IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 1416 of 2017

(Against the Judgment of conviction dated 12.06.2017 and order of sentence dated 14.06.2017 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No. 565 of 2014**)**

Tasleem Khan, son of Late Dalel Khan, resident of Village-Sons, P.O.-Sons, P.S.-Chanho, District-Ranchi, Jharkhand.

… … Appellant

Versus

State of Jharkhand … … Respondent

With

Cr. Appeal (DB) No. 1398 of 2017

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1. Afroz Khan, son of Muslim Khan
2. Nagina Khatoon @ Nagua, wife of Tasleem Khan

Both resident of Village-Sons, P.O.-Sons, P.S.-Chanho, District-Ranchi, Jharkhand

… … Appellant

Versus

State of Jharkhand … … Respondent

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

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For the Appellants : Mr. Pawan Kr. Pathak, Advocate [in both cases]

For the Resp.-State : Mr. Bhola Nath Ojha, Spl. P.P. [in both cases]

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C.A.V./Reserved on 14.09.2026 **Pronounced on: 29.10.2026**

Per Sujit Narayan Prasad, J.

1. As both the appeals emanate from the same impugned judgment of conviction and order of sentence, they were taken up together for hearing and are accordingly being disposed of by this common judgment and order.
2. Both the present appeals, under Section 374 (2) of the Code of Criminal Procedure, have been preferred against the Judgment of conviction dated 12.06.2017 and order of sentence dated 14.06.2017 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No. 565 of 2014, arising out of Chanho P.S. Case No.53 of 2014

corresponding to G.R. Case No.3055 of 2014, whereby and whereunder, the appellant of Criminal Appeal (DB) No. 1416 of 2017, namely, Tasleem Khan, has been convicted under Section 302 of IPC and sentenced to undergo life imprisonment together with a fine of Rs.2,000/- and in case of default of payment of fine, the said appellant has been further directed to undergo simple imprisonment for two months. Whereas, the appellants of Criminal Appeal (DB) No. 1398 of 2017, namely, Afroz Khan and Nagina Khatoon @ Nagua, have been convicted under Section 323 of IPC and sentenced to undergo simple imprisonment for one year.

Factual Matrix

3. The prosecution case is based on the written application dated 04.06.2014 filed by the Informant Mukesh Kumar Sao, son of Kailash Sao, resident of Sons, Police Station Chanho, District Ranchi, to the Station House Officer, Chanho. The informant Mukesh Kumar Sao (deceased) statement, in brief, is that on 03.06.2014, at approximately 10:00 a.m., he was bathing in the courtyard of his home. Meanwhile, Tasleem Khan, father's name unknown, Afroz Khan, son of Muslim Khan, and Tasleem Khan's wife, Nagina Khatoon, residents of village Sons, Chanho, kicked and punched him. Tasleem Khan knocked him down and pressed his foot on his stomach as a result, he experienced severe pain in his abdomen and back and was experiencing urinary retention. The local doctor suggested that he be taken to Ranchi. The informant further stated that aforementioned individuals continue to abuse him and threaten to kill him.

4. On the basis of the above written information, Chanho Police Station Case No. 53/2014 dated 04.06.2014, was registered against Tasleem Khan, Afroz Khan and Nagina Khatoon under sections 341, 323, 324, 506, 448 read with section 34 of the Indian Penal Code. Later on, due to the death of the informant/injured Mukesh Kumar Sao, during treatment, section 302 of the Indian Penal Code was added on 06.06.2014.

5. Charges were framed against the above three accused persons/appellants, Tasleem Khan, Afroz Khan and Nagina Khatoon,

under Section 302 read with Section 34 of the Indian Penal Code, which was read out and explained to the accused. The accused denied the charges and demanded trial.

6. Accordingly, the trial proceeded and at the conclusion of the trial the appellant of Criminal Appeal (DB) No. 1416 of 2017, namely, Tasleem Khan was found guilty for the offence under Section 302 of IPC and the appellants of Criminal Appeal (DB) No. 1398 of 2017, namely, Afroz Khan and Nagina Khatoon @ Nagua, were found guilty for the offence under Section 323 of IPC and sentenced aforesaid.

7. The aforesaid judgment of conviction and order of sentence is under challenge in this appeal.

Submission of the learned counsel for the appellants:

8. Learned counsel for the appellants has taken the following grounds for interfering with the finding recorded by the learned trial court in the impugned judgment:

   (i) Learned counsel for the appellants in both the cases has submitted that the impugned judgment of conviction and sentence is bad in the eyes of law as the same has been passed without application of judicial mind and the evidence put forth in course has not been appreciated in right perspective.

   (ii) It has been submitted that the learned trial court has failed to take into account that none of the independent witness has supported the case of the prosecution rather supported only by the interested witnesses.

   (iii) It has also been submitted that the learned trial court has failed to appreciate that the written report has not been signed by anyone except the deceased and even the author of the written report has not put his/her signature. Further, the written report was signed on 04.06.2014 but at that time, the deceased was in hospital pursuing his treatment, even then, his statement was neither recorded by any police officer nor any certificate of treating doctor was given nor the doctor who firstly treated the deceased at the PHC was examined in this case.

(iv) It has specifically been contended that the deceased died due to septicemia caused by the injuries and he had surgical wounds also and before his death, surgery also took place, therefore, the deceased might have developed septicemia due to improper treatment due to which he died.

(v) It has also been submitted that even if the case of the prosecution will be accepted to be true then also, at best, it can be said to be a case of exception to Section 300 of IPC and hence, the appellant of Criminal Appeal (DB) No.1416 of 2017, at the best can be convicted under Section 304 Part I or II of the IPC.

(vi) Learned counsel has submitted that the appellant of Criminal Appeal (DB) No.1416 of 2017 since has already remained in custody for more than twelve years against the sentence of life imprisonment, hence, his sentence may also be modified to the period already undergone.

(vii) Learned counsel has further submitted that and the appellants of Criminal Appeal (DB) No.1398 of 2017 have remained in custody for six months against the sentence of one year, as such, their sentence may also be modified to the period already undergone.

Submission of the learned Special Public Prosecutor for the State:

9. On the other hand, Mr. Bhola Nath Ojha, learned Special Public Prosecutor has raised the following grounds:

(i) It has been submitted that the prosecution has been successful in fully substantiating the charges against the accused persons. The prosecution's evidence clearly demonstrates that on June 3, 2014, while the informant Mukesh Kumar, was bathing in his courtyard, the accused, acting in collusion, entered his courtyard and assaulted him, threatened and abused him. The accused Tasleem Khan assaulted Mukesh, knocking him to the ground. He then climbed on his stomach and pressed his entire weight against his stomach for a long time, causing Mukesh to suffer external abrasions and internal rupture of his intestines, leaving him unconscious. Mukesh was taken to Chanho Primary Hospital

for treatment, where he was referred to RIMS, Ranchi. Thereafter, Mukesh was admitted to RIMS, Ranchi, where Mukesh died on June 5, 2014, while undergoing treatment.

(ii) It has further been submitted that the cause of death was an intentional injury inflicted by accused Tasleem Khan, which resulted in Mukesh's death. Furthermore, the injury caused by the accused climbing on Mukesh's stomach and rubbing it, which ruptured Mukesh's intestines, was sufficient to cause Mukesh's death under normal circumstances. Mukesh died during treatment as a result of this injury, as evidenced by Mukesh's post-mortem report. The doctor who conducted the post-mortem also found external and internal injuries on Mukesh's body from the antemortem rubbing. Accused Tasleem Khan was accompanied by his wife Nagina Khatoon and Nagina and Afroz also assaulted Mukesh.

(iii) It has also been submitted that when the accused Tasleem Khan knocked Mukesh to the ground and began to trample him under his feet, the deceased's sister and sister-in-law tried to rescue him. The accused Nagina and Afroz grabbed them and began assaulting them.

10. Learned Special Public Prosecution, based upon the aforesaid grounds, has submitted that the impugned judgment of conviction therefore is based upon the testimony of the witnesses and if on that consideration, the learned trial court has come to the conclusion that the present case is of commission of murder with intention to kill, the same cannot be said to suffer from an error.

Analysis:

11. This Court has heard the learned counsel for the parties, appreciated the rival submissions of the parties as referred hereinabove and the finding recorded by the learned trial court in the impugned order.

12. Learned trial Court, based upon the testimonies of witnesses, has passed the judgment of conviction and has convicted the appellant of Criminal Appeal (DB) No. 1416 of 2017, namely, Tasleem Khan under Section 302 of IPC whereas the appellants of Criminal Appeal (DB)

No. 1398 of 2017, namely, Afroz Khan and Nagina Khatoon@ Nagua, have been convicted under Section 323 of IPC and sentenced them as referred hereinabove.

13. This Court, before considering the argument advanced on behalf of the parties, is now proceeding to consider the testimonies of witnesses which have been recorded by the learned trial Court.

14. The prosecution in order to substantiate the case, had examined 07 witnesses out of whom PW-1 Ranjeet Sao, is the brother of the deceased; P.W.-2 Kusum Devi, is sister-in-law of the deceased; P.W.-3 Tarannum Khatoon, was declared hostile; P.W.-4 Soni Kumari, is the sister of the deceased; P.W.-5 Mangri Devi, is the mother of the deceased; P.W.-6 Dr. Debendra Bose, had conducted postmortem examination on the body of deceased Mukesh Kumar and P.W.-7 Shayam Kishore Shah, the investigating officer.

15. Two court witnesses were also examined i.e. Court Witness No. 1 Dr. Saketan Bhagat and Court Witness No. 2 Dr. Gautam Chandra.

16. Three defence witnesses were also examined, i.e. DW-1 Kalimuddin Mian; DW-2 Irshad Khan and DW-3 Suresh Mahto.

17. The testimonies of the prosecution witnesses are being referred as under:

17.1 **P.W.-1 Ranjeet Sao, is the brother of Mukesh Kumar Sao** (deceased). He has stated in his evidence that the incident took place on 03.06.2014 at 10 am. He had gone to the shop to buy incense sticks and when he returned home, he saw his brother Mukesh Kumar unconscious. His wife Kusum Devi said that Tasleem Khan, Afroz Khan, Nagwa Khatoon and Shamsher Khan had beaten him. At that time, his brother had gone to take a bath. They beat him up and threw him down and Tasleem Khan stepped on his brother's stomach and crushed his stomach with his feet, causing serious injuries. He took his brother to the health centre, Chanho and from there he was referred to RIMS, Bariatu. His brother died during treatment. He claimed that the accused had assaulted him for bathing in the open. The police had prepared a death inquest report for his brother, on which he had signed.

During cross-examination he stated that he did not witness the incident. The accused persons lived near his house, so he recognized them. At the time of the incident, his brother was bathing in the courtyard, wearing shorts. His injured brother was talking casually on the way when he was referred from Chanho. He received no treatment at Chanho Hospital, and was immediately referred from there. He received some treatment at RIMS and on the second day in the next morning his brother died.

17.2 **P.W.-2 Kusum Devi,** had stated in her evidence that incident occurred on June 3, 2014, at 10:00 a.m., and at that time she was at home. Her brother-in-law Mukesh Kumar, was bathing in the courtyard. Then, accused Tasleem Khan, Nagina Khatoon, Afroz Khan, and Shamsher Khan broke through the fence of bushes and entered the courtyard and they began assaulting her brother-in-law, Mukesh Kumar. When she and her sister-in-law, Soni, tried to rescue him, they caught hold of them and assaulted them. Tasleem Khan climbed on Mukesh's stomach and kicked and punched him and the other accused persons also assaulted him. Due to the assault, Mukesh screamed and fell unconscious and blood oozed from his mouth. He was brought to Chanho Health Center in an unconscious state and from there he was referred to RIMS. He received treatment at RIMS but he died on June 5, 2014.

In cross-examination, she stated that the accused's house and hers are adjacent, hence, she knows about them. There was no dispute or conflict with the accused persons before the incident. There was no previous animosity between the deceased and the accused. Her brother-in-law used to bath in the courtyard even before the incident and a designated bathing area exists. Her brother-in-law had not undergone any abdominal surgery before the incident. The only separation between the accused's house and hers is a bush and the bush serves as the boundary. The accused had arrived with sticks and rods.

17.3 **P.W.-3 Tarannum Khatoon**, had been declared hostile. She had stated that her house and Ranjit Sao's house are adjacent to each other. She had stated in her evidence that on the day of occurrence, she was at home. She heard noise from Ranjit Sao's house, then she came out and went to his house and there she saw that there was a commotion. Nagina and sister-in-law of Mukesh(deceased) were fighting. She did not see anyone being beaten and anyone getting hurt.

17.4 **P.W.-4 Soni Kumari**, had stated in her evidence that incident occurred at 10:00 am, on June 3, 2014, when her brother Mukesh Kumar, was bathing in the courtyard. Nagina Khatoon arrived and abused him. Thereafter, Tasleem, Afroz Khan and Shamsher Khan came and began assaulting him. They saw Tasleem Khan climb on Mukesh's stomach and squeeze it and Afroz Khan, Shamsher, and Nagina, grabbed Mukesh and assaulted him. Mukesh began vomiting blood. Mukesh was then taken to a health center and from there referred to RIMS. His brother underwent treatment for two days and then he underwent surgery, but he died. The witness identified the accused in court.

During her cross-examination, she stated that her home and home of accused persons are fifty steps apart. Before this incident, there was never any quarrel with the accused. The place where the incident took place is the courtyard of her house. Nearby are the houses of Kalimuddin, Tarannum and Ayub Ansari. People from nearby areas reached there after hearing the noise of the fight and these people saw the incident, but did not came to rescue. After the assault, Mukesh became unconscious, but he regained sense in the health center. He underwent a stomach operation in RIMS and the operation took place on 04.06.2014 at night. Her brother was wearing clothes while bathing. There was no dispute with the accused regarding the boundary.

17.5 **P.W.-5 Mangri Devi,** is the mother of Mukesh Kumar (deceased). She had stated in her evidence that on the day of occurrence her

son was bathing in the courtyard when Tasleem Khan, Afroz Khan, Shamsher Khan and Nagina Khatoon arrived and began fighting with his son. When his daughter, Soni Kumari and daughter-in-law tried to rescue him, they also assaulted him. Tasleem Khan, Afroz, and Shamsher Khan knocked down Mukeh and began beating him. Nagina Khatoon grabbed his daughter. Tasleem Khan climbed on his son's stomach and began mashing and kicking his stomach. His son was injured and became unconscious and fell down. He was taken to the Chanho Government Hospital and from there he was referred to RIMS. They went to the police station, next day and at that time his son had regained sense. Her son died on Thursday while undergoing treatment at RIMS. The witness identified the accused in court.

In her cross-examination, she stated that the accused and her house are opposite to each other. There had never been a quarrel or dispute between them prior to the incident.

17.6 P.W.-6 Dr. Debendra Bose, had conducted postmortem examination on the body of deceased Mukesh Kumar. He had stated in his evidence that on 05.06.2014, he was posted as Junior Resident, Non-Academic in the Department of FMT, RIMS, Bariatu. He conducted the postmortem examination on the body of Mukesh Kumar. He was of average built. Rigor mortise was present all over the body. Abdomen was slightly distended. Abdomen was bandaged. Foley's catheter was placed in Situ. Intestinal Tube was present in left abdomen, lateral side middle part. There was abrasion with reddish brown capon 12cm x 1 cm back of right side of chest middle part. There was surgical stitched wound 15cm x 1 cm with 14 stitches in front of abdomen middle part. There was stitched wound in small intestine.

Internal injuries:

There was centurion of peritoneum with evidence of *peritonitis*. The intestine was cemented. The brain and spinal cord lungs, liver, spleen and kidney were congested. There was bilious fluid 100 cc

in the stomach. There was gas in the small intestine and there was gas and fickle matter in the large intestine.

Opinion regarding following postmortem findings are:

(1) The above noted injuries are antemortem in nature.

(2) Abrasion and internal injuries were caused by hard and blunt substance.

(3) Opinion regarding surgical stitched wounds tube obtained from surgeon concerned.

(4) Death was due to septicemia as a result of above injuries.

Time since death was 6 to 18 hours from the time of postmortem examination. On his identification postmortem report was marked as Exhibit-3.

Cross examination by the defence:

He had found a surgical stitched wound in the small intestine. He cannot comment in the wound stitched because it was stitched. Such surgical stitched wound can be for the operation of Gall Bladder, Hernia or Appendix. The death was due to septicemia and infection of peritoneum inside abdomen. The time of death as opined by him is probable. He didn't obtain the report on stitched wound from concerned surgeon.

17.7 P.W.-7 Sub-Inspector Bhayam Kishore Shah, is the Investigating Officer, of the case. Investigating Officer had stated in his evidence that this case was instituted on June 4, 2014, at 9:30 a.m. He was posted as Sub-Inspector at Chanho Police Station and he was assigned to investigate this case through Sub-Inspector Chhathu Ram Gaur. He had received a case of assault and then he proceeded to investigate the case. The statement of Mukesh Kumar was recorded again at the place of occurrence. The place of occurrence of this incident is the informant's house in village - Sons, Tikritoli, where, Mukesh Kumar(deceased) was bathing in his courtyard, then accused persons allegedly entered the informants house and assaulted him by climbing on his stomach and massaging and punching him. The plaintiff was injured in the

same fight and was taken to the doctor for treatment. On 5th June 2014, at 10 o'clock in the morning, information was received through mobile that the injured of this incident being treated at RIMS is in critical condition, so they left for RIMS Ranchi. On reaching there, it was found that the injured plaintiff of this incident, Mukesh Kumar, died during the treatment. The fardbeyan of deceased mother Mangri Devi, was taken by ASI Shanti Kumari at Baritu Police Station. On identification fardbeyan was marked as Ext.-2/1 and inquest report prepared by ASI Shanti Kumari, on identification was marked as Ext.-4. Thereafter, station-in-charge, had filed, representation before the court to add section 302 of the Indian Penal Code. On 15.07.14, the postmortem report was received. On 31.08.14, while continuing the supplementary investigation on Shamsher Khan, charge sheet no. 77/14 dated 31.08.14 was submitted against three accused under sections 341, 323, 448, 506, 302, 34 in the court.

In his cross-examination, the Investigating Office stated that he was given the responsibility of investigating the case on June 4, 2014 and went to the place of occurrence during the investigation. He did not find seize bathing bucket, lungi, towel, etc. from the scene of the incident, nor did he seize them. He was informed that the injured person had been taken to Chanho Hospital on June 3, 2014, where he was bandaged and was referred from there. The injured person then got ready at home and went to RIMS. He did not go to the Chanho Primary Health Center and he did not record the statements of the doctor and nurse at the Chanho PHC. No signs of a fight were found at the scene of the incident. He went to RIMS on 05.06.14, on rumour of death and found the injured dead there. The inquest report had been prepared by Bariyatu Police. Two court witnesses- Court Witness No. 1 Dr. Saketan Bhagat and Court Witness No. 2 Dr. Gautam Chandra, were examined. Their testimonies are being referred as under:

17.8 Court Witness No. 1 Dr. Saketan Bhagat, presented a detailed report regarding the operation on Mukesh Kumar. He had stated that the operation was performed on June 4, 2014, by Dr. Gautam

Chandra, who worked under him in his unit at the time. He recorded that the abdomen was opened through a midline incision. Since a perforation in the patient's intestines had been discovered during a previous examination, it was deemed appropriate to operate. 2.5 liters of fluid, containing blood and bile, was removed. A 3 cm x 2 cm perforation was found in the patient's small intestine, 1.5 feet from the jugular junction. The peritoneum was congested, the bowel was congested, and the omentum was congested. The 3 cm x 2 cm perforation was sutured closed. Thereafter, bleeding was stopped from all parts of the stomach. After that, the right and left sides of the abdomen were sutured and the abdomen was closed. On the basis of the above operation finding, it cannot be said whether the perforation in the intestine of the patient was caused by the disease or by some external injury. It has been stated that this can be ascertained by looking at the primary injury report. He had identified the injury report which was in the handwriting and signature of Dr. Gautam Chandra, which he recognizes and was marked as Ext.-5.

17.9 Court Witness No. 2, Dr. Gautam Chandra**,** stated that in June 2014, he was posted as a Senior Resident in the Department of Surgery, RIMS. At that time, the HOD of Surgery was Dr. Naval Kishore Jha, and the Unit In- charge was Dr. Saketan Bhagat. He stated that the OT note pertains to Mukesh Kamar, Chanho, Ranchi and the said OT note was prepared by him. The OT note was written by him and bears his signature which had been marked as Ext. -5. In the OT note, it was written that an incision was made in the middle of the patient's abdomen and after the incision, approximately two and a half liters of fluid was drained, which contained blood, bile, and food. There was a perforation in the jejunum of the small intestine, measuring approximately 3 x 2 cm. This hole was located approximately one and a half feet from the duodenum-jejunal junction. The omentum was congested, and the intestine appeared swollen. The peritoneum was also congested. The intestinal hole was repaired by stitching. The bleeding was managed. A DEN was inserted into both abdominal

lobes. He performed a primary examination of the patient and the examination abdominal tapping was done and in it was found that there was hole in the intestine. He also stated that he first saw the patient in the emergency ward of RIMS and after conducting the examination, he was taken to the OT. In above-mentioned condition of the patient is possible due to an injury in the stomach. and it is also possible due to a sudden push. This injury of the patient was of a serious nature.

17.10 In cross-examination, he stated that he did not record the patient's age in the OT note and did not record the father's name, as this sometimes happens due to the patient's critical condition. This is an OT note, so it does not record the patient's admission date, the date of deletion of the name, or the date of death. He did not mention how many stitches were given.

18. In order to appreciate the submissions advanced on behalf of the learned counsel for the appellant, namely, Tasleem Khan, in Criminal Appeal (DB) No. 1416 of 2017, particularly with regard to the question whether the act attributed to the appellant would attract the offence of murder punishable under Section 302 of the Indian Penal Code or culpable homicide not amounting to murder punishable under Section 304 Part-I or Part-II thereof, in the light of the evidence adduced by the respective parties, this Court deems it appropriate to refer to certain judicial pronouncements governing the distinction and applicability of Sections 302 and 304 Parts I and II of the Indian Penal Code.

19. In the case of ***Nankaunoo v. State of Uttar Pradesh reported in (2016) 3 SCC 317*** it has been held that the intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder, for ready reference paragraph-11 is being quoted and referred hereunder as :-

> *"11. Intention is different from motive. It is the intention with which the act is done that makes a difference in arriving at a conclusion whether the offence is culpable homicide or murder. The third clause of Section 300 IPC consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is present and under the second part it must be proved that the injury was sufficient in the ordinary course of nature to cause death. Considering clause Thirdly of*

Section 300 IPC and reiterating the principles stated in Virsa Singh case [Virsa Singh v. State of Punjab, AIR 1958 SC 465], in Jai Prakash v. State (Delhi Admn.) [Jai Prakash v. State (Delhi Admn.), (1991) 2 SCC 32] ,para 12, this Court held as under: (SCC p. 41) "12. Referring to these observations, Division Bench of this Court in Jagrup Singh case [Jagrup Singh v. State of Haryana, (1981) 3 SCC 616], observed thus: (SCC p. 620, para 7) „7. ... These observations of Vivian Bose, J. have become locus classicus. The test laid down in Virsa Singh case [Virsa Singh v. State of Punjab, AIR 1958 SC 465], for the applicability of clause Thirdly is now ingrained in our legal system and has become part of the rule of law." The Division Bench also further held that the decision in Virsa Singh case [Virsa Singh v. State of Punjab, AIR 1958 SC 465] has throughout been followed as laying down the guiding principles. In both these cases it is clearly laid down that the prosecution must prove (1) that the body injury is present, (2) that the injury is sufficient in the ordinary course of nature to cause death, (3) that the accused intended to inflict that particular injury, that is to say it was not accidental or unintentional or that some other kind of injury was intended. In other words clause Thirdly consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas under the second part whether it was sufficient to cause death, is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury. The language of clause Thirdly of Section 300 speaks of intention at two places and in each the sequence is to be established by the prosecution before the case can fall in that clause. The „intention" and „knowledge" of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words „intention" and „knowledge" and it is accepted that the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to "knowledge", "intention" requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end."

20. In the case of ***State of Andhra Pradesh v. Rayavarapu Punnayya, (1976) 4 SCC 382,*** the Hon'ble Apex Court, while clarifying the distinction between section 299 and 300 of the Indian Penal Code and their consequences, held as under: —

"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" is species. All "murder" is "culpable homicide" but not vice-versa. Speaking generally, "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 "12. In the scheme of the Penal Code, „culpable homicide" is genus and „murder" is species. All „murder" is „culpable homicide" but not vice-versa. Speaking generally, „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.

21. The Hon'ble Apex Court while considering the various decisions on the aforesaid issue has laid down the guidelines in the case of ***Anbazhagan Vs. State Represented by the Inspector of Police reported in 2023 SCC OnLine SC 857*** which are being quoted as under:

"66. Few important principles of law discernible from the aforesaid discussion may be summed up thus:—

(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. ---

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is "guilty intention," whereas the second part would apply when there is no such intention, but there is "guilty knowledge".

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section,

(ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression "sufficient in the ordinary course of nature to cause death" but is of a lower degree of likelihood which is generally spoken of as an injury "likely to cause death" and the case does not fall under Clause (2) of Section 300 of the IPC,

(iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death. To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word "likely" means probably and it is distinguished from more "possibly". When chances of happening are even or greater than its not happening, we may say that the thing will „probably happen". In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mensrea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable

homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

67. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

68. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is - whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.

69. In the aforesaid view of the matter and more particularly bearing the principles of law explained aforesaid, the present appeal is partly allowed. The conviction of the appellant under Section 304 Part I of the IPC is altered to one under Section 304 Part II of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years."

22. In the backdrop of the aforesaid discussion of proposition of law as well as factual aspects of the instant case, this Court is to consider following issues regarding the conviction of the appellant Tasleem Khan:

    (i) Whether the material as has come in course of trial is sufficient to attract the ingredients of offence committed under Section 302 of the Penal Code, 1860? Or

    (ii) Whether the case is said to be covered under the exception to Section 300 of the Penal Code, 1860? Or

    (iii) Whether on the basis of factual aspect, the case will come under the purview of Part 1 of Section 304 IPC or Part II thereof ?

    (iv) Whether the appellant is entitled for acquittal in absence of cogent evidences?

23. Since, all these issue issues are inextricably interlinked, the same are being discussed and decided hereinbelow together.

24. It needs to refer herein that Section 299 I.P.C. speaks about culpable homicide wherein it has been stipulated that 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. Thus, Section 299 defines the offence of culpable homicide which consists in the doing of an act – (a) with the intention of causing death; (b) with the intention of causing such bodily injury as is likely to cause death; (c) with the knowledge that the act is likely to cause death. Hence, intention and—knowledge as the ingredients of Section 299 postulates existence of the positive mental attitude and this mental condition is the special *mens rea* necessary for the offence. The knowledge of 3rd condition contemplates knowledge or the likelihood of the death of the person.

25. If the offence which is covered by one of the clauses enumerated above, would be liable to be convicted under Section 304 IPC. If the offence is such that which is covered by clause (a) or (b) mentioned above i.e. Section 299 IPC, the offender would be liable to be convicted under Section 304-part I IPC as it uses the expression that death is caused with the intention of causing death or of causing such bodily

injury as is likely to cause death, where intention is dominant factor. However, if the offence is such which is covered by clause (c) mentioned above, the offender would be liable to be convicted under Section 304-part II IPC because of the use of the expression ―if the act is done with the knowledge that is likely to cause death but without any intention to cause death or to cause bodily injury as is likely to cause death‖ where knowledge is a dominant factor.

26. The Hon'ble Apex Court while considering the aforesaid fact, in the case of ***Jairaj v. State of Tamil Nadu*** reported in ***AIR 1976 SC 1519*** has been pleased to held at paragraph 32 & 33 which is being quoted hereunder as:

> *"32. For this purpose we have to go to Section 299 which defines "culpable homicide". This offence consists in the doing of an act (a) with the intention of causing death, or (b) with the intention of causing such bodily injury as is likely to cause death, or (c) with the knowledge that the act is likely to cause death.*
>
> *33. As was pointed out by this Court in Anda v. State of Rajasthan [AIR 1966 SC 148 : 1966 Cri LJ 171] x"intent" and "knowledge" in the ingredients of Section 299 postulate the existence of positive mental attitude and this mental condition is the special mensrea necessary for the offence. The guilty intention in the first two conditions contemplates the intended death of the person harmed or the intentional causing of an injury likely to cause his death. The knowledge in the third condition contemplates knowledge of the likelihood of the death of the person."*

27. Thus, while defining the offence of culpable homicide and murder, the framers of the Indian Penal Code laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable homicide or murder as the case may be.

28. The framers of the Indian Penal Code designedly used the two words intention and knowledge, and it must be taken into consideration that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where *mens rea* is not required in order to prove that a person had certain knowledge, he must have been aware that certain specified harmful consequences would or could follow.

29. In view of Section 299 of the Indian Penal Code, the material relied upon by the prosecution for framing of charge under Section 304 Part-II must be at least *prima facie* indicate that the accused has done an act which has caused death with at least such a knowledge that such act was likely to cause death.

30. The Hon'ble Apex Court, in ***Keshub Mahindra v. State of M.P.*** reported in ***(1996) 6 SCC 129*** has been pleased to hold as under paragraph 20 which reads hereunder as :-

> *"20. --- We shall first deal with the charges framed against the accused concerned under the main provisions of Section 304 Part II IPC. A look at Section 304 Part II shows that the accused concerned can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act of the accused concerned 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 charged offences would fall under Section 304 Part II. However before any charge under Section 304 Part II can be framed, the material on record must at least prima facie show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the accused concerned falls short of even prima facie indicating that the accused appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get out of the picture. In this connection we have to keep in view Section 299 of the Penal Code, 1860 which defines culpable homicide. It lays down that: "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." Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least prima facie indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death. ---"*

31. Further, Section 300 of Indian Penal Code speaks about murder under which it has been stipulated that 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, 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.

32. It is, thus, evident that the punishment under Section 302 of the Indian Penal Code shall not apply if any of the conditions mentioned above, are not fulfilled. This means that if the accused has not intentionally killed someone then murder cannot be proved. Apart from this, Section 300 of the Indian Penal Code mentions certain exceptions for offence of murder, which are as follows :-

> *"(a) If a person is suddenly provoked by a third party and loses his self-control, and as a result of which causes the death of another person or the person who provoked him, it won't amount to murder subject to proviso as provided.*
>
> *(b) When a person under the right of private defence causes the death of the person against whom he has exercised this right without any premeditation and intention.*
>
> *(c) If a public servant, while discharging his duty and having lawful intention, causes the death of a person.*
>
> *(d) 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. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."*

33. All these exceptions mentioned above shall come under the purview of Section 304 IPC and will be termed as culpable homicide not amounting to murder.

34. It is, thus, evident that the parameters which are to be followed while convicting a person of commission of crime of murder will be different if the murder comes under fold of culpable homicide amounting to murder and it will be different if with the intent to commit murder as per the outside purview of exception carved out under Section 300 of the Indian Penal Code.

35. This Court, upon due consideration of the principles enunciated by the Hon'ble Supreme Court, particularly in ***State of Andhra Pradesh v. Rayavarapu Punnayya*** **(supra) and** ***Anbazhagan*** **(supra),** wherein the distinction between Section 299 IPC, Section 300 IPC and Section 304 IPC has been clearly delineated, now proceeds to appreciate the evidence available on record in the present case.

36. Reverting to the facts of the present case, in the present case, homicidal death of Mukesh Kumar is admitted and found corroborated from the post-mortem report Ext. -3 of the Doctor (P.W.-6).

37. P.W.-2 Kusum Devi, the sister-in-law of the deceased, P.W.-4 Soni Kumari, the sister of the deceased, and P.W.-5 Mangri Devi, the mother of the deceased, have been projected by the prosecution as eyewitnesses to the assault allegedly inflicted upon Mukesh Kumar (deceased). Accordingly, the testimonies of the aforesaid witnesses require careful scrutiny and appraisal in order to ascertain whether the prosecution has successfully established the guilt of the appellant Tasleem Khan beyond reasonable doubt so as to sustain his conviction under Section 302 of the Indian Penal Code.

38. P.W.-2 Kusum Devi, sister-in-law of the deceased, had deposed that on June 3, 2014, at 10:00 a.m., she was at home and her brother-in-law Mukesh Kumar (deceased), was bathing in the courtyard. Then, accused Tasleem Khan, Nagina Khatoon, Afroz Khan, and Shamsher Khan broke through the fence of bushes and entered the courtyard and they began assaulting her brother-in-law Mukesh Kumar (deceased). When she and her sister-in-law Soni (PW-4), tried to rescue him, they caught hold of them and assaulted them. Tasleem Khan climbed on Mukesh's stomach and kicked and punched him and the other accused persons also assaulted him. Due to the assault, Mukesh screamed and fell unconscious and blood oozed from his mouth. He was brought to Chanho Health Center in an unconscious state and from there he was referred to RIMS. He received treatment at RIMS but he died on June 5, 2014.

39. Further, P.W.-4 Soni Kumari, the sister of the deceased, had stated in her evidence that on the day of occurrence she was at her home and her brother Mukesh Kumar, was bathing in the courtyard. Nagina Khatoon arrived and abused him. Thereafter, Tasleem, Afroz Khan and Shamsher Khan came and began assaulting him. They saw Tasleem Khan climb on Mukesh's stomach and squeeze it and Afroz Khan, Shamsher and Nagina, grabbed Mukesh and assaulted him. Mukesh began vomiting blood.

40. Again, P.W.-5 Mangri Devi, the mother of Mukesh Kumar (deceased), had also deposed that on the day of occurrence, when his son Mukesh was bathing in the courtyard then, accused Tasleem Khan, Afroz Khan, Shamsher Khan and Nagina Khatoon arrived and began fighting with his son. Tasleem Khan climbed on his son's stomach and began mashing and kicking his stomach. His son was injured and became unconscious and fell down.

41. Hence, from the depositions of PW-2, PW-4 and PW-5, fact emerges that on 03.06.2014 at about 10:00 A.M., Mukesh (deceased) was bathing in the courtyard of his house. In the meantime, the accused persons, namely, Tasleem Khan, Afroz Khan and Nagina Khatoon, arrived there and started assaulting him. PW-2, PW-4 and PW-5 have consistently deposed that accused Tasleem Khan climbed on the abdomen of Mukesh (deceased) and repeatedly pressed and kicked his stomach. As a result of the assault, Mukesh sustained injuries, he became unconscious and fell down. Thereafter, he was taken to Chanho Health Centre in an unconscious condition, from where he was referred to RIMS for better treatment. However, during the course of treatment, Mukesh succumbed to his injuries on 05.06.2014.

42. Learned counsel for the defence has taken the ground that there was no premeditation of mind to commit murder of Mukesh (deceased) rather it was sudden fight and scuffle and the act was done in a heat of passion.

43. In order to invoke exception 4 to Section 300 of IPC, four ingredients must be satisfied, i.e., - (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.

44. Hence, this court is proceeding to examine whether the present case falls under exception 4 to Section 300 of IPC.

45. This Court finds from the written report of the Informant Mukesh(deceased) that when he was bathing in his courtyard, then accused/appellant Tasleem Khan, knocked him down and pressed his foot on his stomach as a result, he experienced severe pain in his abdomen and back and was experiencing urinary retention.

46. Further, in the evidence of the prosecution witnesses it has come that informant party and accused/appellants are neighbour. Further it has come in testimonies of the witnesses that there was no prior enmity or dispute between the accused person Tasleem and the deceased and this fact would be substantiated from testimony of P.W.2 and 4 particularly.

47. This Court finds from the written report and evidences of PW-2, PW-4 and PW-5, who are the sister-in-law, sister and mother respectively of Mukesh(deceased) and the Investigating Officer (PW-7) that, the appellant Tasleem Khan had knocked down Mukesh (deceased) and pressed and kicked his stomach as a result Mukesh(deceased) succumbed to his injuries during the treatment.

48. The testimony of PW-2, PW-4 and PW-5 as to kicking the stomach of Mukesh(deceased) finds support from the testimony of the Court Witness No. 2 Dr. Gautam Chandra, who had treated Mukesh(deceased), in RIMS. Dr. Gautam Chandra, had deposed that he had performed a primary examination of Mukesh (deceased) and a hole was found in the intestine and abdominal tapping was done. Dr. Gautam Chandra, had also deposed that such injury was possible due to sudden push.

49. Further, in the present case, absence of premeditation can be seen from the deposition of P.W.-2 Kusum Devi and PW- 4 Soni Kumari, who are the sister-in law and sister respectively of Mukesh(deceased) and both PW-2 and PW-4, have specifically deposed that there was no previous animosity between the deceased and the accused persons/appellants and there was never any quarrel with the accused persons/appellants.

50. Thus, from the evidence available on record, the following admitted and undisputed facts emerge:

    (i) It is evident from the testimonies of the prosecution witnesses, particularly the eyewitnesses P.W.2, P.W.4 and P.W.5 that appellant **Tasleem Khan**, who has been convicted under Section 302 of the Indian Penal Code, was not armed with any weapon at the time of the occurrence.

    (ii) The aforesaid witnesses have consistently deposed that the assault attributed to appellant Tasleem Khan was carried

out by means of fist blows and kicks directed towards the stomach of the deceased.

(iii) It is further admitted that no prior enmity, animosity, or ill-will existed between the appellants and the deceased before the alleged occurrence.

(iv) The learned Trial Court, while recording the conviction, convicted appellant Tasleem Khan under Section 302 IPC and the remaining appellants under Section 323 IPC. Significantly, the learned Trial Court did not invoke the aid of Section 34 IPC, but instead assessed and determined the individual culpability of each appellant on the basis of their respective acts and participation in the incident.

(v) It is also undisputed that the deceased did not succumb to the injuries caused by the assault at the place of occurrence. Rather, he remained alive after the incident and made a statement on the basis of which the First Information Report was instituted. The deceased ultimately succumbed to the injuries allegedly sustained in the assault after two days while undergoing medical treatment.

51. The aforesaid admitted circumstances, particularly the absence of any weapon, the lack of prior enmity, the nature of the assault being limited to fist and kick blows, and the fact that the deceased survived for two days after the occurrence, constitute material factors requiring consideration while assessing the nature of the offence and the extent of criminal liability attributable to the appellant Tasleem Khan.

52. In the backdrop of the aforesaid discussion, the judicial pronouncements referred to hereinabove, the evidence adduced by the prosecution witnesses, and the overall facts and circumstances of the present case, this Court is of the considered opinion that the assault upon Mukesh (deceased) was not a premeditated act. Rather, the occurrence appears to have arisen suddenly and on the spur of the moment on account of a dispute triggered by the deceased bathing openly in the courtyard, to which the accused persons had objected on the ground that young girls were residing in their house.

53. The evidence on record further does not indicate the existence of any prior enmity or motive on the part of appellant Tasleem Khan against the deceased. Significantly, appellant Tasleem Khan was not armed with any weapon, and the assault attributed to him consisted solely of fist and kick blows. Had there been a deliberate intention to commit murder, it would have been natural for the assailant to arm himself with a weapon capable of causing fatal injuries. However, no such circumstance is borne out from the prosecution evidence.
54. Thus, upon a comprehensive evaluation of the testimonies of the prosecution witnesses, the medical evidence, and the entire material available on record, this Court is of the considered view that the prosecution has failed to establish beyond reasonable doubt that appellant **Tasleem Khan** had the intention of causing death so as to attract the offence of murder punishable under Section 302 of the IPC. However, the evidence unequivocally establishes that the injuries inflicted by appellant Tasleem Khan during the course of the occurrence ultimately resulted in the death of the deceased.
55. Having regard to the nature of the occurrence, the absence of premeditation, the lack of prior enmity between the parties, the fact that the appellant was not armed with any weapon and had assaulted the deceased only by means of fist and kick blows, this Court is satisfied that the act of the appellant would not fall within the ambit of Section 302 IPC.
56. Nevertheless, considering the nature of the assault and the part of the body targeted, it can reasonably be inferred that the appellant had the intention of causing such bodily injury as was likely to cause death. Consequently, the case would appropriately fall within the purview of Section 304 Part I of the Indian Penal Code.
57. Accordingly, this Court is of the view that the judgment impugned convicting the appellant Tasleem Khan, needs to be interfered with by modifying it to that of conviction of the Tasleem Khan, under Section 304 Part-I of the Indian Penal Code.
58. Accordingly, all the issues involved regarding the appellant Tasleem Khan, have been answered.

59. Regarding conviction of the appellants Afroz Khan and Nagina Khatoon @ Nagua, under section 323 of IPC, this Court finds that PW-2 and PW-4, have deposed that accused/ appellants Afroz Khan and Nagina Khatoon @ Nagua, had also assaulted Mukesh(deceased). PW-2 had also deposed that when she had gone to rescue Mukesh(deceased), then accused persons/appellants, had also assaulted her.

60. Hence, conviction of the appellants Afroz Khan and Nagina Khatoon @ Nagua, under section 323 of IPC, same calls for no interference and is hereby sustained and upheld.

Conclusion:

61. Accordingly, impugned Judgment of conviction dated 12.06.2017 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No. 565 of 2014, arising out of Chanho P.S. Case No.53 of 2014, is hereby modified and the appellant Tasleem Khan is held guilty of the offence punishable under Section 304 Part I of IPC.

62. On the question of sentence, since the conviction of the appellant Tasleem Khan has been modified to Section 304 Part I of the Indian Penal Code and from the record, it is evident that the appellant Tasleem Khan has already undergone custody for a period of approximately twelve years, therefore, this Court is of the considered view that in the facts and circumstances of the case, his sentence is reduced to period undergone by him.

63. Consequently, the appellant Tasleem Khan, who is presently in custody, is directed to be released forthwith from jail custody, provided he is not required to be detained in connection with any other case.

64. So, far as sentence of simple imprisonment of one year for conviction of appellants Afroz Khan and Nagina Khatoon @ Nagua, under section 323 of IPC is concerned, from record it appears that appellant Afroz Khan has undergone about 9 months in custody and appellant Nagina Khatoon @ Nagua, has undergone more than 3 months in custody, hence, their sentence is reduced to period undergone by them.

65. In consequence thereof, the appellants Afroz Khan and Nagina Khatoon @ Nagua, are discharged from their liability of the bail bond.

66. Accordingly, the instant appeals stand dismissed with the aforesaid modification in conviction and sentence.

67. Let the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

68. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

Jharkhand High Court, Ranchi
Dated: 29/10/2026

Saurabh /**A.F.R.**

Uploaded on 30.10.2026