HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Appeal No. 560/2008

The State of Rajasthan

----Appellant

Versus

1. Pintu @ Praveen Singh s/o Kesar Singh Rao.
2. Kesart Singh s/o Hindu Singh Rao.
3. Smt. Asrat Kanwar w/o of Kesar Singh Rao.

All residents of Dhalmu, Police Station Pratapgarh, Dist. Chittorgarh.

----Respondent

Connected With

S.B. Criminal Appeal No. 196/2007

Pintu @ Praveen Singh s/o Kesar Singh Rao r/o Dhalmu, Police Station Pratapgarh, Dist. Chittorgarh.

----Appellant

Versus

The State of Rajasthan

----Respondent

For Appellant(s)	:	Mr. Rajesh Bhati, AGA
For Respondent(s)	:	Mr. Ramesh Purohit Mr. Bhagat Dadhich

HON'BLE MR. JUSTICE FARJAND ALI
HON'BLE MR. JUSTICE SANDEEP SHAH
Judgment

REPORTABLE

DATE OF CONCLUSION OF ARGUMENTS	**:**	**13/03/2026**
DATE ON WHICH ORDER IS RESERVED	**:**	**13/03/2026**
FULL ORDER OR OPERATIVE PART	**:**	**Full Order**
DATE OF PRONOUNCEMENT	**:**	**28/03/2026**

BY THE COURT:- (Per Hon’ble Mr. Farjand Ali,J)

INTRODUCTION

1. These are two cross-appeals arising out of the common judgment dated 08.03.2007 rendered by the learned Additional District and Sessions Judge (Fast Track), Pratapgarh, Rajasthan, in Criminal Case No. 39/2006.

1.1 The appeal No.560/2008 has been preferred by the State under Sections 378(i) and (iii) of the Code of Criminal Procedure (hereinafter to be referred as "CrPC"), assailing the impugned judgment to the extent it acquits the accused person, Pintu alias Praveen Singh of the charge under Section 302 Indian Penal Code (hereinafter to be referred as "IPC") and further acquits all the three accused respondents of the offence under Section 498-A IPC, while convicting accused Pintu alias Praveen Singh only for the offence under Section 304 Part I IPC. The State has, thus, prayed that the impugned judgment be set aside to the aforesaid extent and that accused Pintu alias Praveen Singh be convicted and sentenced for the offence under Section 302 IPC, and all the accused respondents be convicted and sentenced for the offence under Section 498-A IPC.

1.2 The appeal No. 196/2007 has been preferred by the accused-appellant, Pintu alias Praveen Singh under Section 374 of the CrPC, laying challenge to the very same judgment dated 08.03.2007, with a prayer that the impugned judgment be quashed and set aside in toto, and the appellant be acquitted of all the charges levelled against him.

1.3 Both the appeals, being directed against the same judgment, are being decided together.

RELEVANT FACTS OF THE CASE

2. Brief facts of the case, as borne out from the record, are that on 23.07.2005, the complainant Umed Singh submitted a written report stating that his daughter, Smt. Kiran, who was married to accused Pintu @ Praveen Singh about 8–9 years prior and had two minor sons out of the wedlock, was found lying unconscious with grievous injuries at her matrimonial home. On being enquired, the minor child disclosed that the accused had inflicted a blow with a spade on the head of the deceased. An FIR under Section 307 IPC came to be registered, which, upon the death of Kiran during treatment, was converted into an offence under Section 302 IPC. After due investigation, charge-sheet was filed and the matter was committed to the Court of Sessions. The learned trial Court, upon appreciation of evidence, convicted accused Praveen Singh under Section 304 Part-I IPC while acquitting all the accused persons of the charge under Section 498-A IPC vide judgment dated 08.03.2007.

OBSERVATION

3. We have heard Shri Ramesh Purohit, learned counsel appearing on behalf of the accused and Shri Rajesh Bhati, AGA, appearing on behalf of the State.

4. After perusing the material available on record and after going through the order dated 08.03.2007, it is revealing that the incident appears to have emanated from a routine discord of

matrimonial life, arising out of trivial provocation between the spouses, which might have momentarily disturbed the mental equilibrium of the accused. In such a state of loss of self-control, the accused is stated to have picked up a spade (phawda) lying at the spot and inflicted a solitary blow upon the deceased. This version finds corroboration from the testimony of the child witness, the sole eye-witness of the occurrence, who has consistently deposed that the implement spade was lying at the place of incident and was not brought by the accused, and even after the occurrence, it was left there itself.

4.1 There is nothing on record to indicate any premeditation, prior enmity, or motive of such gravity so as to suggest that the accused had come prepared to commit the offence. The absence of a deadly weapon carried by the accused and the use of an object readily available at the spot fortifies the inference that the act was committed in a sudden fit of anger, bereft of any calculated design.

APPPLICATION OF LAW

5. To commit murder, there are essential ingredients which needs to be fulfilled. For a ready reference, Section 300 of the IPC is reproduced herein below:-

> "**300. Murder.** —Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—
>
> 2ndly. —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—

> 3rdly. —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—
>
> 4thly. —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."

5.1 From a bare perusal of the provision, it is evident that to bring a case within the fold of Section 300 IPC, the prosecution is required to establish that the act by which death is caused falls within any of the four well-defined clauses contemplated therein. Firstly, the act must have been committed with the intention of causing death; secondly, with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the particular person; thirdly, with the intention of causing bodily injury sufficient in the ordinary course of nature to cause death; and fourthly, with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and the act is committed without any excuse for incurring such risk. Thus, the essential ingredients to attract the offence under Section 302 IPC are conspicuously absent and cannot be taken as an offence of murder.

5.2 Moving further to Section 299 of IPC and exceptions engrafted to the provision of murder, it is apposite to note that the present case pertains to culpable homicide not amounting to murder, as contemplated under Section 299 of IPC and it's

punishment has been given under Section 304 IPC, which operates as an exception to the offence of murder defined under Section 300 IPC. For the sake of clarity and ready reference, Section 299 of IPC and the relevant Exceptions are reproduced hereinbelow:-

"**299. Culpable homicide.** —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."

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

The above exception is subject to the following provisos: —

First. —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
Secondly. —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
Thirdly. —That the provocation is not given by anything done in the lawful exercise of the right of private defence.
Explanation. —Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

Exception 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.**

A bare reading of the exception to the offence of murder, and from a conjoint reading of Section 299 IPC and Section 300 IPC, it becomes manifest that though every murder is culpable homicide,

the converse is not invariably true. The Exceptions appended to Section 300 IPC delineate circumstances wherein, despite the presence of intention or knowledge, the culpability of the act is mitigated owing to the surrounding facts and human frailty. Exception 4 to Section 300 IPC contemplates those cases where death is caused without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel. It is trite that where the offender has not taken undue advantage or acted in a cruel or unusual manner, the rigour of "murder" stands diluted. The essence lies in the spontaneity of the occurrence and the absence of prior design. In such circumstances, the act, though culpable, is divested of the gravamen requisite for constituting murder. Consequently, the offence would fall within the ambit of culpable homicide not amounting to murder. In other language, it may be observed that where the act causing death is committed under grave and sudden provocation, or in the course of a sudden fight without premeditation, in the heat of passion upon a sudden quarrel, the offence would not travel to the rigours of murder. In such situations, the law, taking a pragmatic view of human conduct, attributes a lesser degree of culpability, thereby bringing the act within the ambit of culpable homicide not amounting to murder. Thus, the doctrine underlying this Exception is that the mental element, though present, is not of such a degree as to brand the act as murder. The absence of premeditation, the suddenness of the occurrence, the loss of self-control, the number of injuries and no repetitive attempt to hurt the deceased are

relevant considerations which dilute the severity of the offence and manifest lack of intent to kill. Consequently, such cases are punishable under Section 304 IPC, where the sentence is calibrated in accordance with the degree of intention or knowledge established on record.

LEGALITY AND CORRECTNESS OF THE ORDER DATED 08.03.2007

6. The present matter requires an examination whether the judgment rendered by the learned court below is legally sustainable and in accordance with established principles of law. For the purpose of such determination, Section 304 of the IPC is reproduced hereinbelow:—

> "**304 Punishment for culpable homicide not amounting to murder. —**Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;
> **or 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.**"

6.1 The provision prescribes punishment for culpable homicide not amounting to murder and is bifurcated into two distinct parts, namely Part I and Part II. Under Part I, the offence is constituted where the act is committed with the intention of causing death or of causing such bodily injury as is likely to result in death. In contrast, Part II applies to cases where the act is done with the

knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury.

6.2 As regards the nature of the occurrence, it is borne out from the record that the incident was neither premeditated nor pre-concerted, but occurred on the spur of the moment. The accused had not come armed with any weapon; rather, he used an implement which was readily available at the spot. The act was not repeated, nor was it carried out in a cruel or unusual manner. Significantly, there was no impediment or intervention to restrain the accused, and yet, he did not exploit his dominant position to inflict further injuries. Had there been a deliberate intent to cause death, the accused could have persisted in the assault; however, he consciously refrained from doing so. The sine qua non for attracting Section 304 Part I IPC is the existence of intention to cause death or such bodily injury as is likely to cause death. In the present case, there is a conspicuous absence of motive, object, or any compelling circumstance which could have impelled the accused to commit the act with such intention. Thus, the essential ingredient of intention being clearly lacking, the conviction of the accused under Section 304 Part I IPC is bad and not sustainable in the eyes of law.

6.3 The question, therefore, that arises is as to the nature of the offence actually committed. It is not in dispute that the accused inflicted a blow with a spade, which is a heavy implement, on the skull of the deceased, a vital and delicate part of the human body. It can safely be presumed that any prudent person would be

aware that striking such a blow on a vital part is likely to cause death. The expression "likely to cause death" can be reasonably inferred from the nature of the weapon used and the part of the body targeted. In fact, the injury so inflicted did result in death. The expression "likely to cause death" occurring in the scheme of culpable homicide has a well-recognised connotation in criminal jurisprudence. It does not postulate a certainty of death, but denotes a degree of probability which is more than a mere possibility. The term "likely" signifies that, in the ordinary course of human affairs, the act is such that it carries with it a real and substantial risk of causing death. It is, thus, indicative of a foreseeable and appreciable consequence flowing from the nature of the act, the weapon employed, and the part of the body targeted. In juxtaposition, the phrase "may cause death" is of a comparatively wider and less stringent import. It conveys a bare possibility, howsoever remote, of death ensuing from the act. However, when the act in question involves the use of a heavy object upon a vital and delicate part of the body, such as the skull, the distinction between "may cause death" and "likely to cause death" tends to narrow. In such circumstances, what may initially appear as a mere possibility, in fact, assumes the character of a likelihood, owing to the inherent dangerousness of the act. It is in this backdrop that the principle may be understood that the expression "may cause death," when read *ejusdem generis* with the surrounding circumstances, can, in appropriate cases, be construed as synonymous with "likely to cause death." Where the

nature of the weapon is inherently capable of causing grievous harm, and the blow is directed at a vital organ, the law presumes that any prudent person would have the knowledge that such an act is likely to result in death. Thus, the determination does not rest merely on the linguistic distinction between the two expressions, but on the totality of circumstances, namely, the nature of the weapon, the manner of its use, the force applied, and the part of the body affected. When these factors cumulatively point towards a high probability of death, the act transcends the realm of a mere possibility and squarely falls within the ambit of "likely to cause death," thereby attracting culpability under Section 304 Part II IPC. Therefore, this Court has no hesitation in holding that the accused possessed the requisite knowledge of the consequences of his act, thereby attracting the provisions of Section 304 Part II IPC.

6.4 Coming to the question of judgment passed by the learned trial Court and its correctness in the eye of law, it is noticed that vide judgment dated 08.03.2007, the learned trial Court acquitted the accused Pintu @ Praveen Singh of the charge under Section 302 IPC and instead convicted and sentenced him under Section 304 Part I IPC. The learned trial Court further acquitted the said accused as well as the co-accused, namely his father and mother, of the charge under Section 498-A IPC. Insofar as the appeal preferred by the State assailing the acquittal of the accused persons for the offence punishable under Section 498-A IPC is concerned, upon a meticulous and threadbare scrutiny of the

record, it transpires that the learned Court below has extended the benefit of doubt to the husband as well and consequently acquitted him of the charge under Section 498A IPC. Section 498A IPC, in its essence, penalizes the act of subjecting a married woman to cruelty at the hands of her husband or his relatives. As per Explanation appended to Section 498A IPC, the term "cruelty" has been given a specific and inclusive meaning. For ready reference, Section 498A and its Explanation is reproduced herein below:-

> "**498A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
> Explanation.—For the purposes of this section, "cruelty" means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

6.5 From bare perusal of Section 498A, cruelty under Section 498A IPC is not confined to physical harm alone, but also encompasses mental agony and harassment, particularly when it is connected with unlawful demands or is of such intensity as to imperil the life or well-being of the woman. This Court is of the view that the material available on record does not disclose

multiple or continuous instances of cruelty; rather, the prosecution case hinges upon a solitary incident. The said incident, however, is of a graver complexion and has already been brought within the fold of Section 304 Part-II IPC, for which the accused stands convicted and sentenced. In such circumstances, when the singular act has been duly subsumed and addressed under a more serious penal provision, this Court finds no justification in visiting the accused with a separate conviction and sentence under Section 498A IPC. This Court is not persuaded to find any reliable, cogent or convincing material against the respondents. The evidence, insofar as it relates to the other accused persons, suffers from inherent deficiencies and lacks the requisite probative worth. In view of the aforesaid, this Court finds no justifiable ground to interfere with the well-reasoned and sound findings of acquittal recorded by the learned trial Court on the aspect of cruelty. The view taken by the learned trial Court appears to be a plausible and legally sustainable one, not calling for any indulgence in appellate jurisdiction.

7. At this juncture, adverting to the nature of the offence and the attendant circumstances, it is evident that there was no intention on the part of the accused to cause death; consequently, the offence under Section 302 IPC is not attracted. In the facts and circumstances of the present case, this Court is of the considered view that the acquittal of the accused, Pintu @ Praveen Singh, under Section 302 IPC does not suffer from any legal infirmity and is hereby affirmed. Insofar as the offence under

Section 304 IPC is concerned, the conviction of the accused would more aptly fall within the ambit of Section 304 Part II IPC rather than Part I thereof, having regard to the fact that the act in question, being a single blow, cannot be said to have been committed with the intention of causing death, but certainly with the knowledge that it was likely to cause death.

OBJECT OF SENTENCING AND THEORIES OF PUNISHMENT

8. The object of sentencing has consistently been understood to ensure that the punishment awarded to an offender is commensurate with the gravity of the act committed, so that justice is not only done but is also perceived to have been done by the victim. The sentence must, therefore, strike a delicate balance, reflecting the culpability of the accused while simultaneously addressing the legitimate expectations of the victim. In the realm of penology, the purpose of punishment transcends mere retribution; it serves as a means to safeguard society at large by deterring criminal conduct and reinforcing the rule of law. Thus, sentencing must be guided by a judicious blend of proportionality, deterrence, and societal protection, ensuring that the administration of justice remains both fair and effective.

8.1 For a comprehensive understanding, it would be apposite to briefly advert to these theories of punishment which are as follows:-

i) Deterrent Theory

ii) Retributive Theory

iii) Preventive Theory

iv) Reformative Theory

(a) To start with, the ***deterrent theory***, propounded by *Jeremy Bentham*, is founded upon the principle of hedonism, which postulates that pleasure alone is intrinsically valuable and pain intrinsically undesirable. The essence of this theory lies in its capacity to instill fear in the minds of potential offenders by making an example of the consequences that follow criminal conduct. The punishment, therefore, must bear a rational nexus with the offence committed and ought to be proportionate thereto. However, experience has shown that excessive harshness in sentencing may prove counterproductive, often evoking public sympathy for the offender and thereby diluting the very object of deterrence. Thus, the doctrine of proportionality remains the guiding beacon, punishment must neither be unduly harsh nor manifestly lenient. While determining an appropriate sentence, certain well-recognised factors assume significance, inter alia:-

(i) the nature and gravity of the offence;

(ii) the statutory punishment prescribed;

(iii) the manner of commission of the offence;

(iv) the proportionality between the crime and the punishment;

(v) the age and sex of the offender;

(vi) the character and disposition of the offender;

(vii) antecedents, including prior criminal history;

(viii) the likelihood of reformation;

(ix) the impact of the offence on social order and public interest; and

(x) the overall personality of the offender as reflected through surrounding circumstances.

The sentencing court is thus enjoined to strike a delicate balance between the individual circumstances of the offender and the societal interest, so as to arrive at a just and appropriate sentence. By way of illustration, in offences such as organised economic fraud or corruption, where the impact transcends the individual victim and undermines public confidence in institutions, the element of deterrence assumes greater prominence, warranting a sterner sentence. Conversely, in cases arising out of sudden provocation or momentary lapse, where the offender does not exhibit a continuing criminal propensity, an unduly harsh sentence may fail to serve the intended purpose of deterrence and may instead operate oppressively. Thus, deterrence, while vital, cannot be divorced from rationality and fairness.

(b) Coming to the ***retributive theory***, often encapsulated in the maxim "an eye for an eye and a tooth for a tooth," it proceeds on the premise that the punishment must correspond to the harm inflicted upon the victim. However, this theory, in its rigid application, is seldom favoured in modern jurisprudence. Firstly, the quantification and equivalence of pain is inherently impracticable; secondly, unbridled adherence to retribution may erode the very foundation of an orderly legal system, reducing justice to vengeance. That said, a measured degree of retribution continues to find place in sentencing, for the criminal law cannot be wholly indifferent to the suffering of the victim. In heinous

offences such as brutal homicides, sexual offences, or acts of extreme cruelty, the collective conscience of society demands that the punishment reflect the gravity of the wrong committed. For instance, where an offence is committed in a barbaric or depraved manner, displaying total disregard for human dignity, the sentence must convey society's condemnation of such conduct. Nonetheless, this element of retribution must always operate within the confines of law and reason, and cannot be permitted to degenerate into retaliation or vindictiveness.

(c) The ***preventive theory***, in contrast, is forward-looking in nature. Its primary objective is not to avenge the past, but to safeguard the future by incapacitating the offender. Measures such as life imprisonment or, in the gravest cases, capital punishment, are premised on the idea of isolating the offender from society to prevent recurrence of crime and to protect the social fabric. This theory assumes particular relevance in cases involving habitual offenders, organised criminal activity, or individuals who pose a continuing threat to society. For example, where an accused has a demonstrable history of repeated violent conduct, or is part of a criminal syndicate, the need to incapacitate such an individual becomes paramount. The emphasis here is on protecting society at large rather than merely punishing the individual act. However, even within this framework, the Court must be cautious to ensure that the preventive measure adopted is commensurate with the actual threat posed, and is not founded on mere conjecture or apprehension.

(d) Lastly, the ***reformative theory***, which has gained considerable acceptance in contemporary penology, seeks to transform the offender into a law-abiding citizen. It proceeds on the humane premise that criminality is not an inherent trait but often a consequence of adverse circumstances. By affording an opportunity for reformation, particularly to first-time offenders and juveniles, the law endeavours to reintegrate such individuals into society. Nonetheless, this approach must be cautiously applied, for an excessive tilt in favour of reform may, in certain cases, undermine the legitimate expectations of the victim and society at large. The reformative approach finds expression in sentencing practices such as probation, parole, and rehabilitation programmes. For instance, in cases involving young offenders who have acted under the influence of poverty, lack of education, or adverse social conditions, the Court may lean towards a sentence that facilitates correction rather than mere incarceration. Similarly, where the conduct of the accused during trial reflects remorse and a genuine inclination to reform, such factors may weigh in favour of a lenient sentence. However, this theory cannot be applied indiscriminately, especially in cases involving grave offences or where the offender exhibits a hardened criminal disposition.

8.2 In ultimate analysis, sentencing is not a mechanical exercise but a judicious blend of these principles. The Court, while imposing sentence, must adopt a balanced approach, ensuring that justice is not only done to the offender but is also manifestly seen to be done to the victim and to society.

OPINION OF THE COURT

9. From a careful appreciation of the evidence on record, it is evident that the occurrence was not premeditated and had taken place in the course of a sudden quarrel, wherein the accused, in a fit of anger and disturbed mental equilibrium, picked up a spade lying at the spot and inflicted a single blow upon the deceased. The fact that no weapon was carried by the accused and that the implement used was readily available at the place of occurrence clearly negates any prior intention or design to cause death. The act of the accused does not reflect an intention to cause death or such bodily injury as is likely to cause death; however, it can safely be attributed that the accused had the knowledge that such an act was likely to cause death. The distinction, though subtle, is significant and goes to the root of the matter in determining the nature of culpability. Thus, in the totality of circumstances, particularly the infliction of a solitary blow, absence of premeditation, and the suddenness of the incident, the case squarely falls within the second limb of Section 304 IPC, i.e., culpable homicide not amounting to murder committed with knowledge but without intention. The conversion of the offence from Section 302 IPC to Section 304 IPC by the learned trial Court, therefore, does not suffer from any perversity. However, having regard to the nature of the act, the case would more appropriately fall within the ambit of Section 304 Part II IPC instead of 304 Part I of IPC.

CONCLUSION

10. In the conspectus of the aforesaid principles and having bestowed our anxious consideration to the facts and circumstances of the present case, we are of the considered view that while the acquittal of the accused persons under Section 498-A of IPC and Pintu alias Praveen Singh, from the charge under Section 302 IPC does not warrant interference but the conviction under Section 304 is liable to be appropriately modified.

10.1 The evidence on record unmistakably reflects that the incident was a result of a sudden altercation culminating in a single blow, without any premeditation or intention to cause death; however, the knowledge that such an act was likely to cause death can safely be imputed to the accused. Consequently, the case squarely falls within the ambit of Section 304 Part II IPC.

10.2 Accordingly, the conviction of the accused is altered from Section 304 Part I to Section 304 Part II IPC and considering that a substantial period has elapsed since the incident, and it has been brought to the notice of this Court by Shri Ramesh Purohit that the accused is taking care of his children, the possibility of reformation cannot be ruled out.

10.3 At the same time, while the act committed in a moment of anger cannot be condoned and calls for appropriate punishment, this Court cannot be oblivious to its social obligations. It has come on record that the children of the deceased have, perhaps, reconciled with the situation. Sending the accused to prolonged incarceration would deprive the children of paternal love, care,

protection, and guidance. Thus, a delicate balance is required to be maintained between the gravity of the offence and the societal and familial consequences of the sentence imposed.

10.4 As regards the sentence, this Court deems it just and proper to impose a punishment commensurate with the nature of the act, the manner of its commission, and the surrounding circumstances, while also keeping in view the possibility of reformation. In such circumstances, the sentence of seven years would meet the ends of justice and be sufficient to subserve the cause of law while also preserving the prospects of rehabilitation and familial harmony thereby striking a balance between the demands of justice, societal interest, and the individual circumstances of the accused.

11. In view of the aforesaid discussion, this Court is of the considered opinion that the prayer advanced by the State does not merit acceptance, inasmuch as the findings returned by the learned Trial Court are, to a substantial extent, well-reasoned and do not suffer from any manifest illegality warranting interference. Equally, the plea on behalf of the accused for complete exoneration cannot be countenanced, for the material on record unmistakably establishes his culpability, albeit not to the extent originally determined. The ends of justice would, therefore, be adequately met by holding the accused liable under Section 304 Part II of the IPC, which appropriately reflects the nature of the act, bereft of intention to cause death, yet accompanied by the knowledge that such act was likely to result in death.

VERDICT

12. Accordingly, the appeal No. 560/2008 preferred by the State, being devoid of merit, stands dismissed.

12.1 The appeal No. 196/2007 preferred by the accused is partly allowed. The conviction of the accused under Section 304 Part I IPC is set aside, and instead, he is convicted for the offence punishable under Section 304 Part II IPC.

12.2 The accused is sentenced to undergo rigorous imprisonment for a period of seven years, with the fine remaining unaltered.

13. In the aforesaid terms, both the appeals stand disposed of.

14. Stay petition and all pending applications stands disposed of.

(SANDEEP SHAH),J **(FARJAND ALI),J**

65-Mamta/-