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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision:- 20th September, 2024.

+ **CRL.A. 482/2024 & CRL.M.(BAIL) 872/2024**

RAJARAM

.....Appellant

Through: Mr. Nitin Saluja, Mr. Harsh Gattani,
Mr. Anubhav Singh and Mr. Nischal
Tripathi Advocates (M: 8527757231).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP with Insp.
Bijay Kumar, Insp. Vivek Anand PS
Bawana.

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AND

+ **CRL.A. 553/2024 & CRL.M.(BAIL) 1059/2024**

SANTRAM

.....Appellant

Through: Ms. Arundhati Katju Advocate
DHCLSC with Ms. Ritika Meena and
Ms. Spriha Pachauri Advs. (M:
8003996072).

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP with Insp.
Bijay Kumar, Insp. Vivek Anand PS
Bawana.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

BACKGROUND

2. These are two appeals filed by Raja Ram (hereinafter '*Appellant No.1*') and Sant Ram (hereinafter '*Appellant No.2*') respectively, challenging



the impugned judgment dated 9th February, 2024 and order on sentence dated 20th March, 2024 arising out of SC No. 57622/2016 in **FIR No. 320/2012** under Sections 302/201/34 IPC,1860 passed by Special Judge (NDPS), North District, Rohini Courts, Delhi, whereby the Appellants were imprisoned for life along with fine of Rs. 20,000/-. The relevant portion of the order on sentence is extracted below:

“CONVICT SANTRAM

1.) Under section 302 IPC- Sentenced to undergo life imprisonment (simple imprisonment) and to pay fine of Rs. 20,000/-. In default of payment of fine, convict shall further undergo, simple imprisonment for one year.

CONVICT RAJA RAM

1.) Under section 302 IPC- Sentenced to undergo life imprisonment (simple imprisonment) and to pay fine of Rs. 20,000/-. In default of payment of fine, convict shall further undergo, simple imprisonment for one year.

2.) Under section 201 (I) IPC- Sentenced to undergo 3 years imprisonment (simple imprisonment) and to pay fine of Rs. 2,000/-. In default of payment of fine, convict shall further undergo, simple imprisonment for four months. Period of simple imprisonment of three years under section 201(1) IPC has already been undergone by the convict during the trial.

All the sentences shall run concurrently and benefit of section 428 CrPC shall be given to the convicts as per rules.

Fine not paid by the convicts.

Out of fine of Rs. 42,000/- as and when deposited by convict, Rs. 18,945/- shall be paid to the State on account of expenditure incurred in prosecution of this case out of the fine amount paid by the convicts.”



BRIEF FACTS:

3. Briefly, the facts are as follows:-

4. On 20th September, 2012 on receipt of a Diary entry, the police reached Maharishi Valmiki Hospital, Pooth Khurd, where injured Ravinder, was found admitted vide MLC No. 3632/12 and was declared brought dead by the doctor. Appellant No.1-Raja Ram @ Kallu was also found admitted in the hospital. The complainant Vineet Kumar (PW-3) met SI Parveen Kumar and gave his statement wherein he stated as under:

- i. that he used to work in the factory of Parvinder (PW-4) *i.e.*, Factory No. F-36, Sector-4, DSIDC, Bawana, Delhi (herein referred as '*spot/place of occurrence*') as a helper since the last five months. Factory was being run by Parvinder (PW-4) but owner of the same was one Mr. Anand Sharma (PW-1). He further stated that Parvinder (PW-4) had another factory at E-146, Sector-4, DSIDC, Bawana where deceased Ravinder used to work as a helper and used to sleep in Factory F-36 with Vineet;
- ii. Appellant Nos.1 & 2 being deployed by Anand Sharma (PW-1) and used to work as plumbers during day time and used to sleep in the said factory during night, as guards. He further stated that as per the directions of the owner, he used to lock the main gate of the factory at about 09:00 PM. He further stated that the Appellants-Raja Ram and Sant Ram used to come late at night after consuming liquor and when he and deceased Ravinder refused to open the main gate, they abused them and also



- threatened to kill them. The said act of both the Appellants was also informed to Parvinder (PW-4) and Anand Sharma (PW-1);
- iii. On the date of the incident *i.e.*, 20th September, 2012, at around 07:00-08:00 pm, when Parvinder (PW-4) left for his house, Appellant Nos. 1 & 2 who were consuming liquor on the roof of the factory, came down by using the roof of the adjacent factory. PW-3 told Appellant No.1 that he was going to sleep after locking the door of the roof as it was very late. In the meantime, the deceased Ravinder also locked the main gate of the factory and asked Appellant No.2 not to open the main gate. On this, Appellant No.1 Raja Ram abused him and threatened to kill him;
- iv. He further alleged that thereafter, on his advice, Appellant No.1 came to the roof of the factory from the adjacent factory as he was having the keys of the lock of the roof. Thereafter, Appellant No.1 called Appellant No.2 and handed over the keys of the roof door to him. Appellant No.2 opened the door and when Appellant No.1 was coming down from the staircase, the deceased met him and on seeing him, Appellant No.1 started beating him with leg and fist blows whereas Appellant No.2 caught hold of him from behind;
- v. He further alleged that when PW-3 tried to intervene, Appellants also threatened to kill him. Appellant No.1 then went inside his room and took out an iron pipe and hit on the body of the deceased. Appellant No.1 also hit a brick on the head of the deceased. When the deceased ran towards the roof,



Appellants, Santram and Rajaram also followed him. Deceased-Ravinder fell in front of the bathroom, Appellant No.2 took a pitcher (*matka*) and hit on the head of the deceased. Appellant No.1 also hit the deceased with iron rod due to which blood started oozing out from the head of the deceased and he fell down on the ground;

- vi. PW-3 further alleged that he went to factory No. E-146, and called Parvinder (PW-4) from the mobile of Bharat and informed about the incident. Parvinder (PW-4) further called Johny to accompany him to the spot of offence and when they reached the spot, they found that deceased Ravinder was lying in an unconscious condition in the pool of blood. PCR also reached the spot and the injured was shifted to hospital;
- vii. Meanwhile, DD No. 21 PP was received by the police who proceeded to the spot and were informed that the injured had already been shifted to hospital. It was alleged by PW-3 that when he along with Ct. Jaideep was proceeding towards hospital, Appellant No.1 was found present near E-Block and he started running on seeing the police. He was then apprehended. He was under the influence of liquor and his clothes were blood stained. On interrogation he stated that he and his brother-in-law *i.e.*, Appellant No.2 Santram had beaten deceased Ravinder. Ct. Jaideep then took Appellant No.1 Raja Ram to MV Hospital as he was also injured.

5. On the basis of the MLC of Ravinder, an **FIR No. 320/2012** was registered under Section 302/34 IPC on 20th September, 2012. On 31st



October, 2012, Appellant No.2 surrendered before the Court and was arrested upon his confession of involvement in the commission of the crime. Thereafter, Charge sheet was filed against the Appellants under Sections 302/201/34 of Indian Penal Code. Vide impugned judgment and order on sentence dated 19th February, 2024 and 20th March, 2024 respectively the Appellants were convicted for committing murder of deceased-Ravinder under Sections 302/32 IPC and Appellant No.1 was additionally held guilty under Section 201 IPC, however Appellant No.2 was acquitted.

6. The present appeals have been filed by both the Appellants under Section 374(2) read with Section 383 of Cr. P.C. challenging the judgment dated 9th February, 2024 and order on sentence dated 20th March, 2024. Notice was issued on 20th May, 2024 and submissions have been heard.

SUBMISSIONS

7. On behalf of the Appellant No.1-Rajaram in ***CRL.A. 482/2024***, Mr. Nitin Saluja, Id. Counsel, has made the following submissions:-

- i. Firstly, both the Appellants had consumed liquor at the time of the incident and that the evidence of Vineet (PW-3) would show that the deceased had locked the gate of the factory from the inside and both the Appellants used to work as plumbers during the day and in the night hours they would work as watchmen for the building owner;
- ii. PW-3 clearly states that the Appellants were asked repeatedly not to consume liquor and not to come late at night. Many a time, PW-3 or the deceased were required to open the lock of the main door when the Appellants used to enter the factory at late hours. Due to this behaviour of the Appellants, PW-3 stated that he had



complained to PW-4 and PW-1/the owner. PW-4 had in fact counselled them not to drink and come late at night to the factory. Upon counselling being given by PW-1 and PW-4 the Appellants had given an assurance that they would not fight with the deceased;

- iii. It is highlighted that after the gate of the factory was locked by the deceased, Appellant No.1-Rajaram entered the factory through the adjacent roof of a building which was under construction and came to the ground floor. The incident took place when they were walking down the staircase and a fight erupted between Appellant No.1 and the deceased;
- iv. the Appellant No.1 was the first one to give some blows to Deceased-Ravinder with kicks but the deceased hit back with a brick which led the Appellant No.1 to bring an iron pipe. The deceased then went to the roof and the Appellant No.1 went after him and again gave injuries to the deceased. At the same time, the other Appellant No.2 also hit the deceased with a *Matka*.;
- v. The fight between the deceased and Appellant No.1 was sudden and was not pre-planned and the first weapon used, *i.e.*, the brick, was used by the deceased and not by the Appellant No.1. The iron pipe was then used by the Appellant No.1 in a fit of rage but was not premeditated;
- vi. all these factors would show that the manner in which the incident took place, none of it was planned by either of the Appellants;



- vii. that though Vineet and deceased were together on one side, he was not injured by the Appellants;
- viii. PW-4, the other owner, to whom the factory belongs in fact clearly stated that he had also counselled both the Appellants 15 days before the incident took place. Reliance is placed upon the testimony of PW-10, Dr. N. Masand, who gave evidence to the effect that there were injuries on the body of the Appellant No.1 as well;
- ix. Paragraph 55.15 of the impugned judgment dated 19th February, 2024 is also referred to, to argue that the Id. Trial Court has completely misinterpreted the manner in which the incident took place by holding that the entire incident was a pre-planned attempt to kill the deceased, whereas, the actual facts revealed the contrary;
- x Ld. Counsel for the Appellant No.1 has also relied upon the following judgments:
 - (a) ***Muthu v. State, (2009) 17 SCC 433***, reliance is placed on the fact that intention to cause death is to be gathered from various circumstances including whether the weapon was carried by the accused or picked up from the spot. This fact clearly creates a distinction between premediated intention and death caused in the heat of the moment (*paras 9 and 10*);
 - (b) ***Surain Singh v. State of Punjab, (2017) 5 SCC 796***, in the present case injury was caused by a small *kirpan* and hence it was observed that there was no intention to cause death as the attack was not premediated. The Court drew a distinction



between Section 304 Part I and 304 Part II and stated that where there is only knowledge but no intention to cause murder or bodily injury then the same would fall under Section 304 Part II (*paragraph 23 to 25*)

- (c) ***Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770***, the Court observed that the nature of the injury, part of the body on which it is inflicted, the weapon used and the circumstances in which the injury was inflicted has to be considered. (*paragraph 3, 11, 27 and 68*)
- (d) ***Nadodi Jayram v. State of Tamil Nadu, 1993 SCC (Cri) 184***, - The Court observed that the kind of injuries also explains the intention *i.e.*, whether there was simple or grievous injury caused. (*paragraphs 6, 9, 19 and 20*)
- (e) ***Vinod Kumar & Ors v. State (Govt of NCT of Delhi), 2016 SCC OnLine Del 3466***, as per the judgment the fact that there was no previous enmity between the parties, and the Appellants did not made preparations to procure the weapons has to be given due consideration. (*paragraphs 2, 11,26, 55 and 60*)

On behalf of Appellant No.1-Raja Ram it is submitted that since the murder was not premeditated, it could at best have been held to be an offence under Section 304 Part II and not 302 of the I.P.C.

8. Submission of learned counsel for the Appellant No.2- Santram in ***CRL.A.553/2024*** are as follows:-

- i. Ms. Arundhati Katju, learned counsel appearing for Appellant No.2-Santram relies upon the evidence of PW-3, Vineet to show



how there was no pre-meditation and in fact, Santram was himself not involved in the murder of the deceased and that he had no role to play;

- ii. Ld. Counsel has taken the Court through the testimony of Vineet PW-3, to show how all the four persons were working in one factory and the manner in which the incident occurred on the night of 20th September, 2012;
- iii. According to Ms. Katju, the first person who used the brick to hit Appellant No.1-Raja Ram was the deceased himself after which Appellant No.1 hit the deceased with an iron rod;
- iv. Ms. Katju has further highlighted that the manner in which the fight had actually commenced, was not due to her client. It is her submission that the entire incident may have been started by Rajaram but Santram was not actually involved right till the point where Rajaram was hitting the deceased. It was only once the deceased and the Appellant no.1 had reached the roof, at that stage that Santram picked up a *matka* and hit it upon the deceased. The Appellant No.2-Santram used an empty pitcher to hit the deceased to save Appellant No.1. The post-mortem however does not record any injury caused by the pitcher to the deceased. Most of the injuries are not attributed to the Appellant no.2;
- v. PW-3 had also left peacefully and there was no fight between the Appellants and PW-3, though he was supporting the deceased. It is also highlighted that PW-4 Parvinder in his cross-examination stated clearly that he had told Santram not to fight with Ravinder and the injury was also with a *matka*, at best it is her submission



that this sought to be conviction under Section 304 Part II of the IPC.

- vi. The defence case is that the said Vineet and the deceased had some dispute which led to the death of the deceased in an incident which was neither pre-planned nor premeditated;
- vii. Ld. Counsel for Appellant No.2 submits that there was no intention of Santram to kill the deceased as the main fight only took place between Appellant No.1 and the deceased.

On behalf of Appellant No.2-Santram, acquittal is sought.

9. On behalf of the Prosecution, Mr. Mukesh Kumar, ld. APP has made the following submissions:

- i. Ld. APP has relied upon the testimony of PWs-1, 3 and 4 to argue that there was an old dispute which was going on between the deceased and the two Appellants. This is clear from the testimony of all the 3 witnesses. At least 15-20 days prior to the incident there were altercations between the said three persons *i.e.*, Deceased, Appellant No.1 and Appellant No.2.
- ii. The Appellants were regular drinkers and both Ravinder and Vineet/PW-3 were annoyed by their behaviour and had complained to PW-4, the owner of the factory. PW-4 had repeatedly asked the Appellants to come in time and lock the factory, however, they would not adhere to the discipline. The incident was a continuation of an old grudge which the Appellants had with the deceased on the ground that the deceased



was not allowing them to enter the factory late at night. The deceased was also a hearing-impaired person.

- iii. The use of 3 feet iron pipe causing multiple injuries and the manner in which the injuries are caused would show that it was premeditated. The post-mortem report is relied upon to depict the nature of the injury which was caused to the deceased. This act of crime was in fact conducted in a premeditated manner in which the deceased was killed using an iron rod causing so many injuries.
- iv. The testimony of PW-22, Dr. Vijay Dhankar and Ex. PW-22/A, *i.e.*, the post mortem report are relied upon to show the manner in which the injuries were caused.
- v. The FSL report would also reveal that the injuries led to the death of the deceased and there was no doubt of the fact that the blood on the iron pipe was matching with the deceased. It is also submitted by the prosecution that the DNA report also shows that the blood on the deceased clothes match with that of Appellant No.1-Raja Ram.
- vi. Ld. APP further seeks to distinguish the judgments cited by the Appellants by arguing that none of the said judgments would show that there was any old enmity between the parties involved in those cases. This is contrary to the facts of the present case. The fact that PW-3 and PW-4 gave repeated counselling to the Appellants would also show that they had a criminal intent in hitting the deceased.



ANALYSIS

10. Heard learned counsels for the parties and perused the record.

11. The testimony of PW-3 Vineet is of crucial importance in the present case as he was an eye-witness and was present at the time when the incident took place. PW-3 gave a complete background of the dispute between the Appellants and the deceased as also the manner in which the incident took place. His examination-in-chief is relevant and is set out below:-

Statement on 25th April, 2014

“PW - 3 Sh. Vineet, S/o Sh. Jai Prakash, Age - 22 yrs, 9th standard pass, Private Job, R/o F-172, Sector 3, Bawana Industrial Area, Delhi.

Permanent Resident of : Maanpur Shivpuri, PS Dhampur, Distt. Bijnaur, UP.

On SA

I am working in the factory at the above-said address which was owned by Sh. Parvinder Kumar where electronic weighing machines are manufactured. Sh. Parvinder Kumar, my employer was earlier running his factory at F-36, Sector -4, DSIDC Bawana, Delhi and also at E-146, Sector 4, DSIDC, Bawana, Delhi.

I along with other labourers were working at factory situated at ground floor, F-36, Sector 4, DSIDC, Bawana, Delhi, owned by employer Parvinder Kumar, which was let out to him by Anand Sharma. Ravinder (deceased) was working as a helper in the factory situated at E-146, Sec. 4, DSIDC Bawana, Delhi owned by Parvinder Kumar which was let out to him by Bhola Dutt Tiwari.

After the working hours, Ravinder (deceased), employee of Parvinder, used to reside with me in on the first floor of factory premises situated at F-36, Sector 4, DSIDC, Bawana, Delhi. Owner of the premises namely Anand Sharma employed two watchmen/chowidar namely Raja Ram and Sant Ram for building situated at F-36, Sector



4, DSIDC, Bawana, Delhi. This building is constructed up to first floor. There is a basement in the said building. Raja Ram and Sant Ram used to work as a plumber and in the night hours, they used to work as a watchman of this building for owner Anand Sharma. I along with Ravinder (deceased), Raja Ram and Sant Ram used to sleep in the night on the first floor of this building. Sant Ram is brother-in-law (saala) of Raja Ram. **Deceased Ravinder was deaf. I along with Ravinder (deceased) used to lock the main lock of this building/factory at about 9.00-9.30 pm. Raja Ram and Sant Ram used to come late in the night and used to drink liquor. Sometimes I or Ravinder (deceased) used to open the lock of the main door when Raja Ram and Sant Ram used to come in the late hour. We requested them not to come late, but they did not pay any heed to our request. We conveyed to our owner Sh. Parvinder Kumar that both Raja Ram and Sant Ram used to come late and when we requested them, they used to abuse us and threatened us. My employer Parvinder Kumar accordingly informed Anand Sharma that his watchmen Sant Ram and Raja Ram used to drink and come late in the night and they are threatening his employees Ravinder and Vinit Kumar. My employer also talked to Sant Ram and Raja Ram and made them understand to mending their ways.**

On 20.10.2012, again said 20.09.2012, I along with Ravinder performed duty in our factory. At about 9.00-9.30 pm, we were preparing dinner. Sant Ram and Raja Ram were at the factory premises during the day hours because on that day, they had not gone to their work. Both of them Raja Ram Sant Ram had taken drink/liquor in the day hours. Raja Ram along with Sant Ram was taking liquor at the roof of our factory at that time. I went to the roof top of the said building where both Sant Ram and Raja Ram were taking liquor. I requested both of them to come down because I had to lock the gate of the roof. At the same time, someone called them from the



ground floor, outside the factory premises. After hearing the call of the said person from the ground floor, Raja Ram went to the roof of adjacent under construction building and came down the ground, floor, where the said person was calling him. Sant Ram accompanied me to the first floor of our factory and I locked the doors of the roof from inside. I along with Ravinder (deceased) went to the ground floor outside the factory where Raja Ram was standing with one person. The said person, with whom Raja Ram was talking left the place. I along with Ravinder (deceased) went outside the factory premises and requested Raja Ram to come inside the factory premises as we had to lock the main gate of factory premises. On this Raja Ram went ahead in the gali, outside the factory and did not hear our request. I explained Ravinder by gestures that I am going to take back Raja Ram. Raja Ram did not accompany me to the factory premises even I requested him. I came to the factory and accordingly informed Ravinder and I waited for Raja Ram outside the factory premises. Ravinder locked the main gate of the factory premises from inside. Accused Raja Ram and Sant Ram are present in the court today (correctly identified by the witness). Further examination-in-chief deferred as no time left before lunch and Ld. defence counsel is not available after lunch owing legal meeting in jail with other client in after lunch sessions.”

Statement on 18th July, 2014

“Accused Rajaram came outside the factory premises and requested Ravinder to open the lock from inside. Ravinder told Rajaram that he would not open the lock and accused Raiaram may come inside from the way he came out of the factory, I also advised accused Rajaram to reach inside the factory from adjacent factory's roof. The accused Rajaram went to the roof of adjacent factory and reached on the roof of the factory-where we



reside. I advised accused Rajaram that he should not abuse or quarrel with Ravinder. Accused Rajaram assured me that he would not abuse or quarrel with Ravinder. Accused Rajaram called co-accused Sant Ram. Accused Sant Ram was inside our factory premises. I threw the key of the door to accused Sant Ram for opening the lock/door, by which he opened the same. I alongwith accused persons Sant Ram and Raja Ram were getting down on the staircase. In the staircase, Ravinder was coming up. Accused Rajaram saw Ravinder in the staircase and accused Rajaram starting quarreling with Ravinder. The accused Rajaram gave beatings to Ravinder with kicks and fists blow. Ravinder picked up a brick and hit the same on the head of accused Rajaram. Accused Rajaram rushed to his room at first floor and Ravinder ran to the roof of our factory. Accused Rajaram came with an iron pipe in his hand, and I tried to stop him. Accused Rajaram threatened to kill me. Accused Rajaram, Santram went to the roof of our factory where Ravinder was present. I followed them and tried to pacify them. Ravinder was cornered near the bathroom by accused Santram and Rajaram. Accused Santram hit the clay made pitcher (mitti ka ghada uske Ravinder ke sir pe maar diva) on the head of Ravinder. Accused Rajaram hit repeatedly on the head of Ravinder and other part of his body with iron pipe.....”

12. A perusal of PW-3's examination in chief would show that the Appellants did have a dispute with the deceased previously. However, the incident itself occurred at the time when the deceased was coming up the staircase and the Appellants along with PW-3-Vineet were walking down the staircase. Thus, it was not a premeditated meeting which took place.



13. PW1-Anand Sharma, owner of the factory and PW4-Parvinder, state in their testimony that they had repeatedly counselled the Appellants to mend their behaviour, however, the same did not appear to have happened and the Appellants continued with their mannerism.

14. In his cross examination, PW-3 clearly states that when the deceased was coming up the staircase, the Appellant No.1-Raja Ram and the deceased started quarrelling which led to the kicks and blows which were given by the Appellant No.1 to the deceased and thereafter the deceased caused some injuries on Appellant no.1 by using a brick.

15. The manner in which the fight itself has broken out would show that at the relevant time the Appellant was not equipped with any weapon to hit the deceased. It was once the fight broke out that the Appellant picked up an iron pipe and even at that stage, PW-3 tried to stop him but the Appellant No.1 followed the deceased to the roof and gave blows to the deceased with the iron pipe. When PW-3 gave blows to the deceased on the roof, Appellant No.2-Santram also hit *Matka* on the deceased which finally caused the death of the deceased.

16. Both PW1 and PW4 repeatedly state in their testimonies that they had met the Appellants at least fifteen to twenty days before the incident and they had repeatedly warned both the Appellants not to come in a drunken condition in the factory. The testimony of PW-10 Dr. N. Masand, Medical Officer, Maharishi Valmiki Hospital, Delhi, goes to show that the Appellant No.1 also sustained several injuries which could have been caused by the deceased upon him. The manner in which the incident had itself occurred shows that there was no premeditation and there was a sudden provocation on the staircase when they had a chance meeting.



17. The factors which have been highlighted by Id. Counsel for the Appellants would also show that the Appellants did not have any intention to cause death of the deceased on that particular day, though there were old grudges between the parties.

18. On the question of intention, in the case of *Pulicherla Nagaraju v. State of A.P. (2006) 11 SCC 444*, the Court laid down various circumstances through which intention could be gathered, which is a pivotal question in deciding whether the case falls under Sections 302, 304 Part I or 304 Part II of IPC. These categories have been laid down below:

*“29. Therefore, 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. Be that as it may.”

19. A perusal of the impugned judgment of the Id. Trial Court would show that in paragraph 55.15, the Id. Trial Court has misinterpreted the manner in which the death of the deceased was caused. The Trial Court had applied the above stated categories in ***Pulicherla Nagaraju (Supra)*** to determine the intention of the Appellants. The said paragraph is relevant and is set out below:-

“55.15 Thus, it emerges from the case law analyzed herein above that whether the death was a murder or culpable homicide not amounting to murder can be discerned by unraveling the facts during trial. Applying the ratio of *Pullecherla Nagaraju's* case (discussed supra) to the present case, Hon'ble Supreme Court has jolted down 11 points to gather intention of the accused to cause death. The intention can be gathered from combination of few or several of 11 points which can be summarized in the present case as under:



(1) accused Raja Ram used deadly weapon i.e., iron rod to inflict injury upon the deceased,
(ii) he was not carrying the weapon with him and picked the same from the spot,
(iii) he aimed blows on the head of the deceased i.e., vital part of the body,
(iv) he caused the injuries with full force,
(v) the act was not in the course of sudden quarrel as accused Raja Ram was furious because did not open the door of the factory. Accused Raja Ram started assaulting the deceased at the very first opportunity and when deceased retaliated, accused Raja Ram collected an iron rod and mounted a ferocious attack on his head,
(vi) the incident did not occur by chance and accused Raja Ram initiated the quarrel although, no pre-meditation can be seen as he was not armed with any weapon when he was coming downstairs,
(vii) deceased was known to the accused persons and accused had grudge against him because deceased had complained their conduct on earlier occasion to PW4 Parvinder and they were rebuked by factory owner Parvinder,
(viii) there was no grave and sudden provocation from the deceased. In fact accused Raja Ram attacked him and started the quarrel,
(ix) there is nothing on record to suggest that the incident occurred in the heat of passion. Accused Raja Ram initiated the quarrel and both accused had enough time to control themselves before attacking the unarmed deceased.
(x) and (xi) the accused persons acted in a cruel and unusual manner and took undue advantage. Deceased was unarmed and accused could have restrained themselves by giving a single blow but initially four blows were given on front side of the head and subsequently, six blows were given on back side of the head which reflects that accused took undue advantage of the situation and acted in a cruel manner.”



20. A perusal of the above analysis of the Id. Trial Court would show that in points (v) to (ix), the Id. Trial Court comes to the conclusion that there was no sudden quarrel whereas the testimony of PW-3, the eye witness, reveals the contrary. The Appellant No.1 is also alleged to have assaulted the deceased at the very first opportunity which again is not fully correct inasmuch as the Appellants were not armed with any weapon when they met the deceased on the staircase for the first time. The Id. Trial Court also concluded that the incident did not occur by chance which again is an incorrect finding by the Id. Trial Court as the meeting of the deceased on the staircase was by chance and was not pre-fixed in any manner.

21. The quarrel which took place had the participation both by the Appellants and by the deceased, therefore, it appears to be a sudden quarrel which took place and not a quarrel which was carried forward from any previous motive or intention to kill on behalf of the Appellants. The fact that the deceased had used the brick against the Appellant No.1 would also show that the picking up of the iron rod by the Appellant No.1 was also due to a sudden provocation and may be also due to anger in an intoxicating condition.

22. The judgment of the Id. Trial Court on all these points is contrary to the evidence on record. In the present case, the settled position in law as has been enunciated in the various judgments cited by the Id. Counsel for the Appellants would also show that if there is a sudden provocation which leads to the death and the death is not caused by premeditation, there is an absence of intention, it cannot be held as Culpable Homicide under Section 302 IPC.

23. In *Dauvaram Nirmalkar v. State of Chattisgarh, 2022 SCC OnLine SC 955* the Court observed how loss of self-control by grave provocation is a question of fact and is also an exception to exclude the acts of violence which



are premediated, but not negate consideration of circumstances. The relevant portion of the judgment is set out below:

“12. The question of loss of self-control by grave and sudden provocation is a question of fact. Act of provocation and loss of self-control, must be actual and reasonable. The law attaches great importance to two things when defence of provocation is taken under Exception 1 to Section 300 of the IPC. First, whether there was an intervening period for the passion to cool and for the accused to regain dominance and control over his mind. Secondly, the mode of resentment should bear some relationship to the sort of provocation that has been given. The retaliation should be proportionate to the provocation.”¹² The first part lays emphasis on whether the accused acting as a reasonable man had time to reflect and cool down. The offender is presumed to possess the general power of self-control of an ordinary or reasonable man, belonging to the same class of society as the accused, placed in the same situation in which the accused is placed, to temporarily lose the power of self-control. The second part emphasises that the offender's reaction to the provocation is to be judged on the basis of whether the provocation was sufficient to bring about a loss of self-control in the fact situation. Here again, the court would have to apply the test of a reasonable person in the circumstances. While examining these questions, we should not be short-sighted, and must take into account the whole of the events, including the events on the day of the fatality, as these are relevant for deciding whether the accused was acting under the cumulative and continuing stress of provocation. Gravity of provocation turns upon the whole of the victim's abusive behaviour towards the accused. Gravity



does not hinge upon a single or last act of provocation deemed sufficient by itself to trigger the punitive action. Last provocation has to be considered in light of the previous provocative acts or words, serious enough to cause the accused to lose his self-control. The cumulative or sustained provocation test would be satisfied when the accused's retaliation was immediately preceded and precipitated by some sort of provocative conduct, which would satisfy the requirement of sudden or immediate provocation.

13. Thus, the gravity of the provocation can be assessed by taking into account the history of the abuse and need not be confined to the gravity of the final provocative act in the form of acts, words or gestures. The final wrongdoing, triggering off the accused's reaction, should be identified to show that there was temporary loss of self-control and the accused had acted without planning and premeditation. This has been aptly summarised by Ashworth¹³ in the following words:

“[T]he significance of the deceased's final act should be considered by reference to the previous relations between the parties, taking into account any previous incidents which add colour to the final act. This is not to argue that the basic distinction between sudden provoked killings and revenge killings should be blurred, for the lapse of time between the deceased's final act and the accused's retaliation should continue to tell against him. The point is that the significance of the deceased's final act and its effect upon the accused - and indeed the relation of the retaliation to that act - can be neither understood nor evaluated without reference to previous dealings between the parties.”



15. Following the view expressed in K.M. Nanavati (supra), this Court in Budhi Singh v. State of Himachal Pradesh¹⁴ observed that in the test for application of Exception 1 to Section 300 of the IPC, the primary obligation of the court is to examine the circumstances from the point of view of a person of reasonable prudence, if there was such grave and sudden provocation, as to reasonably conclude that a person placed in such circumstances can temporarily lose self-control and commit the offence in the proximity to the time of provocation. A significant observation in Budhi Singh (supra) is that the provocation may be an act or series of acts done by the deceased to the accused resulting in inflicting of the injury. The idea behind this exception is to exclude the acts of violence which are premeditated, and not to deny consideration of circumstances such as prior animosity between the deceased and the accused, arising as a result of incidents in the past and subsequently resulting in sudden and grave provocation. In support of the aforesaid proposition and to convert the conviction from Section 302 to Section 304 Part I of the IPC in Budhi Singh (supra), the Court also relied upon Rampal Singh v. State of Uttar Pradesh¹⁵.”

24. The case of the Appellants would also get covered by various other decisions of the Supreme Court including in **Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770**, wherein the death was caused by an iron pipe and due to exchange of hot words or similar circumstances. The Supreme Court holds that the murder would be punishable under Section 304 Part II. The observation in the said judgment would show that whenever there is sudden fight without premeditation, it cannot be held to be an offence under Section 302. The relevant portion of the judgment has been extracted below:



“3. The prosecution story is that the appellant, Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (Accused 2) and Shivaji Bhivaji Gaikwad (Accused 3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to have hit the dog with the iron pipe that he was carrying in his hand. The deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog. The exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while Accused 2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head.

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11. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons:

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27. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II IPC.

xxxx



68. In the result, we allow this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. The appeal is disposed of in the above terms in modification of the order passed by the courts below. A copy of this order be forwarded to the Registrars General of the High Courts in the country for circulation among the Judges handling criminal trials and hearing appeals.”

25. Similar is the position in ***Ebadat Mondal & Ors. v. The State of West Bengal, 2011 SCC OnLine Cal 72*** where a death caused by an iron rod was converted into conviction under Section 304 Part II of the Indian Penal Code. The relevant portion of the judgment has been extracted below:

“16. In the case of Kailash v. State of M.P. reported in (2006) 11 SCC 420 it was held that the entire attending circumstances must be taken into consideration for the purpose of finding out the nature of the actual offence committed. In the said case the accused inflicted a single blow with the help of axe on the head of victim on a sudden provocation and without any premeditation which resulted in the death of the victim; the injury received by the co-accused was not explained by the prosecution and under such circumstances the sentence under section 302 Penal Code, 1860 was altered to section 304 Part II Penal Code, 1860.

17. In the case of Pappu v. State of M.P.(2006) 7 SCC 391 there was a single blow on the head given by the appellant by picking up a lathi in course of sudden quarrel without any premeditation and without taking advantage or acting in a cruel manner. It was held that



the appellant was liable to be convicted under section 304 Part-II and not under section 302 Penal Code, 1860.

xxx

21. We alter the conviction under section 302 and sentence Sahadat Mondal to suffer R.I. for eight years under section 304 Part-II Penal Code, 1860. The other appellants, namely, Ebadat Mondal, Saheb Ali Mondal are acquitted of the charge under section 302/149 Penal Code, 1860. But, we sentence them to suffer R.I. for one year each under section 323 Penal Code, 1860. Appellant Sahidul Mondal is acquitted of all the charges levelled against him and be set at liberty, if not wanted in any other case. The period of detention in custody be set off. The impugned judgment passed by the learned Trial Court is hereby modified to the extent stated above.”

26. In ***Vinod Kumar & Ors. (supra)***, a Division Bench of this Court was considering the case where an *iron sariya* was used by the accused, because of which, the death was caused. Ld. Division Bench holds that an iron rod or iron pipe is not as deadly as a knife or a gun which are commonly available. The relevant observation are set out herein below:-

“26. As far as the nature of weapon used in the commission of the offence is concerned, it has emerged that the nature of the weapons used i.e. an iron rod and an iron pipe are not as deadly as a knife or a gun and are commonly available.”

27. In the case of ***Nadodi Jayram v. State of Tamil Nadu, 1993 SCC (Cri) 184***, though there were thirty two injuries which were inflicted upon the deceased in terms of the post-mortem report, the Supreme Court converted the conviction into one under Section 304 Part II and had sentence the



Appellants rigorous imprisonment for the period already undergone though the period undergone was merely five years. The relevant portion is as under:

“19. Coming now to the question of sentence. The occurrence took place almost two decades ago, on June 15, 1972. The appellants faced the trial and were convicted by the learned Sessions Judge, vide judgment dated March 29, 1975 and thereafter their appeal against conviction and sentence remained pending and was dismissed by the High Court on September 15, 1976. Special leave was granted on February 1, 1978, and on November 28, 1978, the appellants were directed to be released on bail, vide this Court's order made in Criminal Miscellaneous Petition No. 2495 of 1978. On behalf of the appellants, we were informed that as under-trial prisoners and during the trial and on conviction, each of the appellants had suffered imprisonment for more than five years. In our opinion, therefore, it is not now desirable to send the appellants back to jail after they have been on bail also for more than a decade and during this period, nothing has been brought to our notice to show that they had indulged in any criminal activity. Therefore, while convicting them for the offence under Section 304, Part II IPC, we sentence each of the appellants to suffer rigorous imprisonment for the period already undergone by them.”

28. In ***Surain Singh v. State of Punjab, (2017) 5 SCC 796***, injuries were caused by a *kirpan* and Supreme Court observed that the number of wounds would by itself not be a decisive factor, the observation of the Supreme Court is as under:-

“22. The weapon used in the fight between the parties is kirpan which is used by “Amritdhari Sikhs” as a spiritual tool. In the present case, the kirpan used by the appellant-accused was a small kirpan. In order to find



out whether the instrument or manner of retaliation was cruel and dangerous in its nature, it is clear from the deposition of the doctor who conducted autopsy on the body of the deceased that stab wounds were present on the right side of the chest and of the back of abdomen which implies that in the spur of the moment, the appellant-accused inflicted injuries using kirpan though not on the vital organs of the body of the deceased but he stabbed the deceased which proved fatal. The injury intended by the accused and actually inflicted by him is sufficient in the ordinary course of nature to cause death or not, must be determined in each case on the basis of the facts and circumstances. In the instant case, the injuries caused were the result of blow with a small kirpan and it cannot be presumed that the accused had intended to cause the inflicted injuries. **The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.** Of course, the offender must not have taken any undue advantage or acted in a cruel manner. It is clear from the materials on record that the incident was in a sudden fight and we are of the opinion that the appellant-accused had not taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this Exception provided he has not acted cruelly.

23. Thus, 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 intention to cause murder and bodily injury then the same would fall under Section 304 Part II. We are inclined to the view that in the facts and circumstances of the present case, it cannot be said that the appellant-accused had any intention of causing the death of the deceased when he



*committed the act in question. **The incident took place out of grave and sudden provocation and hence the accused is entitled to the benefit of Section 300 Exception 4 IPC.***

*24. Thus, in entirety, considering the factual scenario of the case on hand, the legal evidence on record and in the background of legal principles laid down by this Court in the cases referred to supra, the inevitable conclusion is that the act of the appellant-accused was not a cruel act and the accused did not take undue advantage of the deceased. **The scuffle took place in the heat of passion and all the requirements under Section 300 Exception 4 IPC have been satisfied. Therefore, the benefit of Exception 4 under Section 300 IPC is attracted to the fact situations and the appellant-accused is entitled to this benefit.***

25. Thus, considering the factual background and the legal position set out above, the inevitable conclusion is that the appropriate conviction of the appellant-accused would be under Section 304 Part II IPC instead of Section 302 IPC. Hence, the sentence of imprisonment for 10 years would meet the ends of justice.

29. A perusal of the above would also show that the Court drew a distinction between Section 304 Part I and Part II of IPC. In *Surain Singh (supra)*, injury was caused by a small kirpan and so it was observed that there was no intention to cause death, the attack was not premediated. It was further observed that between Section 304 Part I and 304 Part II, the difference is that, when there is only knowledge but no intention to cause murder or bodily injury then the same would fall under Section 304 Part II.



30. In the present case, the post-mortem report Ex. PW 22/A¹ reveals that the injuries have been inflicted both in the head area and in the back area as also on the hand and the neck area. The post-mortem report does not show that there was deliberate hitting only in one area of the body of the deceased to cause death. The Appellants seem to have hit the deceased in a fit of anger or rage and did not intend to cause death of the deceased. The injury Nos. 12,13,14,15 and 16 are all injuries on the back, though the post-mortem report reveals that the injury No. 13 is indicative of repeated strikes with a linear blunt object like a *danda*, rod etc. Moreover, it is also noticed that out of the seventeen injuries which have been caused, eight injuries have been caused with the pipe and remaining are blunt injuries which may have been caused by the *Matka*.

31. In view of the nature of the injuries and the fact that there was no premeditation to cause death, this Court is of the opinion that the present case is one where Appellants' conviction deserve to be converted into Section 304 Part II.

32. The Nominal roll would show that the Appellant No.1-Raja Ram has already undergone incarceration for a period of 9 years, 2 months and 11 days as on 5th July, 2024 and the Appellant No.2 has undergone 8 years 1 month and 25 days as on 9th August, 2024.

33. In view of the above, the impugned order on sentence is modified in the following manner: -

¹ Note: The post-mortem report i.e., Ex.PW-22/A would show that there were total 17 injuries and majority of them were caused on the head by the linear blunt object, the cause of death is the cranio cerebral damage and haemorrhagic shock caused due to consequent injuries on the head, neck and chest.



“APPELLANT SANTRAM

1.) 1.) Under section 304 (Part-II) IPC- Sentenced to period already undergone along with a fine of Rs.10000/- In default of payment of fine, convict shall further undergo, simple imprisonment for six months.

APPELLANT RAJA RAM

1.) Under section 304 (Part-II) IPC- Sentenced to period already undergone along with a fine of Rs.10000/- In default of payment of fine, convict shall further undergo, simple imprisonment for six months.

2.) Under section 201 (I) IPC- Sentenced to undergo 3 years imprisonment (simple imprisonment) and to pay fine of Rs. 1,000/-. In default of payment of fine, convict shall further undergo, simple imprisonment for one month. Period of simple imprisonment of three years under section 201(1) IPC has already been undergone by the convict during the trial.

34. Both the Appeals are partly allowed and disposed of in the above terms, with all pending applications, if any.
35. A copy of the Judgment be sent to the concerned Jail Superintendent for necessary information and compliance.
36. Order be uploaded on the website forthwith.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

**SEPTEMBER 20, 2024
MR/KS/PR**