



2025:CGHC:1436-DB

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 1471 of 2019**

**1** - Chovaram S/o Late Mangalram Dhruv Aged About 40 Years  
**2** - Laxman Dhruv S/o Chovaram Dhruv Aged About 19 Years  
**3** - Bheem Nishad S/o Nohar Nishad Aged About 20 Years  
 All R/o Village- Belora, PS- Magarload, District- Dhamtari, Chhattisgarh.  
 --- **Appellants**

**versus**

**1** - State of Chhattisgarh Through The PS- Magarload District-  
 Dhamtari, Chhattisgarh.  
 --- **Respondent**

**CRA No. 506 of 2021**

**1** - Chetan Dhruv S/o Chovaram Dhruv, Aged About 17 Years R/o  
 Village Belora, PS- Magarload, District Dhamtari Chhattisgarh  
 (Juvenile/ Child In Conflict With Law).  
 ---**Appellant**

**Versus**

**1** - State of Chhattisgarh Through The P.S. Magarload District Dhamtari  
 Chhattisgarh.  
 --- **Respondent**

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For Appellants	:	Shri Shobhit Kosta, Advocate.
For State	:	Shri Shashank Thakur, Dy. A.G.

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**Hon'ble Shri Justice Ramesh Sinha, CJ**

**Hon'ble Shri Justice Ravindra Kumar Agrawal, J**

**Judgment on Board**

**09.01.2025**

**Per, Ramesh Sinha, CJ.**

**1.** Since both these appeals arise out of same crime number, they  
 are being heard and decided together by this common judgment.

2. Criminal Appeal No.1471 of 2019 has been filed by the appellants Chovaram, Laxman Dhruv and Bheem Nishad against the impugned judgment of conviction and sentence dated 28.08.2019 passed by the Additional Sessions Judge, Dhamtari in Sessions Case No.17/2019 whereby the appellants have been convicted for the offence under Section 302 read with Section 34 IPC and sentenced to undergo RI for life imprisonment with fine of Rs.100/-, in default of payment of fine amount, additional RI for six months to each of the appellants.
3. Criminal Appeal No.506 of 2021 has been filed by Juvenile in conflict with law against the impugned judgment of conviction and sentence dated 03.03.2021 passed by the Special Judge, Children's Court (FTC), Dhamtari in Special Criminal Case No.26/2019 whereby the juvenile in conflict with law has also been convicted for the offence under Section 302 read with Section 34 IPC and sentenced to undergo life imprisonment with fine of Rs.500/-, in default of payment of fine, additional RI for six months and he is ordered to be kept in safety home.
4. Brief facts of the case are that on 09.01.2019 the complainant Devkaran Singh, PW-10 gave a merg intimation that present appellants including juvenile in conflict with law were indulged in selling liquor illegally which was objected by the deceased Rajendra Sen and their dispute was going on since 4-5 years. On 09.01.2019 at about 7-7:30 PM when he reached near the house of deceased, he saw that altercation was going on between the

deceased and the present appellants including juvenile in conflict with law. The juvenile in conflict with law gave a knife blow on the neck of the deceased Rajendra Sen by which blood was oozing out from neck and he fell down on the ground. Thereafter, the appellants and juvenile in conflict with law fled away from the place. The deceased was immediately taken to the hospital where he died during treatment. Merg intimation Ex.P/15 was recorded by the police. Inquest Ex.P/18 was prepared in presence of witnesses and dead body was sent for its postmortem to Community Health Centre, Magarlod where PW-1 Dr. Keerti Kumar Singh Kanwar conducted the postmortem of the dead body and gave report Ex.P/1. While conducting postmortem, the doctor noticed one stab injury at right side of neck in carotid, wedge shaped of dimension 2x1.5x4.5 inch in size. Red clots present around injury. Bruise present over left side of neck. Common carotid artery, internal carotid artery, and external carotid artery and internal jugular vein and trachea were cut. The doctor opined that cause of death is excessive hemorrhage due to cut injury of common carotid artery, internal and external carotid artery and internal jugular vein, and mode of death is cerebral asphyxia due to cardio respiratory failure and it is homicidal in nature. FIR Ex. P/21 was registered by the police for the offence under Section 302/34 IPC against the appellants and juvenile in conflict of law. Spot map Ex.P/16 was prepared by the police and P/6 was prepared by the Patwari. Shirt of the

deceased was seized vide seizure memo Ex.P/9. The appellants and juvenile in conflict of law were taken into custody and their memorandum statement was recorded. Memorandum statement of juvenile in conflict of law was recorded vide Ex.P/10 and based on his memorandum, one knife was seized vide seizure memo Ex.P/11. Bloodstained and plain soil were seized from the spot vide seizure memo Ex.P/12. One full-shirt was seized from the appellant Bheem Nishad vide seizure memo Ex.P/13. One T-Shirt was also seized from the juvenile in conflict of law vide seizure memo Ex.P/14. The appellants were arrested on 10.01.2019. T-Shirt of appellant Bheem Nishad and shirt of the deceased were sent for chemical examination to FSL Raipur from where report Ex.P/41 was received and except plain soil, all the articles were found stained with human blood.

5. Statements of witnesses under Section 161 CrPC have been recorded. Statement of complainant Devkaran Sen under Section 164 CrPC have also been recorded and after completion of usual investigation charge sheet was filed against the appellants Chovaram, Laxman Dhruv and Bheem Nishad before the Judicial Magistrate, First Class, Kurud for the offence under Section 302 IPC, whereas, the charge sheet against the juvenile in conflict with law was separately filed before the Juvenile Justice Board, Dhamtari for the offence under Section 302/34 IPC.
6. The Juvenile Justice Board, Dhamtari, conducted preliminary enquiry with regard to juvenility of the juvenile in conflict with law

as required under Section 15 of Juvenile Justice Care and Protection of Children's Act, 2015 (in short, the Act of 2015), and after satisfying himself about his juvenility and finding the juvenile in conflict with law is more than 16 years and less than 18 years of age on the date of incident, committed the case for its trial to Children's Court Dhamtari where Sessions Trial No.26/2019 was registered and the juvenile in conflict with law was separately tried by the Children's Court, whereas, against the three appellants Chovaram, Laxman Dhruv and Bheem Nishad the separate Sessions Trial No.17/2019 was conducted by the Additional Sessions Judge, Dhamtari.

7. The Additional Sessions Judge, Dhamtari, framed charge against the appellants Chovaram, Laxman and Bheem Nishad (CRA No.1471 of 2019) for the offence under Section 302/34 IPC whereas, the Children's Court, Dhamtari, framed charge against the juvenile in conflict with law for the offence under Section 302/34 IPC. The accused persons as well as juvenile in conflict with law denied the charge and claimed trial.
8. In Sessions Trial No.17/2019 the prosecution examined as many as 13 witnesses whereas in Special Criminal Case No.26/2019, the prosecution has examined as many as 11 witnesses. The statement of accused persons including juvenile in conflict with law have also been recorded under Section 313 CrPC in which they denied the circumstances appears against them, plead innocence and appellants have submitted that they are innocent

and have been falsely implicated in the offence. The appellants have further submitted that on the date of incident the appellant Chovaram was suffering from ailment and he was taking rest in his house. The doctor of village Purshottam Yadu was treating him. The main dispute was between the deceased and juvenile in conflict with law and they have not committed any offence. A false allegation have been levelled by the family members of the deceased. The juvenile in conflict with law also denied the circumstances appears against him and submitted that he has been falsely implicated in the offence.

9. Considering the evidence available on record against the appellants as well as juvenile in conflict with law, they have been convicted and sentenced by the trial court respectively which are mentioned in the earlier part of this judgment. Hence these appeals.
10. Learned counsel for the appellants would submit that the appellants are innocence and have been falsely implicated in the case. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis for their conviction. The prosecution has failed to prove its case beyond reasonable doubt. Dispute between the parties were going on since 4-5 years with respect to selling of illegal liquor by the deceased on which the appellants were raising objection. On the date of incident also dispute arose on the same issue and there was no premeditation to commit any offence. It is further

submitted that the deceased himself tried to attack upon the accused persons and during scuffling the deceased himself received injuries on his neck by his own knife. Since the deceased succumbed to the injuries, his family members have levelled allegation against the accused persons. In alternative, they would submit that the incident is occurred in the heat of passion and there was no any repeated blow or any other injury on the body of the deceased and therefore, their offence does not travel beyond the scope of Section 304 IPC. The appellants are in jail since 10.01.2019 and thereby they have already completed about six years of their jail sentence. The appellants have not caused any injuries to the deceased and the allegation of causing injury upon the deceased is upon the juvenile in conflict with law. Therefore, under the facts and circumstances of the case, the conviction of the appellants for the offence under Section 302/34 IPC may be converted for the offence under Section 304 IPC and their sentence may be reduced for the period already undergone by them. He would also submit that the Children's Court have sentenced the juvenile in conflict with law for RI for life and ordered to keep him in safety home and his conviction is also liable to be converted to that of offence under Section 304 IPC and his sentence may also be liable to be reduced for the period already undergone by him.

11. On the other hand, the counsel for the State vehemently opposes the arguments advanced by the counsel for the appellants and

would submit that the prosecution has proved its case beyond reasonable doubt. But for minor omissions and contradictions, there is no discrepancy in the evidence of prosecution witnesses and it is proved that on the date of incident all the accused persons were present on the spot and the juvenile in conflict with law made a knife blow on the neck of the deceased. At the time of incident, all the accused persons sharing common intention to commit murder of the deceased and in furtherance thereof went to the house of deceased and during altercation the juvenile in conflict with law made a knife blow on his neck. The intensity of blow was such that his carotid artery and trachea were cut off and due to said injuries he died. The incident was witnessed by PW-5, PW-10 and PW-11 and their evidences are fully reliable and there is no merits in the appeals of the appellants and the same are liable to be dismissed.

- 12.** We have heard learned counsel for the parties and perused the records.
- 13.** So far as homicidal death of the deceased Rajendra Sen is concerned, eye-witness PW-5, PW-10 and PW-11 have deposed that on the date of incident the accused persons raised altercation with the deceased in front of his house and juvenile in conflict with law has given knife blow on his neck by which the deceased received injuries on his neck and he died due to the injuries. The witnesses of inquest PW-4 and PW-10 have also supported the injuries found on the neck of the deceased.



- 14.** PW-1, Dr. Keerti Kumar Singh Kanwar, who conducted the postmortem of the dead body of the deceased, have stated in his deposition that on 10.01.2019 he conducted the postmortem of the dead body of deceased Rajendra Sen and found deep cut injuries over neck at carotid triangle area and its dimension was wedged shaped. His common carotid artery, internal and external carotid artery, internal jugular vein and trachea were cutted. He opined that cause of death is excessive hemorrhage due to cut injury of common carotid artery, internal and external carotid artery and internal jugular vein and mode of death is cerebral asphyxia due to cardio respiratory failure which is homicidal in nature. In his cross examination, the defence could not brought any material which led this court to draw an adverse inference that death of the deceased was not by the neck injury. Thus, the death of deceased being homicidal in nature has been proved by the prosecution.
- 15.** In Criminal Appeal No.506 of 2021 filed by the juvenile in conflict with law, the Children's Court have also found the death of deceased Rajendra Sen is homicidal in nature which his based on the evidence of witness of inquest i.e. PW-7, Devkaran Sen & PW-8, Govind Dhruv, evidence of PW-1, Shekhar Sahu, PW-7 Devkaran Sen and PW-6 Indrani Sen who are eye-witnesses, and the evidence of Dr. Keerti Kumar Singh who conducted postmortem of the dead body of deceased and hold that death of the deceased is homicidal in nature by the injuries on his neck

and the prosecution has proved the death of the deceased being homicidal in nature.

**CRA No.1471 of 2019.**

16. So far as involvement of appellants in offence in question is concerned, the prosecution relied upon the evidence of three eye-witnesses PW-5, Shekhar Sahu, PW-10, Devkaran Sen and PW-11, Smt. Indrani Sen.
17. PW-5, Shekhar Sahu, have stated in his evidence that on the date incident when he was returning from the house of Roshan at about 7:30 PM there was altercation between the deceased and the appellants near the house of deceased and at that time the juvenile in conflict with law gave a knife blow upon the deceased by which he fell down and at that very moment the wife of deceased came out from her house and then the accused persons fled away from the place. On being raised alarm by the wife of the deceased, Tejram, Parmeshwar and Devkaran came there and immediately taken the deceased to the hospital. In his cross examination, he stated that after 15-20 days, the police recorded his statement and if it is not there that the appellant Chovaram caught hold the deceased, he could not tell the reason. He admitted in his cross examination that Devkaran reached on the spot when deceased fell down on the ground. He has not seen whether at the time of incident the deceased assaulted the juvenile in conflict with law by a piece of brick or not. He also did not know on what issue the altercation took

place. He also admits that the appellant Chovaram, Laxman and Bheem Nishad have not assaulted the deceased by any weapon. He admits that when altercation was going on between them, Devkaran was not there and he also did not see the wife of deceased Rajendra Sen there.

- 18.** PW-10, Devkaran Sen, have stated in his evidence that at the time of incident when he was passing near the house of deceased, he saw altercation between accused persons on the issue of selling illegal liquor. At that time, the juvenile in conflict with law gave a knife blow on the neck of the deceased by which he fell down on the ground and after seeing him, the accused persons fled away from the spot. The deceased was immediately taken to the hospital by his Car, but he was declared brought dead in the hospital. He also stated about the memorandum statement of the accuse persons and seizure of knife from the juvenile in conflict with law and other seizures in the case. In cross examination, he has stated that in his police statement Ex. D/1 he disclosed that all the accused persons caught hold the deceased and if it is not there in his police statement, he could not tell the reason. He further states that he has not disclosed in his 164 CrPC statement Ex.P/20 that Chovaram was caught hold the deceased. He admits that he has not intervened in the altercation. Except juvenile in conflict with law, none of the accused persons were having any weapon with them. He admits

that except neck injury, no other injuries were found in the body of deceased.

- 19.** PW-11, Smt. Indrani Sen, the wife of the deceased, have also stated that there was altercation took place between the accused persons and her husband on 09.01.2019 at about 7-7:30 PM. At that time, the accused persons caught her husband and she intervened in between them, but due to altercation and scuffling she fell down on the ground. At that time the juvenile in conflict with law have assaulted her husband by a knife. Her brother in law Devkaran also came there and they took her husband to the hospital where he was declared brought dead. In cross examination she disclosed to the police that the accused persons have caught hold her husband, but she did not disclose who are the accused persons who caught hold her husband. Although she denied that knife was taken by her husband and he tried to assault the accused persons in the altercation, but she stated that knife blow was given by the juvenile in conflict with law. She admits that she disclosed in her 164 CrPC statement Ex.P/23 that some persons were abusing her husband near kitchen garden on which her husband tried to stop them from abusing.
- 20.** The involvement of the appellants in the altercation or in the offence in question could not be rebutted by the defence in the cross examination of these witnesses and she also remain firmed in saying that the accused persons are responsible for the injuries caused to her husband by knife.

21. PW-4, Govind Dhruv, is the witness of memorandum and seizure from the juvenile in conflict with law. He is also the witness of seizure of T-Shirt from the appellant Bheem Nishad and proved the same.
22. PW-12, Paurush Purre, the Inspector of Police and witness of investigation, has proved whatever he has done during the investigation and remain firm in material point of investigation. The seized knife, T-Shirt of appellant Bheem Nishad, T-Shirt of juvenile in conflict with law, shirt of the deceased and also the bloodstained soil which were sent for FSL examination were found with human blood which is proved by the FSL report Ex.P/41 which corroborates the evidence of eye-witness and also the memorandum and seizure witnesses. Therefore, the involvement of the appellants in crime in question has been proved by the prosecution.

**CRA No.506 of 2021.**

23. In the said Criminal Case No.26/2019 tried before the Children's Court against the juvenile in conflict with law, the aforesaid witnesses have been examined as PW-1, Shekhar Sahu, PW-6, Indrani Sen and PW-7, Devkaran Sen who proved the involvement of juvenile in conflict with law in the offence in question and the injuries inflicted upon the deceased by said juvenile. They have stated in their evidence that during altercation between them, the juvenile in conflict with law took out a knife which he was having in his pocket and gave a blow by which the

deceased received injuries on his neck and thereafter the accused persons fled away from the spot. The deceased was being taken to hospital where he was declared brought dead. The doctor who has conducted the postmortem of deadbody of deceased has been before the Children's Court as PW-4, Dr. Keerti Kumar Singh, who proved the injuries found on the body of the deceased and opined in the same line that cause of death is excessive hemorrhage due to cut injury of common carotid artery, internal and external carotid artery and internal jugular vein and mode of death is cerebral asphyxia due to cardio respiratory failure and it is homicidal in nature.

- 24.** The knife seized from the juvenile in conflict with law was sent for its query report to the doctor who gave his query report Ex.P/2 by which he opined that death may be possible with the above mentioned weapon knife and the knife was sent for FSL examination for its chemical examination for confirmation of human blood and its blood group. In the FSL report Ex.P/36, human blood was found on the knife which connects the juvenile in conflict with law in the offence in question. The seizure of knife from the juvenile has been proved by PW-7, Devkaran Sen and PW-8 Govind Dhruv. The defence could not extract any thing in their cross examination to rebut the evidence that knife has not been seized from his possession. Therefore, involvement of the juvenile in conflict with law in the offence in question has also been proved by the prosecution.

25. The next question for consideration is whether the case of appellants including juvenile in conflict with law are covered in exception 4 to Section 300 IPC viz-a-viz culpable homicide not amounting to murder and their conviction can be converted to Section 304 Part-I or Part-II IPC as submitted by the counsel for the appellants?
26. The Hon'ble Supreme Court in the matter of ***Sukhbir Singh v. State of Haryana, reported in 2002 (3) SCC 327*** observed as under:-
- “21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”
27. The Hon'ble Supreme Court in the matter of ***Gurmukh Singh v. State of Haryana, 2009 (15) SCC 635***, laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen for its special perspective.

The relevant factors are as under :

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.”



28. Likewise, in the matter of ***State Vs. Sanjeev Nanda, 2012 (8) SCC 450***, the Hon'ble Supreme Court has held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.
29. Further, the Hon'ble Supreme Court in the matter of ***Arjun Vs. State of Chhattisgarh, 2017 (3) SCC 247***, has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-
- “20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in *Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348]*, it has been explained as under :(SCC p. 220, para 7)
- “7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a

weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

30. Further in ***Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130]***, in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under :

“ .... '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

31. In the matter of Arjun (supra), the Hon'ble Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to cause murder and bodily

injury, then same would be a case of Section 304 Part-II of the IPC.

32. Further, the Supreme Court in the matter of ***Rambir Vs. State (NCT of Delhi), 2019 (6) SCC 122***, has laid down four ingredients to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (i) There must be a sudden fight;
- (ii) There was no premeditation;
- (iii) the act was committed in a heat of passion; and
- (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”

33. Reverting to the facts of present case, it is quite vivid that on the date of incident, there was altercation between the accused persons and the deceased and in between that a knife blow was given by the juvenile in conflict with law on the neck of the deceased and fled away from the place of incident. So far as the assault is concerned, had the appellants intended to kill the deceased, they would have made repeated blow or would have armed with any other deadly weapon. As per the evidence of witnesses PW-5, PW-10 and PW-11, there was an altercation between the appellants and the deceased. From their evidence, it also reflects that dispute between them was continued since 5-6 years with respect to illegal selling of liquor. The juvenile in conflict with law made only one blow on the neck of the deceased and not acted in a cruel or unusual manner. There was no

premeditation on the part of the appellants to cause death of deceased Rajendra Sen and because of the previous dispute, the altercation took place. As the appellants were not acted in a cruel or unusual manner, the appellants did not have any intention to cause death of the deceased, but by causing such injury, they must have had the knowledge that such injury inflicted by them would likely to cause death of the deceased and as such, their case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellants herein completely satisfies the four necessary ingredients of Exception 4 to Section 300 IPC i.e. (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellants had not taken any undue advantage or acted in a cruel or unusual manner.

- 34.** Considering the law laid down by Hon'ble the Supreme Court in the aforesaid cases and also considering the evidence of eyewitness PW-5, PW-10 and PW-11 (in CRA No.1471 of 2019) and PW-1, PW-6 and PW-7 (in CRA No.506 of 2021), and taking into consideration the fact that the appellants Chovaram, Laxman Dhruv and Bheem Nishad (in CRA No.1471 of 2019) are in jail since 10.01.2019, ends of justice would meet if conviction of all the appellants under Section 302/34 IPC is altered/converted to one under Section 304 Part-I of the IPC.
- 35.** Accordingly, both the appeals are partly allowed and the conviction of the appellants under Section 302 IPC is set aside,

however, they are convicted under Section 304 Part-I of the IPC. The appellants Chovaram, Laxman Dhruv and Bheem Nishad (CRA No.1471 of 2019) are sentenced to undergo R.I. for 6 years with fine of Rs. 100/- to each of the appellants. In default of payment of fine, further R.I. for one month. The appellants Chovaram, Laxman Dhruv and Bheem Nishad are reported to be in jail since 10.01.2019, they are entitled for set off of their undergone period.

36. The Juvenile in conflict with law (in CRA No.506 of 2021) is also sentenced for RI for six years with fine of Rs.1000/-. In default of payment of fine, further R.I. for one month. The juvenile in conflict with law was remained in observation home from 10.01.2019. He was granted bail by this court vide order dated 18.01.2022 after considering the provisions of Sections 2(33) and 18(1) of the Act of 2015 and the judgment passed by the Supreme Court in case of ***Shilpa Mittal Vs. State of NCT of Delhi, 2020 (2) SCC 787***, observing as under:

“Considered the submissions. Perused the evidence present in the record of the trial court. In the case of Shilpa Mittal Vs. State of NCT of Delhi and another, reported in AIR 2020 SC 405, it has been held that emphasis has to be given to the word heinous offence which is mentioned in Section 18(1) of the Act, 2015. Section 2(33) of the Act, 2015 defines the heinous offence according to which the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more, the Supreme Court has made observation in paragraph 30 of the judgment in Silpa Mittal (Supra) as follows :

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one

juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'.

37. Since the juvenile in conflict with law is presently on bail, he be sent to safety home/jail to serve his remaining part of sentence as provided under Section 19(3) of the Act of 2015.
38. A copy of this judgment may also be forwarded to the guardian of the juvenile in conflict with law/appellant (in CRA No.506 of 2021) informing that they are at liberty to assail the present judgment passed by this court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
39. Let a copy of this judgment and the original records be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-  
(Ravindra Kumar Agrawal)  
**Judge**

Sd/-  
(Ramesh Sinha)  
**Chief Justice**