2026:AHC:139692-DB

A.F.R.
Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2570 of 1987

Virendra Singh

…..Appellant(s)

Versus

State of U.P.

…..Respondent(s)

Counsel for Appellant(s)	:	Narendra Kumar Singh, Jitendra Pal Singh, P.k. Bisariya
Counsel for Respondent(s)	:	A.G.A.

In Chamber

HON'BLE SALIL KUMAR RAI, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Per : DR. AJAY KUMAR-II, J.)

1. The instant Criminal Appeal has been directed against the judgment and order dated 30.10.1987 passed by IIIrd Additional Sessions Judge, Etah in Sessions Trial No.497 of 1986 (State Vs. Virendra Singh) arising out of Case Crime No.12 of 1986, under Section 302 IPC, Police Station - Awagarh, District Etah convicting and sentencing the appellant under Section 302 I.P.C. for life imprisonment.

2. Prosecution story, in nutshell, as unfolded in written report (Ex.Ka.-1), is as follows:

The informant of this case Narsingh Pal got solemnized the marriage of Baby, daughter of his brother-in-law with his cousin brother Virendra Singh about six months back. Virendra Singh used to torture and harass his wife. In the morning of 16.02.1986, Baby

came to his wife (Reshma Devi) and told her about the harassment and torture extended by her husband Virendra Singh, on which the informant's wife tried to convince and subside the matter, but she did not agree to go to her husband's house. At about 2:00 P.M., her (Baby's) husband Virendra having wooden plank (flat piece of wood) in his hand came to the house of the informant, while hurling abuses and started beating the wife of the informant and his own wife Baby. At this moment, son of the informant namely, Ravikant objected and tried to save Baby. On being rescued, Virendra, in a state of anger, hurled abuses to Ravikant and made an assault with wooden plank upon the head of Ravikant, who fell down on the ground. Thereafter, Virendra leaving the wooden plank, fled away from the spot. Ravikant sustained injury on his head. When they (informant's side) rushed the injured on a bullock cart, Ravikant succumbed to his injuries just coming out of the village. The informant returned to his house and kept the dead body of the deceased at his platform (*chabootra*). The incident was witnessed by the wife of the informant and the villagers Tejpal s/o Jhunni, Raghunath s/o Man Singh, Hodal and Hattarpal, who belonged to the village of the informant.

3. On the basis of written report (Ex.Ka.-1), on 16.02.1986 at 04:10 P.M., Chik First Information Report (Ex.Ka-3) as Case Crime No.12 of 1986, under Section 304 IPC was registered against the accused at Police Station - Awagarh, District Etah.

4. On 17.02.1986 at 2:00 P.M., the autopsy of the deceased Ravikant was performed by Dr. B.V. Verma, who found following ante-mortem injuries on his person :

(i) Lacerated wound 3.5 cm. x .5 cm x bone deep on right side of skull 13.5 cm. above right ear and longitudinally placed.

On internal examination, the doctor found right parietal bone fractured, membranes were congested and haematoma was present above and below the membranes. Brain was deeply congested and haematoma was present. The duration of death was about one day old.

As per opinion of the doctor, the cause of death was coma as a result of ante-mortem injuries. The postmortem report is Ex. Ka.-2.

5. Sub Inspector Mahipal Singh P.W.6 started the investigation. He reached the village, where the dead body of the deceased was kept at the *chabootra*. He prepared the inquest report (Ex.Ka.5) before the witnesses and also prepared other relevant papers i.e. photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11) and after sealing the dead body of the deceased sent it through constables Prahlad Singh and Ram Sewak for conducting autopsy at the District Hospital Mortuary, Etah. Thereafter he recovered blood stained and plain soil from the place of incident and prepared its memo (Ex.Ka.-12). He also recovered wooden plank used by the accused and prepared its memo (Ex.Ka.-13). After inspecting the spot, site plan of the place of occurrence was prepared by him as Ex.Ka.-14. This Investigating Officer also recorded the statement of witnesses and after completion of the investigation, he submitted charge-sheet (Ex.Ka.-15) under Section 304 IPC against the accused. Thereafter, cognizance was taken upon the said charge-sheet and the case was committed to the Court of Sessions.

6. Accused appeared before the Court and after hearing both the parties, charge was framed under Section 302 IPC against the accused. The accused pleaded not guilty and claimed to be tried.

7. Trial started and in order to prove it's case, the prosecution adduced informant Narsingh Pal, (father of the deceased) as P.W.1, Tej Pal Singh (neighbour of the informant) as P.W.2, Reshma Devi (wife of the informant) as P.W.3, Dr. B.V. Verma (who conducted the post-mortem of the deceased) as P.W.4, Head Constable Surendra Singh (Head Moharrir, P.S. Awagarh, who prepared the chik F.I.R. and made G.D. entry) as P.W.5 and S.I. Mahipal Singh (Investigating Officer, who inspected the spot, prepared site plan and recorded the statements of the witness and prepared other papers) as P.W.6.

8. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report / tehrir dated 16.02.1986 (Ex.Ka.-1), postmortem report (Ex.Ka.-2), chik first information report (Ex.Ka.-3), copy of the G.D. Entry (Ex.Ka.-4), inquest report dated 16.02.1986 (Ex.Ka.-5), photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11), memo in respect of blood stained and plain soil (Ex.Ka.-12), memo of recovered wooden plank (Ex.Ka.-13), Site Plan (Ex.Ka.-14) and charge sheet (Ex.Ka.-15).

9. After the prosecution evidence was over, all adverse/incriminating circumstances relied upon by the prosecution were disclosed to accused in question answer form for his version of occurrence as per mandate of Section 313 Cr.P.C. Accused denied all those adverse/incriminating facts put to him and said that the prosecution case is false, he is innocent and falsely implicated on account of animosity.

10. Trial Court, having heard learned counsel for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused-appellant as above. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal.

11. Heard Sri Narendra Kumar Singh, learned counsel for the appellant and Ms. Archana Singh, learned A.G.A. for the State.

12. Learned counsel for the appellant argued that that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. It was further argued that the learned trial Court has misinterpreted the evidence available on record. P.W.1 and P.W.-2 were cross-examined by the State, therefore, both these witnesses are hostile witnesses and their depositions cannot be relied upon. P.W.-3 has not established the place of incident and therefore, her deposition also does not inspire confidence. No ingredient to bring home the guilt of the accused under Section 302 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial Court misread the evidence and convicted and sentenced the appellant. It was further argued that this appeal pertains to the year 1987. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

13. Learned counsel for the appellant further submitted that the incident took place suddenly and thus, there is no question of any pre-meditated plan by the appellant and thus the appellant can not be convicted under Section 302 IPC as there is nothing on record to show the intention to cause murder of deceased. It was further

submitted that, even if the prosecution evidence is accepted as such, no case under Section 302 IPC is made out. The alleged incident took place all of a sudden without any premeditation in the heat of passion. Accused-appellant had given single blow of wooden plank at the deceased. It was further submitted that, even if the prosecution evidence is accepted as such, at the most only a case under Section 304 IPC is made out against the appellant. It was also submitted that the alleged incident took place on 16.02.1986 and a period of 39 years have already elapsed.

14. Learned A.G.A. for the State vehemently opposing the submissions made on behalf of the appellant and supporting the impugned judgment and order submitted that PW-1, the father of the deceased and P.W.-3, the mother of the deceased have fully supported the prosecution case in their testimony. There is clear and cogent evidence of PW-1 and PW-3, which unerringly point out the guilt of accused-appellant. As the alleged incident took place just outside their house thus, PW-1 and P.W.-3 are natural witnesses. Other witness of fact i.e. P.W.2 has also corroborated the prosecution version, who is a neighbour of the informant. Severe head injury was found on the person of the deceased in the form of lacerated wound. Hence, while going through the evidence on record, it cannot be said that the offence under Section 302 IPC is not made out against the appellant. The learned trial Court has not committed any error in convicting and sentencing the accused - appellant under Section 302 IPC. However, it was fairly admitted by the learned State counsel that the alleged incident took place suddenly at spur of moment. There is no merit in the appeal and the same is liable to be dismissed.

15. We have considered the rival submissions and gone through the entire record.

Analysis

16. In the light of above, following questions arise for consideration in present appeal :

(i) Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

(ii) Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

Oral Evidence on Record.

17. Informant Narsingh Pal, who is the father of the deceased Ravikant, has been examined by the prosecution as P.W.1. In his examination-in-chief recorded on 01.07.1987, he has stated that his house is situated in Bada Bhodela. In front of the house, there is a *chabootra* and a flour mill and in between these, there is a passage. He got married Baby, who is daughter of his brother-in-law, with his cousin brother Virendra on 10.06.1985. Virendra used to torture his wife Baby, due to which, she used to complain to him and his wife Reshma Devi (P.W.3). On the day of incident, Baby came to his house in the morning and complained about the cruelty and torture made upon her, by her husband and refused to go to her husband's place, upon which they (informant and his wife) tried to convince and subside the matter, but she did not agree to go to her husband's house. On the very same day at about 2:00 P.M., Virendra having wooden plank in his hand came to his house and started hurling abuses to his wife and Baby and when his son Ravikant objected and tried to save them,Virendra struck a blow with wooden

plank upon the head of Ravikant, who fell down on the ground. Thereafter, Virendra leaving the wooden plank over there, fled away from the spot. When he proceeded taking Ravikant in an injured condition to the police station, Ravikant took his last breath on the way at some distance from the village. Thereafter, he returned to the village and kept the dead body and wooden plank on the chabootra. He got scribed the wittten report (Ex.Ka.-1) of this incident by one Sugriv Prasad, went to police station Awagarh, lodged the report and registered the case. This witness has proved the written report (Ex.Ka.-1).

18. This witness (P.W.1) was cross-examined on next date i.e. 20.07.1987 wherein he has stated that when Virendra was hurling abuses, his wife was inside the house and from there he (Virendra) was not visible. When Ravikant came, he objected not to hurl abuses, on which he did not stop, then Ravikant weilded lathi upon his head but he saved himself. When Ravikant again tried to wield lathi upon him, then Virendra picked up the wooden plank and hit Ravikant, which struck on his head and he fell down and Virendra ran away. Wife of this witness reached there after 2 – 4 minutes of falling down of Ravikant. Witness Tejpal also came there after 5 – 6 minutes when Ravikant had fallen down. He was not asked by the Investigating Officer that Ravikant wielded lathi or not, therefore, he has not told the same to the Investigating Officer. This witness was also cross-examined by State and in his cross-examination on behalf of the State, this witness stated that the fact when Ravikant wielded lathi, then accused Virendra picked up the wooden plank and gave a blow on the head of Ravikant, was not written in his tehrir, because at that time, he did not consider it appropriate and he also did not inform this to the Investigating Officer. This witness

admitted that accused is his cousin. He denied the suggestion that he is changing his statement to save the accused.

19. P.W.2 Tej Pal Singh, corroborating the facts of the prosecution case, has stated that while he was sitting in front of his baithak, accused Virendra Singh armed with wooden plank came at the house of Narsingh Pal and began assaulting Reshma Devi and Baby. Reshma Devi, wife of Narsingh Pal, asked accused, not to abuse, but he did not stop, upon which when Ravikant, son of Narsingh Pal, objected and prevented him, he stated to Ravikant that he is taking great favour and made an assault upon the head of Ravikant with wooden plank and leaving the plank, fled away to northern side. Later on, Ravikant died. This witness was cross-examined on 20.07.1987. In his cross-examination on behalf of the accused, this witness stated that he saw the dead body of the deceased when Ravikant was lying on the chabootra outside his house and accused Virendra was running towards northern direction. He denied the defence suggestion that he has not seen the incident. This witness was also cross-examined by learned A.D.G.C. and he, in his cross-examination on behalf of the State, stated that the statement given by this witness on the previous date was that accused Virendra Singh while carrying wooden plank in his hand, came at the house of Narsingh Pal and started assaulting the informant's wife and his (accused) wife. Wife of Narsingh Pal asked him (accused) not to abuse, but he did not stop. Then Ravikant son of Narsingh Pal objected and prevented her, on this Virendra said you are taking great favour and made an assault on the head of Ravikant with a wooden plank. Ravikant fell down and Virendra fled away to northern side by leaving the plank on the spot. He has given this statement. He had seen the complete incident and when he went there, he saw the deceased fallen. After this, the defence again

cross-examined this witness and in this cross-examination, he stated that he has given a statement that he saw the deceased lying on the ground. The defence also asked a particular question regarding the assault made by the accused on his wife and wife of Narsingh Pal. This witness in answer to this specific question clearly stated that the accused was assaulting both of them on the *chabootra*, which was situated outside their house. **He was assaulting with hands and the assault continued for about two minutes**. Ravikant came from outside. He denied the defence suggestion that he has not seen the incident.

20. Smt. Reshma Devi P.W.3 in her deposition has corroborated the facts of the prosecution case and has stated that on the day of incident, in the morning hours, Baby, wife of accused Virendra Singh came at her house as her husband has tortured her. Despite being advised, she refused to go to her husband's house. At about 2:00 P.M., Virendra having wooden plank in his hand, came at her house hurling abuses and started beating her and Baby. Her son asked Virendra not to use filthy language and tried to prevent Baby. At this, Virendra said to his son that as you are taking a great favour, therefore let a lesson be taught to you and struck a blow by wooden plank on his head, as a result of which his son (Ravikant) fell down on the ground and later on died. Virendra after leaving the wooden plank, fled away from the spot. The husband of this witness lodged the report about the incident at the police station concerned. This witness has proved the clothes of her son as Material Exbs.-2 to 5. In her cross-examination, this witness stated that her son Ramakant was also called as Ravikant. She further stated that her cousin, who was married to accused Virendra, was sitting with her inside their room. Accused Virendra came inside and Ravikant also

came inside the room. Ravikant, after sustaining injuries, came out of the room and fell down.

21. P.W.4 Dr. B.V. Verma, who conducted autopsy on the dead body of the deceased, has stated that on 17.02.1986 at 2:00 P.M., he conducted autopsy on the dead body of the deceased Ravikant, brought by constables Prahlad Singh and Ram Sewak of P.S. Awagarh in a sealed condition. Deceased was aged about 20 years. On external examination, he found rigor mortis in upper and lower extremities and no sign of decomposition was present on the body. This witness found following ante-mortem injuries on the person of the deceased :

(i) Lacerated wound 3.5 cm. x .5 cm x bone deep on right side of skull 13.5 cm. above right ear and longitudinally placed.

On internal examination, he found right parietal bone fractured, membranes were congested and haematoma was present above and below the membranes. The duration of death was about one day old. The cause of death of the deceased was coma as a result of ante-mortem injuries. Thus, the deceased is likely to have died due to injuries on 16.02.1986 at about 2 P.M. The injury could have been caused by a blunt object i.e. wooden plank. This witness (P.W.4) has proved postmortem report Ex. Ka.-2. This witness was not cross-examined by the defence. From the oral as well as documentary medical evidence, it is clear that the death of the deceased was homicidal in nature.

22. P.W.5 Head Moharrir Surendra Singh, who prepared chik F.I.R. and G.D. on 16.02.1986 on the basis of written report (Ex.Ka.-1), has proved chik F.I.R. (Ex.Ka.-3) and copy of G.D. at Serial No. 26 dtd. 16.02.1986 (Ex.Ka.-4). This witness was also not cross-examined by the defence.

23. The Investigating Officer Sub Inspector Mahipal Singh P.W.6 in his deposition has stated that the investigation of this case was handed over to him on the fateful day. He reached at the place of occurrence and prepared inquest report Ex.Ka.-5 of the dead body of the deceased. He also prepared other relevant papers i.e. photo lash (Ex.Ka.-6), letter to C.M.O. (Ex.Ka.-7), letter to R.I. (Ex.Ka.-8), sample seal (Ex.Ka.-9), challan lash (Ex.Ka.-10), letter to C.M.O. for conducting autopsy (Ex.Ka.-11) and after sealing the dead body of the deceased sent it to mortuary for post-mortem. He took blood stained and plain soil in two separate containers and prepared its recovery memo Ex.Ka.-12. He also proved the two separate containers of blood stained soil and plain soil as Material Exb. Ka-6 & Ka-7 respectively. He also recovered the wooden plank (Material Exb.-1) and prepared its recovery memo Ex.Ka.-13. He prepared site plan Ex.Ka.-4 of the crime scene and recorded the statement of the witnesses. After receipt of post-mortem report (Ex.Ka.-2), he submitted the charge sheet (Ex.Ka.-15) against the accused.

(i) Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?

24. In the instant case, the prosecution charge in brief is that accused Virendra Singh, who is the cousin brother of informant Narsingh Pal, came at the house of the informant having wooden plank in his hand to take back his wife Baby from the house of the informant, who was there since morning, owing to torture and cruelty extended by his husband. While hurling abuses upon the wife of informant and his wife Baby, the appellant - convict has beaten them both. When Ravikant intervened and tried to save Baby, the accused gave a blow by wooden plank on his head, resulting into his death.

25. As per written report / tehrir (Ex.Ka.-1), the occurrence took place on 16.02.1986 at 2:00 P.M. The first information report (Ex.Ka.-3) was registered in Police Station Awagarh, Sub-District Jalesar, District Etah at 16:10 hours on 16.02.1986. The concerned police station was at a distance of about 5 Kms. from the place of incident. The informant Narsingh Pal P.W.1 in his oral deposition as well as in his written report / tehrir (Ex.Ka.-1), has clearly stated that after the incident, they tried to take injured Ravikant to hospital on a bullock-cart. Thus, an attempt was made to take the injured on a bullock-cart, however, just coming out of the village, the injured succumbed to his injuries. Thereafter, the dead body of deceased was taken back to the house of the informant and his dead body was placed on *chabootra*. The written report was scribed. It is only thereafter the informant approached concerned police station with his written report / tehrir. The aforesaid first information report has been lodged within 2 hours and 10 minutes of the incident and from the above facts, it is crystal clear that there is no unnecessary delay in registration of the first information report. Therefore, there is no delay in lodging of the F.I.R.

26. In our considered opinion, the first information report has been lodged promptly without any unnecessary delay with brief description of the incident as well as names of the eyewitnesses of the incident and, therefore, this promptly lodged first information report is a valuable piece of evidence for the prosecution, in the present case.

27. It was argued by the learned counsel for the appellant that both P.W.1 and P.W.2 were cross-examined by the prosecution, therefore, these two witnesses are hostile witnesses and their deposition cannot be relied upon. It is pertinent to mention here that examination-in-chief of P.W.1, P.W.2 and P.W.3 were recorded on

01.07.1987, however, none of these witnesses was cross-examined on 01.07.1987 and all these witnesses have been cross-examined on 20.07.1987. Therefore, some contradictions are bound to occur in their depositions.

28. The word 'hostile' or 'hostile witness' has not been used in the Evidence Act. The word 'hostile witness' carries a specific significance under the English Law, but the position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of hostility. Hon'ble Apex Court in **K.P. Tamilmaran Vs. The State Rep. by Deputy Superintendent, 2025 INSC 576 / 2025 SCC OnLine SC 958** in para 31 has observed that :

"The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence."

29. Hon'ble Apex Court in **Sat Paul V. Delhi Administration (1976) 1 SCC 727 in para 52** has observed that :

> *"52. **From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his***

> ***evidence cannot, as a matter of law, be treated as washed off the record altogether.*** *It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto."*

30. Thus, the law can be summarized to the effect that evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence. The maxim "falsus in uno, falsus in omnibus" i.e. "false in one thing, false in everything", is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the deposition of a hostile witness. A witness may be allowed to be cross-examined by the party who calls him under Section 154 (1) of the Evidence Act and sub-section 2 of this section makes it clear that nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. Law is well settled that the evidence of a witness, who has been cross-examined by the side which produced him, cannot be totally discarded. It is also settled law that the evidence of hostile witness can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witness cannot be treated as washed off the records; it remains admissible in trial and there is no legal bar to even base the conviction of the accused upon such testimony, if corroborated with other reliable evidence. There can be several reasons for a witness to turn hostile and the Court must look into

these factors while evaluating the evidence given by a hostile witness. Therefore, we will be evaluating the depositions of P.W.1 and P.W.2 in the light of above noted well settled position of law regarding admissibility and reliability of witnesses cross-examined by the prosecution.

31. A perusal of the written report / tehrir (Ex.Ka.-1) makes it clear that the informant is not an eyewitness of the incident. Informant Narsingh Pal P.W.1 although in his examination-in-chief has supported the prosecution story, however, in our opinion, he is not an eyewitness of the incident. Examination-in-chief of this witness was conducted on 01.07.1987, but he was not cross-examined on this date, but was cross-examined on 20.07.1987. In his cross-examination, he (informant P.W.1) narrated another version that the deceased wielded lathi on the accused and when he tried to wield another blow of lathi, then the accused struck a blow by wooden plank on the head of the deceased. Admittedly, the appellant – convict Virendra is his cousin brother. Therefore, in our considered opinion, this witness toed with the line of defence that the accused struck the deceased to save himself from the blow of lathi / stick. This witness was also cross-examined by A.D.G.C. and he, in his cross-examination, has stated that the aforesaid fact of wielding lathi was neither got written by him in written report / tehrir nor stated to the Investigating Officer, finding the same not necessary.

32. In our considered opinion, the aforesaid statement given by P.W.1 in his cross-examination is not helpful to the defence for the reason that he (P.W.1) is firstly not an eyewitness and secondly, this witness was not cross-examined with respect to specific statement given by him in his examination-in-chief regarding the manner of incident. The deposition of this witness is relevant and material

firstly for proving the written report / tehrir as Ex.Ka.-1, secondly for proving the fact of torture of Baby by appellant - convict and her visit to P.W.1's house on 16.02.1986 on account of her torture at the hands of accused and lastly regarding the fact that his son died on the fateful day as a result of assault made upon him from wooden plank. The deposition of this witness is also material as far as the fact of fleeing away of the accused from the place of incident is concerned.

33. The prosecution has examined Tejpal Singh and Reshma Devi as P.W.2 and P.W.3 respectively regarding the incident in question. Tejpal Singh P.W.2 is the neighbour of the informant, who as per site plan Ex.Ka.-14 was at place 'D' from where he has seen the incident, which is shown by point 'A'. The deposition of Tejpal Singh P.W.2 is consistent so far as date, time, place and manner of incident is concerned, both in his examination-in-chief and in his several cross-examinations both by defence and State. However, P.W.2, in his cross-examination, stated that when he first saw the dead body, the same was lying on the *chabootra* outside the house of Ravikant. Thereafter, this witness was cross-examined on behalf of the State. However, he affirmed that whatsoever has been stated by him in his examination-in-chief is true. In his examination-in-chief as well as in his cross-examinations, he has clearly stated that the accused ran away towards northern direction after committing the incident. This witness has again confirmed the assault on both the ladies in the incident in his cross-examination by the defence. It is, thus, clear that this witness was present on spot and has seen the incident. The deposition of this witness as far as date, time, place and manner of incident is concerned, is consistent. Although this witness has been cross-examined by the defence, but nothing suspicious has come in his testimony, which either makes his

presence doubtful on the spot at the time of incident or makes his deposition unworthy of credit. Therefore, the deposition of this witness, being consistent, is reliable.

34. Reshma Devi P.W.3, who is the mother of the deceased, in his deposition, has also clearly stated that when Ravikant intervened and tried to stop the accused from abusing and when he (her son) tried to save Baby, then the accused assaulted her son with wooden plank. Even in her cross-examination, nothing contrary has come in her statement as far as aforesaid manner of incident is concerned. However, she has stated in her cross-examination that the accused had entered inside their room and, therefore, learned counsel for the appellant vehemently argued that from the deposition of this witness, the place of incident is not established. However, one has to keep in mind that P.W.3 is a poor illiterate lady, who resides in a village and has lost his son, that too at the hands of her near relative and she was not cross-examined on the day when her examination-in-chief was recorded. Therefore, when her statement is evaluated keeping aside the aforesaid contradiction regarding the place of incident, then her remaining testimony is found to be trustworthy and reliable.

35. On behalf of the accused, though no defence is adduced, however, suggestion was made that first of all the deceased tried to wield lathi upon the accused and thereafter the accused struck a blow by wooden plank on the head of the deceased. In this regard, no defence is adduced and not a single question was asked to the occular witnesses P.W.2 and P.W.3. This suggestion appears to be an afterthought, which was asked to P.W.1 the informant, who is not an eyewitness and is the cousin brother of the accused Virendra. From the statement of ocular witnesses P.W.2 and P.W.3, which finds corroboration from medical evidence of P.W.4 Dr. B.V. Verma, who

conducted post-mortem of the deceased, it is apparent that due to head injury caused by accused with a wooden plank, the death of the deceased occurred.

36. P.W.2 Tejpal Singh and P.W.3 Reshma Devi, wife of the informant have consistently deposed that the accused struck a blow with a wooden plank on the head of the deceased Ravikant, son of the informant. The accused Virendra is the cousin brother of the informant and his (accused's) wife Baby is the daughter of brother-in-law of the informant. Accused Virendra used to torture his wife Baby on account of his quarrelsome nature. In the morning of the fateful day i.e. 16.02.1986, when Baby came at the house of her Aunt (*bua*) P.W.3 Reshma Devi, the wife of the informant, P.W.3 tried to pacify and subside the matter and advised Baby to go at her in-laws' house but owing to his husband's quarrelsome tendency she refused to go at his house. At about 2:00 P.M., accused Virendra came at the house of the informant having wooden plank in his hand, started abusing P.W.3 Reshma Devi and his wife Baby and made an assault upon them with his hands. When Ravikant, the son of the informant P.W.1 and P.W.3, intervened, objected and tried to save Baby, accused gave a blow on the head of Ravikant with a wooden plank, as a result of which, he succumbed to his injury on the way while taking him to the police station.

37. The ocular as well as documentary medical evidence is clear to the effect that the deceased Ravikant sustained a lacerated wound on his right side of skull and below this lacerated wound, his right parietal bone was found fractured, membranes were also found congested and haematoma was found above and below the membranes and in the opinion of autopsy surgeon, the ante-mortem injuries found on the head of the deceased could have been caused by blunt object and the duration of death was about one day old.

Therefore, in the light of medical evidence available on record, the deceased is likely to have died on account of his ante-mortem injuries on 16.02.1986 at about 2:00 P.M. and his death was a homicidal death. P.W.2 and P.W.3 both have consistently stated that it was the accused Virendra, who had struck a blow by a wooden plank on the head of the deceased, therefore, the prosecution has been able to prove that the accused struck a blow by a wooden plank on the head of the deceased at the date, time and place of incident, resulting into ante-mortem head injuries to the deceased and the deceased had died because of coma, which was a result of his ante-mortem injuries. The weapon of offence i.e. wooden plank was recovered by the Investigating Officer from the spot, which has been proved in evidence as Material Exb.-1. The clothes of the deceased has been proved by P.W.3 in evidence as Material Exbs.-2 to 5. There is no delay in registration of the F.I.R. and lastly, the prosecution has been successfully able to prove its case against the accused / appellant - convict beyond reasonable doubt. **Question No.1 is, therefore, answered in affirmative**.

38. In the present case, the Investigating Officer had recovered wooden plank from the spot but the same was not sent to Forensic Science Laboratory for examination. However, this is merely a lapse on the part of the Investigating Officer and in the light of reliable evidence given by P.W.2 and P.W.3, which finds full corroboration from the oral as well as documentary medical evidence available on record, the present appellant – convict cannot claim any benefit of lapse on part of the Investigating Officer.

Question No.2 : Whether the present case is a case of culpable homicide not amounting to murder and, therefore, conviction / sentence of the appellant - convict is liable to be converted / reduced under section 304 I.P.C. ?

39. The accused Virendra is the cousin brother of the informant and deceased Ravi Kant is the son of the informant. The incident occurred in a broad daylight. It is not disputed that the death of the deceased occurred on 16.02.1986 at the house of the informant at the hands of accused Virendra Singh.

40. The Supreme Court while analyzing difference between culpable homicide amounting to murder and culpable homicide not amounting to murder in **Anbazhagan V. State Represented by the Inspector of Police (2024) 20 SCC 500** in paras 39-44 has held that-

> *"39" This Court in Phulia Tudu (2007) 14 SCC 588 has observed that the academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the courts. 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 minute 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 of the IPC. 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 if the act by which the death is caused is done-	*Subject to certain exceptions culpable homicide is murder if the act by which death is caused is done-* *Intention*
(a)with the intention of causing death; or *(b)with the intention of causing injury as is likely to cause death; or*	*(1)with the intention of causing death; or* *(2)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* *(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*
(c) with the knowledge that the act is likely to cause death	*Knowledge* *(4) with the knowledge that 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 commits such act without any excuse for incurring the risk*

	of causing death or such injury as is mentioned above

“40”Clause (b) of Section 299 of the IPC corresponds with clauses (2) and (3) of Section 300 of the IPC. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the of ender 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 of ender'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 clause (2) is borne out by illustration (b) appended to Section 300 of the IPC.

“41” Clause (b) of Section 299 of the IPC does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 of the IPC can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result; of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300 of the IPC, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299 of the IPC, 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 of the IPC and clause (3) of Section 300 of the IPC 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 of the IPC 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.

“42” 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. The decision in the case of Rajwant Singh v. State of Kerala, AIR 1966 SC 1874, is an apt illustration of this point.

"43" The scope of clause thirdly of Section 300 of the IPC has been the subject matter of various decisions of this Court. The decision in Virsa Singh (supra) has throughout been followed in a number of cases by this Court. In all these cases the approach has been to find out whether the ingredient namely the intention to cause the particular injury was present or not? If such an intention to cause that particular injury is made out and if the injury is found to be sufficient in the ordinary course of nature to cause death, then clause thirdly of Section 300 of the IPC is attracted.

"44"Analysing clause thirdly and as to what the prosecution must prove, it was held in Virsa Singh (supra) as under:-

> *"15. First, it must establish, quite objectively, that a bodily injury is present;*
>
> *16. Secondly, the nature of the injury must be proved; These are purely objective investigations.*
>
> *17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended…*
>
> *18. Once these three elements are proved to be present, the enquiry proceeds further and,*
>
> *19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is suficient 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 of ender."*

It was further observed as under:-

> *"20. … If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional." (Emphasis supplied)*

The Apex court also observed in para 66 that

"66"Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

"66.1"When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section

300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

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

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

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

“66.5” Section 304 of the IPC will apply to the following classes of cases:

(i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC,

(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

“66.6” To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

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

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

"66.9" 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.

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

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

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

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

41. In the present case, in the statement recorded under section 313 Cr.P.C. in the year 1987, the accused has stated his age to be about 26 years. Therefore, at the time of commission of offence i.e. 16.02.1986, the appellant was about 25 years of age.

42. Now the question remains that whether homicidal death of the deceased would fall within the four corners of murder or culpable homicide not amounting to murder.

43. We have carefully gone through the entire evidence including the impugned judgment and order of the learned trial Court. It is an admitted position that the deceased was the nephew of appellant – convict. The wife of appellant – convict namely, Baby is the niece of mother of the deceased. P.W.3 Reshma Devi is the wife of informant and mother of the deceased, she is also the *Bua* of Baby. Baby is the daughter of brother of P.W.3. The appellant - convict is the cousin brother of the informant. Therefore, appellant - convict is a close relative not only of the deceased, but of father and mother of the deceased also. The germane of the incident was the alleged torture and harassment of Baby at the hands of his husband / appellant – convict Virendra Singh, because of which Baby came to the house of informant and complained about this harassment. It has come on evidence that the informant's wife tried to convince and subside the matter, however, her effort was futile and about 2:00 P.M., the appellant - convict came to the house of the informant while hurling abuses. When he allegedly started beating with his hands his bhabhi Reshma Devi and wife Baby, then this unfortunate incident had happened. The deceased Ravikant when objected and tried to save, then in a state of anger, the appellant – convict assaulted the deceased with wooden plank. Admittedly, there was no enmity of the accused with the deceased or vice versa. It is also an admitted fact that there is only a single blow inflicted on the person of the deceased and the accused immediately ran away from the spot by leaving the wooden plank on the spot itself. Meaning thereby that there was no intention to cause death of the deceased.

As there was no intention of causing death or causing injury as is likely to cause death, therefore whether the appellant – convict can be said to have the knowledge that the act of assault upon the deceased by wooden plank was likely to cause death or not. The accused was carrying a wooden plank and he was in a fit of rage because of his strained relationship with his wife. No one can be permitted to take refuge that he was lacking knowledge of impact of his assault because of his particular state of mind (i.e. in a fit of anger in the present case). Therefore, we are of the opinion that although the accused was having the knowledge that the act of assaulting the deceased with a wooden plank is likely to cause death, but he was lacking the knowledge that his act was so immensely dangerous that it must in all probability could cause death or such bodily injury as was likely to cause death. As a result, we are of the opinion that that the incident had happened in a spur of moment, with no prior bad intention or planning. As the death caused by the appellant - convict was not a premeditated and there being no previous enmity, therefore, the present case falls under clause (c) of Section 299 I.P.C. We have carefully gone through the entire evidence and thus are of opinion that in the present case none of clause of Section 300 I.P.C. is attracted in the peculiar facts of the present case, therefore the offence committed by the appellant - convict falls under Part-II of Section 304 I.P.C. Resultantly, we are of the view that present appeal is liable to be partly allowed and the conviction of the appellant under Section 302 I.P.C. is liable to be converted into conviction under Section 304 Part-II I.P.C. In **Ankush Shivaji Gaikwad Vs. State of Maharashtra (2013) 6 SCC 770**, it was held that victim compensation is an integral component of the criminal justice administration; Section 357 Cr.P.C. confers a power coupled with a duty on the Courts to apply its mind to the

question of awarding compensation in every criminal case. Informant and his wife have lost their son and no amount of compensation can compensate their loss. However, the appellant was about 25 years of age at the time of incident and was agriculturist by profession. Therefore, for awarding compensation to the parents of the deceased, we are of the opinion that an amount of Rs.2,00,000/- as fine is liable to be imposed on the appellant under Section 304 Part-II I.P.C.

44. Accordingly, present Appeal is **partly allowed** and the appellant is convicted for the offence under Section 304 Part-II I.P.C. and is sentenced to undergo 7 years rigorous imprisonment with a fine of Rs.2,00,000/-. In case of failure to deposit the aforesaid fine, the appellant shall further undergo 1 year simple imprisonment. Parents of the deceased - Ravikant namely, Narsingh Pal and Smt. Reshma Devi shall receive an amount of Rs.1,80,000/- as compensation, out of the total amount of fine so deposited by the appellant. The period for which the appellant was in jail shall be adjusted in the sentence imposed. In the event of death of any of the parents of the deceased, the other parent shall receive the full amount of compensation so awarded.

45. The appellant is on bail. His bail bonds and sureties shall stand cancelled and he is directed to be taken back to the custody forthwith to serve the remaining part of the sentence.

46. The record of the ‘Trial Court’ be sent back immediately with a copy of this judgment for necessary information and compliance.

July 13, 2026
ss

(Dr. Ajay Kumar-II,J.) (Salil Kumar Rai,J.)

Digitally signed by :-
SANDEEP SHARMA
High Court of Judicature at Allahabad