

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.203 of 2023

Arising Out of PS. Case No.-54 Year-2009 Thana- TARAIIYA District- Saran

Arjun Yadav @ Arjun Rai, s/o late Kameshwar Ray r/o village- Sitalpatti,
P.S.- Taraiya, Distt- Saran at Chapra.

... .. Appellant

Versus

1. The State of Bihar
2. Baijnath Singh, S/o Late Ram Chandra Singh, R/o village- Dumari, P.S.-
Taraiya, Distt- Saran at Chapra.

... .. Respondents

with

CRIMINAL APPEAL (SJ) No. 119 of 2023

Arising Out of PS. Case No.-54 Year-2009 Thana- TARAIIYA District- Saran

Baijnath Singh, S/O Late Ramchandra Singh, Resident of village- Dumari,
P.O.- Dumari, P.S.- Taraiya, District- Saran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 203 of 2023)

For the Appellant/s : Ms. Nikita Mittal, Advocate

For the State : Mr. Mukeshwar Dayal, APP

For the Respondent No.2: Mr. Ansul, Sr. Advocate

(In CRIMINAL APPEAL (SJ) No. 119 of 2023)

For the Appellant/s : Mr. Ansul, Sr. Advocate

For the State : Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 05-05-2025

These two appeals have been filed against the
judgment dated 22.11.2022 and the order dated 24.11.2022
passed in Sessions Trial No. 675 of 2009, arising out of Taraiya
P.S. Case No. 54 of 2009 (hereinafter referred to as the



‘impugned judgment and order’ respectively) by learned Additional District and Sessions Judge-IXth, Saran at Chapra (hereinafter referred to as the ‘learned trial court’).

2. By the impugned judgment, the learned trial court held respondent no. 2 (Cr. Appeal (DB) No. 203 of 2023) guilty of the offence punishable under Section 304 Part II of the Indian Penal Code (in short ‘IPC’). The respondent no. 2 has been sentenced to undergo five years rigorous imprisonment for the offence under Section 304 Part II of the IPC with a fine of Rs. 20,000/- . In default of payment of fine, he has been ordered to undergo three months simple imprisonment. All sentences shall run concurrently. The learned trial court has, however, acquitted the respondent no. 2 of the charge under Section 302 IPC.

3. The appellant in Cr. Appeal (DB) No. 203 of 2023 is the informant of the case who is aggrieved by the impugned judgment whereby the Respondent No. 2 has been acquitted of the charge under Section 302 IPC and has been convicted for a lesser offence i.e. culpable homicide not amounting to murder.

4. Cr. Appeal (SJ) No. 119 of 2023 has been preferred by the respondent no. 2 of Cr. Appeal (DB) No. 203 of 2023 for setting aside the impugned judgment of conviction and sentence.



5. With the consent of the parties, both the appeals have been heard together and are being disposed of by this common judgment.

Prosecution case

6. The informant, namely, Kameshwar Rai (since deceased/victim) in his *fardbeyan* recorded on 04.06.2009 at about 08:00 PM at Referral Hospital, Taraiya in emergency ward alleged that on the same day at about 06:30 PM, he was returning his house along with his son Arjun Rai from village Andharwari after grinding flour. When he reached near the house of one Rajendra Rai, in the meantime, a motorcycle came from the side of Taraiya and stopped near the house of Rajendra Rai and one Baijnath Singh got down from the motorcycle and with an intention to kill the informant assaulted him by dagger twice in his ribcage and shoulder due to which he became unconscious and fell down. Thereafter, he tried to assault the son of the informant who fled away to save his life. It is further alleged that the said Baijnath Singh fled away after leaving the motorcycle. It is further alleged that with the help of the villagers the informant was taken to Taraiya Hospital where his treatment is going on. The reason of the alleged incident is the previous enmity.



7. On the basis of the aforesaid *fardbeyan* of the informant, a First Information Report being Taraiya P.S. Case No. 54/2009 dated 04.06.2009 has been registered under Sections 341, 324 and 307 IPC against the sole accused Baijnath Singh. After completion of investigation, police submitted a charge-sheet bearing number 77/2009 dated 25.09.2009 under Sections 341, 323, 307 and 302 IPC against Baijnath Singh. Upon submission of charge-sheet, the learned Magistrate took cognizance *vide* order dated 02.10.2009/05.10.2009. The case was committed to the court of Sessions on 05.12.2009 where Sessions Trial No. 675 of 2009 was registered. *Vide* order dated 21.12.2009 charges were framed under Section 302 IPC.

8. During trial, the prosecution produced as many as ten witnesses and proved some documentary evidences. The full description of the witnesses and the documents proved on behalf of the prosecution are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

| | |
|------|----------------------------------|
| PW-1 | Binda Raut |
| PW-2 | Baharan Rai |
| PW-3 | Arjun Rai (son of the informant) |
| PW-4 | Surendra Rai |
| PW-5 | Sabha Rai |
| PW-6 | Sachidanand Singh |
| PW-7 | Dr. Muneshwar Prasad Singh |
| PW-8 | Shri Bhagwan Rai |



| | |
|-------|---------------------------|
| PW-9 | Dr. Surendra Prasad Singh |
| PW-10 | Nali Narayan Choudhary |

List of Prosecution Exhibits

| | |
|---------------|--|
| Exhibit ‘1’ | Signature of Arjun Rai on the fardbeyan |
| Exhibit ‘1/1’ | Signature of Kameshwar Rai on Fardbeyan |
| Exhibit ‘2’ | Entire fardbeyan |
| Exhibit ‘3’ | Signature of Dr. M.P. Singh on Postmortem report |
| Exhibit ‘4’ | Injury report of Kameshwar Rai |
| Exhibit ‘5’ | Inquest report of Kameshwar Rai |

9. After the prosecution evidence was closed, the statement of the accused was recorded under Section 313 Cr.P.C.

10. In defence, no oral evidence has been led but some documentary evidences have been brought on record as defence evidence.

List of Exhibits on behalf of Defence

| | |
|-----------|--|
| Exhibit-A | Letter No.7778 sent by Superintendent, PMCH to the court |
| Exhibit-B | Letter No.6143 dated 17.04.2015 sent by Superintendent, PMCH to the court |
| Exhibit-C | Bed head ticket of the deceased |
| Exhibit-D | Protest Petition dated 29.11.2010 in Taraiya P.S. Case No.17 of 2010 |
| Exhibit-E | Report of A.C.M.O., Sadar Hospital, Chapra regarding the treatment of deceased |



Findings of the Learned Trial Court

11. Learned trial court after analyzing the evidences on the record found that the accused-respondent no.2 was charged for the offence under Section 302 IPC and the informant -appellant in his fardbeyan alleged that the accused had inflicted two knife blows which finds support from the injury report (Exhibit-4) issued by the doctor of Primary Health Centre. The prosecution witnesses have deposed that there was argument between the informant and the accused on the point of money for tree of *Gullar* whereafter the accused caused injury to the informant and thereafter he was treated at Taraiya hospital from where he was referred to Sadar hospital, Chapra where x-ray of injured was done but he was not admitted there. From the Exhibit-E brought by the defence learned trial court found that injured was treated at Ishwar Dayal Hospital, Patna and he returned home after getting cured. Thereafter, after 40 days of the occurrence, on 14.07.2009 the injured was admitted in PMCH.

12. Learned trial court has held that the informant died after 50 days of the occurrence. The Medical Officer has in his report given different reasons which are self-contradictory. According to the learned court, the act committed by the



accused does not satisfy the essential ingredients of Section 300 IPC. In these circumstances, the learned court acquitted the accused of the offence under Section 302 IPC.

13. Having taken the aforementioned views, the learned trial court held that the accused had assaulted the informant (since deceased) by a dagger as a result whereof the informant died after 50 days. The learned trial court held that this act of the accused would come in the category of culpable homicide as defined under Section 299 IPC. The learned trial court clearly held that the act of assault by dagger clearly indicates that the accused had within his knowledge that the act which he was committing can cause death of the informant. The learned trial court has recorded that from the post mortem report (Exhibit '3') issued by the PMCH, it appears that the death of the informant has occurred because of the infection and formation of pus in the wound of the stomach.

14. The learned trial court, however, went to add that from the oral and documentary evidences of the prosecution, it is evident that the informant (deceased) had not got his treatment properly done. Referring to Explanation 2 of Section 299 of the IPC, the learned trial court held that if appropriate and skilled treatment would have been provided to the



informant (deceased), the death could have been avoided. The learned trial court has clearly recorded that the informant (the deceased) died due to the injury caused by the accused. For these reasons, the learned trial court has held the accused (respondent no. 2 in Cr. Appeal (DB) No. 203 of 2023) guilty of the offence under Section 304 Part II of the IPC. The learned trial court has awarded a sentence of five years rigorous imprisonment to the accused with a fine of Rs.20,000/-. In case of non-payment of fine, the convict shall undergo an additional imprisonment of three months. The learned trial court has given benefit of adjustments of the period already spent in incarceration in terms of Section 428 CrPC (now Section 468 of the Bhartiya Nagrik Suraksha Sanhita (BNSS)).

15. On the point of compensation to the victim under Section 357 A(3), the learned trial court has recommended the case of the victim to the District Legal Service Authority, Saran, Chapra under the Bihar Victim Compensation Scheme, 2014 for providing appropriate compensation.

Submissions on behalf of the Appellant
in Cr. Appeal (DB) No. 203 of 2023

16. Learned counsel for the appellant in Cr. Appeal (DB) No. 203 of 2023 has submitted that despite there being clinching evidence on the record that the respondent no. 2



intentionally caused the injuries which ultimately led to the death of the informant, the learned trial court has acquitted respondent no. 2 on a completely irrelevant and extraneous consideration by taking a view that if proper and skilled treatment would have been provided to the informant then his life could have been saved.

17. Learned counsel submits that the learned trial court has found in paragraph '21' of the impugned judgment that the accused had assaulted the informant by dagger and caused injury. The learned trial court has referred the cause of death shown in the PMCH report wherein it is said to be caused due to heart attack. The learned trial court has noticed the post mortem report of Sadar Hospital, Chapra and the opinion of the Doctor saying that the death of deceased was caused due to infection and pus formation. The learned trial court has got influenced only because the death has taken place due to infection and pus formation in the wound caused in the stomach of the deceased.

18. It is submitted that the learned trial court misconstrued Section 299 IPC and thereby took a view that from the evidence led by the prosecution, it appears that the deceased had not received proper treatment and had he been



properly treated then his death could have been avoided. It is submitted that such observations of the learned trial court is completely irrelevant and contrary to Explanation 2 to Section 299 IPC.

19. It is further submitted that in this case the date, time, place and manner of occurrence have been duly proved by the prosecution. The trial court has accepted the prosecution story but instead of convicting the accused under Section 302 IPC, convicted him under Part II of Section 304 IPC and awarded a meagre sentence of only five years rigorous imprisonment with a fine of Rs.20,000/-.

20. It is submitted that the learned trial court has grossly erred in appreciation of evidence. There is a complete misunderstanding of Explanation 2 of Section 299 IPC on the part of the learned trial court and the Exceptions to Section 300 IPC. The learned trial court has not recorded any finding that the accused had no intention to cause death of the informant.

21. It is submitted that the act of the accused is covered under the definition of Section 300 and there was no reason for the learned trial court to put it within the category of culpable homicide not amounting to murder and then convict the accused under Part II of Section 304 IPC.



Submissions on behalf of Respondent No. 2

in Cr. Appeal (DB) No. 203 of 2023

22. Mr. Ansul, learned Senior Counsel representing respondent no. 2 in Cr. Appeal (DB) No. 203 of 2023 and simultaneously arguing the appeal of respondent no. 2 being Cr. Appeal (SJ) No. 119 of 2023, though initially took a plea that in this case the place of occurrence has not been duly proved by the prosecution and the presence of the son of the informant, namely, Arjun Yadav at the place of occurrence and as an eye witness cannot be believed but in course of his submissions when he was confronted with the averments made in the protest petition (Exhibit 'D') filed by the accused in the court of learned Chief Judicial Magistrate, Chapra, Saran vide C 3689 of 2010 (Exhibit 'D') in which the accused has himself stated about the occurrence which took place on 04.06.2009 at 04:00 PM in Village Andharwari and has shown the presence of Sabha Rai, Pintu, Baharan Rai, Sunil Kumar Rai out of whom Baharan Rai (PW-2) and Sabha Rai (PW-5) have deposed as prosecution witnesses and then the *fardbeyan* of Kameshwar Rai which is the basis of the FIR in which he has clearly stated about the presence of his son Arun Rai with him at the time of occurrence, learned Senior Counsel for the respondent no. 2 has



not pressed this plea.

23. Learned Senior Counsel submits that he would confine his submissions to the extent that in this case the alleged injury caused by the respondent no. 2 is not the proximate cause of death. Learned Senior Counsel has relied upon a Division Bench judgment of the Hon'ble Madhya Pradesh High Court in **Imran Khan versus State of Madhya Pradesh** reported in **1994 MPLJ 862** to submit that an act is said to be a cause of death when the death result from the act itself and from some consequences necessarily or naturally flowing from the act and reasonably contemplated as its result. It is his submission in this case the chain of consequences stood broken as the informant (deceased) was admitted in PMCH after 40 days of the occurrence and he ultimately died as a result of the infection suffered and the pus formed in the wound.

24. It is his submission that there was an unexpected complication which would be in the nature of a new mischief and the relation of cause and effect or the causal connection is too remote. It is his submission that the proximate cause of death being the infection and formation of pus in the wound, the respondent no. 2 would not be liable to be convicted under



Section 302 IPC. It is his submission that in this case the report of PMCH as enclosed with the Letter No. 6143 dated 17.04.2015 (Exhibit 'B') shows that the Doctor noticed on admission of the informant that it was an old case of stab injury for which exploratory laprotomy was done in Ishwar Dayal Hospital where colostomy was done. The Doctor noticed loose watery stool coming out from colostomy wound and wound dehiscence. The informant (deceased) remained admitted in PMCH for about 10 days. He was declared dead clinically on the basis of the findings: pulse-absent; BP- not recordable; heart S./breath S.- not audible; pupil- B/L dilated and fixed; mode of death- cardio pulm. Arrest.

Submissions of the State

in Cr. Appeal (SJ) No. 119 of 2023

25. Learned Additional Public Prosecutor for the State has opposed Cr. Appeal (SJ) No. 119 of 2023. It is submitted that the challenge to the impugned judgment of conviction has no plausible basis and it is liable to fail. The learned trial court has rightly appreciated the entire evidence on the record and having found that the date, time, place and manner of occurrence have been duly proved by the prosecution, convicted the accused for the offence of culpable homicide not amounting to murder and sentenced him to undergo a rigorous



imprisonment of five years with a fine of Rs.20,000/-.

Consideration

26. We have heard learned counsel for the appellant in both the appeals simultaneously and learned Additional Public Prosecutor for the State.

27. As recorded hereinabove, in course of hearing of the appeals, learned Senior Counsel for the convict-appellant in Cr. Appeal (SJ) No. 119 of 2023 has given up his submissions with regard to the place of occurrence and the credibility of the eye witness as also finding of the learned trial court that the cause of death in this case is the injury caused by the accused but the sole contention of learned Senior Counsel for the said appellant while arguing on his behalf as respondent no. 2 in Cr. Appeal (DB) No. 203 of 2023 is that the death of the informant (deceased) has resulted due to the new mischief in form of infection and pus in the wound, therefore, the learned trial court has not committed any error in convicting the respondent no. 2 only for the culpable homicide not amounting to murder and punished him under Part II of Section 304 of the IPC.

28. Notwithstanding the fact that learned Senior Counsel for the appellant in Cr. Appeal (SJ) No. 119 of 2023 and respondent no. 2 in Cr. Appeal (DB) No. 203 of 2023 has



confined his submissions, this Court takes it as its' duty to go through the entire evidences on the record, re-appreciate it and satisfy itself that the prosecution has duly proved its' case beyond all reasonable doubt.

29. We have examined the evidences available on the record. Binda Raut (PW-1) is an eye witness of the occurrence. He is a resident of village Andharwari. He has stated that he was in his house when Kameshwar Rai (the deceased) was coming after grinding flour and Baijnath Singh also reached there. His son was also with him. This witness has not stated any quarrel having taken place in front of his house. He has stated that Baijnath Singh inflicted dagger in right side on to the stomach of Kameshwar Rai. Intenstine had come out and profused bleeding took place. Kameshwar Rai was taken to hospital at Chapra and from Chapra he was taken to Patna. In his cross-examination, this witness has stated that the occurrence had taken place in front of house of Ram Pravesh Rai. He knows Rajendra Rai and Ram Pravesh Rai who are full brothers and their houses are within a distance of one meter. He has stated that Kameshwar Rai came home after one and half/ two months of treatment from hospital but after some complications occurred in the wound, he again went to the



hospital. This witness has not been suggested by defence that there was any sudden quarrel between the informant and the respondent no. 2.

30. Baharan Rai (PW-2) is another villager of village Andharwari. He has stated that he heard *hulla* and when he reached there then he saw that some altercation was taking place between Kameshwar Rai and Baijnath Singh, on that, Baijnath Singh took out a dagger and assaulted Kameshwar Rai which caused injury at three places. People assembled then they took Kameshwar Rai to hospital. In his cross-examination, he has stated that the occurrence has taken place in front of the house of Ram Pravesh Rai. His house is situated at a distance of ten *laggis* from the house of Ram Pravesh Rai. He has explained that one *laggi* is equal to ten hands and his house is situated at a distance of hundred hands. Again, from the evidence of this witness, it appears that the Respondent No. 2 was armed with dagger and while having some altercation in form of oral shoutings, he took out the dagger and assaulted the informant. This witness has seen the occurrence.

31. Arjun Rai (PW-3) is the son of the deceased. He is an eye witness to the occurrence. In the *fardbeyan*, the informant has stated about the presence of his son Arjun Rai



(PW-3) with him at the time of occurrence. PW-3 has stated that he was coming with his father by foot after grinding flour from the flour mill which was kept on a bicycle and when they reached near the house of Ram Pravesh Rai then from Taraiya side, Baijnath Singh came on a motorcycle. There was an oral exchange of words over the *Gullar* Tree on which Baijnath Singh took out a dagger and assaulted on the right shoulder of his father and then he penetrated the dagger in the left side on to the stomach. This witness tied the wound by his *gamchha* and tried to catch hold of Baijnath Singh but Baijnath Singh chased him to assault. PW-3 has stated that he fled whereafter the villagers assembled. Baijnath Singh had left his motorcycle there. The father of this witness was taken to Taraiya Hospital from where he was referred to Chapra Sadar Hospital and then from Chapra, he was referred to PMCH but he was taken to Ishwar Dayal Hospital where he was operated upon. PW-3 has stated that in course of the treatment, his father died. In Taraiya Hospital, the statement of his father was recorded, his father had put his signature on his statement. This witness had also put his signature on the *fardbeyan*. He has identified the signature of his father on the *fardbeyan* as Exhibit '1' and his own signature as Exhibit '1/1'.



32. In his cross-examination, this witness has stated that his home is village-Sitalpatti. Occurrence took place in the village 'Andharwari'. There are 10/12 houses in village Andharwari and the houses are situated at a distance of 2-4 steps. He has stated that his father was assaulted for about 10/5 minutes. He was not assaulted and he had not tried to save him. He had seen the assault by dagger. The pointed part was penetrated. He has made it clear in his cross-examination that the house of Rajendra Rai and Ram Pravesh Rai are situated at a distance of one laggi meaning thereby at a distance of seven hands. This is important to note because in the *fardbeyan* the informant has stated that the occurrence had taken place in front of the house of Rajendra Rai but in course of evidence it has transpired that Rajendra Rai and Ram Pravesh Rai are both brothers and their houses are situated at a distance of one laggi only.

33. This Court has, therefore, found that the statement of the informant that the occurrence had taken place in front of the house of Rajendra Rai cannot be taken to establish any dispute with respect to the place of occurrence. It is to be remembered that the occurrence had taken place in another village where the deceased had gone with his son for grinding



flour and he was assaulted by Respondent No. 2 on his way in front of the house of Ram Pravesh Rai. The I.O. has also established the place of occurrence being in front of the house of Ram Pravesh Rai. Considering the distance between the houses of the two brothers being only a distance of seven hands which is equivalent to one laggi, it cannot be said to be a material discrepancy.

34. It is found that in course of cross-examination of PW-3, he was suggested that Baijnath Singh had also lodged a case. This witness said that he was not aware of it. Thereafter, the defence did not prove any documentary evidence to show that Baijnath Singh had lodged a case. All that has been proved by defence is a protest petition which has been marked Exhibit 'D'.

35. The defence further suggested PW-3 that Baijnath Singh (accused) had suffered injury but in course of trial, the defence has not brought on record any injury report of Baijnath Singh (Respondent No. 2). No oral evidence has been adduced in this regard even though in protest petition, Baijnath Singh claimed that he had gone to Chapra Hospital for his treatment. Thus, the defence has not proved by leading any cogent evidence that Baijnath Singh had suffered any injury in the said



occurrence. On perusal of the evidence of PW-3 coupled with the fardbeyan of the informant (Exhibit '2'), it is evident that he is an eye witness to the occurrence. He is the son of the deceased. PW-1 has also said about the presence of PW-3 with his father. PW-3 has withstood the test of cross-examination and no material contradictions have been shown to this Court in his evidence. The defence suggested PW-3 that occurrence is said to have taken place in front of the house of Rajendra Rai and no occurrence had taken place in front of the house of Ram Pravesh Rai. PW-3 denied the suggestion.

36. Surendra Rai (PW-4) is an independent witness of village Andharwari. He had seen Kameshwar at the place of occurrence immediately after the occurrence. He has stated that when he heard *hulla* at his *bathan* and went ahead to that place, he found that Kameshwar Rai had suffered dagger injury in the left and right side of his stomach. Baijnath Singh had assaulted. Arjun son of Kameshwar Rai had fled away. Kameshwar Rai was taken to hospital. This witness is, however, not an eye witness to the occurrence and he has stated that he had not seen the assault by dagger.

37. Sabha Rai (PW-5) is another eye witness to the occurrence who has stated that there was a talk with regard to



money on account of Gullar Tree, on this Baijnath Singh took out a dagger and penetrated the same in the left side of the *panjara* of Kameshwar Rai and second time assaulted on his shoulder. He had chased this witness and Arjun (PW-3). This witness stated that he fled away raising *hulla* whereafter villagers assembled. He identified the accused. This witness has stated in his cross-examination that he is the brother in Gotiya of Kameshwar Rai. He has given the description of the place of occurrence. He has stated that in South there is house of Ram Pravesh and Rajendra. In East, *atta-chakki*. PW-4 has stated that he is doing *chowkidari*. Thus, this witness corroborates the statement of PW-3 with regard to place of occurrence. He has stated that blood had fallen on the earth. He has stated that before he could have reached, Baijnath Singh had already reached there. When this witness reached there, he saw Kameshwar Rai was bleeding whereafter he ran and raised *hulla*.

38. Sachidanand Singh (PW-6) is the I.O. of the case. He has proved the *fardbeyan* recorded by Asim Khan. It has been marked Exhibit '2'. He had taken the charge of investigation and proceeded to the place of occurrence on 05.06.2009. He was shown the place of occurrence by Baharan



Rai (PW-2). The I.O. has proved the place of occurrence as the *pucci* road North to the house of Ram Pravesh Rai. Road is East-West. He has given the description of the place of occurrence. He has stated that he did not find any noticeable thing. The road is a very busy road. He recorded the statement of witness. Later on, he came to know that the injured died during his treatment. He had received the post-mortem report and had filed the chargesheet.

In his cross-examination, he has stated to have recorded the re-statement of Kameshwar Rai at Sitalpatti. When he had recorded the re-statement of Kameshwar at that time, he had wounds, when there was some healing he had come back but thereafter his condition worsened and he again went to Patna. He has stated that there is no counter case of this case. Case No. 17/10 Taraiya P.S. was registered after this case. This Court has noticed from the protest petition (Exhibit 'D') that the informant has mentioned about the case registered on 15.03.2010 in Taraiya P.S. on the basis of a Complaint Case No. 1919/09 dated 12.06.2009.

39. This Court finds that in this case, the date of occurrence is 04.06.2009. This private complaint was filed after 8 days of the occurrence. In this case, the respondent no. 2 has



not brought any evidence showing any injury to him. Thus, the I.O. has stated that there was no counter case of the present case.

40. Dr. Muneshwar Prasad Singh (PW-7) was the Medical Officer in the Sadar Hospital, Chapra who has conducted autopsy on the dead body of the deceased. He had found the following injuries:-

- “(i) one partially healed infected wound about 3/4" x 1/4" on the left side of upper part of abdomen with surrounding excoriation of skin.
- (ii) One infected wound about 1"x1" with surrounding 5 stitches with granulation and excoriation around the wound.
- (iii) The abdomen was open in the mid line upper part 6"x3" with marks of stitches on the wound margins - rectus muscle being visible through the gaping wound with granulation and infection material over it, bluish discolouration in the lower part.”

41. PW-7 deposed on the injuries suffered by Kameshwar Rai which he noticed in course of postmortem. He has recorded that “shock and exhaustion due to infection of the wounds, gaping of the abdominal wound and injury to intestine were the cause of death”. He has further opined that all the injuries may be possible by *chura*. He has proved the post mortem report which has been marked Exhibit ‘3’. In his cross-examination, PW-7 has stated that “there are many causes of



infection. Carelessness of patient may be one of the causes of infection. If proper treatment was held, there was least chance of infection. The pus formation was held in the intestine. The death of the deceased was caused due to infection and pus formation”.

42. It is evident from the deposition of Doctor (PW-7) that the wound caused to the deceased had developed infection and pus formation had taken place which proved fatal and the informant died. Explanation 2 to Section 299 IPC takes care of this aspect of the matter. It is evident that the death had taken place because of the injury caused to the deceased.

43. We have further noticed the evidence of another Dr. Surendra Prasad Singh (PW-9) who had examined the informant in the Referral Hospital, Taraiya on 04.06.2009. He had found the following injuries on his body:-

“(1) incised wound 2” x 1” deep to chest cavity on the lower part of the back of chest on the left side.

(2) Incised wound on the right shoulder joint about 1” x ½” x skin deep.

Opinion of the both injury reserved and Patient is referred to Sadar Hospital Chapra for further and proper treatment.

Mark of Identification – a mole on left upper arm.”

44. PW-9 has proved the injury report (Exhibit ‘4’). It clearly shows that he had found incised wound deep to chest



cavity on the lower part of the back of the chest and incised wound on the right shoulder joint. Thus, the prosecution story of two repeated dagger blow inflicted by the accused (respondent no. 2) has been duly proved.

45. One of the witnesses, namely, Shri Bhagwan Rai (PW-8) has been declared hostile. He was cross-examined by the prosecution and his attention was drawn towards his previous statement made before police. He has stated in his cross-examination that he knew Baijnath Singh because he is Dak Munshi but he did not know about the occurrence.

46. We have noticed that the prosecution has duly proved the inquest report (Exhibit '5) and the post mortem report as also report of the PMCH to show that two repeated dagger blow were given to the deceased one of which ultimately proved fatal to the life of the informant

47. This Court finds that in this case, the prosecution has proved the date, time, place and manner of occurrence. Prosecution witnesses are reliable, they have withstood the test of cross-examination. The defence has, though questioned the place of occurrence but it is well proved that Ram Pravesh and Rajendra are brothers, they have their houses besides each other which is hardly situated at a distance of one 'laggi' only. I.O.



has given the description of the place of occurrence. The witnesses are consistent that the informant was attacked by respondent no. 2 (Cr. Appeal (DB) No. 203 of 2023) and he penetrated dagger into the left side on to the stomach of the informant.

48. We have been left with the sole argument of respondent no. 2 that the proximate cause of death of the informant in this case is not relatable to the actual death. We will examine this submission of learned Senior Counsel for the respondent no. 2 hereinafter.

49. Section 299 IPC on which the learned trial court has placed reliance reads as under:-

“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.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A



has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it; kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B or cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.”

50. Section 300 IPC is the charging Section which defines ‘murder’. Section 300 with its five explanations are being reproduced hereunder for a ready reference:-

“**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.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a



crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

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.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not



committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was giving by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being



horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

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.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—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.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.”

51. On a bare perusal of Explanation 2 to Section 299 IPC, it would appear that where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused death, although by resorting to proper



remedies and skillful treatment, the death might have been prevented. The learned trial court has understood otherwise. It has taken a view that with proper and skillful treatment of the informant, the death could have been avoided and the infection as well as formation of pus in the wound is the cause of death. This seems to have prevailed upon the learned trial court.

52. Further, we find that the learned trial court has held that it is a culpable homicide. The learned trial court, however, erred in taking a view that it is a case of culpable homicide not amounting to murder. In this case, respondent no. 2 has inflicted two dagger blows upon the informant. One of the dagger blows could hit on the shoulder but it is nearer to the neck, luckily the informant suffered only a skin deep injury on his shoulder but the another blow was fatal, it hit on a vital part of the body and there is no iota of doubt that the dagger blows were inflicted with intention of causing such bodily injury which the respondent no. 2 knew to be likely to cause death of the person to whom such an injury is caused and the injuries is sufficient in an ordinary cause of nature to cause death. The intention of the appellant to kill the informant is found in the fact that he twice attacked the informant aiming vital part of the body. The blow suffered by the informant on his shoulder could have hit any



other vital part of the body but he survived it, still the appellant did not stop and gave second hit on to his stomach.

53. The finding of the learned trial court in the following paragraphs may be seen:-

“प्रस्तुत वाद में अभियुक्त द्वारा गुलर के पेड़ के पैसा को लेकर बाता-बाती होना और इसी दौरान चाकू मारना यह संकेत देता है कि अभियुक्त को ज्ञान है कि जो कृत्य वह कर रहा है उस कृत्य से मृत्यु कारित कर सकता है।”

54. The learned trial court has further held in the last part of its’ judgment as under:-

“अभियोजन की ओर से परीक्षित साक्षियों के साक्ष्य से स्पष्ट है कि अभियुक्त यह ज्ञान रखते हुए सूचक(मृतक) के क्षति कारित कि उस क्षति से उसकी मृत्यु हो सकती थी। अभियुक्त के क्षति के कारण सूचक (मृतक) के जख्म में संक्रमण हुआ और संक्रमण तथा पेट में मवाद बनने के कारण सूचक (मृतक) की मृत्यु हो गयी।”

55. The observations of the learned trial court that had there been a proper and skilled treatment, the death could have been avoided, cannot come to the rescue of the accused (respondent no. 2).

56. The act of respondent no. 2 is apparently covered under Section 300 IPC.

57. We have taken note of the five Exceptions hereinabove. It is not the case of defence that the dagger blow was inflicted upon the informant due to any sudden and grave provocation. The case would not fall in either of the Exceptions



1, 2, 3, 4 and 5. Some of the prosecution witnesses have stated that there were exchange of words between the informant and the respondent no. 2 when respondent no. 2 took out a dagger and assaulted the informant twice. It is not a case of grave and sudden provocation. The fact that the respondent no. 2 was carrying a dangerous weapon such as a dagger with him and he intercepted the informant in another village 'Andharwari', stabbed him and gave repeated dagger blow only proves that the accused-respondent no. 2 had intercepted the informant with a pre-meditation of mind, armed with a weapon in his possession, he stopped, indulged in exchange of words, took out his dagger, stabbed the informant and fled away.

58. Learned Senior Counsel for the respondent no. 2 has relied upon the judgment of Hon'ble High Court of Madhya Pradesh in the case of **Imran Khan** (supra) but we find that what has been held by the Hon'ble High Court in paragraph '11' of the judgment would go against respondent no. 2. Paragraph '11' of the judgment in the case of **Imran Khan** (supra) reads as under:-

“**11.** An act is said to cause death when death results from the act itself or from some consequences necessarily or naturally flowing from the act, and reasonably contemplated as its result. Where without the intervention of any



considerable change of circumstances death is connected with the act of violence by a chain of causes and effects death must be regarded as the proximate and not too remote a consequence of the act. The cause must not only be the cause *sine qua non*, but it must also be a cause reasonably proximate, but the doctrine of criminal creation has reasonable limits. An injury may lead to death. Death may be instantaneous or may be delayed. The injury may lead to shock, excessive bleeding, coma, syncope etc. and cause death; in such a case, injury and death have a clearly perceptible and direct nexus and there will be no difficulty in finding that death is the direct result of injury. The decision may not be so easy in a case where death is caused not directly by the injury itself, but due to a complication or development or in a case where death is delayed or due to a later complication or development, court has to consider the nature of the injury, complication or development and attendant circumstances. If the complication or development is the natural or probable or necessary consequence of the injury and if it is reasonably contemplated as its result, the injury can be said to have caused death. If, on the other hand, the chain of consequences is broken or if there is unexpected complication causing new mischief, the relation of cause and effect is not established or the causal connection is too remote and the injury cannot be said to have caused death. If the original injury itself is of a



fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself since causal connection is proximate.”

(underline is mine)

59. In the kind of materials present on the record, we find that the prosecution has been able to prove a case of ‘murder’ as defined under Section 300 IPC. The learned trial court has erred in acquitting the accused-respondent no. 2 of the charge under Section 302 IPC. This Court reaches to an irresistible conclusion that the respondent no. 2 assaulted the informant with a pre-meditation of mind, intentionally caused two injuries, one of which hit on the vital part of the body which was sufficient in ordinary course of nature to cause death.

60. This Court would, therefore, allow the Cr. Appeal (DB) No. 203 of 2023. The respondent no. 2 is held guilty of commission of offence punishable under Section 302 IPC. The conviction of respondent no. 2 is altered from Section 304 Part II to Section 302 IPC.

61. For the reasons discussed hereinabove, we find no merit in Cr. Appeal (SJ) No. 119 of 2023. Hence, Cr. Appeal (SJ) No. 119 of 2023 is dismissed.



62. The respondent no. 2 is on bail. His bail bond is cancelled and he is taken into custody. He will be sent to Beur Jail for the present.

63. As prayed by learned Senior Counsel for respondent no.2, the records are kept for hearing on sentence day after tomorrow i.e. 07.05.2025. Respondent No.2 shall be produced before this Court on 07.05.2025 at the time of hearing on sentence.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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