



**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1533 OF 2011**

**SHRIKRISHNA**

**...APPELLANT(S)**

**VERSUS**

**THE STATE OF MADHYA PRADESH**

**...RESPONDENT(S)**

**JUDGMENT**

**N.V. ANJARIA, J.**

The Court of learned Additional Sessions Judge, Basoda, in Sessions Case No. 33 of 1993, by judgment and order dated 9th December, 1997, convicted the appellant – Shrikrishna – original accused no.4, along with other accused persons for the offences under Section 302 read with

Section 149, Section 324 read with Section 149 and Section 323 read with Section 149, Indian Penal Code, 1860. The appellant came to be sentenced for life imprisonment with hard labour for the offence under Section 302 read with Section 149, IPC. He was convicted for rigorous imprisonment for three years, one year, and two years for the offences under Sections 324, 323 and 147, IPC respectively.

All the sentences were directed to run concurrently.

2. The appellant challenged his conviction and sentence as above by preferring an appeal before the High Court of Madhya Pradesh. The High Court altered the conviction of the appellant from under Section 302, IPC to Section 304, Part II, IPC, sentencing the appellant to rigorous imprisonment for seven years with fine of Rs.5,000/- and in default of payment of fine, to undergo further imprisonment for three months. The aggrieved appellant has filed the present appeal before this Court against the conviction and sentence imposed on him as above by the High Court.

3. First Information Report No.181 of 1992 came to be registered with the police station concerned. As per the prosecution case, on 10.12.1992 at about 6 p.m. at Village Dudankhedi, a quarrel took place between the son of the appellant herein and the son of one Ram Singh. It was stated that the said Ram Singh had gone to the house of the appellant to complain as to why the appellant's son had beaten Gowardhan Singh - son of Ram Singh. At that time, other accused persons assembled at the place with a common criminal object. It was the case that the co-accused named Ajab Singh and Lakhan Singh had been holding axes (*Farsa*) in their hands, whereas the others, including the appellant, had been holding *lathis*.

3.1 It was the case that the accused persons assaulted Ram Singh with the respective weapons they had been wielding with an intention to kill Ram Singh. Upon hearing the cries of Ram Singh, his son - Gowardhan Singh (PW-8), Bahadur Singh (PW-1), Narayan Singh (PW-9), and

Swaroop Singh (PW-10) reached the place. There were three other persons also, named Ajuddhibai, Gambhir Singh, and Najim Singh, who reached the place of offence and it was alleged that they were also assaulted by the accused persons and suffered bodily injuries. These persons did not, however, enter the witness box.

3.2 Gowardhan Singh (PW-8) lodged the First Information Report No. 181 of 1992 (Ex. P-19), before the Police at Shahabad Police Station. The case was registered against the accused persons under Sections 147, 148, and 307, IPC. The injured Ram Singh and other injured persons were sent for medical examination. Ram Singh died on 11.12.1992 while receiving medical treatment. In view of the same, the police converted the case under Section 302, IPC.

3.3 A cross-First Information Report No. 182 of 1992 was also lodged before the same Police Station by the appellant - Shrikrishna against the other 16 persons for the

offences under Sections 147, 148, 149, 323, 324 and 506, IPC. The allegations in the said FIR were *inter alia* that Najim Singh and Parvat Singh were armed with *Farsa* (axe) and the others had *lathis*. It was alleged that Najim Singh hit the appellant on the head which the appellant took hold of in his hand and that Ram Singh also assaulted the appellant with *lathi*, inflicting blow on the left side of the head. According to the allegation in this cross-FIR, the appellant fell down and shouted. The plea put forward by the appellant was that as he was attacked, he acted in his own defence, thus raising the plea of private defence.

3.4 The prosecution examined 14 witnesses, amongst whom included Bahadur Singh (PW-1), Khushilal (PW-4), Gowardhan Singh (PW-8), Narayan Singh (PW-9), and Swaroop Singh (PW-10) and in addition, 3 members named Gambhir Singh, Ajuddibai and Najim Singh were also injured but they were not examined. PW-8 stated that when his father Ram Singh returned home, he informed his father

that his younger brother - Kalyan was hit by the son of Ram Singh. At that time, it was stated that Ram Singh went to reprimand Shrikrishna about the incident, whose house was nearby and opposite to the house of Ram Singh.

3.5 It was further stated that accused Ajab Singh and Lakhan Singh, who were holding axes in their hands as well as other members of the accused party, including the appellant, who had *lathis* in their hands, started beating his father. It was deposed that appellant-Shrikrishna used *lathi* and attacked on Ram Singh who fell down unconscious. Khushilal (PW-4), Bahadur Singh (PW-1) and Swaroop Singh (PW-10) as well as Narayan Singh (PW-9) supported the story of PW-4, who further stated that he rushed to the place to rescue his father, where he was also hit by the members of the other side named Khelan Singh, Kanhaiya and Ram Narayan. He stated that PW-1 had already reached there.

3.6 According to PW-9, at the time of the incident, he was at his home, which was nearby and heard the shouts. He stated that he saw that the accused persons were engaged in hitting Ram Singh. He stated that Ajab Singh and Lakhan Singh had axes in their hand and Shrikrishna had *lathi*. It came out from the total reading of the evidence of the above prosecution witnesses that all five were neighbours and they were staying near the spot of crime.

3.7 Upon appreciation of ocular evidence, the trial Court observed that accused persons hit Ram Singh on the head and that appellant-Shrikrishna hit him on head by using *lathi*. The conviction of the appellant was guided mainly by the medical evidence of Dr. Anand Uniya (PW-2), who had examined the injured Ram Singh, who found one lacerated wound on the middle part of the head. He stated that there was swelling on the left parietal bone and on the right parietal bone. There was also one contusion on the left frontal bone. All these injuries were mentioned in

the medical report (Ex. P-7). He also found upon medical examination of Ram Singh that on his parietal region, there was an open wound of size 4.5 cm..

3.8 Upon examination of Ram Singh, PW-2 noticed the following injuries, (i) One lacerated wound which was 7 cm long, 1½ cm width, ½ cm deep on the mid aspect of skull. Blood clots were deposited over the wound. This injury was caused by any hard and blunt object. (ii) One diffuse swelling which was 6 cm long, 1½ cm width on left parietal bone. This injury was caused by any hard and blunt object. (iii) One diffuse swelling, which was 4 ½ cm long, 3½ cm width, it was present on right parietal bone. (iv) One contusion mark 3 cm long, 1 ½ cm width it was present on left frontal bone. This injury was caused by a hard and blunt object and it was simple in nature. PW-2 opined that the injuries, more particularly Injury No.3 above, were caused by hard and blunt object.

3.9 The injured Ram Singh was referred for further treatment to District Hospital Vidisha. Dr.Ashok Kumar (PW-12) performed the post-mortem of Ram Singh, who died in the course of treatment. P.W.12 opined on the basis of post-mortem that there was a fracture of parietal bone and hematoma. PW-12, further opined that the deceased died due to head injury.

4. Heard learned counsel Mr.Shubhranshu Padhi who was requested by the court to assist as amicus curiae, and learned government advocate Mr.B.P.Singh for the respondent – State.

5. Looking at the outset, the applicable provisions of Indian Penal Code, the group of offences affecting the human body are contained in Chapter XVI of the Indian Penal Code, 1860. Section 299 is the offence of culpable homicide. It provides that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause

death, or with the knowledge that it is likely by such act to cause death, commits the offence of culpable homicide.

5.1 Section 300 defines “murder”. According to this section, culpable homicide is murder where an act is done by which the death is caused and such act is done with the intention of causing death. Secondly, if it is done with an 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, it is also a murder. Thirdly, in the section, “murder” is committed if the act is done with an intention of causing bodily injury and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. 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, he commits murder when such act is committed without any excuse for incurring the risk of causing death.

5.1.1 Exceptions to Section 300 mentions when culpable homicide is not murder. The same may be extracted to be relevant in the context of the facts obtained in the present case,

*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:—*

*First.—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 power 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 offender's 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.

5.1.2 While Section 302 deals with the punishment of murder, Section 304 is about punishment for culpable homicide not amounting to murder. The offence under Section 304, IPC is punishable in its Part I as well as in Part II. When the prosecution proves the death of the person in question and further that such death was caused by the act of the accused, and that the accused knew that such act is

likely to cause death, the offence would be punishable under Section 304 Part II.

5.1.3 Section 304, IPC has two parts namely; Section 304 Part I and Section 304 Part II. The distinction between these two Parts of Section 304, IPC is required to be considered having regard to the provisions of Sections 299 and 300, IPC. Whether the offender had intention to cause death or he had no such intention brings out the vital distinction.

5.1.4 In **Kesar Singh and Another vs. State of Haryana**<sup>1</sup>, this Court observed that the distinguishing feature is the mens rea for the said purpose, the exceptions contained in Section 300, IPC are taken into account. Culpable homicide is genus, the murder is its specie. The two ingredients namely that the infliction of bodily injury on the deceased was caused intentionally and secondly, that the injury was sufficient to cause death in the ordinary

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<sup>1</sup> (2008) 15 SCC 753

course of nature, are satisfied, the offence would become the offence of murder. However, there may be circumstances which may emerge from the operative facts and the evidence available in a given case that the offence would be one of culpable homicide not amounting to murder.

5.1.4.1 In **Kesar Singh**<sup>1</sup>, the concept of “culpable homicide not amounting to murder” was explained by stating,

“If an injury is inflicted with the knowledge and intention that it is likely to cause death, but with no intention to cause death the offence would fall within the definition of Section 304 Part I, however, if there is no intention to cause such an injury, but there is knowledge that such an injury can cause death, the offence would fall within the definition of Section 304 Part II. Thus, is intention. If intention to cause such an injury as is likely to cause death, is established, the offence would fall under Part I but where no such intention is established and only knowledge that the injury is likely to cause death, it would fall under Part II.”

5.1.5 The charges against the appellant was also levelled under Section 147, IPC, which is punishment for

rioting. Section 148 is the offence of rioting armed with deadly weapon. These offences were held to be not proved. Similarly, the High Court has found that offence under Section 149, which provides that every member of unlawful assembly would be guilty of offence committed in prosecution of common object, but the common object is not made out, is the finding.

5.2 With the above background of statutory provisions, reverting back to the facts of the present case, the scenario of the offence was one of a free fight. There was a commotion where the anger-filled group of two rival parties attacked each other, and injuries were sustained by both sides. The High Court was justified in its reasoning that in such circumstances, it is not possible to reason and to conclude that there was a formation of unlawful assembly with common object of causing death. The accused persons, including the appellant, could not be said to have acted with common intention along with others.

5.2.1 In the group fight, which broke out pursuant to a quarrel, the persons from both sides were involved, and they suffered injuries on various parts of their bodies. It is accordingly rightly held that they cannot be held guilty jointly under Section 149, IPC, and the charges under Section 148 and 147, IPC were not proved to hold the accused persons, including the appellant, to treat them guilty for those offences. At the same time, the kind and nature of the individual act in the commission of the offence would matter, and the guilt or otherwise of the accused would have to be accordingly ascertained and established.

5.3 In this light, looking at the individual role of the appellant herein, he with a *lathi* hit on the head of Ram Singh. The medical evidence suggested that the injuries corroborated and confirmed that there was a single blow with a blunt object on the head of the deceased, which was the cause of his death. The appellant herein also suffered grievous injuries on the head, from the free fight that ensued

when the deceased went to the house of the appellant to ask about the assault of his son by the son of the appellant. In the group fight, it was the defence of the appellant that in the group clash and in the explosive circumstances, he had to act in private defence to use *lathi*, which caused the injuries on the head of the deceased Ram Singh.

5.4 The High Court was correct in its approach in holding the appellant guilty for the offence punishable under Section 304 Part II, IPC by assessing the individual role on his part. Having regard to the evidence on record regarding the role played by the appellant and the injuries caused by him on the head of the deceased by using *lathi*, he could be presumed to have acted with an intention to cause death or such bodily injury which he knew that it would be of such kind and nature that would cause, in ordinary course, the death of the person to whom it is caused. However, the degree of the offence in the facts and circumstances of the case, could not be said to be partaking

the offence of murder under Section 302, but the offence committed would be punishable under Section 304 Part II, IPC.

5.5 The way as the sequence of events happened in the instant case and since the offence by the appellant was committed in the midst of commotion and group clash, it could be legitimately inferred that the appellant acted without any premeditation as such to cause the death of Ram Singh, although in eye of law, having regard to the kind of weapon used and the nature of injury inflicted, which corresponded to the weapon used, knowledge could be inferred in law. Even according to the prosecution, the incident occurred when the deceased came to the house of the appellant, to question him, when some others also gathered and there was a free fight. In fact, the appellant suffered serious injuries to his head in the same transaction.

5.6 For the aforesaid reasons, the impugned judgment and order of the High Court convicting the appellant for the

offence under Section 304 Part II, IPC is justified and warrants no interference. It is sustained.

6. The appellant was arrested on 19.12.1992. The High Court granted bail to him on 05.08.1998. He was then released on bail, after spending five years, seven months and 17 days in jail at that point of time. He was required to surrender, and he surrendered on 06.12.2010. This Court granted bail to the appellant on 05.08.2011. Thus, from 06.12.2010 to 05.08.2011, the appellant underwent further imprisonment for eight months. In view of the above details borne out from the record, the total period of incarceration of the appellant comes to six years and three months.

6.1 The appellant is more than 80 years of age at present. Since the appellant is an old and aged person, and in the December of his life, it would be harsh and inadvisable to send him behind the bars again at this stage. The courts are not supposed to be insensitive. Therefore, in view of the advanced age of the appellant and considering

the totality of the facts and circumstances, while upholding the conviction of the appellant under Section 304, Part II, IPC, the sentence of the appellant is reduced to what is already undergone, to be substituted accordingly.

7. The appeal stands dismissed subject to the above modification in the sentence.

All interlocutory applications, as may be pending, would not survive in view of disposal of the main Appeal.

.....,J.  
[K. VINOD CHANDRAN]

.....,J.  
[ N.V. ANJARIA ]

**NEW DELHI;**  
**09.01.2026.**