

IN THE HIGH COURT FOR THE STATE OF TELANGANA

Criminal Appeal No.863 of 2014

Between:

Pandhre Kishan,  
S/o Ramaq

... Appellant

And

The State of Telangana, through circle  
Inspector of Police, repled by Public  
Prosecutor, Hyderabad.

...Respondent

JUDGMENT PRONOUNCED ON 13.02.2023

**HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA**  
**AND**  
**HON'BLE JUSTICE A.SANTHOSH REDDY**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
3. Whether her Lordship wishes to  
see the fair copy of the Judgment? : Yes

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*Dr. JUSTICE CHILLAKUR SUMALATHA*

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*A.SANTHOSH REDDY, J*



**HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA  
AND  
HON'BLE JUSTICE A.SANTHOSH REDDY**

Criminal Appeal No.863 of 2014

% 29.10.2022

Between:

# Pandhre Kishan,  
S/o Ramaq

..... Petitioner

And:

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Inspector of Police, repled by Public  
Prosecutor, Hyderabad.

....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. S.Chandrasekhar

^ Counsel for Respondent: Sri T.V.Ramana Rao  
Additional Public Prosecutor

**? Cases Referred:**

1. (1976) 4 SCC 382
2. (2006) 11 SCC 444
3. (2021) 10 SCC 706

**HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA  
AND  
HON'BLE JUSTICE A.SANTHOSH REDDY**

CRIMINAL APPEAL No.863 of 2014

**JUDGMENT:** (per Dr. Justice Chillakur Sumalatha)

In disagreement with the findings given and the consequent sentence passed, the appellant, who is the accused in Sessions Case No.306 of 2011 that stood pending on the file of the Court of V Additional District and Sessions Judge, Adilabad, is before this Court.

2. Heard Sri S.Chandrasekhar, learned counsel for the appellant, as well as the learned Additional Public Prosecutor who represented the respondent-State.

3. Making his submission, learned counsel for the appellant contended that the appellant had no intention whatsoever to attack his mother-in-law and cause her death and indeed, the prosecution miserably failed in establishing the guilt of the appellant beyond all reasonable doubt. Learned counsel further submitted that the appellant equally had no intention to attack his wife and his daughter and absolutely, there is no evidence on record

to show that the appellant attempted to kill his wife and his daughter. Learned counsel further contended that even if the version of the prosecution is taken to be true that the appellant hit his mother-in-law with a fire wood stick, the case, at best, would fall within the ambit of Section 304 Part-II IPC, but not under Section 302 IPC. He also stated that the injured i.e., the wife and the daughter of the appellant, sustained only simple injuries and thus, the case does not fall within the ambit of Section 307 IPC, but falls within the ambit of Section 323 IPC. Learned counsel referring to Ex.P-9-Scene Observation Report and Ex.P-20-Rough sketch, contended that those documents reveals the presence of kitchen very near to the scene of offence and further, there is convincing material on record to show that the appellant took the stick from that place and hit his mother-in-law, his wife and his daughter and had the appellant carried any intention to kill those persons, he would have reached the scene of offence with a weapon, but he did not do so. Learned counsel finally pleads the Court to revisit the entire evidence and do justice.

4. Contradicting the submissions thus made, learned Additional Public Prosecutor contended that there is no reason for the wife and the daughter of the deceased, who were examined as P.Ws.1 and 2 respectively, to speak falsehood and they, in clear terms, narrated the happening of the incident. Learned Additional Public Prosecutor submitted that the appellant attacked P.Ws.1 and 2 and also his mother-in-law and ultimately, killed his mother-in-law besides causing injuries to them. Learned Additional Public Prosecutor further submitted that other independent witnesses also supported the case of the prosecution and they stated that it is the appellant who approached the scene of offence, attacked his mother-in-law, his wife and his daughter with an intention to kill them and therefore, the trial Court rightly convicted the appellant for the offences punishable under Sections 302 and 307 IPC and thus, the judgment of the trial Court needs no interference.

5. In the light of the submissions thus made, the points that emerge for consideration are:-

***(1) Whether the prosecution established beyond all reasonable doubt that the***

***appellant committed the offence of culpable homicide amounting to murder.***

***(2) Whether the prosecution established beyond all reasonable doubt that the appellant having attempted to commit the offence of murder, has committed the offence punishable under Section 307 IPC.***

**POINT Nos.1 and 2:-**

6. The case of the prosecution, as could be perceived through the contents of the charge sheet, if narrated in a narrower compass, is that P.W-1-P.Laxmi Bai is the wife of the appellant. Her marriage was solemnised with the appellant about 25 years prior to the date of the incident and they were blessed with two daughters and two sons. The appellant being addicted to the habit of consuming liquor, stopped working and started harassing P.W-1. P.W-1, who could not bear the harassment of the appellant, about ten months prior to the date of incident, left the company of the appellant and joined her mother, who was residing at Shabarimatha Ashram, Shanthi Nagar,

Dahegaon Village, along with her eldest daughter i.e., P.W-2-Sony and started residing there. In the evening of 16.4.2011, the appellant went to the said place in a drunken state and picked up quarrel with the mother of P.W-1, i.e., Shantha Bai (hereinafter referred to as “the deceased” for brevity) for not sending his wife to his house. In a bit of rage, he hit her with a stick over her head. He also beat P.Ws.1 and 2. When the surrounding persons tried to nab him, he escaped by pelting stones on them. The deceased and the injured-P.Ws.1 and 2 were shifted to Government RIMS Hospital, Adilabad, but the deceased succumbed to injuries while undergoing treatment on 18.4.2011.

7. As rightly contended by the learned Additional Public Prosecutor, all the material witnesses supported the case of the prosecution.

8. The evidence of P.W-1 is that the appellant is her husband, P.W-2 is her eldest daughter and the deceased is her mother. She deposed that as her husband was abusing and harassing her on account of his vices, about ten months prior to the date of death of her mother, she



reached her maternal house along with her eldest daughter and there, she used to do tailoring work. On the date of the incident, the appellant came to their house and forced her to join him. Her mother asked the appellant to take her, but to look after her properly. But, the appellant stating that her mother was retaining her at her house, beat her with a fire wood stick on her head and also on shoulder. When she intervened, he also beat her and further, beat her daughter. When P.W.5, L.W-7-Shankar and L.W-8-Narayana attempted to catch the appellant, he fled away.

9. P.W-2 corroborated the testimony of P.W-1. She stated that the appellant beat her grandmother on her head with a fire wood stick. She also stated that he also beat her and her mother.

10. P.W-3, who is the sister of P.W-1, stated that she witnessed the appellant beating her mother with a stick and also hitting P.Ws.1 and 2. P.W-5, who deposed that his house is located opposite to Shabarimatha Ashram, stated that the appellant beat the deceased with a stick and also beat his wife and his daughter. He also stated that on seeing them, the appellant fled away with stones.

11. The fact that the deceased died due to the injuries sustained by her is established by the prosecuting agency through the evidence of P.W-8 and Ex.P-11-Post-mortem report.

12. P.W-8, who stated that she conducted autopsy over the dead body of the deceased, deposed that she found a contusion measuring 9 x 6 cms over the right side of the scalp, a contusion of 8 x 5 cms over frontal lobe of brain and fissured fracture of 4 x 0.5 cms in the frontal region extending into the parietal region of the skull of 5 x 0.5 cms and that those injuries are ante-mortem in nature. She also stated that those injuries over skull are possible with a stick. However, during the course of cross-examination, she stated that those injuries are also possible in case of fall from height.

13. By the testimony of the injured as well as ocular witnesses, it is clear that it is the appellant who attacked the deceased on the date of the incident with a fire wood stick and caused injuries.

14. The crucial point highlighted and argued by the learned counsel for the appellant is that the appellant had

neither intention to kill the deceased nor approached the house of the deceased with a pre-determined mind to cause injuries to injured and therefore, the case neither falls within the ambit of Section 302 IPC so far as the deceased is concerned nor within the ambit of Section 307 IPC in respect of P.Ws.1 and 2.

15. It is established by cogent and convincing material by the prosecuting agency before the trial Court that the appellant hit the deceased with a stick i.e., M.O-1 and the injuries thus caused, resulted in her death. It is not the version of the prosecuting agency that the appellant carried with him either M.O-1-stick or any other weapon so as to attack the deceased or other injured. Further, by the documents produced by the prosecution, i.e., Ex.P-9-Scene Observation Report and Ex.P-20-Rough Sketch, it is clear that the kitchen of the house is located very near to the scene of offence. In such a factual scenario, it has to be seen whether the case falls within the ambit of Section 302 IPC or Section 304 IPC. In case, it falls within the ambit of Section 304 IPC, it should also be looked into whether the

culpability of the appellant is within the ambit of Part-I of Section 304 IPC or Part-II of the said provision.

16. Chapter-XVI of the Indian Penal Code, 1860, deals with the offences affecting human body. For the offences and the circumstances falling within the ambit of Sections 300 to 304, 307, 308, 310 and 311 IPC, the parental provision is Section 299 IPC. While Section 299 IPC states what 'Culpable Homicide' is, Section 300 IPC envisages when Culpable Homicide is Murder and when it is not. Section 301 IPC covers the case where culpable homicide is committed by causing death of person other than person whose death was intended.

17. Section 302 IPC prescribes punishment for murder. Section 303 IPC prescribes punishment for the offence of murder by life convict. Section 307 IPC prescribes punishment for attempt to murder. Section 304 IPC prescribes punishment for the offence of culpable homicide not amounting to murder. Section 308 IPC prescribes punishment for attempt to commit culpable homicide. While Section 310 IPC defines "Thug", Section 311 IPC prescribes punishment for it.

18. In the case on hand, the point raised and stressed repeatedly by the learned counsel for the appellant is that in case, this court firmly believes that the appellant has caused the death of the deceased, the acts of the appellant falls within the ambit of either Part-I or Part-II of Section 304 IPC, but not under Section 302 IPC.

19. The submission of the learned counsel in this regard is that the appellant neither carried intention to cause the death of the deceased nor had such intention to cause bodily injury, which in all circumstances is likely to cause death and as such, he should not be convicted for the offence punishable under Section 302 IPC.

20. The submission of the learned Additional Public Prosecutor in this regard is that the prosecution by all the evidence produced established that the appellant attacked the deceased with a stick and hit her on her vital part of the body i.e., on head and the injuries thus caused ultimately resulted in her death and therefore, the trial Court has rightly punished the appellant by imposing life imprisonment and as such, the sentence imposed needs no interference.

21. Having regard to the rival contentions thus made, this court is now under obligation to see whether the case fits within the ambit of Section 300 IPC where the circumstances of culpable homicide amounting to murder are laid down.

22. For the benefit of discussion, Sections 299 and 300 IPC are extracted as under:-

**“299. Culpable homicide.**—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

**Explanation 1:** A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

**Explanation 2:** Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

**Explanation 3:** The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

**300. Murder:** *Firstly:-* Except in the cases hereinafter excepted, culpable homicide is murder,

if the act by which the death is caused is done with the intention of causing death, or—

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

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

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

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

The above exception is subject to the following provisos:

*Firstly*:- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly*:- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly*:- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

**Explanation:-** Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

**Exception 2:-** Culpable Homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the powers given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

**Exception 3:** Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

**Exception 4:** Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

**Explanation:** It is immaterial in such cases which party offers the provocation or commits the first assault.

**Exception 5:** Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

23. Catena of decisions were rendered by the Honourable Supreme Court and the High Courts across the country



which distinguishes the cases which falls within the ambit of culpable homicide amounting to murder and which falls outside the said purview and thereby, fits within the purview of culpable homicide not amounting to murder. One among them is the decision of the Honourable Supreme Court in the case between ***State of Andhra Pradesh Vs. Rayavarapu Punnayya and another***<sup>1</sup>, wherein discussing about the distinction between murder and culpable homicide not amounting to murder, the court at paras 12 to 22 of the judgment held as follows:-

12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its specie. All “murder” is “culpable homicide” but not vice-versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable

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<sup>1</sup> (1976) 4 SCC 382

under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. The academic distinction between “murder” and “culpable homicide not amounting to murder” has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minutae abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences. Section 299 Section 300-  
A person commits culpable homicide Subject to certain if the act by which the death exceptions culpable is caused is done homicide is murder if the act by which the death caused is done-

INTENTION

(a) with the intention of causing death: (1) with the intention of causing death; or (b) with the intention of (2) with the intention of causing such bodily injury causing such bodily injuas is likely to cause death: as the offender knows to or be

likely to cause the death of person to whom the harm is caused; or (3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or KNOWLEDGE (c) with the knowledge that (4) with the knowledge that the act likely to cause death, the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of using death or such injury as is mentioned above.

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

of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended

bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of “probable” as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala* (AIR 1966 SC 1874) is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab* (AIR 1958 SC 465) Vivian Bose, J. speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500):

“The prosecution must prove the following facts before it can bring a case under Section 300, ‘thirdly’. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other

kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

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

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

incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is “murder” or “culpable homicide not amounting to murder”, on the facts of a case, it will be convenient for it to approach the problem in three steps. The question to be considered at the first step would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second step for considering whether that act of the accused amounts to “culpable homicide” as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the step for considering the operation of Section 300 of the Penal Code, is reached. This is the step at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of “murder” contained in Section 300. If the answer to this question is in the negative the offence would be “culpable homicide not amounting to murder”, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be

“culpable homicide not amounting to murder”, punishable under the First part of Section 304 of the Indian Penal Code.

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

24. Another decision is the one that is rendered by the Honourable Supreme Court in the case between ***Pulicherla Nagaraju @ Nagaraja Vs. State of A.P.***<sup>2</sup> wherein the court at para 18 of the judgment held as under:-

“18. 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

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<sup>2</sup> (2006) 11 SCC 444



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.”

25. In a factual scenario where the accused was driving a truck and one of the Sub-Inspectors of Police tried to stop the said truck, the accused drove the same and the truck ran over the said Sub-Inspector, discussing the culpability of the said accused, the Honourable Supreme Court in the case between **Mohd. Rafiq @ Kallu Vs. State of Madhya Pradesh**<sup>3</sup>, at paras 14 to 16 of the judgment held as follows:-

“14. Coming back to the facts of this case, as observed earlier, there can be no serious dispute that the prosecution established the main elements of its factual allegations : the receipt of information of the breaking of the forest barrier; positioning of the deceased SI Tiwari, with a posse of policemen on the road; the identification of the appellant, as one who drove the truck; gesturing by the deceased to the appellant to stop the truck; the latter slowing down the vehicle; attempt by the SI to board the vehicle, and his being shaken off the truck, on account of the driver refusing to stop, and, on the other hand, speeding the vehicle. Even if the prosecution version that the appellant having

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<sup>3</sup> (2021) 10 SCC 706

threatened to kill the deceased were to be accepted, one cannot set much store by it, because no motive or no animus against the deceased was proved. A general expression of the extreme threat, (without any real intention of carrying it, since the truck was not laden with any contraband or was not used for any illegal or suspect activity), cannot be given too much weight. What is of consequence, is that upon the deceased falling off the truck, the appellant drove on. Here, the prosecution established that the truck was driven, without heed; however, it did not establish the intention of the driver (i.e. the appellant) to run over the deceased. This point, though fine, is not without significance, because it goes to the root of the nature of the intention. Did the appellant intend to kill SI Tiwari? We think not. Clearly, he knew that SI Tiwari had fallen off; he proceeded to drive on. However, whether the deceased fell in the direction of the rear tyre, of the truck, or whether he fell clear of the vehicle, has not been proved; equally it is not clear from the evidence, that the appellant knew that he did. What was established, however was that he did fall off the truck, which continued its movement, perhaps with greater rapidity. This does not prove that the appellant, with deliberate intent, drove over the deceased and he knew that the deceased would have fallen inside, so that the truck's rear tyre would have gone over him. In these circumstances, it can however be inferred

that the appellant intended to cause such bodily injury as was likely to cause SI Tiwari's death.

15. All the essential elements show that the appellant did not have any previous quarrel with the deceased; there was lack of animus. The act resulting in SI Tiwari's death was not premeditated. Though it cannot be said that there was a quarrel, caused by sudden provocation, if one considers that the deceased tried to board the truck, and was perhaps in plain clothes, the instinctive reaction of the appellant was to resist; he disproportionately reacted, which resulted in the deceased being thrown off the vehicle. Such act of throwing off, in fact the owner of the truck deposed during the trial, the deceased and driving on without pausing, appears to have been in the heat of passion, or rage. Therefore, it is held that the appellant's conviction under Section 302 IPC was not appropriate.

16. Section 304 IPC provides punishment for culpable homicide not amounting to murder (under Section 299 IPC). In the facts of the present case, this Court is of the opinion that the appellants should be convicted for the offence punishable under the first part of Section 304 IPC, as he had the intention of causing such bodily harm, to the deceased, as was likely to result in his death, as it did. Having regard to these circumstances, the conviction recorded by the courts below, is altered to one under Section 304 Part I IPC. The sentence

too is therefore modified — instead of rigorous imprisonment (“RI”) for life, the appellant is hereby sentenced to 10 years' RI. The direction to pay fine, is however, left undisturbed.”

26. In the light of the path laid down for deciding whether a particular case falls within the ambit of culpable homicide amounting to murder or within the ambit of culpable homicide not amounting to murder, for the courts to come to a conclusion the following six steps *viz.*, STEPS ‘A’ to ‘F’ appears for probable application.

**STEP ‘A’ – Whether the death is homicidal.**

**If step ‘A’ is +ve → proceed to step ‘B’**

**STEP ‘B’ – Whether the death caused amounts to culpable homicide.**

A person is said to commit the offence of culpable homicide under the following three circumstances –

Circumstance No.1:- When a person causes death by doing an act with the intention of causing death.

or

Circumstance No.2:- When a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death.

or

Circumstance No.3:- When a person causes death by doing an act with the knowledge that he is likely to cause death by such an act.

**If STEP 'B' is also +ve → proceed to verify whether the case fits in STEP 'C' or STEP 'D'.**

**STEP 'C' – Culpable homicide is murder under the following four circumstances –**

**Circumstance No.1-** If the act of the person by which death is caused is done with the intention of causing death.

or

**Circumstance No.2 –** If the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused.

or

**Circumstance No.3-** If the act is done by the person with the intention to cause such bodily injury to any person which is sufficient in the ordinary course of nature to cause death.

or

**Circumstance No.4-** If the act is done by the person with the knowledge that the said act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death.

**In case, STEP 'A' is +ve, STEP 'B' is +ve and STEP 'C' is also +ve, stop here and convict the accused for the offence punishable under Section 302 IPC.**

**In case, STEP 'A' is +ve, STEP 'B' is +ve and STEP 'C' is -ve → proceed to next step i.e., STEP 'D'.**

**STEP 'D' – Culpable homicide is not murder under the following five circumstances –**

**Circumstance No.1:-** If an act is done by the person while deprived of the power of self-control by grave and sudden provocation and thereby, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

However, such provocation should not be sought or voluntarily provoked by the offender as an excuse for killing or doing the harm to another person. That the provocation is not given by anything done in obedience to law or by a public servant in the lawful exercise of powers of such public servant or that the provocation is not given by anything done in the lawful exercise of the right of private defence.

**Circumstance No.2-** If the person in good faith and in exercise of the right of private defence of person or property, exceeds the power given to him by law and causes death of the person against whom he is exercising such right of private defence, without premeditation or without any intention of doing more harm than is necessary for the purpose of such defence.

**Circumstance No.3 –** A public servant or a person aiding a public servant acts for the advancement of public justice, however exceeds the powers given to him by law and causes the death of another by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

**Circumstance No.4 –** If the person commits an act without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the

offenders having taken undue advantage or acted in a cruel or unusual manner.

**Circumstance No.5** – When the person whose death is caused, being above the age of 18 years, suffers death or takes the risk of death with his own consent.

27. When STEP 'A' is +ve, STEP 'B' is + ve, STEP 'C' is -ve and STEP 'D' is +ve, it has to be held that the accused has committed the offence of culpable homicide not amounting to murder.

28. The ingredients of Section 304 IPC have to be looked into at this stage for inflicting the appropriate punishment.

29. **To know whether the case falls under Part-I or Part-II of Section 304 IPC → move on to STEP 'E'.**

**STEP 'E'** – In case, the offence of culpable homicide not amounting to murder is committed by doing an act by which death is caused with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death, the offender should be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years and shall also be liable for fine.



30. In case, the aforesaid two ingredients are not satisfied  
—→ proceed to STEP 'F'.

**STEP 'F'** - When culpable homicide not amounting to murder is committed by a person by doing an act with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death, then he should be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both.

31. Having discussed step-wise and point-wise, the entire gamut of law relating to the offence of culpable homicide which amounts to murder and which does not amount to murder, the following capsule is formulated:-

**REGARDING GUILT OF ACCUSED**

**STEP 'A' + STEP 'B' + STEP 'C' = MURDER**

**STEP 'A' + STEP 'B' + STEP 'D' = CULPABLE HOMICIDE**

**NOT AMOUNTING TO MURDER**

**REGARDING SENTENCE TO BE PASSED**

**STEP 'A' + STEP 'B' + STEP 'C' = (DEATH OR IMPRISONMENT FOR LIFE) + FINE (SECTION 302 IPC)**

**STEP 'A' + STEP 'B' + STEP 'D' + STEP 'E' = (IMPRISONMENT FOR LIFE OR IMPRISONMENT OF EITHER DESCRIPTION FOR A TERM WHICH MAY EXTEND TO TEN YEARS) + FINE (SECTION 304 PART-I IPC)**

**STEP 'A' + STEP 'B' + STEP 'D' + STEP 'F' = IMPRISONMENT OF EITHER DESCRIPTION FOR A TERM WHICH MAY EXTEND TO TEN YEARS OR WITH FINE OR WITH BOTH (SECTION 304 PART-II IPC).**

32. Though there cannot be any straight jacket formula which can be applied, as each case always depend upon its own facts and circumstances, however, having regard to the observations made by the Hon'ble Apex Court in series of decisions, more particularly in ***Pulicherla Nagaraju @ Nagaraja's*** case (2<sup>nd</sup> cited supra), the Courts are under obligation to verify the presence or otherwise of the following circumstances:-

***(1) Whether the accused carried any weapon with him while approaching the scene of offence.***

- (2) In case, he carried such weapon, the nature of the said weapon and the purpose for which he carried the same.***
- (3) Whether accused picked up the weapon from the scene of offence or from any nearby place.***
- (4) Number of blows dealt with.***
- (5) Whether such blows were to the vital parts of the body.***
- (6) Distance from which blows were given and the force employed.***
- (7) Whether there was any premeditation on part of the accused or instigation from others.***
- (8) Whether the incident occurred in the course of sudden quarrel or fight.***
- (9) Whether the accused at the time of incident was exercising the right of private defence.***
- (10) The physical or mental capability or incapability of the accused as well as the victim.***

33. In the case on hand, it is clearly borne by record that the appellant did not carry any weapon with him while approaching the scene of offence. As per the version of the prime witnesses, it is further clear that he had gone to persuade his wife and his mother-in-law i.e., the deceased for sending his wife with him to lead marital life. It is further clear that very near to the scene of offence, there is

a kitchen. The fact that the appellant took the crime weapon i.e., M.O-1-stick which is used as fire wood from the said kitchen is also not in dispute. Admittedly, as the appellant hit the deceased with M.O-1-stick and caused injuries, she succumbed to those injuries. Therefore, we are of the view the appellant caused the death by causing such bodily injury as is likely to cause death but without any intention to cause death, however with the knowledge that the same is likely to cause death. Thus, the case falls within the ambit of Part-II of Section 304 IPC as step 'A', step 'B' and step 'D' stood +ve, application of step 'F' is held appropriate.

34. Coming to the other aspect regarding the injuries caused to PWs.1 and 2, admittedly, the injuries that were caused are simple in nature. By the discussion that went on supra, it is clear that the appellant neither carried intention to cause death of the deceased nor to kill P.Ws.1 and 2. Thus, the case falls within the ambit of Section 324 IPC but not Section 307 IPC. Therefore, having regard to the entire discussion with regard to the law laid down which applies to the facts and circumstances of the case,

we are of the view that the appellant is required to be convicted for the offence punishable under Part-II of Section 304 IPC and for the offence punishable under Section 324 IPC.

35. Resultantly, this Criminal Appeal is allowed in part. The conviction and consequent sentence passed by the trial Court for the offences punishable under Sections 302 and 307 IPC are set aside.

36. Having found the appellant guilty of the offences punishable under Sections 304 Part-II and 324 IPC, the following sentence is passed:-

The appellant is sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.200/-, in default of payment of fine, to undergo simple imprisonment for a period of one month for the offence punishable under Section 304 Part-II IPC. The appellant is further sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.200/-, in default of payment of fine, to undergo simple imprisonment for a period of one month for the offence punishable

under Section 324 IPC. Both the sentences shall run concurrently.

37. Pending Miscellaneous Petitions, if any, shall stand closed.

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**Dr. JUSTICE CHILLAKUR SUMALATHA**

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**A.SANTHOSH REDDY, J**

13.02.2023

*Note:*

*LR copy to be marked.*

*B/o*

*dr*