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CRA-9269-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 9269 of 2023

KISHAN

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Manohar Singh Chouhan- Advocate for the appellant.

Shri Shrey Raj Saxena, Dy. AG assisted by Shri H.S. Rathore, GA
appearing on behalf of Advocate General.

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Heard on :19.06.2025

Delivered On: 25.06.2025

JUDGMENT

Per. Justice Prem Narayan Singh:

1. At the very outset, learned counsel for the appellant prays for withdrawal of the application i.e. I.A. NO.8604/2025 which is an application for suspension of jail sentence, looking to the custody period and allegations against the appellant and prays for hearing of this appeal finally.

2. Prayer is allowed and the application is dismissed as withdrawn and the appeal is heard finally.

3. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment of conviction and sentence dated



08.12.2022, passed by learned Second Additional Sessions Judge, Bagli, District Dewas in Special Criminal Case No.84/2019, whereby the appellant has been convicted for the offence punishable under Section 302 of IPC, 1860 sentenced to undergo Life imprisonment and Rs.1000/- and usual default stipulations.

4. As per prosecution story, the son of the deceased and the appellant namely Karan Singh/complainant made a compliant/Merg Intimation at Police Chouki Kamlapur on 25.5.2019 by submitting that on 24.05.2019 at about 08:00PM, his parents were at home. His father/the appellant was demanding money from his mother. When her mother refused to pay amount to appellant, the appellant assaulted his wife with kicks and fists. When he tried to intervene, the appellant has taken mother of complainant in front of house and assaulted her there. In this way, one Bhoonsingh has also tried to intervene, the appellant thrown a brick on him, due to which, Bhoonsingh fled away. Thereafter, the appellant locked the complainant/son inside the room. At about 04:00AM in the morning, Mousi of Karan came there, she opened the door then Karan came out then they both seen that his mother was lying dead on the floor of Osari of home. She was having injury on her head. His father has committed her murder in the night. Based on the said complaint, the police registered Merg no.27/2019 and later on registered the crime.

5. The police after following the due procedure of law, reached the spot, prepared the spot map; collected the blood stained and normal soil,



blood stained cloths; recorded the statements of the witnesses; arrested the accused person and on his instance seized the articles used in the crime. After due investigation, charge sheet was filed.

6. After filing of the charge-sheet, the matter was committed before the learned Sessions Court by the trial Court. Thereafter, vide order dated 14.11.2019, charges were framed under Section 342 and 302 of IPC.

7. The prosecution on its behalf has examined as many as 09 witnesses namely Karan (PW-1), Bhoon Singh (PW-2), Anubai (PW-3), Bhaav Singh (PW-4), Lokesh Singh (PW-5), Shravan (PW-6), Sharda (PW-7), Dr. Rizwaan Qureshi (PW-8) & Ku. Avinash Patel (PW-9). No witness has been adduced in defence by the appellant.

8. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 08.12.2022 and finally concluded the case and convicted and sentenced the appellant for commission of the said offence as mentioned in para -1 as above.

9. Learned counsel for the appellant submits that the learned trial Court has committed grave error of law in not considering the evidence available on record on its right perspective. It is further submitted that the learned trial Court has not considered that material omissions and contradictions in the statements of the witnesses and convicted the appellant wrongly. It is also submitted that there is no eye-witness in the case so that the case of the prosecution may be found proved. Learned counsel for the appellant further submitted that the statements of the son of appellant and



deceased is only with regard to fight between his parents, but he has not made any specific allegations against the appellant. It is submitted that all other eye-witnesses have turned hostile and have not supported the case of the prosecution. Counsel for the appellant submits that the post mortem report has only shown that there is a single injury caused on the head of the deceased. It is further submitted that if the case of the prosecution is accepted as it is, the offence of the appellant would not travel more than the offence under Section 304-II of the IPC whereas the learned trial Court has convicted the appellant wrongly under Section 302 of IPC. Under the aforesaid submissions, counsel for the appellant prays for setting aside the impugned judgment of conviction and prays for acquittal of the appellant.

10. Alternatively, it is argued that incident had taken place all of a sudden because of quarrel between the family members in the house and therefore there was no intention of the appellant to kill the deceased, hence the offence at the most would fall under section 304(II) IPC. Appellant has been languishing in jail for last more than 06 years, hence, the conviction of appellant be altered from section 302 IPC to section 304(II) IPC.

11. Per contra, counsel for the State has opposed the prayer by submitting that the learned trial Court has convicted the appellant rightly after considering the evidence available on record. It is further submitted that the injury so caused by the appellant by brick on the head of the deceased is well supported by the medical testimony and by the statements of the witnesses specially PW-1. Further, it is rightly evinced that there was a scuffle between the appellant and deceased in the evening, the appellant



locked his son in the room and when he came out, her mother was found lying dead on the floor in the house. Therefore, in such a heinous crime, the appellant does not deserve any leniency and prays for dismissal of the appeal.

12. We have heard the counsel for the parties and perused the record.

13. From bare perusal of Ex.P/1 (FIR) as well as Merg Report Ex.P/2, it is clear that the complainant Karan (PW-1) who is son of the deceased and the appellant, has intimated that at about 08:00PM on the date of incident, her mother and father were at home, his father was demanding money from his mother and mother was denying to pay him money. Due to this altercation, the accused has beaten his mother by kicks and fists, the complainant intervened, but his father has not stopped the quarrel and further taking his mother into Osari and beaten her. In the meantime, Bhoon Singh, uncle of the appellant came and intervened the same, but the appellant has also assaulted on him by throwing brick. Further, his father has locked him in a room and in the next morning at about 04:00AM, Anubai (maternal aunt) of the complainant opened the door and they both seen that the deceased was lying dead. On the basis of that complainant, FIR was registered against the appellant. However, in the court statement PW-1 Karan who who is son of the deceased and the appellant both, has turned hostile to some extent in his examination-in-chief. He has clearly stated that he does not know as to how his mother has expired. However, he has admitted his signatures on Ex.P/1 (FIR), Ex.P/2 (Merg report), Ex.P/3 (spot map), Ex.P/4 (body supurdagi) and Ex.P/5 (blood samples).



14. This witness has also narrated the same story in his statement recorded under Section 164 of Cr.P.C before the Magistrate. Similarly, Bhoon Singh (PW-2) has also not supported the case of the prosecution and turned hostile. However, he has stated that in that unfortunate night, son of the appellant (complainant) has called him that his parents are fighting with each other. However, he has stated that he had gone to his home, he has stopped them and returned to his home, but he has seen a brick in the hand of appellant and the appellant was caught hold the hairs of deceased. However, in his examination-in-chief, he has stated that he does not know as to how the deceased has expired. Similarly, PW-3 Anubai has also not supported the case of the prosecution and turned hostile.

15. In this case, the other witnesses Bhaav Singh (PW-4) who is a Choukidar of the village, Sharwan (PW-6) son of the appellant and Sharda (PW-7) daughter of the appellant have also not supported the case of the prosecution and have turned hostile.

16. So far as the statements of Dr. Rizwan Quresh (PW-8) is concerned, he has stated that on 25.05.2019, he was posted at CHC, Bagli as Medical Officer. Constable 668 Mukesh Rawat reached on the mortuary for postmortem of the deceased and as per the post mortem report, he has found a 4x2 cm injury on parietal region of the deceased and 1.5x1cm scratch mark below the right eye. He has found subdural hemorrhage of 5x3cm in internal examination of the head. The reason of death is opined as 'died due to heavy blood oozing due to head injury and further found that the said injury on the head is caused by "hard and blunt" object.



17. Now, the question remains as on the basis of aforesaid testimonies of the prosecution witnesses, the offence against the appellant is established or not. Certainly, all the witnesses are family members of the appellant including the complainant. Nevertheless, the statement of Bhoon Singh (PW-2) is relevant to some extent that when he reached on the spot, the appellant was having brick in his hand and he was holding the hairs of the deceased. The version of this statement was like that "मैं किशन के घर गया तो मैंने उन दोनों को छुड़ा दिया था और वापस अपने घर आ गया था। किशन के हाथ में ईंट थी और अनीता के बाल पकड़ रहे थे।" . The statement of Dr. Rizwan Quresh (PW-8) is also very significant in this regard wherein he has clearly stated that the deceased succumbed to heavy blood loss and due to the head injury caused by heard and blunt object. That apart, the FIR is also relevant piece of evidence as per Section 8 of the Indian Evidence Act. Bhaav Singh (PW-4) has also not supported the case of the prosecution and turned hostile, but he has stated that the son of the appellant (complainant) has made a complaint to him that his father has killed his mother. This statement is also relevant as it is an instant complaint by the complainant to him. In view of aforesaid scenario, the death of the deceased had occurred in the house of appellant is clearly established. Hence, it is the duty of the appellant to explain about.

18. On this aspect, the Hon'ble Apex Court in the case of **Bable @ Gurdeep Singh vs. State of Chattisgarh [(2012) 11 SC 181]**, wherein the Hon'ble Apex Court has held that if the writer of the FIR turned hostile and other evidence proved the case, the contents of the FIR cannot be discarded.

19. In this case, the last seen theory will also apply. As per the records available, the death was caused at night and the accused was only who was



sharing the room/house with the deceased and the deceased was found lying dead in wee hours. The accused could not give any plausible explanation for the death of his wife. Though, he has stated that he was in the forest for cutting woods at the time of incident and do not know who has killed his wife. But, these explanation is not sufficient to prove his innocence.

20. In addition to that, the brick (Article "A/3") was seized from the appellant on his instigation and it was examined, as per Ex.P/20 (FSL) report. It is revealed that the brick used in the crime by the appellant was having human blood. Since, it is not explained by the accused that how the death of the deceased is occurred in such circumstanced, the accused would be liable for the said offence. On this aspect, the law laid down by Hon'ble Apex Court in the case of **John Pandian vs. State** [(2010) 14 SCC 129] is significant to be considered wherein the Hon'ble Apex Court has held that presence of human blood on the weapon is required to be clarified by the appellant and if the appellant is failed to do so, such failure would entail proving of the prosecution story. Similar view has also been taken by Hon'ble Apex Court in the case of **Balwan Singh vs. State of Chhatisgarh and Others** [(2019) 7 SCC 781].

21. As per the statement of Bhoon Singh (PW-2), when the reached on the spot, he appellant was having a brick in his hand and he was assaulting the deceased. This statement has not been specifically challenged in is cross-examination. Further, the appellant has also tried to assault Bhoon Singh (PW-2) by throwing brick on him also. Initially, this statement has also been narrated under Section 164 of Cr.P.C. by both i.e. by PW-1



Karan/complainant and PW-2 Bhoon Singh. Further, as per the opinion of Dr. Rizwan Qureshi (PW-8), the head injury has been received by "heard and blunt" object and therefore, the brick injury has clearly been caused by the appellant and thereafter, the death is occurred due to the said injury. Thus, the findings of learned trial Court regarding causing injury by brick by the appellant is found proved by the circumstances, statements of theses witnesses which is corroborated by medical report.

22. Now, the question remains as to whether the appellant has caused injury by brick with intention or knowledge to cause her death and the offence committed by the appellant shall be under the purview of Section 302 of IPC or section 304-II of IPC.

23. Bare perusal of the aforesaid FIR (Ex.P/1) lodged by son of the deceased and appellant, Ex.P/8 and Court Statement of PW-2, manifest that there was a sudden scuffle between the appellant and the deceased due to non-fulfilment of demand of the appellant by the deceased and in the heated spur of moment, the incident had happened. The appellant locked the complainant in a room, he tried to assault PW-2 Bhoon Singh by throwing brick on him as well and thereafter, the incident had happened in home where, prima facie, there is no eye-witness. Thus, in lack of other eye-witnesses, the Court has only to decide this question based on the narration of the statements of witnesses mainly PW-1 and PW-2. As per their statements, the incident had admittedly happened all of a sudden and in a furious moment. Brick has been pelted on head of deceased with full force in heated moment. *Thus, in committing so, the appellant was certainly having*



the knowledge of death, but not the intention. Therefore, the offence committed by the appellant shall be under the purview of Section 304-II of IPC and not under Section 302 of IPC.

24. It is also revealed that the marriage between the appellant and deceased was solemnized way back and the age of complainant/Karan is 17 years at the time of incident. There are two sons and one daughter who have been produced as witnesses before the Court and none of them have stated about predetermination or any such motive for this obnoxious act. Under these circumstances, the offence of committing culpable homicide amounts to murder against the appellant cannot be envisaged.

25. In the case of **Hussainbhai Asgarali Lokhandwala vs. State of Gujarat** [AIR 2024 SC 3832], the Hon'ble Apex Court has held as under:-

21. On a cumulative analysis of the evidence of the above prosecution witnesses, the picture which emerges is that there was a matrimonial dispute between Oneja and her husband Abbas. Despite that they had come home from Ahmedabad on 07.11.2000 for attending the marriage of Merriam. However, because of the strained relationship, Oneja did not stay with Abbasbhai in his residence. Instead, she alongwith her daughter Natasha decided to stay in her father's house which was in the close vicinity of the residence of her husband Abbas. On that fateful day, despite receiving calls from her husband, Oneja refused to come to his house. A maid was sent to bring back the keys of the cupboard of the Ahmedabad house but Oneja refused to handover the keys to the maid. It was then that Abbasbhai went to the residence of his father-in-law and demanded from his wife that the keys of the cupboard should be handed over to him. At this, pandemonium broke out resulting in a hue and cry as Oneja's father Asgarali accused Abbasbhai of harassing his daughter. When aunt Arvaben went to the residence of Asgarali to diffuse the



situation, she was pushed back by Asgarali as a result of which she fell down and suffered injuries. Idrishbhai went to the place of occurrence followed by PW-5. It appears that the very sight of Idrishbhai flared up the situation and an enraged Asgarali caught hold of his (Idrishbhai's) arms from behind, calling upon his son Hussain to finish him off. It has come on record that while asking his son to finish off Idrishbhai, Asgarali had said that these people (referring to Idrishbhai and his son Abbasbhai) had caused lot of distress to them. Therefore, he should be finished off. It was at that stage that Hussainbhai Asgarali Lokhandwala, son of Asgarali, brought a kitchen knife from inside the house and fatally stabbed Idrishbhai. When PW-5 sought to intervene, he was also stabbed in the stomach by Hussainbhai as he had stabbed Idrishbhai. That apart, there also appears to be pelting of stones aimed at the glass door of the house of Asgarali shattering the glass pane besides scuffle between the parties.

22. The trial court had convicted Asgarali and Hussainbhai under Section 304 Part I IPC as well as under Sections 323 and 324 thereof. On appeal, the High Court by the impugned judgment and order altered the conviction of both Asgarali and Hussainbhai from one under Section 304 Part I IPC to one under Section 304 Part II IPC. While the sentence of Asgarali was modified to the period of incarceration already undergone by him, that of Hussainbhai was modified to five years.

23. In so far Hussainbhai is concerned, what is discernible from the record is that he was a young man of 18 years of age at the time of the incident studying in Class 12. There was a history of matrimonial dispute between his sister and brother-in-law Abbasbhai. It is natural for a young man to be emotionally upset to see his sister allegedly ill-treated by her in-laws and when the deceased and Abbasbhai came to their residence leading to the ruckus, it is not difficult to visualize the state of mind of Hussainbhai as well of his father Asgarali. The tension was building up since morning as Abbasbhai was first insisting that his wife Oneja should come to his house and then insisting on the cupboard



key of the Ahmedabad house to be handed over to him. It is important to note that the incident had taken place inside the residence of Asgarali (and then spilling over onto the street in front) and not in the residence of Idrishbhai. It is quite possible that as a young man, Hussainbhai was overcome by emotion which led him to physically attack the deceased and his son (brother-in-law). The fact that the incident was not premeditated is buttressed by the happening thereof inside the residence of Asgarali. Besides there was only a stab wound each on the stomach of the deceased and PW-5. The knife was not directed by Hussainbhai at the upper portion of the bodies of the deceased and PW-5.

24. We are in agreement with the view taken by the High Court that the entire incident had occurred in the heat of the moment and that neither party could control their anger which ultimately resulted into the fateful incident.

25. That being the position and since the High Court had brought down the charge from Section 304 Part I IPC to Section 304 II IPC, we feel that it would be in the interest of justice if the sentence of the appellant Hussainbhai Asgarali Lokhandwala is further modified to the period of incarceration already undergone by him while maintaining the conviction.

26. In the aforesaid case of **Hussainbhai (Supra)**, the Hon'ble Apex Court has converted the conviction from the offence under Section 302 of IPC to Section 304-II of IPC.

27. On the similar aspect, the judgment of Apex Court in the matter of **Dattatraya Vs. State of Maharashtra**, Cr.Appeal No. 666/2012 decided on 1.2.2024 and **K. Ravi Kumar Vs. State of Karnataka**, (2015) 2 SCC 638. The important excerpt of the case of **Dattatraya (supra)** is condign to quote here as under:-

20. From every available evidence, which was placed by the



prosecution, it is a case where a sudden fight took place between the husband and wife. The deceased at that time was carrying a pregnancy of nine months and it was the act of pouring kerosene on the deceased that resulted in the fire and the subsequent burn injuries and the ultimate death of the deceased. In our considered opinion, this act at the hands of the appellant will be covered under the fourth exception given under Section 300 of the IPC, i.e., “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”.

21. The act of the appellant is not premeditated, but is a result of sudden fight and quarrel in the heat of passion. Therefore, we convert the findings of Section 302 to that of 304 Part-II, as we are of the opinion that though the appellant had knowledge that such an act can result in the death of the deceased, but there was no intention to kill the deceased. Therefore, this is an offence which would come under Part-II not under Part-I of Section 304 of the IPC.

On almost similar facts, (as are present in the case at hand), this Court had converted the findings of Section 302 to that of Section 304 Part II IPC. The case of which reference is being made here is *Kalu Ram v. State of Rajasthan* (2000) 10 SCC

324. The appellant who had been convicted under Section 302 IPC for causing death of his wife by pouring kerosene on her and then setting her on fire was convicted by the Trial Court under Section 302, which was upheld by the High Court. The facts of the case are as follows :-

In the above case, the appellant who in an inebriated state was pressurizing his wife to part with some ornaments so that he could buy some more liquor. On her refusal he poured kerosene on her and set her on fire by lighting a matchstick. But then he also tried to pour water on her to save her. This Court was thus of the opinion that :

“7....Very probably he would not have anticipated that the act done by him would have escalated to such a



proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder.

8. We therefore alter the conviction from Section 302 IPC to Section 304 Part II IPC..." The facts of the present case, as we have already discussed above, by and large reflect the same situation, nature of crime as well as the act of the accused and the consequences of his action. We are inclined to accept the arguments raised by the learned senior counsel for the appellant, Mr. Sudhanshu S. Choudhari that under the present circumstances it would indeed be a case of culpable homicide not amounting to murder as given in Section 304 Part II in as much as, though the accused had knowledge of the consequences of the act he was committing, yet there was no intention to cause death.

The appeal is partly allowed. We convert the findings of Section 302 to that of Section 304 Part II of IPC and sentence the accused to 10 years of R.I. To this extent the findings given by the trial court and High Court will stand modified. We have also been informed that the appellant has already undergone incarceration for more than 10 years. Therefore, he shall be released forthwith from the jail, unless he is required in some other offence."

28. Similarly in the case of **K. Ravi Kumar (supra)**, there was a fight between husband and wife and husband allegedly stabbed her and then poured kerosene leading to her death it was held that incident occurred due to heated exchange between them and therefore in the facts of that case, the Apex Court converted the conviction from sec. 302 IPC to sec.304(II) IPC.

29. In upshot of the aforesaid propositions of law, it would be held that



culpable homicide is not amounting to murder if it is committed without any premeditation, on a spur of moment, in sudden fight and in heat of passion upon a frivolous matters and without an offender's having taken undue advantage or acted in a cruel, ghostly or unusual manner.

30. In view of the aforesaid law laid down in the case of **Hussainbhai (Supra)**, **Dattatraya (supra)** and **K. Ravi Kumar (supra)**, factum of single major injury found on the body of the deceased, statements of the witnesses as well as the medical evidence and looking to the fact that incident had happened in heated spur of moment, we found that the findings of the learned trial Court regarding conviction of appellant under Section 302 of IPC are perverse and and it should be converted into Section 304-II of IPC.

31. So far as the sentence is concerned, there is no pre-conviction as not adverted by learned public prosecutor, the incident had happened in a heated spur of moment, hence, for the offence under section 304-II of IPC 07 years R.I and fine of Rs.5000/- would be sufficient.

32. Consequently, the appeal is partly allowed. The conviction and sentence of the appellant is modified to the extent that he is convicted under Section 304-II of IPC and sentenced for 07 years R.I. with fine of Rs.5000/- In case of failure to deposit the enhanced fine amount, the appellant shall further undergo 06 months S.I.

33. The judgment of the learned trial Court regarding disposal of the seized property stands affirmed. The appellant shall be released forthwith after completion of the aforesaid period of custody if not required in jail in any other case.



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34. A copy of this judgment be sent to the learned trial Court concerned for information.

Certified copy, as per rules.

(VIJAY KUMAR SHUKLA)
JUDGE

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(PREM NARAYAN SINGH)
JUDGE