

THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 2092 of 2017

(Against the judgment of conviction dated 14.09.2017 and order of sentence dated 16.09.2017, passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa, in Sessions Trial Case No. 241 of 2012)

Bamiya Pingua, Son of Late Chambru Pingua, Resident of Jangiburu, P.O. and P.S. Manjhari, District-West Singhbhum

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant : Mr. Piyush Krishna Choudhary, Advocate
For the Respondent : Mrs. Lily Sahay, A.P.P.

C.A.V. on 07/03/2024 **Pronounced on 30/04/2024**
Per Sujit Narayan Prasad, J.:

Prayer:

1. This appeal has been filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction dated 14.09.2017 and order of sentence dated 16.09.2017, passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa, in Sessions Trial Case No. 241 of 2012, whereby and whereunder the learned trial court has convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and has sentenced to undergo R.I for life under Section 302 of the Indian Penal Code and fine of Rs.10,000/- [ten thousand] and in the event

of default of payment of fine convict was further directed to undergo rigorous imprisonment for six months.

Prosecution Case:

2. This Court, before proceeding to examine the legality and propriety of the judgment of conviction and order of sentence, deems it fit and proper to refer the background of institution of prosecution case.

3. As per fardbeyan (Ext.1/3) of the informant P.W.8 Janki Kui, which was recorded by P.W.11-Sub Inspector of Police, Binod Oraon, Officer-in-charge, Manjhari P.S. on 23.6.2012 at 6.00 hours at near house of Badhai Pingua at Jangiburu, the case of prosecution, in brief, is that on 22.6.2012 at 05.45 p.m. in the evening her husband Birsa Banra (now deceased) was sitting alongwith Bamia Pinuga under tamarind tree situated in front of the house of Badai Pingua, where Bamia Pingua was making plough with adze, he demanded his due amount of Rs.250/- from her husband. Her husband showed inability to return the due amount at once. Upon this Bamia Pingua inflicted blows upon him with adze on his head and the neck as a result of which her husband Birsa Banra @ Michai Banra died on the spot. Her fardbyean was read before her, she heard and understood it.

4. On the basis of fardbeyan of informant, First Information Report being Manjhari P.S. Case No.15 of 2012

was registered under Section 302 of I.P.C against the accused and after completion of investigation, the I.O. submitted charge-sheet against the accused and vide order dated 18.09.2012 cognizance of the offence under Section 302 of the Indian Penal Code was taken against the aforesaid accused, which being exclusively triable by court of sessions, case was committed to the Court of Sessions on 19.10.2012, by learned S.D.J.M., Sadar, Chaibasa. In due course, this case was transferred to the Court of learned Additional Sessions Judge, Chaibasa court for trial and disposal.

5. The charge was framed under Section 302 of the Indian Penal Code against named accused person to which he pleaded not guilty and claimed to be tried.

6. During trial, in order to prove its case, the prosecution has examined altogether twelve witnesses, namely, **P.W.-1** Balmiki Tamsoy, **P.W.-2** Madan Mohan Birua, **P.W.-3** Mathura Tamsoy, **P.W.-4** Pratap Purty, **P.W.-5** Budhan Singh Tamsoy, **P.W.-6** Arjun Tamsoy, **P.W.-7** Kushnu Banra, **P.W.-8** Informant, Janki Kui, **P.W.-9** Dr. Binod Kumar Pandit, who conducted postmortem, **P.W.-10** Sagar Tamsoy, **P.W.-11** I.O., S.I., Vinod Oraon and **P.W.-12** Manoranjan Kumar, learned Judicial Magistrate, 1st Class,

7. The trial Court, after recording the evidence of witnesses, examination-in-chief and cross-examination,

recorded the statement of the accused and found the charges levelled against the appellant proved beyond all reasonable doubts. Accordingly, the appellant had been found guilty and convicted for the offence punishable under Sections 302 of the Indian Penal Code and sentenced to undergo life imprisonment for the said offence, which is the subject matter of instant appeal.

8. The aforesaid judgment of conviction and order of sentence is under consideration before this Court as to *whether the trial Court, while convicting the accused person, has committed any illegality or not.*

Argument on behalf of appellant:

9. Mr. Piyush Krishna Choudhary, learned counsel appearing for the appellant has assailed the impugned judgment of conviction and order of sentence on the following grounds:

- I. That the prosecution has miserably failed to establish the charge said to be proved beyond all reasonable doubt.
- II. That the trial Court has also failed to appreciate that it is not a case where any ingredient of Section 302 I.P.C. is attracted.
- III. That in the case at hand, there is no reliable eye witness to the occurrence and on mere suspicion the

appellant has been arrested and convicted in the case.

- IV. It has been submitted that the learned trial Court has failed to appreciate the evidence of P.W. 8, informant Janki Kui, who is the wife of deceased, has deposed in her cross-examination that her fardbeyan was not read before her. She further deposed that she did not know how her husband died as at that time she had gone to her *Maike (paternal house)*. She further stated that she has no knowledge about the money transaction between her husband and accused.
- V. It has been submitted that in testimonies of most of the witnesses, who are said to be eye witness, there are so many discrepancies. Further, the investigation in the case at hand has been done in a haphazardly manner and there are many discrepancies and inconsistency in the testimony of the witnesses. But the learned trial Court did not take these facts into consideration while passing the impugned judgment of conviction.
- VI. The learned counsel for the appellant, based upon the aforesaid ground, has submitted that the impugned judgment suffers from illegality, hence not sustainable in the eyes of law.

VII. In alternative, submission has been made that even if the prosecution story is taken to be true then also the learned trial court has failed to appreciate that the commission of crime of murder is only on the basis of the heat of passion in a sudden quarrel over a trivial matter.

VIII. Therefore, in alternative, it has been argued that even accepting the case of the prosecution to be true, even then, at best this case would fall under Section 304 Part-I or Part II of the Indian Penal Code taking into consideration the fact that in the manner and mode in which the murder is alleged to be committed, no case under Section 302 IPC is made out.

Argument on behalf of respondent-State:

10. Mrs. Lily Sahay, learned Additional P.P. has opposed the grounds agitated on behalf of appellant against the impugned judgment by defending the same stating *inter alia* that there is no infirmity in the impugned judgment on the following grounds:

- I. It is a case where the prosecution has been able to prove the charge beyond all reasonable doubt, since the assault admittedly was inflicted upon the deceased which resulted into death of the deceased.

- II. It has been submitted that on the date of occurrence accused Bamia Pingua and Birsa Pingua (now deceased) were making plough in their village under the tamarind tree situated in front of the house of Badhai Pingua. After some time they were chewing tobacco and making joke to each other in the meantime accused Bamia Pingua became angry and inflicted blows with adze on the head and neck of the Birsa Banra due to which he died on the spot. Accused was caught hold by the villagers on the spot, he confessed his guilt before the villagers (Ext.3/1) as well as before the investigating officer. This fact has consistently been reiterated by all the eye witnesses.
- III. Furthermore, the Postmortem report (Ext.9) as well as inquest report (Ext.12) also corroborates the version of prosecution witnesses that homicidal death of deceased Birsa Banra was caused by inflicting blows with sharp cutting weapon. Production-cum-seizure list Ext.6/2 also revealed that villagers seized the adze from the possession of accused on the spot which was sent by investigating officer for examination to SFSL Ranchi. SFSL report Ext.13/1 revealed that human

blood of A-Group was found on adze also corroborates the version of prosecution witnesses that on the date of occurrence accused Bamia Pingua committed the murder of deceased inflicting blows with *axe* on his head and neck.

IV. Learned counsel appearing for the State, based upon the aforesaid premise, has submitted that the impugned judgment does not suffer from any error, hence the instant appeal is fit to be dismissed.

Analysis

11. We have heard learned counsel for the parties, perused the material available on record more particularly the testimony of the witnesses as also the finding recorded by learned trial Court.

12. This Court, before considering the argument advanced on behalf of the parties, is now proceeding to consider the deposition of witnesses, as per the testimony as recorded by learned trial Court.

Testimony of witnesses:

13. P.W.-01, Balmiki Tamsoy, has stated in his examination-in-chief that the occurrence took place on 22.6.2012, Friday, in the evening at 4.45 p.m., while he was present under the tamarind tree situated in front of the

house of Badhai Pingua. At that time Arjun Tamsoy, Badhai Pingua, Budhu Banra, Mangal Singh Pingua, Birsa Banra, Chungru Pingua, Bamia Pingua and 4-5 women were also present there. Where Arjun Tamsoy Badhai Pingua, Budhu Banra, Mangal Singh Pingua and Bamia Pingua were making plough with adze. Birsa Banra and Bamia Pingua were sitting in front of each other under the tamarind tree and in course of chewing tobacco they were making jokes with each other, upon this Bamia Pingua became angry and asked to return his Rs. 250/- from the Birsa Banra. Then, Birsa Banra told him that if he did not return the money what would happen. On which Bamia Pingua inflicted blows with adze on the head and neck of Birsa Banra due to which he fell down there and profuse bleeding started and he died at once before them. The information of the incident was given to village Munda, on which village Munda with help of dakua tied the accused Bamia Pingua with tamarind tree.

14. On the next day, 6.00 a.m. in the morning police came there took the statement of Janki Kui and made her understand the contents of her statement. Janki Kui found it true put her thumb impression on fardbeyan. He also put his signature on it, on identification it has been marked as Ext.1. He identified the accused present before the court. His statement recorded U/s 164 of the Cr.P.C before the J.M.,

which also bears his signature on identification it has been marked as Ext.2. Accused Bamia Pingua also confessed his guilt before Madan Mohan Birua, Mukhia of the Panchayat which also bears his signature on identification it has been marked as Ext.3. Bamia Pingua also confessed his guilt before police in his presence. He also put his signature on it, on identification it has been marked as Ext.4.

15. In his cross-examination, he has stated that Janki Kui is an illiterate lady she did not know Hindi. She speaks in 'Ho' language, the fardbeyan was not understood by him. The witnesses further stated Mukhia and other person present there read the fardbeyan in 'Ho' language to the informant. All the papers were prepared before the Mukhia Madan Mohan, Birua Munda and villagers.

16. Accused Bamia Pingua is also illiterate person and he speaks and knows 'Ho' language. He described the boundary of the place of occurrence. North- Land of Motiram Tamsoy , South-Two trees of tamarind, East-Land of LudriKui, West-House of Barai Pingua. He further deposed that the adze by which accused inflicted blows was not today in the court before him. He denied defence suggestion that he was not an eye witness of the occurrence and the alleged occurrence was not committed by the accused, he deposed falsely and implicated the accused in this case.

17. P.W.02 Madan Mohan Birua, has stated in his examination-in-chief that on 23.6.2012, he received information from the villagers that murder of a person was committed at village Jangipur. He went there and saw dead body was found lying under tamarind tree and the person who was committed murder was also sat there village munda Sagar Tamsoy asked from the accused why he had committed the murder? On which he replied that the deceased had taken Rs.250/- as debt from him and he did not return this amount on which he became angry and committed his murder. The confessional statement of the accused was recorded by him, which bear the signature and thumb impression of the witnesses, on identification it has been marked as Ext.3/1. He identified his signature on the confessional statement of the accused recorded by the police, on identification it has been marked as Ext.4/1. He identified the accused present in the dock and stated that this fellow confessed his guilt before him.

18. In his cross-examination, he has stated that he did not know how and when deceased Birsa Banra was died. Investigating officer did not take his statement in this case. He deposed first of all before the court. He did not go to the place of occurrence on the date of incident. The confessional statement of the accused was recorded by him on 23.6.2012

but the date was not mentioned on it. Accused Bamia Pingua knows and speaks only 'Ho' language. He neither speaks nor understands in Hindi. It has not mentioned in the confessional statement (Ext.3/1) of the accused that his statement read before him in 'Ho' language he found it true put his LTI on it. He denied defence suggestion that accused Bamia Pingua did not confessed his guilt before him and he was falsely implicated in this case and he deposed falsely. No one stated before him, when and where deceased had taken Rs.250/- as debt from the accused

19. P.W.03 Mathura Tamsoy, has stated in his examination-in-chief that Bamiya Pingua committed the murder of Birsa Banara on 22.6.2012 in the evening, while he was present at his house. He heard Bamia Pingua had given amount Rs.250/- as loan, when accused asked to return his due amount then Birsa Banra said that if he did not return money then what he would do, on which Bamia Pingua inflicted blows with adze on the head and neck of Birsa Banra and committed his murder. His statement was recorded U/s 164 of the Cr.P.C. and he identified his signature on it, which has been marked as Ext.5. Further he identified his signature on fardbeyan, confessional statement of the accused Bamia Pingua recorded before him and confessional statement of accused recorded before police on

identification, these have been marked as Ext.1/1, 3/2 & 4/1 respectively. He identified the accused present in the dock. In his cross-examination, he has stated that it was not witnessed by him, how Birsa Banra died. Police interrogated him about this case on the date of occurrence. He denied defence suggestion that he deposed falsely.

20. P.W.04, Pratap Purty, has stated in his examination-in-chief that the occurrence took place three years ago , when Bamia Pingua committed the murder of Birsa Banra inflicting blows with adze (hansi) on his neck and head as a result he died on the spot under the tamarind tree. He was not present at the place of occurrence at the time of incident, while he reached there the dead body of the deceased was lying there. When he reached at the place of occurrence Mota Pingua, Badai Pingua, Dulay Birua, Arjun Singh Tamsoy were present there. Bamia Pingua confessed his guilt before the persons present there. He also put his thumb impression on it. He identified the accused present in the dock. Investigating Officer took his statement in this case.

21. In his cross-examination, he has stated that his house was at the distance of half k.m. from the place of occurrence. He did not see how the Birsa Banra died. He has stated before the investigating officer that Bamia Pingua inflicted blows on Birsa Banra. The length of 'Hansi' (adze) was at

about one cubit. There was blood smeared on the 'Hansi' (adze). The said 'Hansi was not in the court that day before him. Balmiki Tamsoy read the confessional statement of Bamia Pingua before him but he has not remembered its date. He denied defence suggestion that alleged occurrence was not committed and accused was falsely implicated in this case.

22. P.W. 05, Budhan Singh Tamsoy, has stated in his examination-in-chief that he knew Birsa Banra. Bamia Pingua had inflicted blows on the head and neck of the Birsa Banra with adze as a result he died. He went to the scene of occurrence after the incident and saw there was blood fallen on the ground and the person present there caught hold the accused Bamia Pingua. He asked Bamia Pingua why had he committed the murder of deceased on which he has stated that accused had taken Rs.250/- as debt but he did not return back, therefore, he committed the murder. When he reached at the place of occurrence police was present there. Blood smeared adze was given to police at the place of occurrence and who prepared seizure list. He put his signature on it, on identification it has been marked as Ext.6. During course of investigation his statement was recorded in the court. He identified his signature on his statement on identification, which has been marked as Ext.7. Investigating

officer took his statement in this case. He identified the accused present in the court.

23. In his cross-examination, he has stated that the occurrence was not witnessed by him. He saw the dead body at place of occurrence on the next day.

24. P.W.06 Arjun Tamsoy, has stated in his examination-in-chief that the occurrence took place in year 2012. At that time, he was going to take bath and when he reached under the tamarind tree in his village, he saw Bamia Pingua and Birsa Banra were making joke and were ploughing. During course of joke, Bamia asked to return his debt amount of Rs.250/- from the Birsa Banra, on which Birsa replied that he had no money upon this Bamia Pingua became angry, inflicted blows on the head of Birsa with adze. As a result bleeding started from his neck and he died on the spot. Police came at the place occurrence and arrested the accused Bamia Pingua. He identified his signature on the confessional statement of the accused Bamia Pingua, before the villagers and police on identification his signatures have been marked as Ext.3/3 and 4/2 respectively. Adze was seized and seizure list was prepared by police before him. He put his signature on seizure list his statement was also recorded before the learned Judicial Magistrate, Sri Manoranjan Kumar, which also bears his signature. Thus, his signature on seizure list,

on his statement recorded under Section 164 of the Cr.P.C. have been marked as Ext.6/1 and 8 respectively. He identified the accused present in the dock.

25. In his cross-examination, he has stated that police took his statement on 23.6.2012, adze was sealed by the police at the place of occurrence but he did not put his signature on it. He read his statement giving before the court. He was not present when there was transaction of Rs.250 took between the deceased and accused. He was present at the place of occurrence at the time of incident. The boundary of the place of occurrence. East- Tree of Karaunzi, West- House of BadhaiPingua, North- filed, South-House of Chamru Pingua. He denied defence suggestion that he deposed falsely due to enmity by the accused.

26. P.W.07 Kushnu Banra, has stated in his examination-in-chief that the murder of Birsa Banra was committed. He put his LTI on the inquest report of the deceased Birsa Banra. He heard that Bamia Pingua had committed the murder of Birsa Banra. He identified the accused present in the dock. In his cross-examination, he has stated that he did not know who had committed the murder of Birsa Banra. He heard from his son Chiru Banra that Birsa Banra was died. Investigating officer had not taken his statement. The

document on which he put his thumb impression did not read before him. He had no knowledge about this case.

27. P.W.08 Informant Janki Kui, who is the wife of the deceased, has stated in her examination-in-chief that Bamia Pingua had committed the murder of her husband Birsa Banra inflicting blows with 'Hansi' (adze) on his head and neck. She saw the dead body of her husband. There was cut injuries on her head and neck. She heard that Bamia Pingua asked money from her husband. But he did not pay the said amount therefore Bamia had committed the murder of her husband. Villagers told him that Bamia committed the murder of her husband under the tamarind tree. Investigating officer took her statement in this case. Police recorded her statement as she stated it was also read before her, she found it true put her thumb impression on it, she identified the accused present before the dock.

28. In her cross-examination, she has stated that her fardbeyan was not read before her. She did not know how her husband was died because at that time she had gone to her maike. She had no knowledge about the money transaction between her husband and accused. Investigating officer took her statement in this case. She cannot say from whom, she received the information about the death of her husband.

29. P.W.09 Dr. Vinod Kumar Pandit, has stated that on 23.5.2012, he was posted as M.O., Sadar Hospital, Chaibasa. On the same day, he conducted postmortem examination on the dead body of Birsa Banara @ Michui, S/o Late Ankura Banara male aged about 25 years, R/o vill. Jangiburu, P.S. Manjhari, District-West Singhbhum, brought and identified by Rampukar Tiwari, Police No.327 of P.S. Manjhari, found the following ante-mortem injuries on his body.

External & Internal Injuries:

I.Sharp cutting injury on neck on left side size 4"x2"x3" deep cutting all soft tissue and vertebrae partially.

II.Sharp cut on scalp in the middle size 4"x3"x bone deep with laceration of brain matter, blood clot inside cranial cavity, Stomach-undigested food material present. Heart-both chamber empty Time since death- More than 12 hours but within 48 hours as rigormortis present in both upper and lower limb.

Cause of death-Head injury, hemorrhage and shock. Abovementioned injuries are ante-mortem in nature and caused by sharp object. This postmortem report is in his pen and signature, on identification it has been marked as Ext.9.

In his cross-examination, he has stated that the deceased had taken meal before roughly half an hour as digestion depends on various factors. If a person falls on

sharp fixed object from a reasonable height such type of injuries may be possible. It is not true that his report is vague.

30. P.W.10 Sagar Tamsoy, has stated in his examination-in-chief that the murder of Birsa was committed by Bamia, he saw the dead body of Birsa. He identified his signature on fardbeyan, on identification it has been marked as Ext.1/2. Investigating officer took his statement in this case. He identified the accused present in the dock. In his cross-examination he has stated that, he did not know how and when Birsa died. He did not go to police station along with Janki Kui. He also stated before the Investigating officer that he has no knowledge about the occurrence. Fardbeyan was neither read by him nor read before him. Janki kui had given her *fardbeyan* in 'Ho;' language. He did not see the dead body of deceased.

31. P.W.11 I.O., Vinod Oraon, has stated in his examination-in-chief that on 23.6.2012 he was posted as officer-in-charge at Manjhari Police station. On the same day he recorded the farbdyan of informant which is in his writing and bears his signature. Informant had also given her thumb impression on it. It also bears the signature of witnesses. On identification it has been marked as Ext.1/3. Further during course of his examination endorsement on

fardbayn, Production-cum-seizure list, formal FIR., arrest memo of the accused Bamia Pingau, Inquest report of the deceased Birsa Banra @ Muchi Banra and confessional statement of the accused Bamia Pingau have been marked as Ext.1/4, 6/2, 10, 11 12 and 4/3 respectively. Thereafter he inspected the place of occurrence. The place of occurrence of this case is under the tamarind tree situated in front of the house of Badhai Pingua of village Jangiburu on the barren land of Moti Ram Tamsoy. Where Bamia Pingua inflicted blows on the head of Birsa Banra and committed his murder. The boundary of the place of occurrence has been given as East-Barren land of Ludri Kui, west-House of Badhai Pingua, North-Barren land of Moti Tamsoy, two trees of tamarind thereafter house of Bamia Pingau. He found blood spot on the of occurrence under the tamarind tree thereafter the took the re-statement of Janki Kui and statement of witnesses Balmiki Tamsoy, Mathura Tamsoy, Pratap Pruty, Madan Mohan Birua, Sagar Tamsoy, Budhan Singh Tamsoy, Arjun Tamsoy, Kushnu Banra, Budhu Banra, and Badhai Pingua. He received postmortem report of the deceased Birsa Banra. Further he had given an application before S.D.J.M. for recording the statement of witnesses U/s 164 of the Cr.P.C. then the statement of Arjun Tamsoy, Badai Pingau, Budhu Banra, Balmiki Tamsoy, Sagar Tamsoy, Mathura Tamsoy,

Budhan Singh Tamsoy and Pratap Purty recorded statement U/s 164 of the Cr.P.C. On the basis of statement of the witnesses by the order of superior officer he found the case true and submitted charge sheet against the accused U/s 302 of the I.P.C. and kept pending investigation on other points. The SFSL report was submitted by SI Mahendra Kumar and on identification it has been marked as Ext.13. He identified the accused present in the dock. In his cross-examination, he has stated that informant was an illiterate lady. He has not mentioned in the fardbeyan that she had given her statement in 'Ho' or Hindi. He has not mentioned in the fardbeyan that fardbeyan was read by him before informant. It has not been mentioned in production-cum-seizure list that the adze was produced by whom. Production-cum-seizure list did not bear the signature of producer. It has not been mentioned in the case diary whether the seized material was sealed at the place of occurrence or not. He has not remembered that the seized material exhibit either bear the signature of the accused or witnesses or him. He kept the seized material in Malkhana but the MR No. has not been mentioned in the case diary. He thoroughly inspected the place of occurrence but he did not seize any article or blood soaked soil and cloth. Finger print was not taken from the handle of adze. No photography was done by police of the

place of occurrence. He has not prepared any map of the place of occurrence during investigation. During course of investigation he did not collect any evidence why and when the accused had given Rs.250/- to the deceased. It has not been mentioned in the case diary that accused had given his confessional statement in which language. It has not been mentioned in confessional statement that confession read before the accused in which language. During course of investigation he did not examine the blood group of the deceased. He denied defence suggestion that his investigation was faulty and he has submitted charge sheet against the accused under wrong sections.

32. P.W.12, Manoranjan Kumar, J.M. Ist Class, has stated in his examination-in-chief that on 04.09.2012 he was posted as J.M. Ist Class at Civil Court, Chaibasa. On the same day, in the light of order passed by learned C.J.M., Chaibasa, he recorded the statement of witnesses Arjun Tamsoy (P.W.6), Badhai Pingua, Budhu Banra, Pratap Purty (P.W.4), Sagar Tamsoy (P.W.10), Balmiki Tamsoy(P.W.1), Mathura Tamsoy(P.W.3) and Budhan Singh Tamsoy(P.W.5) U/s 164 of the Cr.P.C., which are in his pen and signature on identification the statement of witnesses are marked as Ext.14 to 14/7. In his cross-examination, he has stated that certificate has not been given in the statement of witnesses

1,6,7, and 8 that their statement read and understood them because they were knowing reading, speaking and writing Hindi. Witnesses have not mentioned below their signatures that they put their signature after reading their statement translator Harish Singh Sinku has not given certificate that he translated Hindi language in 'Ho' and understood the contents to the witnesses but the witness has stated that the translator understood the statement recorded in Hindi to translate it in 'Ho' language.

Ext.3/1 is the extra judicial confession made by the accused in presence of villagers and recorded by P.W.2 village mukhia Madan Mohan Pingua. Bamia Pingua admitted that on 22.06.2012 on 5.45 p.m. in the evening he asked his dues amount Rs.250/- from Birsa Banra under the tamarind tree situated in front of the house of Badhai Pingua on which he (Birsa Banra) said not to return amount immediately, upon this he became angry and inflicted blows with 'hansi' (Basula) on the head and neck of Birsa Banra due to which he sustained grievous injuries and blood began to ooze out there as a result Birsa Banra died there immediately.

33. Learned trial court, based upon the testimonies of eye witnesses, referred hereinabove, has passed the judgment of conviction convicting the appellants under Section 302 of Indian Penal Code and directed to undergo R.I. for life.

Reference of the law point

34. This Court, in order to appreciate the submissions advanced on behalf of appellant with respect to the culpability of the appellant of commission of offence under Section 302 or under Section 304 Part-I or Part-II of the Indian Penal Code vis-à-vis the evidences adduced on behalf of the parties, deems it fit and proper to refer certain judicial pronouncements regarding applicability of the offence said to be committed under Section 302 or 304 Part-I or Part-II of the Indian Penal Code.

35. In the case of ***Nankaunoo v. State of Uttar Pradesh*** reported in [(2016) 3 SCC 317] it has been held that the intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder, for ready reference paragraph 11 is being quoted and referred hereunder as :-

“11. Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering clause Thirdly of Section 300 IPC and reiterating the principles stated in Virsa Singh case [Virsa Singh v. State of

Punjab, AIR 1958 SC 465], in Jai Prakash v. State (Delhi Admn.) [Jai Prakash v. State (Delhi Admn.), (1991) 2 SCC 32], para 12, this Court held as under: (SCC p. 41)

“12. Referring to these observations, Division Bench of this Court in Jagrup Singh case [Jagrup Singh v. State of Haryana, (1981) 3 SCC 616], observed thus: (SCC p. 620, para 7)

‘7. ... These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case [Virsa Singh v. State of Punjab, AIR 1958 SC 465], for the applicability of clause Thirdly is now ingrained in our legal system and has become part of the rule of law.’

The Division Bench also further held that the decision in Virsa Singh case [Virsa Singh v. State of Punjab, AIR 1958 SC 465] has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury, that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas under the second part whether it was sufficient to cause death, is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The ‘intention’ and ‘knowledge’ of the accused are subjective and invisible states of mind and their existence has to be gathered from

the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words ‘intention’ and ‘knowledge’ and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to ‘knowledge’, ‘intention’ requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end.”

36. In the case of State of **Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382**, the Hon’ble Apex Court, while clarifying the distinction between section 299 and 300 of the Indian Penal Code and their consequences, held as under: —

*“12. In the scheme of the Penal Code, ‘culpable homicide’ is genus and ‘murder’ is species. All ‘murder’ is ‘culpable homicide’ but not vice-versa. Speaking generally, ‘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.

[Emphasis supplied]

37. Recently the Hon'ble Apex Court while considering the various decisions on the aforesaid issue has laid down the guidelines in the case of **Anbazhagan Vs. State Represented by the Inspector of Police** reported in **2023 SCC OnLine SC 857** which are being quoted as under:

“66. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. ---

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not

amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding

an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mensrea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in

causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

38. In the backdrop of the aforesaid discussion of proposition of law, this Court in the instant case is to consider following issues :-

- (i) *Whether the material as has come in course of trial is sufficient to attract the ingredients of offence committed under Section 302 of the Indian Penal Code? or*
- (ii) ***Whether the case is said to be covered under the exception to Section 300 of the Indian Penal Code?***
or
- (iii) *Whether on the basis of factual aspect, the case will come under the purview of Part-I of Section 304 or Part-II thereof? Or*
- (iv) *Whether the appellants are entitled for acquittal in absence of cogent evidences?*

39. Since, all the aforesaid issues are inextricably inter-linked, the same are being discussed and decided hereinbelow together.

40. Section 299 I.P.C. speaks about culpable homicide wherein it has been stipulated that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Thus, Section 299 defines the offence of culpable homicide which consists in the doing of an act – (a) with the intention of causing death; (b) with the intention of causing such bodily injury as is likely to cause death; (c) with the knowledge that the act is likely to cause death, “intent” and “knowledge” as

the ingredients of Section 299 postulates existence of the positive mental attitude and this mental condition is the special *mens rea* necessary for the offence. The knowledge of 3rd condition contemplates knowledge or the likelihood of the death of the person.

41. If the offence which is covered by one the clauses enumerated above, would be liable to be convicted under Section 304 IPC. If the offence is such that which is covered by clause (a) or (b) mentioned above i.e. Section 299 IPC, the offender would be liable to be convicted under part I IPC as it uses the expression that death is caused with the intention of causing death or of causing such bodily injury as is likely to cause death, where intention is dominant factor. However, if the offence is such which is covered by clause (c) mentioned above, the offender would be liable to be convicted under Section 304 part II IPC because of the use of the expression “if the act is done with the knowledge that is likely to cause death but without any intention to cause death or to cause bodily injury as is likely to cause death” where knowledge is a dominant factor.

42. The Hon'ble Apex Court while considering the aforesaid fact, in the case of ***Jairaj v. State of Tamil Nadu*** reported in ***AIR 1976 SC 1519*** has been pleased to held at paragraph 32 & 33 which is being quoted hereunder as :-

“32. For this purpose we have to go to Section 299 which defines “culpable homicide”. This offence consists in the doing of an act

(a) with the intention of causing death, or

(b) with the intention of causing such bodily injury as is likely to cause death, or

(c) with the knowledge that the act is likely to cause death.

33. As was pointed out by this Court in *Anda v. State of Rajasthan* [AIR 1966 SC 148 : 1966 Cri LJ 171] x“intent” and “knowledge” in the ingredients of Section 299 postulate the existence of positive mental attitude and this mental condition is the special mensrea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person.”

43. Thus, while defining the offence of culpable homicide and murder, the framers of the Indian Penal Code laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder.as the case may be.

44. The framers of the Indian Penal Code designedly used the two words ‘intention’ and ‘knowledge’, and it must be taken into consideration that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences

should ensue. Except in cases where *mens rea* is not required in order to prove that a person had certain knowledge, he “must have been aware that certain specified harmful consequences would or could follow.”

45. In view of Section 299 of the Indian Penal Code, the material relied upon by the prosecution for framing of charge under Section 304 Part-II must be at least *prima facie* indicate that the accused has done an act which has caused death with at least such a knowledge that such act was likely to cause death.

46. The Hon'ble Apex Court, in ***Keshub Mahindra v. State of M.P.*** reported in **(1996) 6 SCC 129** has been pleased to hold as under paragraph 20 which reads hereunder as :-

“20. --- We shall first deal with the charges framed against the accused concerned under the main provisions of Section 304 Part II IPC. A look at Section 304 Part II shows that the accused concerned can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act of the accused concerned is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death the charged offences would fall under Section 304 Part II. However before any charge under Section 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the accused concerned falls short of even prima facie indicating that the accused appeared to be guilty of an offence of culpable homicide Section

304 Part I or Part II would get out of the picture. In this connection we have to keep in view Section 299 of the Penal Code, 1860 which defines culpable homicide. It lays down that: "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least prima facie indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death. ---"

47. Section 300 of Indian Penal Code speaks about murder under which it has been stipulated that 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, 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 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 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

48. It is, thus, evident that the punishment under Section 302 of the Indian Penal Code shall not apply if any of the conditions mentioned above, are not fulfilled. This means that if the accused has not intentionally killed someone then murder cannot be proved. Apart from this, Section 300 of the Indian Penal Code mentions certain exceptions for offence of murder, which are as follows :-

(a) If a person is suddenly provoked by a third party and loses his self-control, and as a result of which causes the death of another person or the person who provoked him, it won't amount to murder subject to proviso as provided.

(b) When a person under the right of private defence causes the death of the person against whom he has exercised this right without any premeditation and intention.

(c) If a public servant, while discharging his duty and having lawful intention, causes the death of a person.

(d) 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.

(e) 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.

49. All these exceptions mentioned above shall come under the purview of Section 304 IPC and will be termed as culpable homicide not amounting to murder.

50. It is, thus, evident that the parameters which are to be followed while convicting a person of commission of crime of murder will be different if the murder comes under fold of culpable homicide amounting to murder and it will be different if with the intent to commit murder as per the outside purview of exception carved out under Section 300 of the Indian Penal Code.

51. In the present case, from the testimonies it is established that Birsa Banra (now deceased) was sitting along with Bamia Pinuga (appellant) under tamarind tree situated in front of the house of Badai Pingua, where Bamia Pingua was making plough with adze, he demanded his due amount of Rs.250/- from the deceased. Whereupon the deceased showed inability to return the due amount immediately. Upon this Bamia Pingua inflicted blows him with adze on his head and the neck as a result the deceased-Birsa Banra @ Michai Banra died on the spot. This fact is also supported by the

evidence of doctor, the expert witness which corroborates the evidence of other prosecution witnesses.

52. In the aforesaid backdrop, this Court is now proceeding to examine the evidence adduced by the prosecution in course of trial in order to answer the issue as to whether the culpability in the instant case is under Section 302 or Section 304 Part-I or II of the Indian Penal Code by appreciating the evidences.

Analysis of testimony of witnesses:

53. P.W.-01, Balmiki Tamsoy and P.W. 6-Arjun Tamsoy are the eye witness to the occurrence. Therefore, this Court deems it fit and proper to analyze the testimonies of these witnesses first.

54. P.W.-01, Balmiki Tamsoy, is an independent eye-witness to the occurrence. He has stated in his examination-in-chief that the occurrence took place on 22.06.2012, Friday, in the evening at 4.45 p.m., while he was present under the tamarind tree situated in front of the house of Badhai Pingua. At that time Arjun Tamsoy, Badhai Pingua, Budhu Banra, Mangal Singh Pingua, Birsa Banra, Chungru Pingua, Bamia Pingua and 4-5 women were also present there. Where Arjun Tamsoy, Badhai Pingua, Budhu Banra, Mangal Singh Pingua and Bamia Pingua were making plough with adze. Birsa Banra and Bamia Pingua were sitting in

front of each other under the tamarind tree and in course of chewing tobacco they were making jokes with each other, upon this Bamia Pingua became angry and asked to return his Rs. 250/- from the Birsa Banra. Then, Birsa Banra told him, if he did not return the money what would happen. On which Bamia Pingua inflicted blows with adze on the head and neck of Birsa Banra due to which he fell down there and profuse bleeding started and he died at once before them. The information of the incident was given to village munda, on which village munda with help of dakua tied the accused Bamia Pingua with tamarind tree.

55. He has further deposed that on the next day, 6.00 a.m. in the morning police came there took the statement of Janki Kui and understood the contents of her statement. She found it true and put her thumb impression on fardbeyan. He also put his signature on it and on identification it has been marked as Ext.1. He identified the accused present before the court. His statement recorded U/s 164 of the Cr.P.C before the J.M., also bears his signature and on identification it has been marked as Ext.2. Accused Bamia Pingua also confessed his guilt before Madan Mohan Birua, mukhia of the panchayat which also bears his signature and on identification it has been marked as Ext.3. Bamia Pingua also confessed his guilt before police in his presence. He also put

his signature on it and on identification it has been marked as Ext.4. He was cross-examined at length by the defence but there is nothing in his cross-examination to discard his testimony.

56. P.W.06 Arjun Tamsoy, is also independent eye-witness to the occurrence, who has fully corroborated the version of informant and deposed in his examination-in-chief that the occurrence took place in year 2012. At that time he was going to take bath and when he reached under the tamarind tree in his village, he saw Bamia Pingua and Birsa Banra were doing joke and making plough. During course of joke Bamia asked to return his debt amounting to Rs.250/- from the Birsa Banra, over which Birsa replied that he had no money to repay upon this Bamia Pingua became angry and inflicted blows on the head of Birsa with adze. As a result bleeding started from his neck and he died on the spot. Police came at the place occurrence and arrested the accused Bamia Pingua. He identified his signature on the confessional statement of the accused Bamia Pingua, before the villagers and police and on identification his signatures have been marked as Ext.3/3 and 4/2 respectively. Adze was seized and seizure-list was prepared by police before him. He put his signature on seizure list.

57. His statement was also recorded before the learned J.M. Sri Manoranjan Kumar which also bears his signature. His signature on seizure list, on his statement recorded U/s 164 of the Cr.P.C. have been marked as Ext. 6/1 and 8 respectively. He identified the accused present in the dock. In his cross-examination, he has stated that police took his statement on 23.6.2012, adze was sealed by the police at the place of occurrence but he did not put his signature on it. He read his statement giving before the court.

58. P.W.2 Madan Mohan Birua, P.W.3 Mathura Tamsoy, P.W. 4 Pratap Purty, P.W.5 Budhan Singh Tamsoy P.W.7 Kushno Banra, P.W.10 Sagar Tamsoy are not the eye witnesses of this case rather they are the hearsay witness. They reached at the place of occurrence after the incident and saw the cut injuries on the person of deceased. They heard that Bamia Pingua committed the murder of Birsa Banra inflicting blows with 'Hansi' under the tamarind tree situated in front of the house of Badhai Pingua. Arjun Tamsoy, Badhai Pingua, Budhu Banra, Pratap Purty, Sagar Tamsoy, Balmiki Tamsoy, Mathura Tamsoy and Budhan Singh Tamsoy have also stated in their statement recorded U/s 164 of the Cr.P.C. that accused Bamia Pingua inflicted blows on the head and neck with adze committed the murder of Birsa Banra.

59. Informant P.W.8 Janki Kui has reiterated the case of prosecution in her evidence and stated that the murder of her husband was committed by Bamia Pingua inflicting blows with 'Hansi' on his head and neck. She saw cut injuries on the head and neck of her husband. She heard that Bamia Pingua demanded his dues amount from her husband but he did not pay the said amount due to which he committed the murder of her husband.

60. P.W.9 Dr. B.K. Pandit, conducted postmortem on the dead body of the deceased Birsa Banara @ Muchui on 23.05.2012 and found the following *ante mortem* injuries on his person –

External & Internal Injuries

I. Sharp cutting injury on neck on left side size 4"x2"x3" deep cutting all soft tissue and vertebrae partially.

II. Sharp cut on scalp in the middle size 4"x3"xbone deep with laceration of brain matter, blood clot inside cranial cavity.

Stomach-undigested food material present.

Heart-both chamber empty.

Cause of death-Head injury, hemorrhage and shock.

Above mentioned injuries are ante-mortem in nature and caused by sharp object.

61. Though, the doctor was cross-examined at length but nothing worth has been elicited by the defence so as to discard the prosecution story. Thus, the medical evidence makes it clear that the death is due to head injuries hemorrhage and shock caused by sharp object. From the medical evidence it is clear that it is case of homicidal death.

62. P.W.11 Vinod Oraon is the Investigating Officer of the case, who corroborated the prosecution story and proved the place of occurrence through his evidence. He also found blood stains on the place of occurrence. Production-cum-seizure list of adze (Ext.6/2) was prepared by him. He sent adze for examination to SFSL. SFSL report (Ext. 13/1) also revealed that human blood of A-group was found on the adze. During investigation he found the case true and submitted charge sheet against the accused U/s 302 of the I.P.C. for committing the murder of deceased Birsa Banra. Thus, SFSL report reveals that human blood of A group has been found on the adze. The prosecution has not brought on record the blood group of the deceased. However, after going through the testimonies of all the prosecution witnesses, we found that place of occurrence, appellant and deceased were making plough with the help of adze has not been categorically/specifically denied by accused by giving contrary suggestion to any of the prosecution witness. The

appellant has also not brought on record that any injury has been caused to any other person at the place of occurrence. In this circumstances, it can be conclusively inferred that the blood on the axe is of deceased.

63. This Court, on the basis of the analysis of testimonies of witnesses has found that the learned trial court has considered the testimony of eye witnesses P.W.1 and P.W.6 as also the testimony of other witnesses and on the basis of documentary evidence i.e. extra judicial confessional of accused Bamia Pingua made before the villagers (Ext.3/1), Production-cum-seizure list of adze (Ext.6/2), Postmortem report (Ext. 9), Inquest report (Ext.12) and S.F.S.L. Report (Exts- 13&13/1) has come to the conclusion that prosecution has been able to prove its case beyond all reasonable doubts that on the date of occurrence accused Bamia Pingua had committed the murder of deceased Birsa Banra inflicting blows upon him with adze. Accordingly, held the accused Bamia Pingua guilty under Section 302 of the I.P.C. for committing the murder of Birsa Banra and convicted him RI for life.

64. Learned counsel for the petitioner in alternative has made submission that even if it is presumed that the accused has assaulted the deceased but from the testimonies it is

evident that it was a quarrel over a matter of demand of dues and no premeditation at all before committing the offence of murder was made. It is required to be noted that it is the case of the prosecution that appellant was making plough by the help of adze from which he had given blow on the head and neck of the deceased as he got infuriated from the conduct of the deceased who denied to make payment of due amount of Rs. 250/- to the appellant. So, this is clear from the fact that the appellant has given blow by the adze which was being used by him while making plough at that very moment.

So on this account also, the intention to kill the deceased cannot or should not be inferred. There is no material on record which could suggest that appellant was having intention to cause that particular injury on the person of deceased.

65. While on the other hand, learned A.P.P has submitted that the appellant with the sharp edged weapon has assaulted on the vital part of deceased which resulted into death of deceased, which has fully been proved by eye witness being corroborated by the medical evidence, therefore, the order passed by learned trial Court needs no interference by this Court.

66. In the case of **Anbazhagan** (supra) whose facts are almost similar to the facts of the case in hand and it has been

observed by the Hon'ble Apex Court as under:-

67. *We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.*

68. *Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is - whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.*

69. *In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years.*

67. This Court after taking into consideration the law laid down by Hon'ble Apex Court more particularly in the case of **Andhra Pradesh v. Rayavarapu Punnayya** (supra) and **Anbazzhagan** (Supra) wherein the difference has been carved out in between Section 299 IPC, Section

300 and Section 304 IPC, would like to appreciate the evidence available on record in the present case.

68. In the instant case, from perusal of the testimonies of the witnesses it is noticed that none of the witnesses including the informant has uttered a word that there was previous enmity between the parties rather it has come in the evidence on record that in course of chewing tobacco accused and the deceased were making jokes upon each other, upon this Bamia Pingua became angry and asked to return Rs. 250/- from the Birsa Banra. Then, Birsa Banra told him that if he did not return the money what would happen. On which Bamia Pingua inflicted blows with adze on the head and neck of Birsa Banra due to which he fell down there and profuse bleeding started and he died at once before them. From this it appears that there was no premeditation on the part of the appellant to cause the alleged act. From the oral evidence available on record, it is manifested that deceased as well as appellant were working at the place of occurrence and on account of demand of Rs. 250/-, by the appellant and denial on the part of deceased, gave rise to commission of present offence. So, from the genesis and manner of offence, it can be well inferred, without any doubt, that there was no intention on the part of the appellant to kill the deceased

and also there was no intention of the appellant to cause/inflct that particular injury on the person of deceased but at the same time it can be inferred that it was within the knowledge of appellant that act of the appellant was likely to cause an injury and which would likely to cause death of the deceased.

69. At this stage, it is necessary to reiterate the well settled principle that guilt of the accused is to be judged on the basis of the facts and circumstances of the particular case. The injuries found on the person of the accused assume importance in respect of genesis and manner of occurrence.

70. Thus, considering the entire gamut of the case and on meticulous examination of the material evidence on record we have no hesitation in holding that due to sudden altercation, the accused who was having adze (a sharp-edged weapon) in his hand, in a sudden heat of passion gave blow upon the person of deceased due to which he sustained injury and fell down in injured condition and subsequently died. Admittedly the act of giving blow upon the head by adze was not come out of any premeditation or intention rather it was done in a sudden heat of passion on account of denial of payment of dues by the deceased, when it was asked for by the appellant.

71. In the backdrop of aforesaid discussion and the judicial pronouncement and the testimonies of prosecution witnesses as also taking into consideration the facts and circumstances of the instant case, we are of the view that the assault made by the appellant was not a premeditated and intentional. There was no intention to cause death and cause that particular bodily injury on the person of deceased by the appellant, rather it was done in a sudden heat of passion and spur of moment, but it was well within the knowledge of the appellant that such a blow by a sharp edged weapon upon the deceased would result into the injury likely to cause death of the deceased. Therefore, we are of the considered view that the present case squarely falls under the third part of Section 299 of IPC.

72. Resultantly, we find that the learned trial court while convicting the appellants for commission of offence under Section 302 of the Indian Penal Code, has committed error by ignoring all these facts as recorded in the preceding paragraphs.

73. Accordingly, we are of the view that the judgment impugned convicting the appellant under Section 302 I.P.C. needs to be interfered with by modifying it to that of conviction of the appellant under Section 304 Part-II of the Indian Penal Code.

74. Consequently, the judgment passed by the learned trial court is modified and appellant is held guilty under Section 304 Part II of the Indian Penal Code.

75. On the question of sentence, we have been informed that the appellant has already suffered incarceration for over 11 years.

Conclusion:

76. In the aforesaid circumstances, **we are inclined to modify the sentence of imprisonment to the period already undergone. The appellant is directed to be released forthwith, if not required to be detained in any other case.**

77. **In view of the discussions made hereinabove, judgment of conviction dated 14.09.2017 and order of sentence dated 16.09.2017, passed by learned Additional Sessions Judge-III, West Singhbhum at Chaibasa, in Sessions Trial Case No. 241 of 2012, is modified to the aforesaid extent.**

78. **Accordingly, the instant appeal stands dismissed with the aforesaid modification in the judgment of conviction and order of sentence.**

79. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

80. Pending Interlocutory Application, if any stands disposed of.

I Agree

(Sujit Narayan Prasad, J.)

(Arun Kumar Rai, J.)

(Arun Kumar Rai, J.)

Jharkhand High Court, Ranchi
Dated: Ranchi 30/04/2024
Alankar/**A.F.R.**