



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 163/1997

Devi Singh S/o Khim Singh Rawat R/o Titri, Police Station Bhim,
District Rajsamand.

----Appellant

Versus

State of Rajasthan

----Respondent

For Appellant(s) : Mr. Manish Shishodia, Sr. Advocate
assailant by Mr. Harshvardhan Singh
Rathore

For Respondent(s) : Mr. R.S. Bhati, PP

**HON'BLE MR. JUSTICE MANOJ KUMAR GARG
HON'BLE MR. JUSTICE RAVI CHIRANIA**

Judgment

REPORTABLE

Order reserved on 09/09/2025

Date of Pronouncement: 11/09/2025

BY THE COURT: (PER HON'BLE MR. MANOJ KUMAR GARG, J)

Instant criminal appeal has been filed under Section 374(2) Cr.P.C. against judgment dated 20.01.1997 passed by learned District & Sessions Judge, Rajsamand, in Sessions Case No.101/1994 by which the learned Trial Court acquitted the accused Devi Singh from offence under Sections 109 & 120-B of IPC and convicted him for offence under Section 302 IPC and sentenced him to undergo life imprisonment along with a fine of Rs.5,000/- and in default of payment of fine to undergo six months' SI.



Vide order dated 01.05.2023¹ passed by a co-ordinate Bench of this Court, the appeal in respect of appellant No.2- Maan Singh has been dismissed as abated.

Brief facts necessary to be noted for deciding the controversy are that on 21.04.1994 at about 01:15 AM, complainant- Smt. Radha (PW/6), orally informed the police at Police Station Bhim that on the same day at around 8:00 PM, her husband- Babu Singh, and his nephew- Narayan Singh, were consuming liquor at their residence. During this time, Punam Singh, son of the deceased, was dancing to music. An altercation ensued between Babu Singh and the accused persons. As a result of this altercation, both accused individuals armed themselves with lathis and assaulted Babu Singh. The complainant, along with her daughter-in-law- Smt. Baby, and Narayan Singh, intervened in an effort to rescue Babu Singh. During this intervention, they also sustained injuries. The accused persons continued their assault on Babu Singh, dragged him to their house, and inflicted further injuries. Following this, the complainant raised an alarm, attracting the attention of Daau Singh, Mohan Lal, Madhu Singh, and Kesar Singh, who arrived at the complainant's residence. Subsequently, all of them proceeded together to the house of the accused-appellants. Upon arrival, they found that Babu Singh had succumbed to his injuries at the accused's residence. It is pertinent to note that there was an ongoing land dispute between co-accused Amar Singh and the complainant's brother-in-law (Dever), Ram Singh.

On the said report, Police registered the FIR and started investigation. During investigation, Police arrested the accused





persons. On completion of investigation, police filed challan against the accused persons.

Thereafter, learned Trial Court framed, read over and explained the charges for the offence under Sections 109, 120-B & 302 IPC to accused appellants. They denied the charge and sought trial.

During the course of trial, the prosecution examined as many as 17 witnesses and also got exhibited relevant documents in support of its case.

The accused appellant was examined under Section 313 Cr.P.C. In defence, accused Maan Singh got himself examined as DW/1.

Learned trial Court, after hearing the arguments from both the sides, taking into consideration and appreciating the documentary evidence and the statements of witnesses, vide judgment dated 20.01.1997 acquitted the present accused-appellants from offences under Sections 109 & 120-B IPC and co-accused persons, viz., Amar Singh & Mohan Singh from the offences under Sections 109, 120-B & 302 IPC, however, convicted and sentenced the accused-appellants for the offence under Section 302 IPC. Hence, this criminal appeal.

At the outset, learned counsel representing the accused appellant Devi Singh submits that, initially, six persons were named in the FIR. However, following investigation, the police filed a charge sheet against only four individuals, resulting in the acquittal of Amar Singh and Mohan Singh by the trial court. Additionally, the main accused, appellant No. 2 – Maan Singh, has since passed away. Currently, the appeal is confined solely to the





case of appellant- Devi Singh. Counsel further contends that the incident occurred in the year 1994. According to the statement of the deceased's son, PW/8 – Punam Singh, he explicitly mentioned that Devi Singh inflicted injuries on the deceased using the reverse side of an axe. PW/8 also stated that Maan Singh was armed with an axe, while Devi Singh carried a stick (lathi). However, the eye-witness PW/5 – Smt. Baby, did not specify the name of Devi Singh in her statement. She clearly stated that six individuals, namely Mangal Singh, Gattu, Amar Singh, Maan Singh, Bhanwari, and Khum Singh came to their residence and assaulted the deceased, Babu Singh, with lathis. PW/6 – Radha, wife of the deceased, also testified that six persons assaulted Babu Singh with lathis. However, during cross-examination, she clarified that Maan Singh inflicted injuries with an axe, and co-accused Mohan Singh also caused injuries to the deceased. Counsel emphasizes that there is specific evidence implicating Maan Singh, who has already died, and Mohan Singh, who has been acquitted by the trial court. He argues that if Devi Singh inflicted injuries with the reverse side of an axe, such an act suggests a lack of intent to cause fatal injuries. Furthermore, during the scuffle, Maan Singh sustained three injuries, as corroborated by the testimony of PW/15 – Dr. Ashok Kumar Gupta. This indicates that both parties sustained injuries during the altercation. Therefore, counsel submits that appellant- Devi Singh did not possess premeditated intent to cause harm to the deceased. The assault was spontaneous and occurred in a moment of sudden provocation. He further contends that Devi Singh had no motive or intention to cause death, and thus, cannot be held





liable under Section 302 of the Indian Penal Code. Instead, he urges that Devi Singh be convicted under Section 304 Part II of the IPC. Additionally, it is pointed out that, since the incident took place in 1994 and Devi Singh has already served approximately five years of imprisonment, the court may consider reducing the sentence to the period already undergone. Counsel has relied upon the judgment of the Division Bench of this High Court at Jaipur Bench in the case of **Banwari Lal & Ors. Vs. State of Rajasthan [(2025) 1 CriLR 170]**.

Per contra, Learned Public Prosecutor has vehemently opposed the prayer made by the counsel for the accused Devi Singh and submitted that the deceased received as many as five injuries and cause of death is head injury. Thus, conviction under Section 302 IPC made by the trial Court is absolutely justifiable. Thus craves dismissal of the appeal.

We have considered the submissions of the counsel for the parties made at bar and perused the impugned judgment as well as record of the case.

The First Information Report lodged by the complainant-Radha (PW/6), contains a detailed and specific account of the incident. According to the statement of eye-witness PW/5 – Smt. Baby, did not specify the name of Devi Singh in her statement. PW/6 – Radha, wife of the deceased, also testified that six persons assaulted Babu Singh with lathis. However, during cross-examination, she clarified that Maan Singh inflicted injuries with an axe, and co-accused Mohan Singh also caused injuries to the deceased. Initially, six accused persons were specifically named in the FIR but Police filed charge-sheet against only four accused





persons, out of which, on the same set of evidence, the trial Court acquitted Amar Singh & Mohan Singh and only convicted two accused. Out of the two convicted accused persons, accused Maan Singh has already passed away. PW/8-Punam Singh mentioned that Devi Singh inflicted injury to the deceased with reverse side of the axe. This shows that if accused Devi Singh used reverse side of the axe then no intention of the accused to give fatal injury to the deceased is found. Therefore, the crucial question however is, whether he had the intention to cause death of deceased- Babu Singh or had the intention to cause such bodily injury which was likely to cause death or whether he had the conscious knowledge that it was imminently dangerous that in all probability, it would cause death, or such bodily injury as is likely to cause death and committed the act without any excuse for incurring the risk of causing death or such injury?

At the outset, it would apposite to deal with the relevant legal provisions, which reads as under:-

"300. Murder--Except in the case hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

Secondly--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

Thirdly--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

Fourthly--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.





Exception 1.--When culpable homicide is not murder.-- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

.....X.....XX.....XX..... X.....

.....X.....XX.....XX..... X.....

.....X.....XX.....XX..... X.....

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 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.

.....

304, Part II. Punishment for culpable homicide not amounting to murder – Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge that it is likely to cause death; but without any intention to cause death or to cause such bodily injury as is likely to cause death."

The ingredients constituting an offence under Section 304

Part II IPC are as follows:

- (i) he must commit culpable homicide not amounting to murder;
- (ii) the act must be done with the knowledge that it is likely to cause death;
- (iii) but such act is done without any intention to cause death or to cause such bodily injury as is likely to cause death.

Therefore, under the provisions of Section 304 Part II of the IPC, an individual may be held liable for culpable homicide not amounting to murder when the act is committed with the knowledge that it is likely to result in death, yet without any





intention to cause death or to inflict such bodily injury as is likely to cause death. The essential criterion for establishing an offence under this section is thus twofold: firstly, the presence of knowledge on the part of the accused that their conduct is likely to cause death or such bodily injury as could lead to death; and secondly, the absence of any intention to cause death. Thus, core element of Section 304 Part II IPC is the mental state of the accused, specifically, the conscious awareness of the potential consequences of their act, without the accompanying intent to bring about death.

The reasoning underlying this legal framework is rooted in the principle of moral culpability and the recognition that an individual can be deemed criminally liable even if they did not aim to kill, but nonetheless engaged in conduct that foreseeably endangers life. Such an approach ensures that individuals cannot escape liability merely because they lacked the intent to kill, especially when their actions, by their very nature, posed a substantial risk of resulting in death. It emphasizes accountability for reckless or negligent conduct that, while not intended to cause death, nonetheless leads to fatal outcomes, thereby upholding the principles of justice and societal protection.

The thin line difference between the offence punishable under "Section 302" and "Section 304" of IPC has been succinctly explained by the Hon'ble Apex Court in **State of A.P. v. Rayavarapu Punnayya** reported in **(1976) 4 SCC 382** in the following words:





"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

The difference was further elucidated in **Rampal Singh v. State of U.P.**, reported in **(2012) 8 SCC 289** in the following words:

"18. This Court in Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915] noticed that academic distinction between "murder" and "culpable homicide not amounting to murder" had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya [(1976) 4 SCC 382 : 1976 SCC (Cri) 659] where it was observed as under: (Vineet Kumar case [(2007) 14 SCC 660 : (2009) 1 SCC (Cri) 915], SCC pp. 665-66, para 16) "16. ... that the safest way of approach to the interpretation and application of Sections 299 and 300 IPC is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of Sections 299 and 300 IPC and drawing support from the





decisions of this Court in *Virsa Singh v. State of Punjab* [AIR 1958 SC 465 : 1958 Cri LJ 818] and *Rajwant Singh v. State of Kerala* [AIR 1966 SC 1874 : 1966 Cri LJ 1509] , speaking for the Court, R.S. Sarkaria, J. neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the Court said that wherever the 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 [would] 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 causal 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 in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the First or the Second Part of Section Page 8 of 29 304, 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 Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304 IPC. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative.

21. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide





amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is, (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of Section 304 includes only those cases in which offence is really "murder", but mitigated by the presence of circumstances recognised in the Exceptions to Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in *Fatta v. Emperor* [AIR 1931 Lah 63] , 1151. C. 476 (Refer: Penal Law of India by Dr Hari Singh Gour, Vol. 3, 2009.) "

In **Pulicherla Nagaraju @ Nagaraja vs State Of A.P.**

reported in **(2006) 11 SCC 444**, Hon'ble Apex Court has observed as under :-

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to





cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

From the above extracts, it becomes evident that a key criterion in distinguishing whether a particular act constitutes "murder" or "culpable homicide not amounting to murder" punishable under Sections 302 and 304 IPC, respectively is the presence or absence of the offender's intent. Specifically, if the offender possesses the intention to cause death or to inflict such bodily injury as is likely to cause death, or alternatively, if they are consciously aware of the perilous nature of their conduct recognizing that their actions are so inherently dangerous that they will, in all likelihood, result in death or such injury the act is





more appropriately classified as “murder” under Section 300 of the IPC. In such cases, the corresponding penal provision of Section 302 IPC, which prescribes the punishment for murder, would be applicable. Conversely, if the intention to cause death or such grievous bodily injury is not clearly established the act should be categorized under the lesser offense of “culpable homicide not amounting to murder,” punishable under Section 304 IPC. This classification recognizes the gravity of the act but acknowledges the absence of the requisite mens rea (guilty mind) for murder. The reasoning behind this distinction is rooted in the principles of criminal law, which aim to attribute liability proportionate to the mental state and culpability of the offender. Intention and knowledge are fundamental elements that differentiate between degrees of criminal liability. When the offender intentionally commits an act with full awareness of its dangerous potential, it signifies a higher degree of moral culpability, warranting the harsher penalty prescribed for murder. Conversely, in cases where the offender’s conduct lacks such deliberate intent or conscious knowledge, the law considers the act less blameworthy, thereby justifying a comparatively lenient punishment under Section 304 IPC. This nuanced approach ensures that the legal response is both fair and proportionate to the offender’s mental state and the circumstances of the act.

Upon examination of the injury sustained by the deceased and the postmortem report Ex.P/34 indicates that he received only





single injury on his head, which was identified as the fatal and the primary cause of death was hemorrhagic stroke in the brain.

Furthermore, the circumstances under which the assault occurred, including the motivations behind causing the injury, there is no evidence to suggest that the assault was premeditated or carried out with a deliberate plan to kill the deceased. The absence of evidence indicating premeditation is a significant factor.

Considering the absence of proof of premeditation, including the lack of undue advantage or cruelty on the part of the appellant Devi Singh as well as the fact that the incident was occurred on spur of the moment, the act can be characterized as culpable homicide not amounting to murder, aligning with the provisions of Section 304 Part II of the IPC. This court is of the opinion that the actions of the accused demonstrated a reckless disregard for human life rather than an outright intention to murder. The nature and extent of the injuries, coupled with the circumstances of the incident, support this conclusion.

In view of the aforesaid aspects and upon assessment of evidence as well as the judgments of Hon'ble Supreme Court and this High Court, we are of the considered opinion that the finding of guilt recorded by learned trial Court under Section 302 IPC is not sustainable in the eyes of law because there is a clear absence of pre-meditation or motive to kill deceased Babu Singh and it is a case of culpable homicide not amounting to murder. Therefore, we are inclined to alter the conviction of the accused-appellant No.1 Devi Singh from Section 302 IPC to Section 304 Part II, IPC.





Resultantly, the conviction and sentence passed against the accused appellant Devi Singh for the offence under Section 302 IPC is quashed and set aside and the same is hereby altered to the offence punishable under Section 304 Part II, IPC.

However, considering the facts that the incident is related to the year 1994 and the accused-appellant Devi Singh has remained in custody for about five years, we think it proper to reduce the sentence of the accused-appellant Devi Singh to the period already undergone by him.

Thus, while maintaining conviction of the appellant- Devi Singh offence under Section 304 Part II IPC, his sentence for the said offence is hereby reduced to the period already undergone by him. The fine amount imposed by the trial Court if not already deposited, is hereby waived. The appellant Devi Singh is on bail. He need not surrender. His bail bonds are cancelled.

Accordingly, the criminal appeal is partly allowed.

The record of the trial court be sent back forthwith.

(RAVI CHIRANIA),J

(MANOJ KUMAR GARG),J

76-Rashi/-