IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 854 OF 2002

Satish Narayan Sawant …. Appellant

Versus

State of Goa …. Respondent

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. The present appeal arises out of the judgment and order dated 01.07.2002 passed by the High Court of Bombay at Goa in Criminal Appeal No. 6 of 2000 convicting the accused-appellant under Section 302 of the Indian Penal Code (for short the 'the IPC') and sentencing him to undergo life imprisonment for the offence by setting aside the order of acquittal passed by the trial court.

2. Facts giving rise to the present appeal may be stated first so as to enable us to appreciate the arguments raised by the parties more effectively.

On 19.04.1988 between 8.30 p.m. and 8.45 p.m., Satish Narayan Sawant, the appellant (Accused No. 1) along with two other accused persons and also with two delinquent children allegedly formed an unlawful assembly and that in furtherance of the said common object stabbed one Rauji Dulba Sawant, the deceased and also assaulted Baby Dulba Sawant (PW-1), Ashok Dulba Sawant (PW-2), Kunda Rauji Sawant (PW-8) and Laxmi Dulba Sawant (PW-18) who are the sister, brother, wife and mother respectively of the deceased. It is also the case of the prosecution that as a result of the aforesaid stab injuries given to the deceased, he expired on the same day i.e. on 19.04.1988. P.S. Joaquim Dias (PW-21) who was attached to the Ponda Police Station as P.S.I. received a phone call at about 10.45 p.m. from P.S.I. K.K. Desai of the Panaji Police Station that a person named Rauji Dulba Sawant had been brought in police jeep by police constable Jaisingrao Rane and that while he was being taken to the Goa Medical College, he expired. He was informed that the deceased had died as a result of stab injuries received and, therefore, he was to take necessary steps. On receipt of the aforesaid message, PW-21 along with ASI Tabit Mamlekar went to the scene of offence. They reached the scene of offence at about 11.30 p.m. but found the entire place plunged into darkness and with the help of torch light, PW-21 surveyed the scene of offence. During the survey made at the place of occurrence, PW-21 noticed some blood-stains in the

front courtyard of the house and a pipe of length of about 1 foot or slightly less lying in the courtyard having blood-stains. Thereafter, PW-21, along with P.I. D'Sa gave a call to the inmates of the house to open the door and on hearing the call, one lady opened the door. On enquiring from her, PW-21 learnt that her name was 'Yeshoda' who was later on arrayed as Accused No. 3. Two juvenile girls named, Sarita and Sharmila, who are the sisters of the appellant were found in the house. In the meantime, PW-1, PW-2 and PW-8 came to the house from whom PW-21 made certain inquiries and brought them along with Accused No. 3 and her two juvenile girls to the Police Station. Not finding the appellant and accused no.2 in the house, Dy. S.P. Shri Raikar and P.I. Shri Alan O'Sa were sent in their search.

After reaching the police station, a complaint, which is marked as Exhibit PW 1/A was lodged by PW-1, in which it was alleged that PW-1, PW-8, PW-18, the deceased Rauji and his brother Narayan were residing in one house in Banastari and they used to share a common kitchen between them. It was further alleged by PW-1 that two or three days before the Ganesh Festival, deceased Rauji had informed Narayan that he would install statue of Lord Ganesh in the house and accordingly, he had purchased the same. Religious ceremony was performed by installing the statue of Lord Ganesh in the house and while the said religious ceremony was being performed, Accused No. 2 started uttering insults while standing in the

kitchen. Accused No. 3 told the appellant not to do anything in the ceremony and insulted the family members of Rauji.

PW-1 also alleged that on 19.04.1988 the deceased Rauji returned from his duty at about 6.30 p.m. and thereafter went to purchase some articles. On his return, he went to take bath and after having bath, he went and switched off the light of the room. As soon as the deceased switched off the light, the appellant came from the room and started abusing Rauji. There was a heated exchange of words between Rauji and the appellant switched on the light, which was again switched off by Rauji, the deceased. Thereupon, the appellant went and removed the fuse of the said light. Accused No. 3 had then lit a kerosene lamp and brought the same in the hall. There was already an oil lamp burning which was attached to the ceiling by a brass chain. Meanwhile, Accused No. 3 started abusing PW-1, PW-8, PW-18, and the deceased Rauji.

Thereafter, the appellant and the two other alleged accused namely, Accused Nos. 2 and 3 and the two juvenile offenders gathered in the hall to assault Rauji, the deceased, PW-1 and PW-8. According to PW-1, in order to avoid the assault by all of them, they went to "bulcao" (balcony). When they went there, the appellant went to his mother's room and brought a knife with which he stabbed Rauji. At that time all the accused persons were in the balcony. It was also alleged that after the deceased Rauji fell down on

the ground, Accused No. 3 kicked him. At that time, the appellant who was holding the knife in his hand, handed over the same to Accused No. 3 by which she assaulted PW-8 but PW-8 caught the knife in her hand which caused injury to her right palm. Thereafter, according to PW-1, Accused No. 3 handed back the knife to the appellant and Accused No. 2 brought the oil lamp which was hung in the room and hit the oil lamp on the head of Rauji, the deceased. It was also alleged that when PW-8 tried to intervene, the other three accused started assaulting her with fists and slaps. At that time, PW-2 came there and questioned the accused persons as to what they were doing, whereupon, the appellant and Accused no. 2 started assaulting PW-2 also. Then, Accused No. 3 told the appellant and Accused No. 2 to finish off Rauji first. PW-8, PW-18 and PW-1 then lifted Rauji and brought him in the courtyard. In the meanwhile, residents of the locality had gathered in the courtyard and told the accused persons not to assault Rauji. The juvenile offender, Sarita went inside the house and brought out one iron pipe which she handed over to the appellant who then hit the said pipe on the right leg of PW-1 and also gave a blow with the said pipe on Rauji's right hand. It was also alleged that the other juvenile offender, Sharmila brought a cement block shaped like an elephant trunk, which she handed over to Accused No. 3 with which Accused No. 3 started assaulting Rauji. PW-1, however, intervened and removed the said piece of cement block

from the hand of Accused No. 3 but, Accused No. 3 then picked up one stone and tried to throw it on Rauji by saying that she was going to kill him with that stone. However, PW-1 again intervened and removed the said stone from the hand of Accused No.3. PW– 18 rushed to the rescue of deceased Rauji. The accused then started assaulting her and PW–8 with slaps. In the meantime, police jeep arrived at the scene and on seeing the police jeep, all the accused ran away from the courtyard and went inside. PW – 1 and others asked the police to take Rauji to the Hospital whereupon the police took him to the hospital in the police jeep along with PW-1, PW – 2 and PW –8. On the basis of complaint made by PW-1, an FIR was registered and the accused came to be arrested.

3. On completion of the investigation, the police submitted the charge-sheet against the accused persons namely the present appellant (Accused No. 1), Accused Nos. 2 and 3 and the two juvenile offenders, namely Sarita and Sharmila.

4. The trial court framed charges against all the accused persons for the offence under Sections 302, 323, 143, 147 and 149 of the IPC. The accused pleaded not guilty and claimed to be tried. Since there were two juvenile offenders there cases were segregated and the trial against Accused Nos. 1, 2 and 3 was conducted during the course of

which a number of eye-witnesses were examined on behalf of the prosecution. After completion of the arguments the trial court reserved the verdict. The trial court passed an order on 04.08.1998 acquitting all the accused persons from the offences under Sections 302, 323, 143, 147 and 149 of IPC.

5. Being aggrieved by the aforesaid judgment and order of acquittal the State filed an appeal in the High Court against Accused Nos. 1 to 3. The High Court by impugned judgment convicted appellant (Accused No. 1) under Section 302 IPC and Accused Nos. 2 and 3 were held guilty of an offence punishable under Section 323 read with Section 34 of the IPC.

6. The appellant herein, being aggrieved by the aforesaid order of conviction and sentence, filed the present appeal on which we have heard the learned counsel appearing for the appellant and also the learned counsel appearing for the State.

7. Mr. R. Sundaravardhan, learned senior counsel appearing for the appellant very forcefully submitted that the High Court was not justified in setting aside the order of acquittal passed in respect of the present appellant. He submitted that although the incident in question

had taken place at about 8.45 p.m. the same came to be reported to the police at 3.00 a.m. He also submitted that the police officer (PW-21) who received the information about the incident started investigation without recording either any general diary (for short G.D.) entry or the FIR and, therefore, the FIR which has been proved in the trial court is hit by the provisions of Section 162 of the Criminal Procedure Code (for short "the CrPC"). He also submitted that the High Court has not given any reason for setting aside the appeal against acquittal which was passed after appreciating the entire evidence on record. He further submitted that there was not only shifting of time of the alleged occurrence but also shifting of the place of occurrence from the hall to the outside verandah and courtyard to suit the convenience of the prosecution case. He has drawn our attention towards the entire evidence on record including the cross-examination part and with the help of the same he submitted that the entire alleged incident in question had taken place when there was complete darkness at the scene of occurrence. A scuffle started between the nephew and the uncle in which the accused persons also received injuries and, therefore, the right of private defence of the appellant was available and in that view of the matter, the order of conviction and sentence is liable to be set aside.

8. It was further submitted that the alleged eye-witnesses of the occurrence were examined by the police belatedly and that the medical evidence adduced in the case does not in any manner support the ocular evidence and if at all it would not be a case of culpable homicide amounting to murder but a case of culpable homicide not amounting to murder. He also submitted that if two views are possible and if there are lacunae in the case of the prosecution, the benefit must go to the accused. He next submitted that there was no evidence on record as to when the FIR reached the Magistrate and that none of the courts below considered the said aspect. He submitted that since there was violation of the provisions of Section 162 of the CrPC, the accused-appellant is liable to be acquitted.

9. Ms. A. Subhashini, learned counsel appearing for the respondent-State, however, strenuously submitted that none of the aforesaid submissions could be accepted by this Court as it is a foolproof case of conviction of the appellant under Section 302 IPC. She submitted that the High Court rightly interfered with the order of acquittal passed by the trial court after critically examining the evidence on record. It was submitted by her that the trial court examined the evidence in the present case in a very summary and cryptic manner

and thereby arrived at a wrong conclusion that the accused persons were required to be acquitted. She has drawn our attention to the findings recorded by the High Court while setting aside the order of acquittal observing that the evidence of eye-witnesses namely PWs. 1, 2, 8 and 18 is convincing and reliable but so far as the evidence of PW-4 is concerned, the High Court has made an observation that he is not a reliable witness. Counsel for the respondent has, therefore, taken us through the evidence of PWs. 1, 2, 8 and 18 and on the basis thereof submitted that their evidence clearly prove and establish the role of the appellant herein in stabbing the deceased with the knife which he had brought from the other room with the intention of killing the deceased and, therefore, it is a clear case of conviction under Section 302 IPC.

10. In the light of the aforesaid submissions of the counsel appearing for the parties we have given our in-depth consideration to the facts of the present case.

11. The starting point of the incident in question as indicated from the evidence on record is the hall where apparently a dispute started between the parties with regard to the electricity connection in the house. The deceased tried to put off the light of one particular room

at which the appellant and other accused persons became annoyed and the appellant switched on the light which was again switched off by the deceased. At this, the deceased became annoyed and the appellant removed the fuse of the electricity which act of his plunged the entire house into darkness. It is also clear and established that thereafter a lamp was brought by Accused No. 3 to the room besides another lamp which was already burning in the said room itself. But, in any case, there was an electricity light post in the front of the house which was giving enough light to the house. There is also evidence on record to show that even outsiders were watching the incident from the road which indicates that there was sufficient light for them to see what was happening in the house where the incident had taken place. There was indeed some scuffle between the parties during the course of which Accused No. 1 received simple injuries and the deceased died of the two stab injuries inflicted by the present appellant. The said fact is proved by the evidence of PWs. 2, 8, 18 and the complainant herself (PW-1). The deceased was taken to the hospital and while so taken he died. PW-21 who was at that time attached to Konda Police Station as PSI was informed at about 10.45 p.m. that the deceased while was being brought in the police jeep by a police constable Jaisingrao Rane and was being taken to the Government Medical

College but before the deceased could be admitted he died. PW-21 was also informed by said by said PSI K.K. Desai of Panaji Police Station that it was a case of assault and that the incident had taken place at verandah and that the said matter pertains to his police station and, therefore, he should take appropriate action. On receiving the said message he went to the place of occurrence along with PSI K.K. Desai and upon reaching the place of occurrence at 11.30 p.m. he found the entire place plunged in total darkness. Therefore, he proceeded to survey the place of occurrence with the help of torches. He, in his deposition specifically stated that he found that the back door as well as the front door of the house were latched from inside and in front of the house there was a road where there was an electricity pole and there was a street tube light by which the house could be visible and even the lights of the vehicles were flashed at the house. He stated that although the house had electricity connection, but was not having the electricity supply. He gave instructions to his subordinate and also to the people around that nobody should touch any article lying at the scene of occurrence. He stated that he made preliminary enquiry and brought Yashoda and her two daughters to the police station and sent two other officers in search of Accused Nos. 1 and 2 who were not found in the house. He also stated that he

got the complaint registered at the police station which was lodged by PW-1 and that on the next day he again went to the scene of offence and seized the properties involved in the crime which were sealed. He also recovered the knife at the instance of accused Sharmila which he seized. On 28.04.1988, that is, after about 9 days of the incident, Accused Nos. 1 and 2 surrendered before the police and on their surrender they were taken into custody. It was found that Accused No. 1 was having injury on his back and he was medically examined. On medical examination his injury was found to be simple.

12. Learned counsel appearing for the appellant was critical of the manner in which PW-21 initiated the investigation without recording any G.D. entry and without getting any FIR recorded. He submitted that since the investigation in the instant case was started by the police without recording an FIR, such an FIR is necessarily hit by the provisions of Section 162 of the Cr.P.C. He next submitted that no evidence having been led by the prosecution about the time when the FIR reached the Magistrate, therefore, there is also violation of the provisions of Section 157 of the Cr.P.C.

13. The issue with regard to the initiation of the investigation without recording the FIR was succinctly addressed by this Court in the case

of **State of U.P. v. Bhagwant Kishore Joshi**, (1964) 3 SCR 71, (per Mudholkar J.) observed as follows:

> **"17.** What is investigation is not defined in the Code of Criminal Procedure; but in *H.N. Rishbud and Inder Singh* v. *State of Delhi*1 this Court has described, the procedure, for investigation as follows:
> "Thus, under the Code investigation consists generally of the following steps, (*1*) Proceeding to the spot, (*2*) Ascertainment of the facts and circumstances of the case, (*3*) Discovery and arrest of the suspected offender, (*4*) Collection of evidence relating to the commission of the offence which may consist of (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (*b*) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (*5*) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."
> This Court, however, has not said that if a police officer takes merely one or two of the steps indicated by it, what he has done must necessarily be regarded as investigation. Investigation, in substance, means collection of evidence relating to the commission of the offence. The Investigating Officer is, for this purpose, entitled to question persons who, in this opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt, for this purpose he has to proceed to the spot where the offence was committed and do various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an investigating officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation against the offender. Merely making some preliminary enquire upon receipt of information from an anonymous source or a source of doubtful reliability for

checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. No doubt, Section 5-A of the Prevention of Corruption Act was enacted for preventing harassment to a government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of Deputy Superintendent of Police. Where, however, a police officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualise how any possible harassment or even embarrassment would result therefrom to the suspect or the accused person. If no harassment to the accused results from the action of a police officer how can it be said to defeat the purpose underlying Section 5-A? Looking at the matter this way, I hold that what Mathur did was something very much short of investigation and, therefore, the provisions of Section 5-A were not violated. Since no irregularity was committed by him there is no occasion to invoke the aid of the curative provisions of the Code."

(emphasis underlined)

14. In the instant case, it is quite clear from the evidence on record that PW-1 received the information about the death of the deceased from PSI of Panaji Police Station without any detail as to how the incident had happened and who had caused the incident. It was a very cryptic information received by him regarding the death of a person residing within the jurisdiction of his police station pursuant to an incident taking place on 10.04.1988 between 8.30 p.m. to 8.45 p.m. and,

therefore, it appears that there was not enough information available to him either to get a G.D. entry recorded or to get an FIR lodged. In order to verify the information received, PW-21 went to the place of occurrence and found the entire house in total darkness. He went around the house and saw blood marks on the walls of the verandah and also in the courtyard and came to learn about the incident by using torch light. When he reached at the place of occurrence even the complainant party was not available there but at a later stage they came there. Therefore, he brought them along with the residents of the house who were found to be there namely Accused No. 3 and the two juvenile offenders namely Sarita and Sharmila, who were all ladies. After reaching the police station and at the request of PW-1 the FIR was recorded at 3.00 a.m. in the morning. He received the information about the incident on telephone at about 10.45 p.m. and reached the place of occurrence at about 11.30 p.m. and he must have been there for quite some time and thereafter returned to the police station which must have taken another about 1.30 to 2 hours. Therefore, recording of the FIR at about 3.00 a.m. in the morning was justified and properly explained and it cannot be said that there was any delay in recording the FIR. Besides, the fact of his going to the place of occurrence would not amount to making an investigation.

There is no evidence to show that at that point of time, PW-21 seized any articles or interrogated any witnesses or took any other action in initiating or in furtherance of investigation. The ratio of the decision in *Bhagwant Kishore Joshi* (supra) is applicable to the facts of the present case as the police officer merely visited the spot and place of occurrence and made some survey which cannot be regarded as investigation.

15. In **Animireddy Venkata Ramana and Others v. Public Prosecutor, High Court of Andhra Pradesh**, (2008) 5 SCC 368, at page 374, this Court while considering a similar case observed as follows:

> **"10.** Certain basic facts are not denied or disputed. The deceased died in the bus at about 10.30 p.m. on 23-6-1998 while travelling to his village home from Tuni. PW 1 also sustained injuries in the said incident. Immediately after the incident, hearing cries of passengers, the driver of the bus stopped the bus. Not only the accused persons fled away, all others also did, including PWs 3 and 4. They came back after a short while hearing the cries of PW 1. They acceded to his request to take the bus to his house. From the records, it appears that the distance between the place where the accident took place and the village in question was not much. In any event, the destination of the bus was the said village and they were bound to take the bus thereat. PW 1 informed about the incident to PW 2, another son of the deceased.
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> **11.** The dead body of the deceased was brought down from the bus and taken to the house. The conductor of the bus sent an information to the Depot Manager of the State Road Transport Corporation at Tuni. The investigating officer was also informed. A report to that effect might have been noted in the general diary but the same could not have been treated to be an FIR. When an information is received by an officer in charge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early

> as possible. It was not necessary for him to take that step only on the basis of a first information report. An information received in regard to commission of a cognizable offence is not required to be preceded by a first information report. Duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility. If some incident had taken place in a bus, the officers of Road Transport Corporation also could not ignore the same. They reached the place of occurrence in another bus at about 1 a.m. The deceased and the injured were only then shifted to Tuni Hospital."

16. The ratio of the aforesaid decision is squarely applicable to the facts of the present case. Even assuming that PW-21, the Investigating Officer could have entered the aforesaid information received from PSI of Panaji Police Station in the general diary, yet the said entry could not have been held or treated to be an FIR. The information received by him was very cryptic and without any detail about the incident in question and, therefore, in any case, there was no possibility of recording an FIR at that stage. The place of occurrence was in total darkness and even the persons belonging to the complainant side were not available, therefore, bringing them to the police station where there was sufficient light and recording the complaint at 3.00 a.m. cannot, in any manner, cast any doubt on the veracity of the prosecution case. In that view of the matter it cannot

be said that the FIR was in any manner hit by the provisions of Section 162 of CrPC.

17. So far contention that there was violation of Section 157 of the CrPC is concerned, the same is also without any basis for the defence never cross-examined PW-21 on the aforesaid issue. So long the defence is not able to establish from the records by cogent evidence that there was any delay in sending the FIR to the Magistrate, it cannot be held that there was any such delay. There is no evidence on record before us to hold either way for no such issue was raised either before the trial court or before the High Court nor any evidence was led by the defence in respect of the said issue which is sought to be raised at this stage. From the evidence on record it does not appear to us that any suggestion was given to the said witness to the effect that the copy of the FIR was not sent or that it was dispatched late, which if given, would have given an opportunity to the witness to afford some explanation or to show as to when the FIR, was sent to and received by the Magistrate. In that view of the matter we do not agree with the counsel appearing for the appellant that delay in transmitting the FIR to the Magistrate stands proved in the present case.

18. The next contention that we proceed to discuss now is about whether sufficient light was available at the place of occurrence for the eye-witnesses to see the occurrence as stated by them in the evidence. We have PWs. 1, 2, 8 and 18 as eye-witnesses to the occurrence. These eye-witnesses have stated that the incident had happened initially in the hall where there was some light for Accused No. 3 has brought a lamp to the hall and apart from that another lamp was also burning which was attached to the ceiling. Blood was found by the police on the wall of the verandah and in the courtyard. It is also established from the evidence on record for it is clearly stated that the street light having tube light was giving sufficient light to the place of occurrence and that it was directed towards the house which was the place of occurrence.

19. Besides, all the aforesaid eye-witnesses were inmates of the house and they would know as to who had given the blows for they specifically stated that initially the appellant did not have the knife in his hand but when the deceased and others went to the balcony then he went inside the house and brought a knife with which he gave stab injuries to the deceased which became fatal and as a result of which the deceased died while he was being taken to the hospital.

20. The aforesaid eye-witnesses, although, are related witnesses, were natural witnesses for they were the inmates of the house where the incident had taken place. The said eye-witnesses are consistent about the principal act of the appellant in stabbing the deceased. The discrepancies which were sought to be pointed out are minor discrepancies without in any manner affecting the substratum of the prosecution case and therefore, minor discrepancies in the evidence of the eye-witnesses are immaterial. This Court has observed as follows in the case of **Dinesh Kumar v. State of Rajasthan,** (2008) 8 SCC 270, at page 273 :

> **"11.** It is to be noted that PWs 7 and 13 were the injured witnesses and PW 10 was another eyewitness and was the informant. Law is fairly well settled that even if acquittal is recorded in respect of the co-accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence.
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> **12.** In law, testimony of an injured witness is given importance. When the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence."

21. The aforesaid eye-witnesses were cross-examined at length but even after such lengthy cross-examination these eye-witnesses account could not be shaken. The postmortem report indicates that there were sixteen injuries as against the two as adduced in ocular evidence and, therefore, a submission was made by the counsel appearing for the appellant that the medical evidence adduced in the present case is not supporting the ocular evidence. However, a perusal of record clearly shows that the doctor who conducted the postmortem (PW-7) stated in his evidence that there were in total 16 injuries when external examination was done by him and the knife M. O. 11 could have caused the injuries no. 1, 2, 3 and 4. He further stated that the death was caused due to hemorrhage and shock as a result of stab injury. He further stated that Injury No. 1 was sufficient to cause death in the ordinary course of nature. On being cross-examined, PW-7 categorically stated that death due to stab injury was in consequence of Injury No. 1 and all other injuries were superficial in nature. There is no doubt that four injuries are indicated in the postmortem report shown to have been received by the deceased but the fact that the deceased was given stab injuries by the appellant with the help of a knife brought by him from inside the house is clearly established from

the ocular evidence. There is therefore one particular injury, being injury No. 1 caused because of stabbing and the rest being superficial in nature could be caused during scuffle. Therefore, the alleged discrepancy cannot be said to be very vital as it has been held by this Court in several decisions that ocular evidence cannot be brushed aside only because, to some extent, it is not in consonance with the medical evidence. Reference in this regard may be made to the decision of this Court in **State of U. P. v. Krishna Gopal**, (1988) 4 SCC 302; **Anwar v. State of Haryana**, (1997) 9 SCC 766; **Ravi Kumar v. State of Punjab**, (2005) 9 SCC 315; **Munivel v. State of T.N.**, (2006) 9 SCC 394.

22. All the contentions raised by learned counsel appearing for the appellant were considered by us in the light of evidence on record and we find that none of the aforesaid submissions has any basis. There is cogent and reliable evidence on record to prove and establish that the accused has committed the act of stabbing as a result of which the deceased had died.

23. Before dwelling further into the factual matrix of the case on the basis of which the High Court convicted the appellant under Section 302 IPC; it would be useful to briefly recapitulate the law on the point.

24. Section 299 and Section 300 IPC deals with the definition of culpable homicide and murder respectively. Section 299 defines culpable homicide as the act of causing death; (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that such act is likely to cause death. The bare reading of the section makes it crystal clear that the first and the second clause of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable

homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court.

25. In the case of **State of A.P. v. Rayavarapu Punnayya**, (1976) 4 SCC 382, this Court observed as follows at page 386:

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

26. Placing strong reliance on the aforesaid decision, this Court in the case of **Abdul Waheed Khan v. State of A.P.**, (2002) 7 SCC 175, observed as follows at page 184:

> **"13.** Clause (*b*) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (*b*) appended to Section 300.
>
> **14.** Clause (*b*) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (*b*) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (*b*) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable

homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (*b*) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury … sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

15. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant Singh* v. *State of Kerala*[3] is an apt illustration of this point.

16. In *Virsa Singh* v. *State of Punjab*[4] Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

17. The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows: (AIR p. 467, para 12)

"*12*. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

18. The learned Judge explained the third ingredient in the following words (at p. 468): (AIR para 16)
"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

19. These observations of Vivian Bose, J. have become locus classicus. The test laid down by *Virsa Singh case*[4] for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (*a*) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (*b*) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

20. Thus, according to the rule laid down in *Virsa Singh case*[4] even if the intention of the accused was limited to the infliction

> of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (*c*) appended to Section 300 clearly brings out this point.
>
> **21.** Clause (*c*) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons — being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.
>
> **22.** The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."

27. The aforesaid principles have been consistently followed by this Court in several decisions. Reference in this regard may be made to the decision of this Court in **Ruli Ram v. State of Haryana**, (2002) 7 SCC 691; **Augustine Saldanha v. State of Karnataka**, (2003) 10 SCC 472; **State of U. P. v. Virendra Prasad**, (2004) 9 SCC 37; **Chacko v. State of Kerala**, (2004) 12 SCC 269; **S. N. Bhadolkar v. State of Maharasthra**, (2005) 9 SCC 71; and **Jagriti Devi v. State of H. P.**, JT 2009 (8) SC 648.

28. That being the well settled legal position, when we test the factual background of the present case on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident. The place of occurrence is a residence inhabited by both the parties and there is no evidence on record that the deceased was armed with any weapon. Initially the accused-appellant also did not have any weapon with him but during the course of the incident he went inside and got a knife with the help of which he stabbed the deceased. PW-7 in his cross examination has categorically stated that death due to stab injury was in consequence of Injury No. 1 and all other injuries were superficial in nature. So, it was only Injury No. 1 which was fatal in nature. Factually therefore, there was only one main injury caused due to stabbing and that also was given on the back side of the deceased and therefore, it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness. Records clearly establish that there was indeed a scuffle between the parties with regard to the availability of electricity in a particular room and during the course of scuffle the appellant also received an injury which was simple in nature and that there was heated exchange of words and

scuffle between the parties before the actual incident of stabbing took place. There is, therefore, provocation and the incident happened at the spur of the moment. That being the factual position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

29. Accordingly, we convict the appellant under Section 304, Part II of IPC and sentence him to undergo imprisonment for a period of 7 years. His bail bonds shall stand cancelled and the appellant shall surrender immediately to serve out the remaining period of sentence. If, however, the appellant does not surrender by himself, the State shall take necessary steps to rearrest him to undergo the remaining part of sentence.

30. The appeal stands disposed of in terms of aforesaid order.

.....J.
[Dalveer Bhandari]

……..J.
[Dr. Mukundakam Sharma]

New Delhi,
September 14, 2009