



2026:CGHC:6495-DB

**NAFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 1002 of 2024**

Hameshwar Sahu @ Badshah S/o Late Ramcharan Sahu Aged About 38 Years R/o Sonesilli, P.S. Gobranavapara, Raipur, District Raipur (C.G.)

**... Appellant****versus**

State of Chhattisgarh Through Police Station Gobranavapara Raipur, District Raipur (C.G.)

**... Respondent**

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Shishir Dixit, Advocate
For Respondent-State	:	Mr. Nitansh Jaiswal, Deputy Government Advocate

**Hon'ble Shri Ramesh Sinha, Chief Justice**  
**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**Judgment on Board****Per Ramesh Sinha, Chief Justice****05.02.2026**

1. Heard Mr. Shishir Dixit, learned counsel for the appellant as well as Mr. Nitansh Jaiswal, learned Deputy Government Advocate, appearing for the State/respondent.

2. Today, though the criminal appeal has been listed for hearing on I.A. No.01, application for suspension of sentence and grant of bail to the appellant, however, with the consent of learned counsel for the parties, the appeal is heard finally.
3. Accordingly, I.A. No.01, application for suspension of sentence and grant of bail to the appellant, stands disposed of.
4. This criminal appeal filed by the appellant/accused under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is directed against the impugned judgment of conviction and order of sentence dated 23.04.2024 passed by the learned 9<sup>th</sup> Additional Sessions Judge, Raipur, District Raipur (C.G.) in Sessions Trial No.57/2020, by which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "IPC") and sentenced to undergo imprisonment for life and fine of Rs.1,000/-, in default of payment of fine amount, additional rigorous imprisonment for one year.
5. The prosecution case, in brief, is that the informant/complainant Hemlal Khare (PW-1), resident of village Gobra Nawapara, lodged a report stating that on 31.10.2019, while he was present at Gobra Nawapara, he received information that his son Roshan Khare @ Nanku had sustained serious injuries and had been admitted to the Government Hospital, Nawapara. Immediately thereafter, the informant rushed to the said hospital, where he

found his son lying on a hospital bed in an unconscious condition. It was noticed that the deceased had sustained injuries on his head and face and blood was oozing from the injuries. Upon making inquiry from the doctor on duty regarding the condition of his son, the informant was informed that Roshan Khare @ Nanku had already expired.

6. On the basis of the said information, Merg Intimation No. 64/2019 was registered on 31.10.2019 at Police Station Gobra Nawapara (Ex.P/01). During merg inquiry, on the basis of the information received and the material collected, a cognizable offence was found to have been committed. Consequently, a First Information Report was registered vide Crime No. 463/2019 against an unknown person for the offence punishable under Section 302 of the Indian Penal Code, and the FIR was registered as Ex.P/25.
7. On the same day, notices were issued to witnesses for conducting inquest proceedings (Ex.P/02) and the inquest (Panchanama) over the dead body of deceased Roshan Khare @ Nanku was conducted in the presence of Panch witnesses. During the said proceedings, the condition of the dead body and visible injuries were duly noted. After completion of inquest proceedings, the inquest report was prepared and the spot map of the place where the dead body was examined was prepared vide Ex.P/03.
8. During the course of investigation, on the basis of the statement of informant Hemlal Khare, a spot map of Rajim–Chirghar area was

prepared in the presence of witnesses, which has been exhibited as Ex.P/15. Further, on the basis of the statement of witness Mahesh Kumar Khare, another spot map of the place of occurrence at village Kumar Sona Silli was prepared in the presence of witnesses and the same was exhibited as Ex.P/26.

9. From the place of occurrence, blood-stained soil and plain soil were seized in the presence of witnesses, and seizure memo was prepared vide Ex.P/11. The dead body of deceased Roshan Khare @ Nanku was thereafter sent for postmortem examination through requisition (Ex.P/05). The postmortem examination was conducted and the postmortem report was received and exhibited as Ex.P/20. The short P.M. Report issued by the Community Health Centre, Gobra Nawapara, was also collected and exhibited as Ex.P/21.
10. After completion of postmortem examination, the dead body of the deceased was handed over to the relatives, namely the informant Hemlal Khare, and a handing-over memo was prepared and exhibited as Ex.P/04. During investigation, at the instance of witness Horilal Sonkar, the viscera of the deceased was seized in the presence of witnesses, and the seizure memo was prepared vide Ex.P/13.
11. During further investigation, memorandum statement of the accused Hameshwar Sahu @ Badshah was recorded in the presence of witnesses after issuing notice (Ex.P/19), and the

memorandum statement was duly recorded and exhibited as Ex.P/06. Pursuant to the memorandum statement of the accused, the following articles were recovered in the presence of witnesses: (i) One blood-stained bamboo stick measuring approximately 50 inches in length, having blood stains between its knots; (ii) One black coloured jacket; and (iii) One broken chain. All the aforesaid articles were seized and seizure memo was prepared vide Ex.P/07.

- 12.** Further, from the vicinity of the spot, one green coloured ladies bicycle, having blood stains on the tyre and mudguard, was seized in the presence of witnesses and seizure memo was prepared vide Ex.P/09. On finding prima facie evidence against the accused, he was arrested and an arrest memo was prepared vide Ex.P/08. Intimation regarding his arrest was duly given vide Ex.P/27.
- 13.** During the course of investigation, the Tahsildar, Gobra Nawapara was requested to get the detailed spot map prepared. Accordingly, requisition was issued vide Ex.P/14, pursuant to which the Patwari prepared the spot map of the place of occurrence and the same was exhibited as Ex.P/06-B.
- 14.** The seized articles, including the clothes of the deceased, blood-stained bamboo stick, blood-stained soil and plain soil, were sent for chemical examination to the Forensic Science Laboratory through requisition (Ex.P/17). Acknowledgment of receipt was

received and exhibited as Ex.P/18, and thereafter the FSL report was received and exhibited as Ex.P/28. Requisition for obtaining Query Report was also sent to the Community Health Centre, Gobra Nawapara and the query report was received and exhibited as Ex.P/23.

- 15.** Statements of the witnesses were recorded as per law. Opinion regarding injuries was obtained from Dr. S.K. Tiwari, Medical Officer, Community Health Centre, Gobra Nawapara, and the said medical opinion was exhibited as Ex.P/24. Documents relating to the criminal antecedents of the accused were also collected and exhibited as Ex.P/29.
- 16.** After completion of the entire investigation, finding sufficient evidence against the accused Hameshwar Sahu @ Badshah, charge-sheet was filed on 30.12.2019 before the Judicial Magistrate First Class, Raipur for the offence punishable under Section 302 of the Indian Penal Code, which was registered as Criminal Case No. 14045/2019. After committal, the case was registered as Sessions Trial No. 57/2020 and was thereafter transferred to the Court of Sessions, Raipur on 18.07.2023 for hearing and disposal in accordance with law.
- 17.** The charge under Section 302 IPC was framed against the accused, which was read over and explained to him. The accused denied the charge and pleaded innocence. In support of its case, the prosecution examined 18 witnesses and exhibited 29

documents, whereas the appellant has not examined any witness but exhibited only two documents.

- 18.** The statement of the accused under Section 313 of the Cr.P.C. was recorded, wherein he claimed himself to be innocent and alleged false implication. The accused did not adduce any defence evidence.
- 19.** The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 23.04.2024 convicted the accused-appellant for the offence punishable under Section 302 of the IPC and sentenced him as as mentioned in the fourth paragraph of this judgment. Hence, this criminal appeal has been filed.
- 20.** Mr. Shishir Dixit, learned counsel for the appellant, most respectfully submits that the learned trial Court has failed to appreciate the facts and circumstances of the present case in their entirety and in the correct legal perspective. It is submitted that the impugned judgment of conviction is illegal, erroneous, perverse, and contrary to law. The learned trial Court has not properly appreciated the evidence available on record, resulting in erroneous findings and grave miscarriage of justice. The conviction has been recorded on mere conjectures and surmises, despite the prosecution having failed to prove its case beyond all reasonable doubt. It is further submitted that there are material inconsistencies and contradictions in the testimonies of the

prosecution witnesses, which strike at the root of the prosecution case. The learned trial Court has also erred in convicting the Appellant without any specific and incriminating question being put to him under Section 313 of the Cr.P.C., thereby causing serious prejudice to the appellant. Therefore, the case of the present appellants falls within the purview of Exception 4 to Section 300 of the IPC and the act of the appellant is culpable homicide not amounting to murder, and therefore, it is a fit case where the conviction of the appellant for the offence punishable under Section 302 IPC can be converted/alterd to an offence under Section 304 (Part-I or Part-II) IPC. Further, as appellant is in jail since 02.11.2019 and therefore, considering the period he had already undergone, he be awarded the sentence of the period already undergone by him. Hence, the present appeal deserves to be allowed in full or in part.

- 21.** Per contra, Mr. Nitansh Jaiswal, learned Deputy Government Advocate, supported the impugned judgment of conviction and order of sentence and submits that the prosecution has proved the offence beyond reasonable doubt by leading evidence of clinching nature. He further submits that in view of statements of the prosecution witnesses coupled with other material available on record, the learned trial Court has rightly convicted the appellant for offence under Section 302 IPC. It has been contended that appellant has committed heinous crime of murder and in such circumstances, it is not the case where conviction of

the appellant for offence under Section 302 IPC requires to be altered to Section 304 Part-I or Part-II IPC. Thus, the present appeal deserves to be dismissed.

- 22.** We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records with utmost circumspection.

**Points for Determination**

- Whether the prosecution has proved beyond reasonable doubt that the death of deceased Nanku Khare @ Roshan Khare was homicidal in nature?
- Whether the prosecution has further proved beyond reasonable doubt that the appellant/accused Hemeshwar Sahu @ Badshah caused the homicidal death of the deceased, and if so, whether the conviction recorded under Section 302 of the IPC warrants interference?

**Answer to Point No.1**

- 23.** This Court has bestowed its anxious consideration upon the entire oral as well as documentary evidence on record, particularly the medical evidence, inquest proceedings and the surrounding circumstances, in order to determine the nature of death of deceased Nanku Khare @ Roshan Khare.
- 24.** At the very outset, it may be noticed that immediately after receiving information regarding the injured condition of the

deceased, the informant Hemlal Khare (PW-01) rushed to the Government Hospital, Nawapara, where he found his son lying unconscious with bleeding injuries on the head and face. Upon enquiry, he was informed by the attending doctor that the deceased had expired. His statement led to registration of Merg No.64/2019 (Ex.P/01).

- 25.** The inquest proceedings (Ex.P/03) were conducted in the presence of Panch witnesses. A bare perusal of the inquest report clearly reflects that multiple external injuries were noticed on the person of the deceased, particularly on the head, face and temporal region. The body was thereafter sent for post-mortem examination.
- 26.** The post-mortem examination of the dead body of deceased Nanku Khare @ Roshan Khare was conducted by Dr. Suryakant Tiwari (PW-17), Medical Officer, who has duly proved the postmortem report exhibited as Ex.P/20. In his deposition, PW-17 has stated that upon external examination, the dead body bore multiple visible injuries, particularly on the vital region of the head and face. The postmortem report reveals the presence of lacerated wounds over the frontal and temporal regions of the scalp, accompanied by swelling and contusions over the facial area. The said injuries were not superficial in nature but were grievous and extensive, indicating application of considerable force.

- 27.** On internal examination, PW-17 noticed serious damage to the cranial bones, including fractures, along with corresponding injury to the underlying brain tissue. The internal findings clearly demonstrated intracranial hemorrhage and trauma to vital portions of the brain. The doctor has specifically opined that all the injuries were ante-mortem in nature and were caused by a hard and blunt object. He has further stated that the cumulative effect of the injuries to the head resulted in coma, leading to death of the deceased.
- 28.** The medical witness has categorically deposed that the injuries found on the person of the deceased were sufficient in the ordinary course of nature to cause death. The nature, location and multiplicity of injuries, as recorded in Ex.P/20, unequivocally rule out any possibility of accidental fall or self-inflicted harm. The pattern of injuries clearly suggests a violent assault, particularly aimed at the head, a vital part of the body.
- 29.** Further, in response to a specific query raised during investigation, PW-17 furnished his opinion vide Query Report Ex.P/23, wherein he has affirmed that the injuries sustained by the deceased were possible by assault with a bamboo stick, such as the one recovered at the instance of the accused during investigation. The said opinion provides strong medical corroboration to the prosecution case regarding the manner of assault and the weapon used.

- 30.** The medical evidence finds complete corroboration from other prosecution witnesses. PW-08 Tiwari Prasad has stated that he saw the deceased lying injured and unconscious near Sonesilli Road with visible head injuries. There is no suggestion in cross-examination that the injuries were accidental or self-inflicted.
- 31.** Significantly, there is no evidence whatsoever on record suggesting any possibility of accidental fall or suicidal act. The nature, number and situs of injuries completely rule out such possibilities.
- 32.** The law is well settled that where medical evidence coupled with circumstantial evidence clearly establishes that death occurred due to intentional bodily injuries inflicted by another person, the death must be held to be homicidal.
- 33.** In view of: (i) the inquest report (Ex.P/03), (ii) the postmortem report (Ex.P/20), (iii) the query report (Ex.P/23), and (iv) the unimpeached testimony of PW-17 (Doctor), this Court has no hesitation in holding that the prosecution has proved beyond reasonable doubt that the death of deceased Nanku Khare @ Roshan Khare was homicidal in nature.
- 34.** As such, Point No.1 is accordingly answered in the affirmative.

**Answer to Point No.2**

- 35.** The prosecution case against the appellant rests essentially upon circumstantial evidence, as there is no direct eyewitness to the act

of assault. It is therefore incumbent upon the prosecution to prove a complete chain of circumstances, which must be consistent only with the hypothesis of guilt of the accused and inconsistent with his innocence.

36. This Court shall therefore examine each circumstance relied upon by the prosecution.

**(A) Motive**

37. The prosecution has successfully brought on record evidence to demonstrate existence of motive. From the testimonies of PW-04, PW-09 and PW-16, it emerges that there was a dispute and altercation between the accused and the deceased prior to the incident. The deceased was seen quarrelling with the accused shortly before the occurrence.
38. Though motive by itself is not decisive, when proved, it lends assurance to the prosecution case, particularly in cases based on circumstantial evidence.

**(B) Last Seen Circumstance**

39. The most crucial circumstance is the evidence of PW-16 Sanjay Kumar Gandrike, who has categorically stated that on 31.10.2019 at about 2:00 PM, he saw the accused and the deceased together near Sagar Rice Mill on Sonesilli Road. He has further stated that both were engaged in a quarrel and were proceeding towards the house of the accused.

40. The testimony of this witness inspires confidence and has remained intact despite searching cross-examination. There is nothing on record to discredit his presence or version.
41. Soon thereafter, the deceased was found lying grievously injured at the same place and succumbed to the injuries. The proximity of time between the "last seen together" circumstance and the death of the deceased is so small that the possibility of intervention of a third person is completely ruled out.
42. The accused has not offered any explanation whatsoever under Section 313 CrPC as to how the deceased, who was last seen with him, suffered fatal injuries. This failure attracts the presumption under Section 106 of the Evidence Act.

**(C) Recovery of Weapon and Articles**

43. Another incriminating circumstance is the recovery of weapon at the instance of the accused.
44. The memorandum statement of the accused was recorded vide Ex.P/06, pursuant to which a blood-stained bamboo stick was recovered under seizure memo Ex.P/07. The recovery has been duly proved by independent witnesses and the Investigating Officer.
45. Additionally, blood-stained clothes of the accused and other articles were seized vide Ex.P/09 and Ex.P/10. All seized articles were sent for forensic examination, and the FSL Report (Ex.P/28)

confirms the presence of human blood on the bamboo stick recovered at the instance of the accused. The accused has not offered any explanation regarding the said recovery.

- 46.** The recovery of the weapon, duly corroborated by FSL report and medical opinion, is a strong incriminating circumstance.

**(D) Conduct of the Accused**

- 47.** The conduct of the accused is also relevant. After the incident, the accused neither informed anyone nor offered assistance to the injured deceased. His silence and evasive answers during examination under Section 313 Cr.P.C. further strengthen the prosecution case.

**(E) Completion of Chain of Circumstances**

- 48.** From the above discussion, the following circumstances stand conclusively proved:

- Homicidal death of the deceased,
- Motive for commission of the offence,
- Deceased last seen alive in the company of the accused,
- Recovery of blood-stained bamboo stick at the instance of the accused,
- Medical corroboration connecting the weapon with injuries,
- Failure of the accused to explain incriminating circumstances.

- 49.** The chain of circumstances is complete and excludes every

hypothesis except the guilt of the accused. Thus, this Court holds that the accused Hemeshwar Sahu @ Badshah is the author of the crime.

- 50.** The aforesaid finding brings us to the next question for consideration, whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant ?
- 51.** While dealing with The Hon'ble Supreme Court in a recent judgment in the case of ***Anbazhagan v. The State represented by the Inspector of Police in Criminal Appeal No.2043 of 2023*** disposed of on **20.07.2023** has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:-

*“60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:*

*(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: ‘A’ is bound hand and foot. ‘B’ comes and placing his*

*revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.*

*(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of*

*Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.*

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

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

*(5) Section 304 of the IPC will apply to the*

*following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.*

*To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.*

*(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the*

*accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.*

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

*(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the*

*case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.*

*(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary course of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.*

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

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

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

- 52.** The prosecution case substantially rests upon circumstantial evidence supported by the testimony of the informant Hemlal Khare (PW-1), the memorandum and recovery at the instance of the accused Hameshwar Sahu @ Badshah, the medical evidence, and scientific corroboration. Though there is no direct eyewitness to the actual assault, the chain of circumstances proved by the prosecution is complete and unbroken, leading to only one conclusion, namely, that it was the accused who caused the fatal injuries to the deceased Roshan Khare @ Nanku.
- 53.** Hemlal Khare (PW-1), father of the deceased, has stated that on 31.10.2019, he received information that his son had been found seriously injured and was admitted to the Government Hospital, Gobra Nawapara. On reaching the hospital, he noticed injuries on the head and face of his son, with profuse bleeding. Upon inquiry, the doctor informed him that his son had succumbed to the

injuries. His testimony establishes the immediacy of the incident, the condition of the deceased soon after the occurrence, and the fact that the death was unnatural. His evidence remained consistent and unshaken in cross-examination and there is no reason to doubt his credibility.

- 54.** During investigation, the accused Hameshwar Sahu @ Badshah made a voluntary memorandum statement, duly recorded under Section 27 of the Evidence Act, which has been proved through Ex.P/6. Pursuant to the said memorandum, the accused led the police and witnesses to the place of occurrence and got recovered a blood-stained bamboo stick measuring approximately 50 inches, a black coloured jacket, and a broken chain, vide seizure memo Ex.P/07. These recoveries are significant and directly connect the accused with the commission of the offence. The recovery witnesses have supported the prosecution case and no material infirmity has been elicited in their cross-examination.
- 55.** Further, from the place of occurrence, a green coloured ladies bicycle bearing blood stains on the tyres and mudguard was seized vide Ex.P/09. Blood-stained soil and plain soil were also seized from the spot vide Ex.P/11, thereby conclusively establishing the place of occurrence. The defence has failed to suggest any plausible explanation as to how the blood of the deceased came to be present on the seized articles, particularly when the chemical examination report (Ex.P/28) confirmed the

presence of human blood.

- 56.** The place of incident has been duly proved through spot maps Ex.P/15, Ex.P/26, and the Patwari map Ex.P/14-B, all of which consistently point towards the same location. No contradiction of material nature has been brought out during cross-examination to discredit the prosecution version regarding the place of occurrence. Thus, the situs of the crime stands firmly established.
- 57.** The medical evidence lends strong corroboration to the prosecution case. As discussed earlier, Dr. Suryakant Tiwari (PW-17), who conducted the postmortem examination, has categorically opined vide Ex.P/20 that the deceased sustained multiple grievous injuries on the head and face, resulting in fracture of cranial bones and damage to brain tissue. The cause of death was opined to be coma due to head injuries, and the nature of death was homicidal. In his query report Ex.P/23, the doctor has further opined that the injuries were possible by the bamboo stick recovered at the instance of the accused, thereby furnishing direct medical corroboration to the recovery evidence.
- 58.** The cumulative effect of the ocular version of PW-1 regarding the immediate aftermath of the incident, the memorandum and recoveries made at the instance of the accused, the forensic corroboration, and the unimpeached medical opinion forms a complete chain of circumstances pointing unerringly towards the guilt of the accused. The defence has failed to offer any

alternative hypothesis consistent with innocence.

- 59.** Reverting to the factual matrix of the present case, the evidence on record indicates that the incident was not the outcome of any premeditated design. There is no material to suggest that the accused was armed in advance with the intention to kill the deceased. The incident appears to have arisen out of a sudden quarrel, during which, in the heat of passion, the accused assaulted the deceased with a bamboo stick.
- 60.** There is nothing on record to show that the accused had taken undue advantage or acted in a cruel or unusual manner beyond the scope of the sudden altercation. Though the injuries inflicted proved fatal, the circumstances clearly suggest absence of pre-planning or prior intention to commit murder.
- 61.** At the same time, considering the nature of the weapon used and the fact that the blows were inflicted on a vital part of the body, namely the head, it can reasonably be inferred that the accused had the knowledge that such acts were likely to cause death. Therefore, while the element of intention to cause death is not fully established, the knowledge contemplated under Section 299 IPC stands proved.
- 62.** The conditions required for invoking Exception 4 to Section 300 IPC, namely: (i) sudden quarrel, (ii) absence of premeditation, (iii) commission of the act in the heat of passion, and (iv) not taking undue advantage or acting in a cruel or unusual manner, are

clearly satisfied in the present case. Consequently, the offence committed by the accused would amount to culpable homicide not amounting to murder.

63. In view of the above discussion, this Court is of the considered opinion that though the accused Hameshwar Sahu @ Badshah is the author of the injuries which resulted in the death of Roshan Khare @ Nanku, the offence would fall under Section 304 Part-I IPC and not under Section 302 IPC. Accordingly, the conviction of the accused under Section 302 IPC deserves to be altered.
64. Resultantly, the conviction of the accused under Section 302 IPC is set aside and he is convicted under Section 304 Part-I IPC. Considering the gravity of the offence, the manner of its commission, and all attending circumstances, the accused is sentenced to undergo rigorous imprisonment for a term of 10 years. The fine imposed by the trial Court shall remain intact. The appellant is stated to be in jail since 02.11.2019 being the date of arrest. He is directed to serve out the sentence as modified above.
65. The criminal appeal is **allowed in part** to the extent indicated hereinabove.
66. Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial Court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail

where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
**Judge**

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**

Anu