

AFR**Reserved On:-** 06.02.2024**Delivered On:-** 05.08.2024

Neutral Citation No. - 2024:AHC:125534-DB

Court No. - 47**Case :-** CRIMINAL APPEAL No. - 3149 of 2004**Appellant :-** Saleem alias Sambha**Respondent :-** State of U.P.**Counsel for Appellant :-** Mohd. Naushad Siddiqui**Counsel for Respondent :-** Govt. Advocate**Hon'ble Rajiv Gupta, J.****Hon'ble Mohd. Azhar Husain Idrisi, J.****(Delivered by Hon'ble Mohd. Azhar Husain Idrisi, J.)**

1. The instant criminal appeal, under Section 374 (2) Cr.P.C. emanates out of the judgment and order dated 18.5.2004, passed by Additional District & Sessions Judge, Fast Track Court No. 4, Kanpur Nagar, in Sessions Trial No. 178 of 2001, State Vs. Saleem alias Sambha, (Case Crime No. 11/2001, P.S. Ghatampur, Kanpur Nagar), whereby the learned trial court, convicted the accused/ appellant Saleem alias Sambha under Section 302 IPC and sentenced him for life imprisonment, with a fine of Rs. 3,000/-. In case of default, appellant was directed to undergo an additional imprisonment for a period of six months.

2. Bereft of unnecessary details, the prosecution case, as culled out from the First Information Report (FIR), undisputed facts and other material on record, is that the informant Lukman s/o Usman, R/o of Mohalla- Hafizpur, town- Ghatampur, police station- Ghatampur, District Kanpur Nagar, presented a tehrir (Ext Ka-1), on 17.01.2001 at about 12.45 p.m. in the police station Ghatampur, about the incident happened on 17.01.2001 at about 11.30 a.m., scribing therein that his maternal uncle (Mama) Aziz and Saleem alias Sambha s/o Habib both R/o Mohalla Hafizpur, Town- Ghatampur, District-Kanpur Nagar, were engaged in the business of selling meat (gosht) some times separately and some times jointly with each other. Saleem alias Sambha alleged that Aziz owed Rs. 50/- to him but Aziz denied it. On 17.01.2001 at about 11.30 a.m., Saleem alias Sambha called Aziz from his house and had taken him to the

house of Balia s/o Badkan to settle the account. The complainant Lukman, along-with Faheem s/o Late Saleem and Saeed s/o Majeed, followed them. Saleem alias Sambha and Aziz went inside the house of Balia and started talking about the disputed transactions, while the persons accompanying them, remained standing outside the door of Balia's house. Both the parties were disputing over the accounts, meanwhile Saleem alias Sambha stabbed Aziz in his abdomen with a chhuri (dagger), with an intention to kill him. On hearing shrill and shriek, persons, standing outside, entered into the house of Balia and saw accused Saleem alias Sambha coming outside brandishing blood soaked dagger in his hand. He threatened them also. They chased Saleem alias Sambha, but he managed his escape good. Injured Aziz was taken to the government hospital at Ghatampur for treatment, where he succumbed to his injury.

3. On the basis of the aforesaid tehrir a case crime no.11 of 2001 under Section 302 IPC was registered at Police Station Ghatampur, District Kanpur Dehat (now Kanpur Nagar) against Saleem alias Sambha. Entries were drawn in Kaimi G.D. (Ext. Ka-9) and the chik FIR (Ext. Ka-3) at about 12:45 on 17.01.2001. The investigation was entrusted to S.H.O. R.K. Sharma.

4. Thus, the investigation started rolling. I.O. reached at the place of occurrence and visited at C.H.C., Ghatampur along with police party, where corpse of the deceased Aziz was kept. S. I. Sarvesh Kumar launched inquest proceeding after nominating Mohd. Arif, Mohd. Rafiq, Mohd. Usman, Shahbaz Quresi and Devi Prasad the witnesses, on 17.11.2001 at about 12.45 pm. The panchan remarked that there is a blood plum injury on the left side of the chest near pelvis region. The panches opined that the cause of death is the injury inflicted upon deceased Aziz, nevertheless in order to ascertain the real cause of death, the postmortem may be conducted. S.I. Sarvesh Singh also subscribed the opinion of the panches. Therefore, he prepared a request letter to this effect to the CMO and send the wrapped and sealed corpse of Aziz through C- Brijnandan Singh and C- Rajesh Kumar, along with copy of inquest report (Ext. Ka- 10), reference slip to CMO (Ext. Ka-11), Sample of seal (Ext. Ka-12), Challan lash (Ext. Ka-14), Letter to the R.I. (Ext. Ka-15) to Mortuary for autopsy. The postmortem of the deceased was conducted by Dr. M.K. Jain (PW-5) on 18.01.2001 at 12.00 O' clock.

5. On 17.01.2001 I.O. proceeded at place of occurrence and recorded the

statement of the witnesses under section 161 I.P.C. and collected blood soaked and plain pieces of bricks, in the presence of witnesses from the place of occurrence. He also prepared recovery memo (Ext. Ka- 7) for the same. He prepared site plan of place of occurrence (Ext. Ka- 6), at the instance of the complainant and other witnesses and site plan of place of recovery of weapon of assault (Ext. Ka- 8) in the presence of witnesses. I.O. collected other relevant evidences also.

6. I.O. was in search of the accused, however, he surrendered on 25.01.2001 in the court of CMM. Thereafter with the leave of the court I.O. recorded the statement of the accused on 29.01.2001 in jail, wherein he confessed his guilt and stated that he can get recovered the weapon of assault, from the place, where he had hidden it. Hence I.O. prayed and was granted 24 hours police custody remand for the purpose of recovery by the court. Pursuant to the leave of the court, on 01.02.2001 at about 8.00 am in the morning, the accused was taken in police custody and as per disclosure of accused, proceeded to the place, where he had hidden the said weapon. He himself walked towards a place in shrubs standing on Bhadras road and took out a dried blood stained on its front, chhuri in the presence of the witnesses and handed over to I.O. The recovery memo (Ext Ka-5) for the same was prepared by the I.O, in his handwriting and signatures, over which signatures of the witnesses were also obtained. I.O. also prepared site plan (Ext Ka-8) of the place of recovery. Chhuri recovered and other materials was sent for forensic examination. The FSL report of which was received and is part of the record as Ext Ka-16.

7. Investigating officer after due investigation and collecting credible and clinching material and evidence showing the complicity of the accused appellant submitted charge sheet under Section 302 I.P.C. against the accused Saleem alias Sambha, in the court of learned CJM, Kanpur Dehat, who took the cognizance of the case. Since the case was exclusively triable by the court of sessions, CJM, committed it to the court of sessions Kanpur Nagar, vide its order dated 10.04.2001. In the court of sessions it was registered as S.T. No. 178 of 2001, who in turn transferred it to the court of additional Sessions Judge, Fast Track Court No. 4 Kanpur, for trial.

8. The learned trial Sessions Judge framed charge under Section 302 IPC, against the accused/ appellant Saleem alias Sambha. Accused appellant

abjured the charge, pleaded not guilty and claimed to be tried.

9- In order to bring home guilt of the appellant, prosecution has examined following witnesses in ocular evidence:-

SL No.	Name of Witness	PW No.
i	ii	iii
1	Lukman (Informant)	PW-1
2	Mohd. Faheem (independent witness)	PW-2
3	Sayeed (independent witness)	PW-3
4	Sadiq (independent witness)	PW-4
5	Dr. M.K. Jain (post-mortem)	PW-5
6	C.P. Kameshwar Mishra (H.M.)	PW-6
7	SI Maharaj Singh Tomar (Witness of recovery of weapon of assault)	PW-7
8	Inspector Vigilance R.K.Sharma (I.O.)	PW-8
9	SI Sarvesh Kumar Singh (Inquest witness)	PW-9

10. Besides, aforesaid ocular evidence, prosecution has adduced following documentary evidence also-

SI No.	Particulars	Ext. Nos.	Proved by
i	ii	iii	iv
1	Tehrir	Ext. Ka-1	PW-5
2	Post-mortem report	Ext. Ka-2	PW-5
3	Chik F.I.R.	Ext. Ka-3	PW-6
4	Corban copy of tehrir	Ext. Ka-4	PW-6
5	Recovery memo of knife	Ext. Ka-5	PW-7
6	site-plan	Ext. Ka-6	P.W-8
7	Recovery memo blood stained and plain brick	Ext. Ka-7	P.W-8
8	Site plan place of recovery of weapons	Ext. Ka-8	P.W-8
9	Kaimi GD	Ext. Ka-9	P.W-6
10	Inquest Report	Ext.Ka10	P.W-8
11	Reference slip to CMO	Ext.Ka11	P.W-9
12	Sample of seal	Ext.Ka12	P.W-9
13	Form no. 13	Ext.Ka13	P.W-
14	Photo lash	Ext.Ka14	P.W-9
15	Letter to the R.I.	Ext.Ka15	P.W-9
16	F. S. L. Report	Ext.Ka16	P.W-9

11. In further corroboration of its story, prosecution has also produced following material objects in evidence:-

SLNo	Particulars	Proved by	Ext. No.
i	ii	iii	iv
1	Chhuri (dagger)	PW-7&8	Ext.-1
2	Vests, tahmad, under wear	PW-7&8	Ext.-2
3	Plain and blood soaked pieces of bricks	PW-7&8	Ext.-3

12. After conclusion of prosecution evidence the accused was confronted with the evidence on record and his statement under Section 313 Cr.P.C. was recorded, wherein he denied prosecution version and stated that on 17.01.2001

the deceased Aziz had gone to the house of Sadiq. Aziz had illicit relationship with the wife of Sadiq. At the relevant time, Sadiq and Balia also reached there. Seeing Aziz present there they started beating him. Sadiq stabbed him in his abdomen and killed him. When he reached, he saw that Aziz was injured, while Sadiq and Balia were present there. They screamed, that Saleem had killed Aziz. They also chased him Sadiq called the family members of Aziz and blamed him to be the assailant. In question no. 10, the appellant has denied that he got recovered any weapon of assault chhuri and the recovery is planted.

13. Accused appellant examined DW- 1 Rakesh Kumar as defence witness.

14. The learned trial court, after examining and scrutinizing testimonies of prosecution witnesses and entire material on record, came to the conclusion that there is a complete chain of evidence pointing towards guilt and the complicity of the accused/ appellant in the commission of said crime. Thus, prosecution has proved its case beyond reasonable doubts and accordingly, convicted, accused/ appellant Saleem alias Sambha under Sections 302 I.P.C. and sentenced him for the charge u/s 302 IPC R.I. for life and fine of Rs. 3,000/- with default stipulation, vide impugned judgment and order dated 18.5.2004. Felt aggrieved, the appellant has preferred the present appeal.

15. We have heard Sri Mohd. Naushad Siddiqui, learned Amicus Curiae for the appellant, Sri Arun Kumar Pandey, learned A.G.A. for the State, in extenso and have been taken through the entire material on record.

16. Learned Amicus Curiae appearing for the appellant assailed the conviction and sentence passed by impugned judgment dated 18.05.2004, on various grounds and advanced several arguments in this behalf. Let us test, examine, scrutinize and analyze the contentions advanced by the learned counsel for the parties, on the touchstone of the evidence adduced, undisputed facts and circumstances of the case. It bring us to view the prosecution evidence.

17. PW- 1 Lukman who, claimed to be an eye witness. He is informant of the incident. He deposed that the incident took place on 17.01.2001 at 11.30 a.m. He was sitting on the spot. His maternal uncle, Aziz s/o late Abdul Karim and Saleem alias Sambha used to sell meat in Ghatampur. Aziz was indebted Rs. 50/- of Saleem alias Sambha. Aziz was taken to the house of Baliya s/o Badkan for settlement of account. He, Faheem and Saeed, also followed them. Aziz and

Saleem alias Sambha went inside the house of Baliya for settling the accounts. The other persons remained standing talking outside the door of Baliya. During talk about the dispute, Saleem alias Sambha stabbed a knife in the stomach of Aziz, with an intention to kill him. Hearing the scream, they went inside the house and saw that Saleem alias Sambha has a bloodstained dagger, in his hand. Saleem alias Sambha threatening them came out of the house. He was chased, but could not be found. He took his injured uncle to Government hospital Ghatampur, where he was declared dead. Corpse of the deceased Saleem was kept in the Government hospital. He got a tehrir scribed by journalist Siraji on his dictation which was signed by him in urdu, he proved the tehrir as Ext. Ka.1. Tehrir was given at the police station Ghatampur, on which the case was registered. The said witness was confronted with several queries during his cross examination.

18. PW- 2 Mohd. Faheem has deposed that it was a chilly cold weather. The incident took place on 17th January, 2001. The deceased Aziz was his real uncle (chacha). He was engaged in business of meat (gosht) selling in partnership with accused Saleem alias Sambha. Saleem claimed that Aziz owed Rs.50/- to him. His uncle denied his claim and expressed his willingness and readiness to settle the account and make payment, if he owes any amount towards Saleem alias Sambha. The incident took place in the house of Badkan, who is the father of Sadiq and Baliya and where the deceased was taken for settling the accounts. His uncle Aziz and Saleem alias Sambha had gone inside the house of Badkan, while they remained standing in front of the door of the house. As the accounts were being settled, suddenly vulgar dialogues started between Aziz and Saleem. We asked them for peaceful settlement of accounts. Meanwhile, Saleem alias Sambha took out a chhuri and stabbed in the abdomen of his uncle Aziz. They tried to catch hold of Saleem alias Sambha, he brandished the chhuri to kill us too, rushed towards the door, and came out brandishing chhuri in his hand. They took injured Aziz to the hospital. The doctor stated that it is a police case and asked to first lodge the report. Meanwhile, doctor examined injured Aziz and declared him dead. The report of this incident was lodged by Lukman. The police had done paper work regarding dead body of deceased in the hospital itself. The Sub-Inspector had recorded his statement with regard to the incident. The witness identified the accused/

appellant present in the court, saying he is Salim alias Sambha, who had killed his uncle Aziz. The said witness was also thoroughly cross examined.

19. PW- 3 Saeed has averred in his examination that the deceased Aziz was his elder uncle (bade baap). He was running the business of sale of meat severely and sometimes jointly in partnership with the accused Saleem alias Sambha. The incident occurred 10-12 days before 26 January 2001. The incident occurred around 11:30 in the day. The incident took place in the house of Baliya and Sadiq. Saleem alias Sambha called Aziz and asked him to settle the account. When these people were going, he, Faheem and Lukman followed them. All of them remained standing at the door of Sadiq. Saleem alias Sambha and Aziz went inside the house. Saleem alias Sambha asked for payment of Rs. 50/-, Aziz assured that he will give the amount by tomorrow. During the course of dialogue, Saleem alias Sambha stabbed Aziz with chhuri with intention to eliminate him. He took out the chhuri and threatened us, saying that he would kill anyone who spoke. They tried to catch him, but he made his escape good. Saleem alias Sambha ran away towards Kallu's hotel and could not be arrested. They took Aziz to the hospital where he expired. The police report of the incident was lodged by Lukman. A sub-inspector had interrogated and recorded his statement regarding the incident. The witness identified accused present in the court room stating that he is the Saleem alias Sambha, who stabbed Aziz. The witness was cross-examined, in extenso.

20. P.W.4, Sadiq has averred that the incident occurred around 11:30 AM, one year and nine months ago. He is well acquainted with Saleem and Aziz. They used to do the business of meat (gosht) in partnership. Saleem alias Sambha and Aziz had an accounting dispute between them for a paltry sum of only Rs. 50/-, over which they quarreled. Aziz had indebted Rs. 50/- to Saleem alias Sambha. His house is very big and he was present in his house at the time of incident. The incident had occurred outside his house on the road, made up of bricks. He came outside on hearing the screaming. Saleem alias Sambha was holding a dagger (Churi) in his hand. He stabbed it, in the abdomen of Aziz. When they challenged him, he ran away towards the Kallu's hotel. Then, they took Aziz to the police chowki, where they were asked to take him to the police station. By that time Aziz was already dead. When the incident occurred, he was in the Verandah (Daalan) of his house. The witness further deposed that Baliya

is his brother, both of them lived together. It is not true that the incident occurred inside his house and later on the deceased and Saleem alias Sambha came outside. He also stated that he was taking meal inside his house at the time of occurrence. I.O. has recorded his statement in this regard. Witness was thoroughly cross examined also.

21. P.W.5 Dr M.K. Jain has deposed that during his posting as Surgeon on 18.01.2001 at K. P. M. Hospital, he conducted postmortem of the dead body of the deceased Aziz, brought by C-1260 Rajesh Kumar Pandey and C- 2007 Brij Nandan Singh of P. S. Ghatampur, at about 12.00 noon. During autopsy he found the following injuries:-

(I)-**External Examination**:- The deceased was a man of average height and built. His mouth was half opened and eyes were closed. Rigor- mortis was present in both hands and legs.

(II)- **Ante-mortem injuries** - During the course of autopsy postmortem surgeon found following ante-mortem injuries on the person on the deceased-

Lacerated and perforating wounds 3 cm x 1.5 cm x abdominal cavity deep and the same was present on the upper side of the abdomen below the ribs towards the left side in a 10 O'clock position, 9 cm above the umbilicus.

(III)-**Internal examination**:- Both the chambers of the heart were devoid of blood. The abdominal walls and membrane were torn. There were one and half liters of blood in the body and clots present in the stomach. The small intestine was cut at two places, and it was cut across at one place. There was also cut wound on the spleen. There was six ounces of semi digested food present in the stomach.

(IV)-**Opinion** :- PW-5, Dr. M. K. Jain, opined that the deceased died about a day before the postmortem was conducted, due to excessive bleeding and shock, due to pre-mortem injuries. The injury on the body of the deceased would have been caused by knife or Churi. The death of the deceased is possible on 17.01.2001 at about 11.30 A.M. The witness prepared the post mortem report in his own hand writing and signature. He proved it as Ext. Ka- 2.

22. PW- 5 Dr. M.K. Jain deposed in his cross-examination that there was only one visible injury on the body of the deceased. The wound's margin were

sharp. He marked it as incised wound. He did not mark in PMR if the margins of the wound margins were pointing, inward or outward. He could not say whether blood was oozing out from the dead body at the time of post-mortem because it was in a supine position. Such injuries could be caused to a person lying down or in a sitting position. The direction of attack was unclear as the wound was deep and perforating. The rupture of the spleen below the wound, indicate its direction almost vertical. He could not tell about the length, width and thickness (size) of the weapon, with which the deceased was inflicted the said injury but that weapon must be sharp edged and its end should be pointed. He denied the suggestion that the said injury could be caused to the victim skinning a buffalo and that weapon slipped from his hand and by the slip of the dagger which skinning the buffalo.

23. P.W.6, C.P. Kamleshwar Mishra has stated in his testimony that on 17.01.2001, he was deployed as a Constable/clerk at P.S. Ghatampur. On that day, on the tehrir of complainant Lukman, he registered a Criminal Case vide Case Crime No. 11/2001, u/s 302 IPC against Saleem alias Sambha. He entered the particulars of the case in kaimi GD and had drawn chik FIR. The witness stated that these documents are in his hand writing and signature. He further stated that carbon copy of the GD was prepared in the same process with original. He proved Chick FIR as Ext Ka-3 and kaimi GD as Ext ka -4.

24. In his cross-examination PW- 6 further stated that Lukman reached in the police station at 12.45 P.M. to lodge the FIR. The tehrir was scribed by Shiraji and signed by Lukman. It took half an hour lodging the FIR. SHO was informed about the incident, who reached on the spot.

25. P.W.7, S.I. Maharaj Singh Tomar, is the I.O. and one of the formal witnesses, who deposed that he recorded the statement of the accused Saleem alias Sambha. On 01.02.2001 he took accused Saleem alias Sambha in police custody remand in expectation of recovery of weapon of assault used in the crime No. 11/2001. He set out from the P.S. in the jeep, along with SHO R.K. Sharma, SI Ramendra Kumar Singh, C- Pawan Kumar, C- Sunil Kumar jeep driver Abdul Rahman, at the place disclosed by the accused. Accused Saleem alias Sambha in presence of the witnesses Kalaam and Umar Siddqui got recovered chhuri and hand over the same to him. It was a pointed iron weapon (chhuri), measuring 1 pawn, 7 fingers. There were spots of dry blood on its handle. The Chhuri was

recovered at the pointing out of the accused at around 8 o'clock, which was wrapped in a news paper and sealed at the spot in the presence of the witnesses. Accused Salim Alias Sambha stated that he had murdered Aziz with this weapon only. This witness has proved recovery memo of knife as Ext Ka-5 as well as recovered knife as material Ext-1.

26. PW- 7 S.I. Maharaj Singh also exhibited the recovered chhuri, blood stained clothes and two nos. of plain and blood stained bricks. He proved them as material Ext. 1, 2 & 3. He further stated that these items were sent to FSL, Lucknow for forensic examination

27. P.W. 8, Rakesh Kumar Sharma, Inspector deposed before the court that he took over the investigation of the present Case Crime No. 11 of 2001, under Section 302 I.P.C. on 17.1.2001. This witness has proved the entire proceedings conducted by him during investigation. This witness raided the house of accused Saleem alias Sambha after recording the statement of complainant but no one was found. S.I. Ramendra Singh was sent in search of the accused person. Thereafter spot inspection was conducted at the instance of complainant and witnesses. Site plan (Ext Ka- 6) was prepared and blood stained as well as plain piece of brick were taken into custody and memo was prepared. He further stated that after conclusion of the prosecution evidence, finding sufficient, clinching and riveting evidence pointing towards the guilt of the accused, he submitted Charge sheet under Section 302 I.P.C against the accused Saleem alias Sambha.. This witness has proved site plan of spot as Ex Ka-6, recovery memo of brick piece Ex Ka-7, site plans of the place of occurrence and the place wherefrom weapon used in the murder was recovered as Ext. Ka-8), Charge Sheet No 35 dated 9.2.2001 (Ex Ka-9) as well as pieces of blood stained and plain bricks Ex-2 and 3.

28. Sarvesh Kumar,S.I.(P.W.9) has proved the inquest proceedings. Thereafter Constable Rajesh Kumar and Constable Brijnandan were sent with the dead body along with documents for postmortem. This witness has proved Inquest report as Ex Ka-10, letter to C.M.O. Ex Ka-11, Sample seal Ex Ka-12, Challan of the body Ex Ka-13, photo Lash as Ex Ka-14 and letter written by R.I. to C.M.O. Kanpur as Ex Ka-15.

29. Learned Amicus Curiae for the appellant audaciously argued that witnesses produced by the prosecution are partisan, inimical to the appellants and interested witnesses and not independent witness. They are unreliable witnesses and

as such no credence can be attached to their testimony and their deposition is not reliable and deserves to be discarded. Learned A.G.A. refuted the contention of the learned Amicus Curiae for the appellant. He submitted that ordinarily a closed relative would not spare the real culprit who has caused the death and implicate an innocent person. It will be beneficial to discuss law on the issue and evaluation of testimonies such witnesses.

30. In case of **State of Rajasthan Vs. Smt. Kalki and Anr.** (1981) 2 SCC 752 the Hon'ble Supreme Court distinguished between the related and interested witness. It held that 'Related' witness is not equivalent to 'interested' witness. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in a decree of a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of the case, cannot be said to be 'interested'. In the present case the witnesses produced have nothing to gain if the appellant is convicted or acquitted. There is not even an iota of evidence that any of these witnesses will get some benefit out of litigation between complainant and the accused. They are eye witnesses. So, they are not interested witnesses.

31. The aforesaid submission of the learned Amicus Curiae for the appellant that prosecution witnesses are partisan and inimical to appellant, was thoroughly considered by the Hon'ble Apex Court in case of **Daleep Singh Vs. State of Punjab AIR 1953 SC 364** and enunciated the following principles:-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

32. In a three Judges Bench of the Supreme Court of India in **Hari Obula Reddy Vs. State of A.P. (1981) 3 SCC 675** observed as under:-

"13. ...it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested

testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

33. Again, in **S. Sudershan Reddy and others Vs. State of A.P (2006) 10 SCC 163**, the Hon'ble Supreme Court has held as under:-

"12. We shall first deal with the contention regarding interests of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

15. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses."

34. It is well known that there may be three kinds of witnesses:-

- (i) Wholly reliable,
- (ii) Wholly unreliable,
- (iii) Partly reliable and partly unreliable,

There is no problem to evaluate testimony of wholly reliable or wholly unreliable witnesses, but it is different to deal with the witness, who are partly reliable and partly unreliable. The court has to be very careful in evaluation of such kind of witnesses.

35. The testimony of a reliable witness must be of **sterling quality** on which implicit reliance can be placed for convicting the appellants. The Apex Court in **Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21** has very vividly describe the characteristics of a sterling witness as under.

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness

should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co- relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

36. Thus, Hon'ble Apex Court in its enumerable decisions has categorically held that if evidence of an eye-witness, is found truthful, it can not be discarded simply because the witnesses were relatives of the deceased. The only caveat is that the evidence of relative witnesses should be subjected to careful scrutiny and accepted with caution.

37. It is germane to point out here that prosecution in the present case has examined as many as 9 witnesses in support of its version. Out of which four are the witnesses of facts and rest are formal witnesses. PW-1 Lukman is the complainant of the incident and nephew of the deceased Aziz. Thus, admittedly deceased Aziz is the maternal uncle of PW-1 Lukman. PW- 2 Mohd. Faheem is also nephew of the deceased. It is also undisputed that deceased Aziz was real elder uncle (bade baap) of PW- 3 Saeed. PW- 4 Sadiq has admitted that deceased Aziz was his relative and brother. He also admitted that witnesses, Lukman, Mohd. Faheem and Saeed are his nephews and relatives. Thus, all these witnesses are related witnesses of the deceased Aziz. Therefore, their evidence be viewed with extra caution to reach on conclusion regarding their reliability and credibility.

38. At this juncture it may also be pointed out that a close scrutiny of the testimonies of these witnesses spontaneously bring us to conclusion that they have narrated the prosecution story in a very intrinsic and a natural way. All these witnesses, PW- 1 Lukman, PW- 2 Mohd. Faheem, PW- 3 Saeed and PW- 4 Sadiq have, without exception, stated that deceased Aziz and the appellant were engaged

in business of selling meat and there was a dispute of Rs. 50/- between them. Appellant Saleem alias Sambha claimed that Aziz owe Rs. 50/- to him, while Aziz has disputed it. In his cross examination. PW-2 Faheem has stated that after the incident Aziz was lying writhing in agony pooled in blood. He asked to carry him to the hospital subsequently, apprehend Saleem alias Sambha first and then carry. He saw Saleem alias Sambha in the courtyard of the house of Sadiq. This conversation indicates that it was Saleem alias Sambha who had stabbed the deceased Aziz. He denied the suggestion that he had taken Rs. 40,000/- from the Saleem alias Sambha and to avoid payment of the amount, he is falsely deposing. It may be pointed out that it is just a suggestion in defence to the witness but it has not been proved by him by any cogent evidence. PW- 1 Lukman, PW- 2 Mohd. Faheem and PW- 3 Saeed have also supported prosecution story firmly that on 17.01.2001 at about 11.30 a.m. appellant Saleem alias Sambha had called upon and taken deceased Aziz to settle the account at the house of Balia and Sadiq sons of Badkan. Father and sons reside jointly in one house. They also followed them to the house of Balia. These witnesses further corroborated the prosecution story by stating that the deceased Aziz and appellant Saleem alias Sambha went inside the house of Balia, while they remained standing out at the front the door of the house. During course of conversation regarding settlement of the accounts, they over heard screaming consequent thereto they also entered into the house and saw that Saleem alias Sambha has stabbed Aziz with a chhuri and thereafter scaring the witnesses by brandishing it left the house. PW- 1 Lukman and PW- 2 Faheem tried to catch hold of the appellant Saleem alias Sambha but he threatened them and managed his escape good. Thereafter injured Aziz was carried to hospital, where he died. PW- 1 Lukman lodged the FIR. PW- 4 Sadiq has supported prosecution version to a great extent. He substantiated all the facts stated above by the witnesses except the actual place of occurrence. According to him he was present in his house at the time of incident and was taking meal. On hearing the shrieks he came out of his house and saw Saleem alias Sambha holding a blood soaked chhuri in his hand. Saleem has stabbed the chhuri in the stomach of Aziz. They chased him up to hotel of Kallu, thereafter they carried injured Aziz to the police outpost. He died on the way. Thus, all these witnesses were present at the scene of occurrence during the incident and they are the eye witnesses. There is no evidence at all on record that these witnesses are inimical to the appellant which could prompt them to rope him in the said crime.

It is also to be mentioned that nothing was elicited from their examination which could be beneficial to the appellant version of the defence. It is also not out of place to mention that even defence witness DW- 1 Rakesh Kumar, though half heartedly, has supported the prosecution case that deceased Aziz was stabbed by Sadiq and Balia but he could not see as to who stabbed Aziz. In fact he has not seen anyone stabbing Aziz. He deposed that he has given the earlier statement of Sadiq assaulting deceased by knife without understanding its true import Aziz. Thus, the defence witness is so contradictory in his statement that by no stretch of imagination could be said to have supported the defence version at all.

39. DW- 1 Rakesh Kumar has narrated the defence version in his deposition. Negating defence version he deposed that on 17.01.2001 at about 11.30 a.m. he heard screaming in the house of Balia and Sadiq. At the relevant time he was passing through from where he saw that Sadiq stabbed Aziz with chhuri. Aziz had illicit relation with the wife of Sadiq Ayesha. Large number of persons had gathered at the place of occurrence. In his cross-examination he stated that at about 11.30 a.m. he was taking tea at the hotel of Kallu, he heard the shrieks near the house of Balia. He has not witnessed the murder of Aziz. Aziz was beaten by Sadiq and Balia. They were quarreling outside the courtyard in the house of Balia which was visible. Many people gathered there and tried to pacify them inside the house. He has not seen the act of stabbing Aziz by anyone in the house of Balia.

40. Appellant in his defence has stated that deceased Aziz had gone to the house of Sadiq. Aziz had illicit relationship with the wife of Sadiq. At the relevant time Sadiq and Balia also reached there. Seeing Aziz present there, they started beating him. Sadiq had stabbed him in his abdomen and killed him. When he reached, he saw that Aziz was injured, while Sadiq and Balia were present there. They screamed, that Saleem had killed Aziz. They also chased Sadiq and later called the family members of Aziz and blamed him to be the assailant. It may be mentioned that defence has not led any inspiring evidence to prove this version of defence. Assuming this defence version as true, he should have cross examined PW- 4 Sadiq on this point, but no such suggestion was put to him, to strengthen the hypothesis of the defence case. The defence has not put any suggestion to prosecution witnesses to inspire confidence regarding the defence version in this regard. In this way the defence version is not tenable and it do not inspire over confidence and is liable to be discarded outrightly.

41. The learned Amicus Curiae for the appellant urged that there is no independent witness to support the prosecution version, while admittedly several persons were present at the scene of occurrence. It creates serious doubt about the truthfulness and probity of the prosecution version. Learned A.G.A. has opposed the arguments. In this behalf it may be mentioned that it is established cannon of law of evidence that it is the quality, not the quantity of evidence, which matters to prove a case. The prosecution has examined eye witnesses of the occurrence who were present at the place of occurrence. It has also produced all relevant formal witnesses which in no way affects the prosecution case adversely. It is also established law that if eye witnesses successfully proves the prosecution version and testimonies of these witnesses are reliable, then non-production of any independent witness will not in any way affect the prosecution case adversely.

42. Learned Amicus Curiae for the appellant has argued that in the present case FIR is delayed, ante timed and is the result of embellishment which as a creature of afterthought. However, learned A.G.A. dispelled the contention of the learned Amicus Curiae. It is pertinent to discuss, in brief, the legal scenario in this behalf. A Division Bench of Allahabad High Court in **Bhurey Singh Vs. State of U.P. 2008 (4) ALJ 772 Aild.** has referred the Apex Court in **Maharaj Singh Vs. State of U.P. (1994) 5 SCC 188** some checks about the ante timed FIR. One of the checks pointed out is regarding the receipt of the copy of FIR by the local Magistrate. If it is sent late it will give rise to an inference that FIR is not lodged within reasonable time. Further if sending FIR with the dead body, its inference is noted in the inquest report will lead that FIR is within time. The absence of those details indicating the facts that the prosecution story was still in an embryo state and it has come to be recorded later on, after due deliberation and consultation. **Maharaj Singh** (Supra) has been followed by the Apex Court in **Mohammad Muslim Vs. State of U.P. 2023 live law (SC) 489** also. In the present case witnesses of prosecution PW- 1 complainant Lukman, PW- 2 Mohd. Faheem, PW- 3 Saeed and PW- 4 Sadiq in their deposition have stated that the incident has occurred on 17.01.2001 at about 11.30 a.m. Chik FIR Ext. Ka- 3 and PW- 6 C.P. Kameshwer Mishra and PW- 8 I.O. Inspector vigilance R.K. Sharma have stated that FIR has been registered at 12.45 p.m. (noon). The distance of the police station concerned from the place of occurrence is about 1 km. Thus, it took about 1.15 hours to get registered the FIR. The incident pertains to the murder. PW- 2 Faheem

has stated in his cross-examination that after the incident Aziz was brought to the hospital where they were told that it is a police case, so lodge the FIR first. Hence, they came to the P.S. concerned and lodged the FIR meanwhile injured Aziz was declared dead in the hospital. Amongst all these facts and circumstances of the case, it is natural to take 1.15 hours to get FIR registered and there is no unreasonable delay in lodging the FIR. Thus, FIR in the matter is prompt and there is no possibility of manipulating and twisting the real facts. It cannot be termed afterthought. Therefore arguments put forth by the learned Amicus Curiae for the appellant, has no substance and is liable to be discarded.

43. Learned Amicus Curiae for the appellant has contended that prosecution has miserably failed to fix the place of occurrence, which renders prosecution case incredible and unreliable. Learned A.G.A. has vehemently opposed this contention of the appellant and argued that the incident occurred inside the house of the Balia. As per FIR, PW- 1 Lukman, PW- 2 Mohd. Faheem and PW- 3 Saeed, the incident in question occurred in the courtyard of the house of Sadiq while PW- 4 Sadiq has averred that incident had occurred outside his house on the road in front of the door of his house. All the prosecution witnesses live in the vicinity of each other, so they are well acquainted with each other. PW- 1 Lukman, PW- 2 Mohd. Faheem, PW- 3 Saeed have stated in their examination that there was a dispute of Rs. 50/- between the deceased Aziz and the accused appellant Saleem alias Sambha. On the fateful day Saleem alias Sambha called deceased Aziz and took him in the house of Badkan to settle the account. Both of them went inside the house of Badkan (which is also the house of PW- 4 Sadiq) and started conversing about the settlement of the account. All of sudden Saleem alias Sambha stabbed a dagger in the abdomen of the Aziz. The witnesses who followed Aziz and Saleem alias Sambha while they were proceeding towards the house of Sadiq, stayed outside and Saleem alias Sambha and Aziz went inside the house. Thus, according to these witnesses incident occurred in side the house of the Badkan. However, PW- 4 Sadiq has stated in his examination that at the time of the incident he was present in his house and taking meal. He also stated that on hearing the scream, he came out of his house where he saw Aziz lying injured. Saleem alias Sambha had stabbed him with a chhuri and he saw Saleem alias Sambha fleeing from the spot. In view of the consistent statement of prosecution witnesses PW- 1 Lukman, PW- 2 Mohd. Faheem, PW- 3 Saeed that the incident occurred inside the house of Balia. We are

of the opinion that the incident actually occurred inside the house. It appears that PW- 4 Sadiq, either did not witness the occurrence or he was not present on the spot at the time of incident. In their cross-examination Pws has stated that on hearing the shriek inside the house of Sadiq they reached inside the house and tried to lay injured Aziz on a cot and brought him outside the house. Thus, incident of stabbing occurred inside the house of Sadiq and after receiving fatal injury they brought deceased Aziz out of house on the road, in front of the door of the house of Sadiq. Thus, it is established that initially the place of occurrence was the courtyard inside the house of Sadiq. Similar case has been set up by PW- 8 I.O. R.K. Sharma who has rightly depicted the place of occurrence inside the house of Balia in the site map, which he has proved as Ext. Ka- 6 in his statement.

44. In this regard it has also been argued by the learned Amicus Curiae for the appellant that if the incident had occurred in the courtyard of the house of Balia some blood must have been recovered there but the I.O. has not collected any blood stained soil, from the said place. To the contrary he is shown to have collected blood stained bricks while the floor of the yard was not made of bricks. Learned A.G.A. has refuted this argument.

45. It may be mentioned in this regard that there is no satisfactory evidence on record that the blood soaked bricks were collected by I.O. from which place, either from road side or from the courtyard of the house of Balia. It may also be a discrepancy in the statement of I.O. that he has not clarified the position in this regard in his statement. Therefore, it does not mean that incident has not occurred inside the house of Balia and thus the appellant cannot be given any benefit of such lapses/ mistake of the I.O. Thus, the argument that prosecution has not fixed the place of occurrence and hence its case is doubtful, is not acceptable.

46. Learned Amicus Curiae for the appellant has also argued that the questionable recovery of chhuri (*dagger*) by the accused appellant further makes prosecution case doubtful. The recovery is false and there is no independent witness of such recovery. Learned A.G.A. has refuted the argument and urged that the recovery of the weapon of assault is at the instance of the appellant, in the presence of the witnesses, which itself indicate involvement of the appellant in the crime. In this behalf it may be pointed out that according to PW- 8 I.O. inspector vigilance R.K. Sharma the appellant surrendered before the court on

25.01.2001 thereafter with the leave of the court he recorded the statement of the accused on 29.01.2001 wherein he has stated that he can get recovered the chhuri by which he has committed the crime. So his police custody remand was prayed and granted, in expectation of recovery of weapon of assault. On 01.02.2001 weapon of assault, chhuri was recovered at the pointing of the appellant from the standing shrubs on the road side of Bhadras on Musa Nagar Road Chungi. In this connection, recovery memo Ext. Ka- 5 was prepared by PW- 7 S.I. Maharaj Singh Tomar over which the signature of the witnesses, I.O. R.K. Sharma, S.I. Ramendra Kumar, C- Pawar Kumar, C- Sunil Kumar were obtained. Thus, the recovery was made in the presence of the witnesses. This weapon of assault material Ext-1 was sent to FSL for chemical examination. FSL report Ext Ka-16 which is on record, reveals that there were stains of human blood on the Churri (dagger) which clearly establish to that the accused appellant used the recovered chhuri (dagger) in commission of the crime. All the prosecution witnesses substantiate the fact that chhuri was used as weapon of assault by the accused appellant in causing the fatal injury to the deceased Aziz. The mode of recovery also indicates that it was only the accused appellant also be involved in the said crime.

47. PW-8, I.O., Inspector vigilance R.K. Sharma has further stated that after committing the crime accused appellant fled away from the scene of occurrence. He tried to arrest the appellant accused and conducted raids at various places to ensure his arrest but failed to arrest him, consequently the appellant surrendered on 25.01.2001 before the court of CJM, concerned. His conduct of fleeing away, just after the incident is relevant under section -8 Indian Evidence Act 1872. This facts strengthens the presumption that he did so, to evade his arrest from the police as incident has been caused by the accused / appellant alone.

48. It has been further submitted that there are material and serious inconsistencies and discrepancies in respect of the place of occurrence, weapon used and the blows inflicted upon the injured. There is some discrepancy in the prosecution version as pointed out by the witnesses that the deceased was wearing 'T-shirt' and 'Tahmad', whereas in inquest there is description of 'Baniyan' and 'Tahmad' on his person. Some witnesses had stated that after committing the crime Saleem alias Sambha, entered into the house of Sabhapati,

whereas other witnesses had stated that after committing the incident, accused ran away towards the hotel of Kallu, P.W.- 4 Sadiq has stated that accused fled from the scene of occurrence brandishing chhuri (dagger) towards Kallu's hotel. This creates serious doubts about the truthfulness of the prosecution version and the appellant, who has no criminal history and has falsely been implicated. However, in our opinion these are not such discrepancies and inconsistencies, which could affect prosecution case adversely. Thus there is no material contradictions in the statement of the prosecution witnesses.

49. Learned Amicus Curiae for the appellant has also contended that there is no motive for appellant to commit such a gruesome murder for trivial issue of dues of Rs. 50/- only. If it was the motive it was the weakest kind of motive. Learned A.G.A. disputed the contention of Amicus Curiae. It deems pertinent to point out that the incident has occurred in the broad day light and in the presence of several witnesses. All the prosecution witnesses including the witness of the defence has stated that the appellant and deceased Aziz were engaged in the business of selling of meat (gosht), some times jointly and some time severally. Saleem alias Sambha alleged that Aziz owed Rs. 50/- to him but Aziz denied it. On the fateful day, Saleem alias Sambha called Aziz from his house and taken him to the house of Balia s/o Badkan to settle the dispute. PW- 1 Lukman, PW- 2 Faheem s/o Late Saleem and PW-3 Saeed, followed them. Saleem alias Sambha and Aziz went inside the house of Balia and started conversing about the disputed transactions, while the persons accompanying them, remained standing outside the door of Balia's house. Both the parties were quarrelling over the statement of accounts in the house, meanwhile Saleem alias Sambha stabbed Aziz in his abdomen with a churi (dagger), with an intention to kill him. On hearing shrill and shrieks, persons, standing outside, entered into the house of Balia and saw accused Saleem alias Sambha, coming out of the house, brandishing blood soaked dagger in his hand. He even extended threats to them, who chased Saleem alias Sambha, but he managed his escape good. The injured Aziz was taken to the government hospital at Ghatampur for treatment, where he succumbed to his injury. PW-1 Lukaman, PW-2 Faheem, PW-3, Saeed have supported this prosecution case in their testimonies. Even PW-4 Sadiq has supported prosecution version except to the extent that the incident had occurred outside his house while all other witnesses stated that it occurred inside in the

courtyard of the house of the Sadiq but as has been discussed herein above there is a suspicion about the presence of Sadiq on the spot witnessing the incident. There is no corroborative evidence to support the statement of the defence witness DW-1 Rakesh kumar who had no information/ knowledge about the illicit relation of the wife of Sadiq with deceased Aziz. Nevertheless he also supported prosecution case regarding the dispute of Rs. 50/- between the parties and going to the place of occurrence and causing the death of the deceased Aziz by the appellant Saleem alias Sambha.

50. It has also been contended by the learned Amicus Curiae for the appellant that that the appellant has wrongly been convicted under Section 302 IPC whereas as per prosecution story it can easily be inferred that the case would fall under Section 304 Part- II of the I.P.C., as it is said that only a single blow of the knife was given. In support of his contention, he has invited our attention towards the decision rendered in the case of **Stalin V/s The State Through The Inspector Of Police**, AIR 2020 SC 718. He has further placed reliance upon the case of **Mahesh Balmiki alias Munna V/s State Of Madhya Pradesh**, AIR 1999 SC 3338. In the case of Mahesh Balmiki, the Court observed as under:-

“Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury-(A), whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused, and the manner in which the injury is inflicted, are all relevant factors, which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case.

51. Concluding, learned Amicus Curiae for the appellant has submitted that the alleged incident took place on 17.1.2001 and since then 23 long years has elapsed and still he is suffering continuous mental agony. In these circumstances, while not disputing the conviction, learned Amicus Curiae for the appellant submitted that ends of justice would be met, if the appellant is sentenced to the period already under gone by him.

52. Refuting the said assertion of the learned Amicus Curiae, the State Counsel argued that the findings of guilt recorded by the Trial Court are based on proper appreciation of evidence on record. The prosecution has examined the most natural witnesses of the case, whose presence at the time of occurrence can not be doubted. Credibility of the witness has to be judged in view of the facts and circumstances of every case and the trial judge strictly scrutinized their evidence with utmost care. He next averred that minor discrepancies on the part of investigating officer could not be a justification for discarding the accusation against the appellant. Prosecution witnesses have proved prosecution case beyond all shadow of doubts. The prosecution has successfully been able to prove the date, time and place of occurrence. The appellant has not been able to prove by any evidence that he has falsely been implicated in the case and as such the appeal is liable to be dismissed.

53. Learned Amicus Curiae appearing for the appellants has next submitted that there was absolutely no intention on the part of the appellant to have caused death of deceased Aziz, nor to cause any bodily injury to the him. He further submitted that considering the manner in which the incident had occurred and the role attributed to the appellant, the present case does not travel beyond the scope of the offence u/s 304 Part- II I.P.C. i.e. causing injuries with the knowledge that it was likely to cause death but without any intention to cause death. He has further submitted that the conviction of the appellants u/s 302 IPC is a result of misappreciation of evidence on record. At the most the appellant can be convicted for the offence u/s 304 Part II of IPC.

54. Per contra, learned AGA has submitted that prosecution has proved its case beyond all reasonable doubt from the evidence adduced during the course of trial both intention and knowledge could be attributed to the appellant in causing the death of Aziz and, therefore, the trial court has rightly convicted the appellant under Section 302 I.P.C., which order do not require any interference.

55. Having considered the rival submissions made by the learned counsel for the parties and having gone through the material available on record, the only question that now falls for our consideration is that whether the conviction of the appellant would fall within the scope of Section 300 IPC or it is a case of culpable homicide not amounting to murder punishable u/s under Section 304 Part I or Part II of IPC.

56. We have already gone through the evidence adduced by the prosecution and the genesis of the occurrence and the role attributed to the appellant herein. During the course of autopsy of the dead body of the deceased P.W.-5- Dr. M.K. Jain has found only one ante-mortem injury in the form of lacerated and perforating wounds 3 cm x 1.5 cm x abdominal cavity deep and the same was present below the ribs towards the left side in a 10 O'clock position, 9 cm above the umbilicus. Prosecution witnesses have stated that there was no other injury on the body of the deceased. Thus, this is a case of single blow.

57. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death-

- (i) with the intention of causing death or
- (ii) with the intention of causing such bodily injury as is likely to cause death, or
- (iii) with the knowledge that such an act is likely to cause death.

A bare perusal of this provision, reveal that it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners, noted-above, it would be 'culpable homicide'. Section 300 IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. In **Rampal Singh vs. State of U.P., (2012) 8 SCC 289** it has been held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'.

58. The Court must address itself to the question of mens rea. 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.

59. When single injury is 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.

60. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC 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. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken 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."

61. The phraseology of Sections 299 and 300 respectively of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

62. The word "intent" is derived from the word archery or 'aim'. The "act" attempted to must be with "intention" of killing a man. Intention, is a state of mind, can never be precisely proved by direct evidence as a fact; it can only

be deduced or inferred from other facts which are proved. The intention may be proved by *res gestae*, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct evidence but is to be deduced from the facts and circumstances of a case.

63. In the case of **Smt. Mathri v. State of Punjab**, AIR 1964 SC 986, at page 990, Das Gupta J. has explained the concept of the word 'intent'. The relevant observations are made by referring to the observations made by Batty J. in the decision *Bhagwant vs. Kedari*, I.L.R. 25 Bombay 202 as under:-

“The word “intent” by its etymology, seems to have metaphorical allusion to archery, and implies “aim” and thus connotes not a casual or merely possible result-foreseen perhaps as a not improbable incident, but not desired-but rather connotes the one object for which the effort is made-and thus has reference to what has been called the dominant motive, without which, the action would not have been taken.”

64. In the case of **Basdev vs. State of Pepsu**, AIR 1956 SC 488, at page 490, the following observations have been made by Chadracharya Aiyar J.:-

“6. ... Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion.”

65. Bearing in mind the test suggested in the aforesaid decisions and historical background that our legislature has used two different terminologies 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury, which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that 'intent' and 'knowledge' cannot be equated with

each other. They connote different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that 'intent' and 'knowledge' are the same. 'Knowledge' will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

66. In another case **Pulicherla Nagaraju @ Nagaraja Reddy vs State of A.P**, 2006 (11) SCC 444, the Hon'ble Supreme Court has laid down various relevant circumstances from which the intention could be gathered. Some relevant considerations are the following:-

- (i) The 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 the 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,
- (vi) whether the incident occurred 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 a grave or sudden provocation and if so, the cause for such provocation,
- (ix) whether it was heat of passion,
- (x) whether a person inflicting the injury has taken undue advantage or has acted in a cruel manner,
- (xi) whether the accused persons has dealt a single blow or several blows.

67. Thus, requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide. It is also necessary to prove specific intentions. Even when such intention is not proved, the offence will be culpable homicide, if the doer of the act causes the death with the knowledge that he is likely by his such act cause death, i.e., with the knowledge that the result of his act may be such as may result in death.

68. Now we recapitulate the facts and circumstances of the case. It is an admitted case of prosecution that deceased and the appellant were engaged in business of selling meat. Their relations were cordial as PW- 2 has stated that Saleem alias Sambha has never threatened the deceased. During the course the business there arose a dispute between them, when appellant demanded his due amount Rs. 50/- which the deceased owed towards him. The deceased asked the appellant to settle the account between them and if there is any amount due upon him, he is ready to pay. On the fateful day Saleem alias Sambha called the victim and taken him to the house of Balia to settle the disputed account. It is

important to note that both the parties are in relation to each other and their residences are in the same town and vicinity, to each other. They had similar business also and generally belong to the same profession and community. Prosecution witnesses stated that there was no enmity of any kind, between them and there was not even a remote possibility that the dispute between them could result in the commission of murder by appellant but something has occurred between them during the course of conversation and in the spur of moment and sudden provocation, appellant stabbed 'chhuri' in the abdomen of the deceased. The weapon of assault chhuri is a common item which could be found in dwelling houses, specially where selling of meat is the business. In these circumstances it could not be inferred that appellant had a pre-planned intention to kill the deceased Aziz and from the mode of occurrence it could not be inferred that the appellant had knowledge that by his act of stabbing the deceased would receive such an injury which would likely culminate in the death of the deceased.

69. Thus, from the aforesaid discussion, we are of the view that none of the clauses of Section 300 I.P.C. are attracted as intention of the appellants to cause death or such bodily injury which he knew would cause the death of the other person or sufficient in the ordinary course of nature to cause death, is not proved. Resultantly, we are of the opinion that the appellants had not committed an offence within the meaning of Section 300 IPC, i.e., "culpable homicide amounting to murder", punishable under Section 302 I.P.C. The incident had occurred without any premeditation and on trivial matter i.e. dispute regarding meager amount of Rs.50/-. Thus, the offence committed by the appellant would fall within the meaning of "culpable homicide not amounting to murder" under Section 304 I.P.C.

70. Now the next question would be as to whether the appellant would be guilty in Part-I or Part-II of Section 304 IPC The intention probably was to pressurize by brandishing the chhuri and not to cause bodily injuries. Otherwise there would have been more than one blow, which would have surely done away with the deceased. However, in sudden provocation, the single blow proved fatal. Considering all the facts and circumstances of the case intention of appellant gathered, mode of occurrence and weapon used, nature of injury, his act falls within the province of Section 304 Part- II I.P.C.

71. In view of the foregoing discussion, we are of the opinion that the appellant is not guilty of murder punishable under Section 302 IPC but he is guilty of committing homicide not amounting to murder an offence which is punishable under Section 304 Part II IPC, we partially accept this appeal and alter the offence from that of Section 302 IPC to one under Section 304 Part II of the Indian Penal Code.

72. In the light of prolix and verbose discussions made herein above and also regard being had to the entire facts and circumstances of the case and re-appreciation of the entire evidence, we are of the opinion that the prosecution has proved its allegations beyond reasonable doubts, pointing unerringly the guilt of the accused / appellant, punishable under section 304 Part- II IPC. Having regard to the facts and circumstances of the instant case, we find that the sentence of 10 years' rigorous imprisonment would serve the ends of justice adequately for the offence of which the appellant has been held guilty.

73. We, therefore, award a sentence of 10 years' rigorous imprisonment to the appellant Saleem alias Sambha. The judgment under appeal is modified and the appeal is allowed in part, accordingly.

74. The Chief Judicial Magistrate, Kanpur is directed to take appellant Saleem alias Sambha in custody in the aforesaid case and send him to jail to serve out the remaining sentence awarded to him.

75. Let a copy of the judgment and order be sent to the trial court concerned for necessary compliance. The trial court record be remitted back within fifteen days. The compliance report shall be communicated to this court in a further period of two weeks, thereafter.

Order date :- 05.08.2024

Israr