

**(2014) 07 DEL CK 0077**  
**In the Delhi High Court**  
**Case No : CRL.A. 87/2011**

Javed

APPELLANT

Vs

State Govt. of NCT of Delhi

RESPONDENT

**Date of Decision : 22-07-2014**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 313  
Penal Code, 1860 (IPC) — Section 299, 300, 300(3), 302, 304

**Citation : (2014) 07 DEL CK 0077**

**Hon'ble Judges :** Sanjiv Khanna, J;Deepa Sharma, J

**Bench :** Division Bench

**Advocate :** K. Singhal, Advocate for the Appellant; Rajat Katyal, APP, Advocate for the Respondent

**Final Decision :** Disposed Off

## Judgement

Deepa Sharma, J.—The present appeal has been filed against the judgment dated 24th November, 2010 by which the appellant was convicted for the offence u/s 302 IPC, and also against the order dated 29th November, 2010 by which the appellant was sentenced to imprisonment for life with fine of Rs. 10,000/- and in default, to undergo rigorous imprisonment for six months for the offence u/s 302 IPC.

2. The brief facts of this case are that on 22nd October, 2007 at about 11.30 pm near E Block, public toilet, Patharwala Bagh, JJ Colony, Wazirpur, Delhi, the (acquitted) alongwith two co-accused namely Shaukat Ali @Badka (acquitted) and Jameel @ Chonch (acquitted) assaulted Lakshman with fists and kick blows and that the appellant stabbed him on his left buttock with a sharp edged weapon.

3. After the incident, information was conveyed to PCR through mobile phone no. 9910276881 and was recorded by Constable Meenakshi (PW-11) in document exhibit PW 11/A and the information was conveyed to PS Ashok Vihar at about 11.45 pm and was recorded vide DD No. 32 (Ex. PW 9/F). On receiving the said

DD, ASI Dev Raj (PW-9) along with Constable Surrender reached at the spot and found the PCR vehicle and the injured near the public toilet with his mother, Mrs. Kailashwati @ Radha (PW-2) along with large number of public persons. Injured Lakshman was taken to the BJR Hospital where Dr. Yashwant Singh (PW-10) examined him. The MLC (PW 10/A) was prepared. Doctor had noted three injuries on the person of Laxman which included:- (1) 2 cm CIW over left hip muscle deep (2) 2 cm CLW over left eye brow and (3) abrasion behind right ear.

4. After providing medical aid and treatment, Laxman was discharged. ASI Dev Raj (PW-9) recorded the statement of injured Laxman (Ex. PW 9/A) in the hospital on 23rd October, 2007 before he was sent back. In his statement, the injured had stated that he was going to the toilet at about 11/11.30 pm when the boy named as Teda met him and stopped him and questioned him as to where was he going and on being told to mind his own business, Teda along with his two associates started beating him and he received injuries on his left eye-brows and on his hip. ASI Dev Raj had recorded DD No. 7 at about 7 am on 23rd October, 2007 relating to the three different matters in which he had taken the action which also included the matter arising out of DD No. 32 (PW-9/F).

5. Subsequently, condition of Laxman (injured) had deteriorated, he was taken to Hindu Rao Hospital, where he died on 24th October, 2007. Doctor R.N. Bansal (PW-12) prepared the death summary (PW-12/A). The information regarding death of Laxman was also received in police post J.J. Colony of PS Ashok Vihar at about 7.55 am on 24th October, 2007 and was recorded vide DD No. 9 (Ex. PW 8/A).

6. On receiving the copy of the said DD, ASI Dev Raj (PW 9) went to Hindu Rao Hospital. He made an endorsement on Ex. PW 9/A (the statement Ex. PW 9/A of Laxman which was recorded by him earlier on the day of incident). The FIR (Ex. PW 7/A) was registered at 9.45 am on 24th October, 2007.

7. During the course of investigation, after registration of FIR, the blood stained clothes (T-shirt Ex. P-2, Trousers Ex. P-3 and Underwear Ex. P-4) of the deceased Laxman were seized vide memo Ex. PW 9/C. The site plan (Ex. PW 14/A) was prepared. The crime team inspected the dead body in the mortuary of Hindu Rao Hospital and prepared the death report. The post-mortem was conducted on the body and the report Ex. PW 15/A was prepared by Dr. Rajiv Sharma, Senior Resident, Department of Forensic Medicine.

The autopsy doctor found the following four injuries on the dead body:-

a) Incised wound stitched 2.2 cm X 0.5 cm obliquely placed over the left hip, its margin being clean cut with extravasation of blood seen over the margin, the upper end of the wound being pointed and 10 cm below the sacral promontory and lower end being blunt, 83 cm above the left heel pad, the midpoint being 4 cm left to the natal cleft.

b) Stitched lacerated wound, 1.5 cm X 0.5 cm X 5cm deep over left eyebrow,

extravasation of blood seen over the margin.

c) Abrasion, reddish, 2 cm X 1 cm over the right mastoid behind the right pinna.

d) Abrasion, reddish, 4 cm X 2 cm over left acromion over the left shoulder.

The autopsy doctor opined that the death had occurred due to shock and haemorrhage consequent to injuries including the injury no. 1 and its corresponding internal injuries having been caused by sharp edged weapon and sufficient to cause death in the ordinary course of nature. Photographs of the dead body (Ex. PW 14/A-1, 2, 3) were also taken.

8. Kailashwati (PW-2), mother of the deceased made a statement which was recorded wherein she had stated that her son had told her that there were three assailants who had picked up quarrel with him and caused injuries by hitting him with legs and fists and that he was stabbed by the appellant on his way to toilet. During investigation, it was found that the incident was witnessed by one Babbi Singh (PW-1), another local resident of the same slum cluster.

9. The appellant was arrested on 29th October, 2007 vide arrest memo (Ex. PW 13/B). The appellant made a disclosure statement (Ex. PW 15/F) admitting his involvement and also giving the information that the knife used by him in the incident was lying in his jhuggi which he could get recovered. He took the police to his jhuggi and produced the knife, Ex. P-1, seized vide memo PW-13/D. The knife was found to be button actuated and having a blade of 10 cm length. Its sketch (PW 13/C) was prepared and thereafter it was sealed in a parcel with seal of BL. The knife (P1) was shown to the autopsy doctor on 22nd November, 2007 and the doctor opined vide his opinion (Ex. PW 15/B) that the internal and external injuries mentioned in the postmortem report were possible with the said weapon and similar other types of sharp edged weapons/objects.

10. The clothes of the deceased and the weapon of offence along with blood sample preserved during autopsy were sent to Forensic Science Laboratory (FSL). The reports Ex. PX-1 and PX-2 were received. Blood of human origin was detected on the knife (P1), Trousers (P-3) and Underwear (P-4). The blood group however could not be ascertained. Prosecution has examined 15 witnesses. The alleged eye witness Babbi Singh, PW 1 has not supported the prosecution case and was declared hostile.

11. The learned trial Judge, during the course of arguments, on the question about the propriety of the procedure adopted by ASI Dev Raj (PW-9) and Inspector Babulal, (PW-14) during investigation, recalled both the witnesses and questioned them. Some serious questions about the practice adopted by the police in context of Section 154/155 CrPC cropped up and the Id. Trial Judge took up the matter with the officers at supervisory level and called the DCP Manish Aggarwal, as the court witness and showed his displeasure of keeping DD No. 32 (Ex. PW 9/F), pending on the ground that "final medical opinion was awaited". This resulted into the issuance of the circular no. 30 by the Police Headquarters

vide no. 2501-2600/Record Branch/PHQ dated 12.10.2010 in consultation with the Director of Prosecution and with the approval of Commissioner of Police which contained instruction of a proper compliance with provisions in Section 154 and 155 of Cr.P.C.

12. The entire exercise was done by the learned trial court to dispel the impression of the investigating agency that they were not required to record the formal FIR (recording of which is now been computerised) till the receipt of medical opinion.

13. The appellant has not taken any specific defence in his statement u/s 313 CrPC and has only pleaded innocence and false implication.

14. Relying on the testimony of the mother of the deceased and treating the statement of the deceased made to his mother and his statement (PW 9/A basis of recording FIR) the learned trial court had reached to the conclusion that it was the appellant who had caused the injury no. 1 on the person of the deceased. The learned trial court has also relied on the Post Mortem Report (Ex. PW 15/A) wherein the doctor has opined that the injury no. 1 was sufficient in the ordinary course of nature to cause death. The Id. Trial Court has also relied on the recovery of the weapon of offence i.e. the knife (P1) from the house of the appellant pursuant of his disclosure statement and the opinion of the doctor that injury no. 1 has been caused either by P1 or any other weapon of the same nature. The findings of FSL whereby human blood was detected on P1 (knife), has also been relied upon while holding the accused guilty of the offence of murder.

15. The appellant has challenged the said verdict on various grounds.

16. The first and foremost argument of learned counsel of the appellant is that the appellant is not involved in this offence and is innocent and falsely implicated and secondly that on the facts of the case no offence of murder has been made out and thus the conviction u/s 302 IPC is bad in law. The State on the other hand has argued that all the ingredients constituting offence of murder has been duly established and thus the conviction u/s 302 IPC is justified.

17. Culpable Homicide is defined in Section 299 IPC which reads as under:-

"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."

The offence of "culpable homicide amounting to murder" is punishable u/s 302 IPC and "culpable homicide not amounting to murder" is punishable u/s 304 IPC. The principal question which arises for consideration is whether on the facts proved in this case it is a case of "murder" or "culpable homicide not amounting to murder"?

18. In the case of State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr., (1976) 4 Supreme Court Cases 382, the Apex Court has elaborately discussed this issue and has given the fine distinction between "murder" and the "culpable homicide not amounting to murder".

The court has observed as under:-

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 stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage 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 stage for considering the operation of Section 300, Penal Code, is reached. This is the stage 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 exception enumerated in Section 300, the offence would still be "culpable homicide" not amounting to "murder", punishable under the first part of Section 304, Penal Code.

19. The court has further discussed distinction between the expression "bodily injury likely to cause death" u/s 299 IPC and the words "sufficient in the ordinary course of nature, used in third clause of Section 300 IPC as under:-

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.

20. In this case, the Supreme court has relied on its earlier judgment in the case of Virsa Singh vs. State of Punjab, 1958, SC 465 wherein the following observations have been made:-

The prosecution must prove the following facts before it can bring a case u/s 300, "thirdly". Firstly, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury 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.

21. These cases have given the guidelines and parameters to facilitate decision on the given facts, whether the offence falls within the ambit of "culpable homicide amounting to murder" u/s 300 IPC and punishable u/s 302 IPC or was "culpable homicide not amounting to murder" punishable under Part 1 or 2 of Section 304 IPC.

22. We first venture to find out if the accused had caused the death of Laxman. The proved facts on record proves one fact convincingly that the life of Laxman (deceased) was cut short due to the injuries received by him in an incident dated 23.10.2007. His death was neither natural nor accidental. It was culpable homicide.

23. The cause of death of Laxman were the injuries received by him on 22.10.2007 by appellant/accused. In order to prove that the appellant had caused the injuries including injury No. 1 upon the person of Laxman (deceased), the testimony of the mother of the deceased Laxman and statement of deceased (PW 9/A) are material and relevant evidence. From the statement of PW-9, the investigation officer, it is apparent that when he reached at the spot on the basis of information received from PCR, the injured Laxman was present near the public toilet with his mother (PW2). In cross-examination of PW 9 and PW2, presence of mother of deceased Laxman with him after incident is not disputed. There is ample evidence which prove that she had accompanied her son (injured) to hospital and brought him back to home from there. The presence of the mother with the injured at the place of occurrence thus stands proved. However, PW 2 is not an eye witness. She has stated that she reached at the spot as soon as she learned that her son had been stabbed. She has clearly deposed that she was present in her house and on hearing the news that her son had been stabbed near the public toilet, she reached there and saw her son bleeding from his buttock and having wound on right eye-brow and forehead. She was, therefore, possibly the first known person who met her son and it was natural for the injured to narrate the incident to his mother. PW-2 has clearly deposed that her son had told her that he was stabbed by one Teda. She has deposed that she

knew the accused Teda and identified him in the Court. This statement of the mother of the deceased was treated as dying declaration by learned ASJ. It has also come on record that all the accused as well as the injured and the witnesses were living in the same colony.

24. Besides that the injured (Laxman) in his statement PW9/A (which forms basis of FIR) has also clearly stated that the injuries were inflicted upon him by Teda along with his associates.

25. The factum of fight between appellant and Laxman stands proved by the fact that PCR had received the information from mobile no. 9910276881 regarding this fight which it recorded vide Ex. PW11/A. PW9 ASI Dev Raj who reached at spot, removed the injured to hospital and recorded his statement Ex. PW9/A. PW9 ASI Dev Raj also recorded statement of mother of Laxman who has clearly stated that Laxman told him that he was stabbed by Teda. The statements of Laxman (Ex. PW 9/A) and that of his mother were treated as dying declarations by learned ASJ.

26. It is argued that these statements have no value since the maker of statement Laxman had subsequently died and did not come in witness box to depose and was not subjected to cross-examination and the learned trial court has erred in relying on these statements treating them as dying declarations for the reason that there was a delay in recording these statements and also that the injured died after 36 hours of making his statements. It is also argued on behalf of appellant that there is no eye witness to the incident, and therefore, the benefit of doubt be given to the appellant. The arguments are fallacious, as the dying declarations as deposed by PW 9/A and PW 2 are sufficient and credible to convict the appellant as perpetrator.

27. The arguments that statements of PW 9/A and of PW 2 cannot be treated as dying declarations was raised before the Id. trial court and the Id. trial court has duly dealt with these arguments. After discussing the law laid down by the Supreme court in the case of Atbir Vs. Govt. of N.C.T. of Delhi, , the Ld. Trial Court had reached to the following conclusion:-

"80. This has been a consistent view of Hon"ble Supreme Court, as can be demonstrated by reference to the observations in the cases of Apren Joseph alias Current Kunjukunju and Others Vs. The State of Kerala, and Ram Jag and Others Vs. The State of U.P., .

85. In a recent decision of Hon"ble Supreme Court in Atbir Vs. Govt. of N.C.T. of Delhi, , the law on dying declaration has been recapitulated. After tracing the law laid down in various judgments including in Munnu Raja and Another Vs. The State of Madhya Pradesh, , Paras Yadav and others Vs. The State of Bihar, , Balbir Singh and Another Vs. State of Punjab, , State of Rajasthan Vs. Wakteng, , Bijoy Das Vs. State of West Bengal, , Muthu Kutty and Another Vs. State by Inspector of Police, Tamil Nadu, and Panneerselvam Vs. State of Tamil Nadu, , Hon"ble Supreme Court culled out of the following principles:-

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- (viii) Even if it is a brief statement, it is not to be discarded.
- (ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration."

86. Noticeably the evidence of PW-2, PW-9 and PW-10, read together, leaves no room for doubt that the deceased had not only been moving on his own but was also communicative, at least for a few hours after the injuries had been inflicted on him. The evidence shows that his faculties were intact at that stage and, therefore, there is no reason to conclude that he was not in a fit state of mind to narrate the history of the assault on him or mention the identity of the authors of the injuries. His condition deteriorated much later over the night resulting in he being taken to Hindu Rao Hospital where he would succumb. His statement to PW-9 forming the basis of the FIR cannot be brushed aside only because it did not elaborate on the sequence of events further. If at all, it was fault on the part of PW-9 rather than that of the deceased.

87. On careful scrutiny, I am satisfied that the evidence respecting the statement Ex. PW-9/A made to PW-9 and the information shared by the deceased with his mother about identity of the author of his injuries is not only true but also free of the vices in the nature of tutoring, prompting etc. The said statements were

made by the deceased to PW-9 and PW-2 as to the circumstances respecting the transaction in which he suffered injuries as a consequence of which he was to die within a few hours. Therefore, the evidence in this regard adduced through PW-9 and PW-2 qualifies to be accepted and acted upon as dying declarations of the deceased, which can form the sole basis of finding of guilty, without the need of any further corroboration."

28. The above findings of Ld. Trial Court are thus based on the established law qua dying declaration and its application on the facts proved on record. The learned counsel for the appellant has failed to point out any illegality in these findings of the learned tribunal necessitating this court to hold any other opinion. These dying declarations are sufficient to convict the appellant.

29. Recovery of knife at the instance of appellant and presence of human blood on knife are also the relevant factors. The doctor's opinion that the stabbed injury was caused by either with the knife recovered from appellant or of similar type of knife is also corroborative. The trial court's finding that the stabbed injury was caused by appellant cannot be disturbed.

The second question is whether the appellant has been rightly convicted u/s 302 IPC or he had committed an offence of a lower or lesser degree.

30. Prosecution submits that the stab injury i.e. injury No. 1 mentioned in Ex. PW 15/A is the cause of death of Laxman. The facts proved on record shows that from the spot the injured was taken to BJR Hospital, where the deceased (the then injured) was examined by Dr. Yashwant Singh (PW-10). The doctor in his deposition has stated that on examination, he found the following injuries:-

- 1) 2 CM CIW over left hip muscle deep
- 2) 2 CM CLW over left eye brow
- 3) Abrasion behind right ear.

Dr. Yashwant after giving necessary medical aid (which was sufficient according to him) discharged the patient Laxman. Prosecution claims that despite the medical aid given to the injured, Laxman's condition deteriorated. He was taken to Hindu Rao Hospital where he died and his death summary was prepared and is proved as PW12/A. Dr. Aryan Bansal had counter signed the death summary and deposed that the condition of Laxman deteriorated and he became serious and died on 24th October, 2007 at 7.30 am. Thereafter, the post-mortem of the dead body of Laxman was done. The post mortem is proved on record as Ex. PW15/A. The post mortem report shows that the deceased was having external injury no. 1. The doctor has also opined that injury no. 1 and its correspondent internal injuries have been caused by a sharp edged weapon and was sufficient to cause death in ordinary course of nature.

31. The MLC describe injury No. 1 as 2 cm CIW over left hip muscle deep and the post mortem report also shows the same diameter of external injury at the same

place. No other injury on the hip or any other part of the body has been found which according to the doctor's opinion was fatal. At the time of post mortem, the doctor also found an injury on the shoulder of the deceased. It seems that the doctors at BJR Hospital failed to evaluate and effectively treat injury No. 1. It was treated as a minor injury and Laxman was discharged after first aid. This was a lapse, and a serious one. The doctors did not even bother to try to see the depth of injury no. 1. Although the injuries were found stitched by doctors of Hindu Rao Hospital, there is no record of the stitching in BJR Hospital. The injury no. 1 on the person of Laxman is the same injury which is mentioned in the postmortem report. The injury, it is apparent went inside the body of the deceased and had damaged vital organs. There is no doubt that injury no. 1 mentioned in the post-mortem report is the same injury no. 1 mentioned in the MLC of the deceased which has proved fatal. However, it is also apparent, that Laxman after first aid/treatment was satisfied with his recovery. He too did not feel that the said injury was life threatening.

32. It is argued by the learned counsel for the appellant that the injury no. 1 shown in Ex. PW 15/A was not the immediate cause of death but the deceased had died due to lack of care by the attendants of the deceased and lack of proper treatment at the hospital. Let us examine the evidence on record and see if this argument finds some support even by preponderance. It is apparent that a fact cannot be presumed or conjured. The facts need to be proved on record. The appellant, therefore, is required to produce on record some evidence of preponderance to prove the fact that death was the result of lack of care by the attendants of the deceased or lack of medical care. No question was asked from any of the prosecution witnesses by the appellant in this regard. The contention of the appellant that the deceased died due to lack of medical aid and lack of care by his attendants do not found support from any material on record. Post Mortem report (Ex. PW 15/A) as noticed below does not support the appellant. Moreover, the post mortem report (Ex. PW15/A) shows the track of the wounds as under:-

"After piercing the skin and subcutaneous tissues over 4 buttock, it pierces the left lateral wall of rectum then came out of the anterior wall of rectum and peritoneum and enter the pelvic cavity. Rectal vessels are found cut on the way on its way moving upwards and medially it perforates the ileum at multiple places about 10 cm proximal to the ileocecal junction with the contents of ileum and rectum are leaking into the peritoneal cavity mesentery and mesenteric vessels are also found cut on the way.

Tract of wound: about 12 cm long.

Direction of tract: from back to forward, upwards and medially."

33. This apparently shows that a very deep injury of the depth of about 12 cm had been caused and also in such a manner that it had damaged several internal vital organs.

34. In order to bring home the guilt of the accused for the offence of murder u/s 300(3) of IPC, the prosecution is required to prove that act of the appellant had intended to cause bodily injury and the bodily injury intended to be inflicted was sufficient to cause death in the ordinary course of nature. The prosecution thus is required to prove that the appellant had intended to cause bodily injury No. 1 on person of Laxman which as discussed above was sufficient to cause death in ordinary course of nature.

35. Although, the prosecution has successfully proved that the appellant was the perpetrator but the question remains whether injury No. 1 it was the intended injury. The statement of deceased (Ex. PW 9/A) (then an injured) shows that a fight had ensued between the deceased and the appellant and his co-accused at the time when the deceased was going to the toilet. He was interrupted by the appellant and the appellant made an enquiry from the deceased as to where was he going. Upon that the deceased asked the appellant to mind his own business. It was at this time that there was a fight and the deceased (then injured) was beaten by the appellant and it was in this fight that he received injury. The call made to the PCR and recorded in the PCR vide Ex. PW 11/A shows that the information of incident was that of a quarrel. These facts clearly show that injury was inflicted during the quarrel. There is no evidence on record to suggest any previous enmity between the appellant and deceased. Undisputedly all the parties were living in the same locality. PW2 mother of deceased has also not deposed about any previous enmity or bad blood between his son and appellant. This thus rules out any prior motive or intention on the part of the appellant. It is also apparent that only one wound has been inflicted by the appellant. The court in the case of Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, , has elucidated the principles to be taken into consideration while deciding whether the case falls u/s 300 (Part-III), observing:-

The third contention relates to the question whether the offence is a murder punishable u/s 302, or culpable homicide not amounting to murder, punishable u/s 304 Part II. The evidence shows that there was a long standing enmity between the families of the two brothers (A-1 and PW-2). There was a quarrel on 24.4.1999 in respect of PW-2 taking a tractor through the land of A-1. There was another quarrel when A-1 allegedly removed the fence and PW-1 and PW-2 questioned A-1 as to why he removed fencing, which led to an altercation between A-1 and A-3 on the one hand and PW-1 and PW-2 on the other about half an hour before the stabbing of the deceased, which resulted in injuries to PW-1 and PW-2. After the second incident, Purushotham Reddy followed by PW-1 and PW-2 was going towards A-1's house to protest against A-1 and the appellant causing injuries to PW-1 and PW-2. Neither Purushottam Reddy nor PW-1 and PW-2 were armed with any weapon. There was no indication that they intended to cause any physical harm to the accused, or that they intended to retaliate for the earlier incident. The nature and size of the weapon used by the appellant (barisa, which is a big size dagger), the force with which the weapon was used, the part of the body where the injury was caused, just below the neck,

a vital part of the body, the nature of the injury, stab wound measuring 3 cm x 5 cm x 12 cm, resulting in instantaneous collapse leading to death, leave no room to doubt that the intention of the appellant was to cause the death or, at all events, cause bodily injury, which is sufficient in the ordinary course of nature to cause death.

36. There is no evidence on record to prove that any preparation was done by the appellant and that he had come prepared with intention to kill the deceased or to cause the said injury or even fight. The stabbing is the result of a sudden fight when parties met at that spot accidentally since they were living in the same locality. The fact that only one stab wound was inflicted further rules out any intention to kill. The place of wound is also of great importance. It was not in stomach or heart or any other vital part of the body but was on the buttock and this fact further negates any intention on part of appellant to kill Laxman. Thus exception 4 to the Section 300 IPC would be applicable.

Dealing with Exception 4 to Section 300 IPC in the case of Kishan Lal Vs. State of Rajasthan, , Supreme Court has observed :-

"7. Now Exception 4 to Section 300 IPC is in the following terms:

" 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."

The requirements of this exception are:-

- (a) without premeditation in a sudden fight;
- (b) in the heat of passion upon a sudden quarrel;
- (c) the offender has not taken undue advantage; and
- (d) the offender has not acted in a cruel or unusual manner.

Where these requirements are satisfied, culpable homicide would not be murder."

37. Applying the same principles as laid down above, it is clear that from the established facts that a sudden quarrel had taken place between the appellant and the deceased. In that sudden fight in heat of passion only one wound was inflicted on the deceased which hit him at place indicated, which rules out the proposition that appellant has in any way acted in a cruel manner or took undue advantage of his position.

38. For the foregoing reasons, we convict the appellant for the offence of culpable homicide not amounting to murder.

39. By order dated 29th November, 2010, the appellant was sentenced to imprisonment for life with fine of Rs. 10,000/- and in default, to undergo rigorous imprisonment for six months for the offence u/s 302 IPC by the trial court. This court has now convicted the appellant for the offence punishable u/s 304 IPC-"culpable homicide not amounting to murder". From the nominal roll of the appellant, it is apparent that he has been in judicial custody since 30th October, 2007 till date which includes the under trial period from 30th October, 2007 to 29th November, 2010 and from 30th November, 2010 till date, he has been in judicial custody as a convict. He, therefore, is in judicial custody for the total period of about 6 years and 10 months approximately.

40. Keeping in mind all the facts and circumstances of the case, we sentenced the accused for the period already undergone by him for the offence u/s 304 IPC-"culpable homicide not amounting to murder".

41. The appeal stands disposed of in the above terms.

42. The Registry is directed to send a copy of the order to the Jail Superintendent, Central Jail, Tihar for compliance and to supply the same to the appellant.

43. A copy of this judgment be sent to the trial court.