination, the PW-1 stated that as to why the accused felt angry with they did not know because they did not state to him any such thing which may cause angry to him, the occurrence took place suddenly. She stated that her deceased husband was a healthy man. She further stated that while they were talking then the accused did not give any reply.

20. PW-2, Smti Malaya Das, the daughter of the deceased and the wife of the accused, had deposed that days before the occurrence she came to her parental house and after two days i.e. on the day of occurrence, her mother (PW-1), father (deceased Rabin Das) and she came to the house of the accused appellant/her husband to drop her. While they reached the house of the accused then they found that accused was sleeping. Her parents talked with the accused and tried to make him understand not to do any quarrel with her. In the meantime her father (the deceased) about to move towards outside and then suddenly accused took up an axe and dealt blow on the neck of her father and he fell down on the middle part of the door with cut Injuries. His upper side body on the outside of the door and lower side inside the door in a pool of blood. While they immediately tried to obstruct the accused then he moved towards them with the axe to assault them and then they come out towards the road and raised hue and cry. Then accused returned to the house and again assaulted her father armed with the axe. At their hue and cry the neighboring people rushed to the place of occurrence and brought her injured father to hospital and in the hospital he was declared dead. The Police came and brought the dead body. Later they cremated the dead body. The police recorded her statement. In the cross-examination, she stated that on the day of occurrence while they rushed the house of the accused then they found that accused was sleeping. The occurrence took place suddenly. While her father was trying to make the accused understand, the accused did reply to him. In the cross-examination she stated that her parents had sold country liquor and there was love affair between accused and herself.

21. PW-3, Sri Narayan Das, deposed that accused is his neighbor and he reside in front of his house and he has a shop in front of his house. On the day of occurrence, he heard that accused cut his father-in law Rabin Das. There was hulla at the time of occurrence. The police had recorded his statement. (He was declared as hostile witness). He was suggested that he had stated before the I.O that "On the day of occurrence hearing hulla in the house of the

accused he went there and saw accused was standing in front of the door of his house armed with an axe. In the meantime, he assaulted and cut his father-in-law with the axe and injured Rabin Das was lying in a pool of blood on the floor of the house of the accused. After some time accused armed with the axe fled away from his house by his bicycle which he had witnessed." In his cross-examination, he found no such material that the defence side able to discard his evidence. Such evidence has been sustained by the evidence of PW-11, Sri Pradip Haloi, the Investigating Officer, who stated that Witness Sri Narayan Das had stated that on the day of occurrence at the hue and cry in the house of accused Kalamani he rushed there and saw accused Kalamani @ Arup Das was standing in his house armed with an axe and in the meantime he dealt blows on his father-in-law Rabin Das as a result of Rabin Das was lying in the pool of blood and thereafter accused by a bicycle armed with the axe fled away which he had seen. We find the evidence of PW-1 and 2 have supported the hostile witnesses.

22. PW-4, Sri Binod Uzir, deposed that he is the Secretary of their Ganyanraij. On the day of occurrence while he was attending Manasha Puja in the house of Kumud Talukdar of Bhotanta Mohitara Gaon he heard from others that the Police recovered a bicycle and an Axe in the bicycle in the garden of Madhuram Talukdar of their village. He immediately went there and saw the Police had seized the bicycle and the Axe in his presence and accordingly he put signature as witness. He deposed that he has seen the seized bicycle and the axe in the Court.

23. PW-5, Sri Chandan Talukdar, deposed that about 9 months back one day while he was attending Manasha Puja in the house of his uncle in their village, then he heard that the Police come to the house of Maduram Talukdar and then he immediately came to the house of Madhuram Talukdar and saw the Police had recovered a bicycle and an axe in the carrier of the bicycle. Thereafter, the police seized the bicycle and the axe in his presence. Further, he deposed that Material Ext. 1 is that seized Axe and Material Ext. 2 is that seized bicycle which he has seen in the court. It reveals that the police had seized the Ext.1 and Ext.2 the axe and the bicycle and they are the seizure witnesses.

24. PW-6, Sri Ramen Das, deposed that accused Arup Das is his own brother and he is also called as Kalamani by his nick name. He deposed that Informant Smti Rita Das is the

mother-in-law and deceased Rabin Das is the father-in-law of the accused. Smti Malaya Das is the wife of the accused. He had further deposed that the occurrence took place on 13.05.2016. On that day at about 9 a.m., he was in the Panchayat Office of their village. At that time Informant Rita Das, her husband Rabin Das and their daughter Malaya Das along with her child came to the house of the accused and there they met him near the Panchayat office and asked about the accused and then he told that accused is in the house. Thereafter, Rabin Das went to the house of the Gaonburah and did not find him in the house and then they went to the house of the accused. At that time, their mother was washing the utensils for preparing lunch. After some time he heard hulla in their house and immediately he rushed to their house and saw Rabin Das was lying on the verandah with cut injuries and his head side was lying on the verandah side. Immediately, they called 108 Ambulance and brought Rabin Das to Pathsala Sub-Divisional Civil Hospital. In the Hospital he was declared dead. Rabin das sustained cut injuries on back of the head, side of the ear. The dead body of Rabin Das was brought to Pathsala Police Out Post. The inquest of the dead body was done. Ext.2 is the inquest report and Ext.2(i) is his signature. After completion of the post mortem, the dead body was handed over to the Informant. He heard that accused cut the deceased Rabin Das armed with an Axe. He further deposed that while he rushed to the house then he saw the accused was standing in his house armed with an axe and just after the occurrence he fled away by bicycle with the axe. He further deposed that the axe was with blood stain. PW-6 further deposed that his statement was recorded by the police and his statement was also recorded before the Magistrate. Ext.3 is his statement made before the Magistrate and Ext.3(1), 3(ii) and 3(iii) are his signatures. In the cross-examination, PW-6 stated that from two months back of the occurrence there was no conversation with the accused and he used separate kitchen. He stated he does not know on what circumstances Robin Das sustained injuries. Further, he stated that even he had not seen in what connection there were altercation between the accused and victim Rabin Das.

25. On perusal of evidence of the PW-6, it appears that though he had not seen under what circumstances Rabin Das was assaulted but just after the occurrence he rushed to his house and saw Rabin Das was lying on the floor of their house with cut injuries with oozing blood and accused was standing on the verandah armed with an axe and after some time accused

fled away by bicycle from the house. Except some suggestions there was no such reply of the PW-6 that the defence side able to discard his evidence. His evidence has supported the prosecution case since he witnessed that the accused was standing in the verandah of the house just after the occurrence armed with the axe and the cut injured body with oozing blood of Rabin Das was lying in the verandah near to him and immediately accused fled away from the place of occurrence by his bicycle with axe. Such circumstances as well as evidences have clearly supported the involvement of the accused of the occurrence. Further, he stated that he had witnessed the deceased Rabin Das and his wife and daughter while they entered into the house of the accused, on the other hand he is the elder brother of the accused and have been residing in the same house. We find PW-6 to be a truthful witness being the brother of the accused, who did not try to escape from deposing the fact he witnessed.

26. PW-7, Smti Nilimabala Das, deposed that accused Arup Das @ Kalamani is her son and Smti Malaya Das (PW-2) is her daughter-in-law and deceased Rabin Das is the father-in-law and informant (PW-1) is the mother- in-law of the accused. She deposed that they have separate kitchen. She had deposed that since there was quarrel between the accused with his wife Malaya Das(PW-2) as such she went to the house of her parents. On the day of occurrence Rabin Das (deceased), Malaya Das(PW-2) and Informant Smti Rita Das (PW-1) came to the house of the accused and at that time she was washing the utensils in the back side of their house for preparing lunch. At the time of occurrence, accused was in his room. She heard hulla. She came to see them and then she saw Rabin Das was lying on the verandah with cut injury with oozing blood and his head was on the verandah side. Accused assaulted Robin Das armed with an axe. At the hue and cry the villagers rushed there. Someone called 108 Ambulance and his son Ramen Das (PW-6) and other persons taken Rabin Das to Pathsala Civil Hospital. But in the hospital Rabin Das was declared dead. PW-7 further deposed that her statement was recorded by the police and her statement was also recorded before the Magistrate wherein she put her thumb impression. After completion of the post mortem examination, the dead body of Rabin Das was handed over to the informant. In her cross-examination, the PW-7 stated that she does not know what altercation took place between accused and his wife Malaya Das. In what circumstances Rabin das sustained injuries she does not know.

27. On perusal of evidence of the PW-7, it appears that she had witnessed that on the day of occurrence deceased Rabin Das, Malaya Das (PW-2) and Rita Das (PW-1) came to meet

the accused in the house, she heard hulla and she reached to the spot and saw Rabin Das was lying with injuries on the door step on the verandah side. Further, she stated that accused had assaulted Rabin Das armed with an axe. Though she is the mother of the accused, she did not try to escape from stating the truth and as such her evidence could not be discarded. She witnessed the occurrence. The prosecution side has failed to bring any doubt of her evidence. She has supported the prosecution case. Her evidence has been corroborated with the evidence of other witnesses namely PW-1, 2 and 6 (PW-6 who is her elder son and elder brother of accused appellant).

28. PW-8 Sri Damodar Das, had deposed that his house and shop are situated in front of the house of the accused. He deposed that on the day of occurrence while he was coming from the market then he heard that accused cut his father-in-law Rabin Das. While he reached there in the meantime the villagers gathered at the house of the accused. The prosecution side has declared him hostile witness. His evidence is hearsay otherwise.

29. PW-9, Md. Saifudaullah Khan, Executive Magistrate, deposed that on 13.05.16 he was discharging as Executive magistrate at Bajali under Barpeta district. On that day he did inquest of the dead body of Rabin Das at Sub-Divisional Civil Hospital, Pathsala. We find no any such material to disbelieve his evidence in his cross examination.

30. PW-10, Dr. Dipak kr. Das, who conducted the post mortem examination of deceased Rabin Das, deposed that on 13.5.16 while he was discharging as Medical & health officer in the Dept. Of Forensic Medicine at Fakaruddin Ali Ahmed Medical College And Hospital, Barpeta, he conducted the post-mortem examination on the dead body of Rabin das, 55 years, son of Late Someswar Das of village Rihabari, P.S. Patacharkuchi in the district Barpeta, In connection with Pathsala O.P.GDE No.295 dtd.13.5.16. the dead body was identified by constable No.70 Sri Birendra Baishya and the examination found as follows:

On general examination, he found that:-

An average build male dead body, swarthy complexion, rigor mortis present over whole body, body cold on touch, eye were closed, mouth party open, wearing a checked shirt, blue ganjee and brown stripped full pant, upper body and wearing garments were soaked with blood.
Anus, penis scrotum healthy.

Injury:

(1) One chop wound present over left side of upper neck just below the lower end of left ear. Size 12cms X 3 cm X bone deep. Cutting skin muscle, nerve, vessel of neck, skull bone and membrane of brain (All major vessels of left side of neck cut and cutting mandible also).

(2) One chop wound present over scalp near upper boarder of left ear. Placed obliquely size 9 cm x 2 cm x bone deep. Front to back above the downward.

(3) One chop wound present over back of head over occipital region side to side horizontally. Size 10 cm x 2cm x bone deep.

(4) One chop wound present over posterior portion of parital bones. Just 2 cm behind vertex of head. Placed horizontally side to side. Size 13 cm x 2 cm x bone deep.

N.B. Blood smear adherent to body and wound margins which resist washing with water.

On examination of neck:

No ligature mark is detected and on dissection as described.

On examination of cranium and spinal canal:

Scalp as described of has multiple chop wounds and on dissection defused haema-toma and contusion seen over whole scalp.

Skull: Fracture mastoid area and temporal bone (communicated and depressed fracture).

Verteba: Healthy.

Membrane: Congested and lacerated over left temporal region. Sub-dural Haemirrhage detected over brain (mild).

Brain: Pale.

Spinal cord : not examined.

Thorax: Wall, ribs and cartilage all healthy and pale. Pleure larynx, trachea all healthy.

Both Lungs -Healthy and pale, **Pericardium** healthy and pale. Vessels of thorax healthy and empty. **Heart**- healthy and empty.

Abdomen: Wall healthy, Peritoneum, mouth, pharynx and oesophagus health and pale.

Stomach: Mucosa healthy and pale contains semi solid food material. No suspicious smell

detected.

Small intestine mucosa healthy and pale contains fluidy food material. No suspected smell detected.

Large intestine contains gases and fecal matters.

Liver, spleen and both kidneys pale and healthy. Bladder- Pale micosa healty and empty.

Organ of generation and extema and internal as described healthy.

Opinion:

Death was due to hemorrhage and shock resulting from injuries sustained over neck. All injuries were ante mortem and caused by heavy sharp cutting weapon which is homicidal in nature.

Approx. time of death is 4 to 8 hrs.

There is nothing in the cross-examination worth analysis.

31. On the scrutiny of the testimony of PW-9 and 10, it transpires that deceased had sustained cut injuries over the neck and the death was due to hemorrhage and shock resulting from the injuries over the neck caused by heavy sharp cutting weapon which is homicidal in nature. It reveals that since the injuries are caused by heavy weapon as such the seized axe supports the injuries. The evidence of post mortem examination report supports the evidence of the PW-1 and 2.

32. PW-11, Sri Pradip Haloi, the I.O. had deposed that during the investigation he got an information that an axe has been lying in the back side of the house of Madhuram Talukdar of village Kaharpara, P.S. Patachrkuchi and then he immediately rushed there and seized the axe and a bicycle which was lying in the back side of the house of Madhuram Talukdar in presence of the witnesses. Material Ext.1 is the seized Axe and Material Ext.1 the seized axe which has seen in the court during his evidence. PW-6 and 8 have supported that the seized axe was used by the accused in the occurrence. The evidence of PW-11 has shown that just after the occurrence the axe was recovered which was used by the accused during the occurrence. The I.O. is able to seize the axe which was used by the accused in the incident. It reveals that the injury sustained by the injured is sufficient to cause death.

33. The evidence of PW-6, reflects that when he rushed to the place of occurrence then he saw the accused in front of his house armed with an axe and after some time he fled away from his house by bicycle with the blood stained Axe. PW-8, (who was declared hostile) but his evidence has been confirmed by the I.O, who had deposed that on the day of occurrence while he rushed to the place of occurrence hearing hulla in the house of the accused then he saw the accused was armed with blood stained axe and injured Rabin Das was lying near to him ad after some time he fled away by bicycle with that axe. From the evidence of PW- 6 and 7, it appears that just after the assault they rushed to the place of occurrence and they saw the accused was with the blood stained axe in front of his house and thereafter he fled away from the house by bicycle with the axe which was recovered in the garden of Sri Madhuram Talukdar. It appears that though said Madhuram Talukdar was not examined even there the defence side has failed to bring out any doubt of the seizure.

34. The evidence of PW-1 is corroborated with the evidence of PW-2 that on the day of occurrence they came to the house of the accused along with their husband/father Rabin Das and after some discussions the accused assaulted him with the axe as a result of which he had died. Further PW-6, the brother of the accused and PW-7, the mother of the accused have supported that on the day of occurrence deceased Rabin Das came to the house of the accused along with his wife (PW-1) and daughter (PW-2) who is the wife of the accused, which they had witnessed after some time they heard hulla and then they reached to the spot and saw Rabin Das was lying in a pool of blood with cut injuries and near to him accused was standing armed with an Axe who had assaulted Rabin Das with that axe. PW-6 and 7, the own brother and the mother of the accused have supported the evidence of PW-1 and 2 and their evidences are corroborated to each other of the occurrence that accused had killed Rabin Das by assaulting him with the Axe.

35. It reveals from the evidence that the intention of the accused assaulting the deceased Rabin Das that at first accused dealt blow over Rabin Das in his neck inside the house and when PW-1 and 2 raised hue and cry then the accused moved towards them and to save themselves they ran out from the house to the road and then accused armed with that axe chased them and then he returned to his house and again dealt several blows over Rabin Das. The accused had assaulted Rabin Das for the second time which established that he

had intentionally assaulted Rabin Das to kill. As such the evidence as revealed there was an intention on the part of the accused to commit murder to the deceased. The witnesses namely PW-. 6 and 7 who are the brother and mother respectively of the accused have adduced the truth of the occurrence and they did not try to escape from the truth to save the accused. They are trustworthy and there is nothing on record to disbelieve them.

36. On careful scrutiny of the entire evidences on record, it transpires that on 13.05.2016 at about 11 a.m. deceased Rabin Das, informant PW-1 and PW-2, the wife of the accused, came to the house of accused to drop back PW-2 in the house of accused and being the father-in-law tried to make the accused understand to maintain peaceful life with his wife (PW-2). But it appears that irked by such words, the accused appellant assaulted his father-in- law Rabin Das by an axe as a result of which he had died. At first accused assaulted the deceased inside the room while the deceased moved to come out from the house and thereafter the accused came out from the house to assault PW- 1 and 2 but they somehow saved themselves, thereafter, then he again moved back towards the deceased and for the second time he assaulted the deceased with the axe with intent to kill him. The intention of the accused clearly reveals from the facts as well as evidences of the case. In our considered view, the evidence of eye witnesses i.e. PW-. 1 and 2, which are duly supported and corroborated by the PW-6 and 7, are cogent and consistent and we concur with the view of the learned trial court.

37. Now, we would refer to the case laws relied herein above.

38. In **Jagriti Devi** (Supra), wherein Hon'ble Supreme Court has held, which is reproduced here-in-under:-

> *"26. Section 299 and Section 300 IPC deals with the definition of "culpable homicide" and "murder" respectively. Section 299 defines "culpable homicide" as the act of causing death*
>
> *(i) with the intention of causing death, or*
>
> *(ii) with the intention of causing such bodily injury as is likely to cause death, or,*
>
> *(iii) with the knowledge that such act is likely to cause death.*
>
> *A bare reading of the section makes it crystal clear that the first and the second clauses of the section refers to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge"*

postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

27. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa.

28. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court.

29. In State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382, this Court observed as follows at p.386:

"12. In the scheme of the Penal Code, "culpable homicides" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

30. Placing strong reliance on the aforesaid decision, this Court in Abdul Waheed Khan v. State of A.P., (2002) 7 SCC 175, observed as follows:

"13. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

14. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is

suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

15. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant Singh v. State of Kerala3 is an apt illustration of this point.

16. In Virsa Singh v. State of Punjab reported in AIR 1958 SC 465, Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 "Thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause "Thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows:

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 `thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

18. The learned Judge explained the third ingredient in the following words (at p. 468): (AIR para 16)

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

19. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case4 for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in Virsa Singh case4 even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

21. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons -- being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as

aforesaid.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."

31. The aforesaid principles have been consistently applied by this Court in several decisions. Reference in this regard may be made to the decision of this Court in Ruli Ram v. State of Haryana, (2002) 7 SCC 691; Augustine Saldanha v. State of Karnataka, (2003) 10 SCC 472; State of U. P. v. Virendra Prasad, (2004) 9 SCC 37; Chacko v. State of Kerala, (2004) 12 SCC 269; and S. N. Bhadolkar v. State of Maharasthra, (2005) 9 SCC 71.

32. That being the well settled legal position, when the factual background of the present case is tested on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the trial court as also by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident of murder in which the accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant. The deceased also took out the `Khukri' which was under the pillow with the intention of assaulting the accused-appellant and the accused-appellant in order to save herself grappled with the deceased and during that process she also received injuries. The prosecution has failed to give any explanation with regard to those injuries received by the accused-appellant.

33. Further, it is also established in evidence that the `Khukri' used in the commission of offence was kept by the deceased under her pillow while she was sleeping in the veranda outside the house. Clearly, there was no intention on the part of the accused-appellant to kill the deceased.

34. That being the position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

35. We, therefore, hold the accused-appellant to be guilty for offence under Section 304 Part II IPC. Her conviction under Section 302 IPC is, therefore, set aside. The accused-appellant has already undergone about seven years of imprisonment. We therefore, alter the sentence to the period already undergone by the accused-appellant. So far as the punishment of fine is concerned, the same stands set aside. The accused-appellant is already on bail. The bail bonds shall stand cancelled."

39. In **Singapagu Anjaiah** (Supra), wherein Hon'ble Supreme Court has held, which is reproduced here-in-under:-

"*16. In our opinion, as nobody can enter into the mind of the accused, its intention has*

to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crow bar as the weapon of offence. He has further chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly lead to one and the only conclusion that the appellant intended to cause death of the deceased."

40. In **Sachendra Singh Rawat** (Supra), wherein Hon'ble Supreme Court has held, which is reproduced here-in-under:-

"*7. In light of the above factual scenario, few decisions of this Court on the point whether culpable homicide would tantamount to murder or not, are required to be referred to and considered.*

8. In the case of Virsa Singh (supra), in paragraphs 16 & 17, it was observed and held as under:

'*16. ... The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, 7 is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.*

17. It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact; ....'" (emphasis supplied)

9. In Dhirajbhai Gorakhbhai Nayak (supra), on applicability of Exception 4 of Section 300 IPC, it was observed and held in paragraph 11 as under:

"*11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the*

first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"

10. In the case of Pulicherla Nagaraju (supra), this Court had an occasion to consider the case of culpable homicide not amounting to murder and the intention to cause death. It was observed and held by this Court that the intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

(i) nature of the weapon used;

(ii) whether the weapon was carried by the accused or was picked up from the spot;

(iii) whether the blow is aimed at a vital part of the body;

(iv) the amount of force employed in causing injury;

(v) whether the act was in the course of sudden quarrel or sudden fight or free for all

fight;

(vi) whether the incident occurs by chance or whether there was any premeditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows.

41. From the above, we find that Honble Supreme Court has held that the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted

in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.

42. Section 299 IPC defines culpable homicide as an act of causing death (i) with the intention of causing death, (ii) with the intention of causing some bodily injury as is likely to cause death and (iii) with the knowledge that such act is likely to cause death. The first and second clauses of the section refer to intention apart from knowledge and the third clause refer to knowledge apart from intention. Intention and knowledge postulate the existence of positive mental attitude. The expression knowledge referred to in section 299 and 300 IPC is the personal knowledge of the person who does the act. To make out an offence punishable under section 304 Part II IPC, the prosecution has to prove the death of the person and such death was caused by the act of the accused and that he knew that such of his is likely to cause death.

43. We may again refer to the case of **Jagriti Devi** (supra) wherein the Hon'ble Supreme Court has held that it is trite law that section 304 Part II IPC comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

44. In the case of **State of A.P. v. Rayavarapu Punnayya,** reported in **(1976) 4 SCC 382,** the Hon'ble Supreme Court has held that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of the case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether the act of the accused amounts to culpable homicide as defined in section 299. If the answer to this question is prima facie found in affirmative, the stage for considering the operation of section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case with the ambit of any of the four

clauses of the definition of murder contained in section 300. If the answer to this question is in negative the offence would be culpable homicide not amounting to murder, punishable under first or second part of section 304, depending, respectively, on whether the second or third clause of section 299 is applicable. If the question is found in the positive, but the case comes, within any of the exceptions enumerated in section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of section 304 of the Penal Code.

45. Reverting back to the present case, as noted in the preceding paragraphs, the prosecution case is that the accused armed with deadly weapon i.e. an Axe, assaulted the deceased. Evidence of eye witnesses namely PW-1, 2 and evidence of PW-6 and 7 regarding assault to the deceased with an Axe found to be truthful and corroborated and the medical evidence of PW-10 also clearly supports the case and the same could not be discarded on ground of PW-1, 2, 6 and 7 being related or interested witnesses.

46. On careful scrutiny of the entire evidences on record, it transpires that on 13.05.2016 at about 11 a.m. deceased Rabin Das, informant PW-1 and PW-2, the wife of the accused, went to the house of accused to drop back PW-2 in the house of accused and being the father-in-law tried to make the accused understand to maintain peaceful life with his wife (PW-2). The accused appellant assaulted his father-in- law Rabin Das by an axe as a result of which he had died. The accused assaulted the deceased inside the room while the deceased moved to come out from the room and thereafter the accused chased PW- 1 and 2 to assault but they ran away then he again moved back towards the deceased and assaulted the deceased for the second time by an Axe with intent to kill him which clearly reveals the intention of the accused appellant. The evidence of eye witnesses i.e. PW-. 1 and 2, which are duly supported and corroborated by the PW-6 and 7, are cogent and consistent. We find that the accused appellant has taken undue advantage while inflicting injury with several blows and has acted in a cruel and unusual manner. Thus, we are of the view that the offence committed by the appellant would not fall under section 304 IPC.

47. From the analysis of the evidence on record in its entirety and the law enunciated by the Hon'ble Supreme Court, we are of the considered view that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt. Looking to the matter from all

angles, we have no doubt in our mind that knowledge and intention can be attributed to the accused that his act might caused such bodily injury, which may, in ordinary course of nature, be sufficient to cause death. Had the accused appellant not assaulted the deceased for the second time, certainly no intention could have been attributed to him that he did not have intention to cause death. However, since the accused appellant after the first attack on which the deceased fell on the ground with injuries and blood oozing out, he assaulted by the axe for the second time which is established by the eye witnesses namely PW-1 and 2, it cannot be said that he has the knowledge but not intention.

48. From a careful examination and scrutiny of the testimony of the PW-1, 2, 6, 7, 10 and 11 and in the light of law laid down as referred to above, we of the considered view that the evidence of these witnesses which established the cause of death of deceased due to cut injuries inflicted by the accused appellant are credible, reliable and trustworthy and the conviction of appellant can be based on the testimony of the PW-1 and 2 which is corroborated by the by PW- 6, 7, 10 and other evidences which warrant no interference. We have, therefore, no incertitude in holding that the evidence led by the prosecution establish the charges brought against the appellant beyond reasonable doubt. Therefore, the learned Trial Court has rightly convicted the appellant.

49. Consequently, conviction and sentence of the accused persons by the learned Additional Sessions Judge, Bajali at Pathsala in Sessions Case No. 317/2016 vide the Judgment dated 31.10.2017 is upheld.

50. Accordingly, criminal appeal stands dismissed.

51. We extend our appreciation to the learned counsel for the parties for their able assistance.

TCR be sent back.

JUDGE **JUDGE**

Comparing Assistant