Court No. - 44 **A.F.R.**

Reserved on 07.09.2022

Delivered on 20.10.2022

Case :- CRIMINAL APPEAL No. - 3856 of 2015
Appellant :- Munna @ Parvez
Respondent :- State of U.P.
Counsel for Appellant :- Mahesh Prasad Yadav
Counsel for Respondent :- Govt.Advocate

Hon'ble Dr. Kaushal Jayendra Thaker,J.
Hon'ble Nalin Kumar Srivastava,J.

(Per : Nalin Kumar Srivastava, J.)

1. This Criminal Appeal has been directed against the judgment and order dated 15.7.2015 passed by the Additional Sessions Judge, Fast Track Court, Pilibhit in Sessions Trial No. 435 of 2013 (Case Crime No. 362 of 2013), P.S. Kotwali Pilibhit, District Pilibhit convicting and sentencing the appellant under Section 302 I.P.C. for life imprisonment and a fine of Rs. 10,000/-, under Section 354-ka IPC for three years rigorous imprisonment and a fine of Rs. 5,000/- and under Section 354-gha IPC for three years rigorous imprisonment and a fine of Rs. 5,000/- with stipulation of default clause. All the sentences were directed to run concurrently.

2. Brief facts, as culled out from the record, are that a First Information Report was lodged by the informant, Zahid Khan son of Shri Puttan, resident of Veni Chaudhary, Police Station Kotwali Sadar, Pilibhit, at Police Station Kotwali Sadar, District Pilibhit with the averments that Munna, Adnan son of Dilshel Khan and Amar son of Mohd. Umar used to tease her daughter Hima by passing comments which was complained to their guardians but they did not stop their activities. On 20.5.2013, at about 8.00 p.m. when his daughter was returning from the house of her Bua in front of the gate of the house, the aforesaid Munna and others gave mobile to Hima and asked her to call to them with the said mobile but Hima did not accept the mobile, due to which being angry they tried to drag her. Angreed with Hima’s protest, the

aforesaid Munna and others sprinkled kerosene on her and set her ablaze. Hearing her cry, Shahid, son of the informant and Gudia, wife of Afaq and the local residents reached there and on their exhortation, the aforesaid Munna and others ran away. Information about the incident was given at Police Station Kotwali at 9.30 p.m. and the injured was hospitalized in District Hospital, Pilibhit where her dying declaration (Ext. ka-11) was recorded by the Nayab Tehsildar, Pilibhit. He also took her thumb impression over the same. Victim was conscious at the time of statement.

3. On the basis of the written report (Ext. ka-1), chik First Information Report (Ext. Ka-2) was registered at Police Station concerned on 20.5.2013 at 9.30 p.m. against Munna, Adnan and Amar at case crime no. 362 of 2013 under Sections 354-ka and 354-gha and 307 IPC.

4. Investigation of the case proceeded. During course of investigation, the Investigating Officer recorded the statement of witnesses, prepared site plan, inquest report was prepared and post mortem was performed. During the course of instigation, the victim died. After making thorough investigation, charge sheet was submitted against the accused. Concerned Magistrate took cognizance on the charge sheet. On 19.7.2013 and 13.9.2013 respectively accused Adnan and Amar were declared juvenile in conflict with law and their files were separated and sent to Juvenile Justice Board. The learned Magistrate summoned the accused Munna and committed the case to Court of Sessions, as prima facie charges were for the sessions triable offences.

5. The charges framed were under Sections 354-ka, 354-gha, 307 IPC read with Section 34 IPC and 302 IPC read with Section 34 IPC. The accused-person pleaded not guilty and wanted to be tried. Trial started and in support of its case, prosecution examined 10 witnesses, who are as follows:

1	Zahid	PW-1 (informant) (father of the deceased)
2	Rashid	PW-2 (brother of deceased)
3	Asma Bee	PW-3 (aunt of deceased)
4	Ram Chandra Sharma	PW-4 (scribe of the F.I.R.)
5	Dr. Bhagwan Das	PW-5 (who performed the post mortem of the deceased and and gave certificate before the dying declaration of the deceased)
6	Gandhi Lal Sharma	PW-6 (who conducted the inquest of the deceased and prepared other papers)
7	Rajeev Nigam	PW-7 (Nayab Tehsildar Sadar, Pilibhit who recorded the dying declaration of the deceased)
8	Satendra Kumar Singh	PW-8 (Investigating Officer-III)
9	Rakesh Singh	PW-9 (Investigating Officer-I)
10	Anand Kumar Verma	PW-10 (Investigating Officer-II)

6. In support of oral version, following documents were filed and proved on behalf of the prosecution:

1	Written report	Ext. A-1
2	Chik F.I.R.	Ext. A-2
3	G.D. entry	Ext. A-3
4	Post mortem report	Ext. A-4
5	Inquest report	Ext. A-5
6	Challan Nash	Ext. A-6
7	Photo Nash	Ext. A-7
8	Letter to C.M.O.	Ext. A-8
9	Letter to R.I.	Ext. A-9
10	Specimen Seal	Ext A-10
11	Dying declaration	Ext. A-11
12	Charge sheet	Ext. A-12
13	Memo of clothings of deceased	Ext. A-13
14	Site plan	Ext. A-14
15	Copy G.D.	Ext. A-15
16	Certificate before recording the dying declaration	Ext. A-16
17	Certificate after recorded the dying declaration	Ext. A-17

7. Deceased was hospitalised after the occurrence. She died on the same day of the occurrence during the course of treatment.

8. The incriminating circumstances emanating from the prosecution evidence were put to the accused. In his statement recorded under Section 313 CrPC, he denied his involvement in the incident and pleaded false implication on account of enmity.

9. The accused in his defence has examined DW-1 Ishaq Ahmad, DW-2 Fahim, DW-3 Sharfuddin and DW-4 Jalil Miyan.

10. Relying upon the aforesaid evidence adduced by the prosecution, the trial court concluded that the prosecution succeeded in proving its case beyond reasonable doubt and convicted and sentenced the accused appellant accordingly.

11. The learned counsel for the appellant assailing the findings of the trial court recorded in the impugned judgment argued that the impugned judgment is a product of surmises and and conjectures. The trial court did not appreciate the evidence on record in a legal and proper manner and the findings are contrary to law. The impugned judgment does not appear to be fair and just conclusion of the episode which invites interference of the appellate court and deserves to be set-aside. It has also been submitted that the sentence imposed by the trial court is too severe and the accused appellant invites indulgence of the appellate court to acquit him. The dying declaration, which also formed basis of conviction, is also not legally reliable. On the aforesaid grounds it has been prayed that the accused appellant be acquitted by allowing the present appeal.

12. Per contra, learned AGA appearing for the State has contended that there is no legal or factual error in the impugned judgment and it is a result of proper appreciation of facts and evidence on record and the dying declaration is also a reliable and cogent piece of evidence. On the aforesaid grounds, dismissal of the present appeal was prayed for.

13. Heard Shri Mahesh Prasad Yadav, learned counsel for the appellant and Shri N.K. Srivastava, learned AGA for the State.

14. At the very outset, the fact which draws our attention is that the present case rests upon the eye witness account. The facts of the case find support from oral evidence as well as the dying declaration of the deceased. It is found in the F.I.R. itself and also in the oral testimonies of PW-1, father of the deceased and PW-2, brother of the deceased, that earlier from the occurrence the named accused persons including the present appellant used to passing comments upon the deceased and their mischief was complained of by the informant to their family members also. As per the F.I.R. version at the time of occurrence the appellant alongwith other two co-accused whose trial was separated and sent to the Juvenile Justice Board, tried to give mobile phone to the deceased forcibly but she refused to take it being angry of which they tried to drag her and in the course of this incident they poured kerosene oil upon the deceased and set her ablaze.

15. PW-2, the brother of the deceased, has categorically stated in his evidence that when on cry of his sister he reached the spot, he saw the appellant Munna and other co-accused Adnan and Amar surrounding his sister. Co-accused Adnan and Amar poured kerosene oil over his sister and present appellant Munna set her ablaze. At the time of occurrence his father Zahid, mother Shamshadi Begum and other neighbourers came over there. Hima ran towards the house and laid on a cot. They took her to the hospital but after some time she died. The accused fled away from the scene of occurrence. This statement finds support from the statement of PW-1, informant, who has also categorically confirmed the role of present appellant in the occurrence. PW-1 and PW-2 both have stated that the present appellant and other co-accused used to tease the deceased and when she protested on the fateful day she was set ablaze by them. The informant has also proved the written report as Ext. A-1.

16. PW-3, Smt. Asma Bee, who is a native of the same vicinity, has also corroborated the prosecution version and has stated that when on the cry of Hima she reached the spot, she saw her burning and Munna, Adnan and Amar running away from there. PW-1 and PW-2 have also stated that when Hima laid on the cot after the occurrence she had told that Amar, Adnan and Munna had set her ablaze and they used to tease her.

17. There is nothing in the cross-examination of PW-1, PW-2 and PW-3 which can be termed as inconsistent or untrustworthy statement.

18. It has been contended by the learned counsel for the appellant that there is no independent witness of the incident and all the aforesaid three witnesses are the family members of the deceased, which makes the prosecution story suspicious.

19. We do not find ourselves in agreement with the aforesaid plea taken by the learned counsel for the appellant. The legal position in respect of a relative witness has been made clear in a catena of decisions by the Hon'ble Apex Court and by this Court also. It is well settled that the testimony of a witness in a criminal trial cannot be discarded merely because the witness is relative or family member of the victim of the offence. In such a case the Court has to adopt a careful approach in analysing the evidence of such a witness and if the testimony of the related witness is otherwise found credible the accused can be convicted on the basis of testimony of such related witness. Recently, in ***Surinder Kumar Vs. State of Punjab (2020) 2 SCC 563*** Hon'ble Supreme Court has reiterated that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The same view has been taken in ***Bhagwan JagannathMarkad Vs. State of Maharastra (2016) 10 SCC 537, Dhari & Others Vs. State of U.P., AIR 2013 SC 308, Shyam Babu Vs. State of U.P., AIR 2012 SC 3311, Shyamal Ghosh Vs. State of WB, AIR 2012 SC 3539, Dayal Singh Vs. State of Uttaranchal, AIR 2012 SC 3046, Amit Vs.***

State of U.P., AIR 2012 SC 1433 and *State of Haryana Vs. Shakuntala & Others, 2012 (77) ACC 942 (SC).* In view of the aforesaid case laws and the trustworthy and cogent evidence of PW-1, PW-2 and PW-3 we are of the considered view that the learned trial court did not make any illegality in relying upon the testimonies of the aforesaid witnesses.

20. PW-4, Head Constable Ram Chandra Sharma, has proved the registration of F.I.R. on the basis of written report of informant Zahid Khan. He has proved the chik F.I.R. as Ext. A-2 and G.D. as Ext. A-3 and no adversity is found in his deposition. The proceedings of inquest has been proved by PW-6 S.I. Gandhi Lal Sharma who has not only proved the inquest report but also the papers sent for the post mortem i.e. challan nash, photo nash, letter to C.M.O., letter to R.I. as Ext. A-5 to Ext. A-9 and specimen seal as Ext. A-10. No unnatural statement has been made by this witness also.

21. It is pertinent to mention here the evidence of PW-5 Dr. Bhagwan Das, who has performed the autopsy of the deceased Hima. In his deposition PW-5 has proved the Autopsy Report as Ext. A-4 and the following ante mortem injuries were found by him :

> *"Superficial to almost deep burn injury present over body except lower abdomen and back of head. Front scalp hair burnt. Skin peeled out at places read colour of base of burn injury."*

He has also opined that death was caused due to shock and mild asphyxia as a result of extensive burn injury over the body (in the ante mortem injury). He has further stated that the deceased was 95% burnt. She was brought to the emergency of the hospital in a burn and living condition and was referred to surgery and was examined on 20.5.2013 at 9.00 p.m. General condition of the patient was very bad and pulse was not being found and B.P. was very much low. It is noteworthy that the post

mortem of the deceased was conducted on 21.5.2013 at 1.40 p.m. and the death occurred on 21.5.2013 at 5.30 a.m..

22. On the basis of aforesaid evidence, we reach the conclusion that the offence was committed by the present appellant with the aid of other co-accused by burning and the prosecution has successfully proved its case to this extent.

23. Furthermore, from the statement of PW-1, PW-2 and PW-3 it is clear that the occurrence happened on the road near the house of the informant. The topography of the place of occurrence has been clearly shown in the site plan Ext. A-14 proved by PW-9, who has stated in his deposition that on pointing out of the informant of the case he had inspected the spot and prepared the site plan. Hence, the place of occurrence is certain and we, therefore, do not find any force in the contention of the learned counsel for the appellant regarding the fixation of place of occurrence.

24. The motive of the case was also hit by the learned counsel for the appellant, who has vehemently argued that the appellant had no reason to set the deceased ablaze and there was no previous enmity between the parties. Learned AGA has opposed this plea and submitted that since the present case rests upon the evidence of eye witnesses, there is no need to prove the motive of the offence for the prosecution. We also find ourselves in support of the plea taken by the learned AGA. In **Bikau Pandey Vs. State of Bihar (2003) 12 SCC 616** it has been held that when the direct evidence establishes the crime, motive is of no significance and pales into insignificance. In **Anil Rai Vs. State of Bihar (2001) 7 SCC 318** it has been held that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons.

25. There are catena of decisions on the point that in a case based upon the eye witness account, the motive loses its significance. In **Deepak Verma Vs. State of Himachal Pradesh (2011) 10 SCC 129** It has been held as under:

> "...Proof of motive is not a sine qua non before a person can be held guilty of commission of crime. Motive being a matter of mind, is more often than not difficult to establish through evidence."

26. Moreover, in the present case it has been fully established by the cogent and reliable evidence of PW-1 PW-2 that the accused appellant used to tease the deceased who was a young girl alongwith other co-accused persons and when they failed in their planning to give a mobile phone to her to be in regular contact with her, they set her ablaze.

27. The trial court in the impugned judgment has discussed the aforesaid points at length and has made a categorical finding that the prosecution case is fully established on the basis of cogent and reliable evidence on the aforesaid points.

28. Both sides have made their rival contentions upon the veracity of dying declaration of the deceased. PW-7 the Nayab Tehsildar, Sadar has recorded the dying declaration of the deceased on 20.5.2013. Dying-declaration was recorded by him after obtaining the certificate of mental-fitness from doctor in the hospital. After completion of dying-declaration also the said doctor has given certificate that during the course of statement, the victim remained conscious.

29. Learned counsel for the appellant has argued that dying declaration is doubtful and not corroborated by witnesses of fact, hence, it cannot be the sole basis of conviction. Legal position of dying declaration to be the sole basis of conviction is that it can be so done, if it is not tutored, made voluntarily and is wholly reliable. In this regard, Hon'ble Apex Court has summarized the law regarding dying declaration in ***Lakhan vs. State of Madhya Pradesh*** [(2010) 8 Supreme Court Cases 514], in this case, Hon'ble Apex Court held that the doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means, "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in

Section 32 of Evidence Act, 1872, as an exception to the general rule contained in Section 60 of Evidence Act, which provides that oral evidence in all cases must be direct, i.e., it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

30. The law on the issue of dying declaration can be summarized to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. It is also held by Hon'ble Apex Court in the aforesaid case of ***Lakhan*** (supra) that a dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim.

31. In the wake of aforesaid judgment of ***Lakhan*** (supra), dying declaration cannot be disbelieved, if it inspires confidence. On reliability of dying declaration and acting on it without corroboration, Hon'ble Apex Court held in ***Krishan vs. State of Haryana*** [(2013) 3 Supreme Court Cases 280] that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused. Where the dying declaration is true and correct, the attendant circumstances show it to be reliable and it has been recorded in accordance with law, the deceased made the dying declaration of her own accord and upon due certification by the doctor with regard to the state of mind and body, then it may not be necessary for the court to look for corroboration. In such cases, the dying declaration alone can form the basis for the conviction of the

accused. Hence, in order to pass the test reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once, the court has come to the conclusion that the dying declaration was the truthful version as to the circumstance of the death and the assailants of the victim, there is no question of further corroboration.

32. In ***Ramilaben Hasmukhbhai Khristi vs. State of Gujarat***, [(2002) 7 SCC 56], the Hon'ble Apex Court held that under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the from of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.

33. From the above case laws, it clearly emerges that it is not an absolute principle of law that a dying declaration cannot form the sole basis of conviction of an accused when such dying declaration is true, reliable and has been recorded in accordance with established practice and principles and if it is recorded so then there cannot be any challenge regarding its correctness and authenticity.

34. In the present case, dying declaration of the deceased was recorded by Nayab Tehsildar, Sadar, Pilibhit after obtaining the certificate of medical fitness from the concerned doctor. This

dying declaration was proved by him. This witness is absolutely an independent witness and has no grudge or enmity to the convict at all. In the dying declaration, the deceased did not unnecessarily involved the other family members of the accused appellants. She only attributed the role of burning to accused appellant, who were actual culprit.

35. Learned counsel for the appellant has also assailed the proceedings of the investigation and has argued hat the investigation has not been done in a proper manner and there are several lacunas in the investigation. Learned trial court has elaborately discussed the several aspects of the investigation of the case and has found that there is no material lacuna or omission in the investigation of the case and we concur with the same. Moreover, it is also to be kept in mind that even if the investigation of the case is faulty but the prosecution succeeds to prove its case on the basis of other cogent evidence on record, it makes no adverse affect over the prosecution case. In **Hema Vs. State (2013) 81 ACC 1 (Supreme Court)** it has been held by the Hon'ble Apex Court that any irregularity or deficiency in investigation by I.O. need not necessarily lead to rejection of the case on prosecution when it is otherwise proved. The only requirement is to use of extra caution. The defective investigation cannot be fatal to prosecution when ocular testimony is found credible and cogent. It may be reiterated at the cause of repetition that investigation in the present case does not suffer with any material irregularity which goes to the root of the prosecution case.

36. One specific argument has been made from the side of the appellant to the effect that the prosecution has not disclosed the genesis of the case in truthful manner and many material facts have been concealed. It is vehemently argued that it was not a homicidal death but the deceased committed suicide by setting her ablaze herself in the house of the informant himself. DW-1,

DW-2 and DW-4 have been examined from the defence side to prove the aforesaid facts. They have stated in their respective depositions that at the time of the occurrence they had seen the deceased in burning condition over the roof of Zahid, the informant. They went over there and found that Hima was lying on the bed in burning condition and they had brought her away to the hospital. They have also stated that at the time of occurrence there was a power cut in the vicinity and they live nearby the house of the accused. DW-3 has also been examined to prove the factum of power cut at the time of occurrence. He is an employee of Electricity Division, Pilibhit and on the basis of official register he has proved this fact that on 20.5.2013 there was a shut-down in mohalla Beni Chaudhary from 8.05 p.m. to 8.35 p.m..

37. Learned AGA has vehemently opposed the aforesaid plea taken by the learned counsel for the appellant and contended that the parties were known to each other as they lived in the same vicinity which is called mohalla Beni Chaudhary, Pilibhit. Even if it is presumed that there was power cut at the time of occurrence, it cannot be said that the accused and his friends could not be identified by the prosecution witnesses of fact. Moreover, deceased was seen in burning condition by PW-1, PW-2 and PW-3 and in the light of the fire itself they could easily be identified by the witnesses. Hence, the evidence of DW-3 is of no help to the convict / appellant. The attention of this Court was also drawn by the learned AGA to the fact that DW-1 has stated in his evidence that the inquest proceedings were performed before him and he had made signature over the inquest report but he has admitted that at the time of inquest he did not disclose this fact to the police that it was a suicidal case. This omission makes his deposition unreliable. Likewise, testimony of DW-2 is also not reliable. In his cross-examination he has stated that whatsoever he has stated in his examination-in-chief he had informed to the police. It is noteworthy that there is nothing on

record in writing regarding this fact. So far as the testimony of DW-4 is concerned, he has not seen the occurrence and has only seen the deceased crying and burning.

38. Learned trial court has discussed the defence evidence, above mentioned, at length and found it not reliable and we concur with the same.

39. Considering the evidence of the witnesses, the medical evidence including post mortem report and also considering the dying declaration, there is no doubt left in our mind about the guilt of the present appellant.

40. However, the question which falls for our consideration is whether, on reappraisal of the peculiar facts and circumstances of the case, the conviction of the appellant under Section 302 of I.P.C. of the Indian Penal Code should be upheld or the conviction deserves to be converted under Section 304 Part-I or Part-II of the Indian Penal Code. It would be relevant to refer Section 299 of the Indian Penal Code, which read 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."*

41. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Section 299 and 300 of I.P.Code. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300

A person commits culpable homicide if the act by which the death is caused is done-	Subject to certain exceptions culpable homicide is murder is the act by which the death is caused is done.

INTENTION

(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) 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;
KNOWLEDGE	KNOWLEDGE
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so immediately dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

42. On overall scrutiny of the facts and circumstances of the present case coupled with the opinion of the Medical Officer and considering the principle laid down by the Apex Court in the Case of **Tukaram and Ors Vs. State of Maharashtra**, reported in **(2011) 4 SCC 250** and in the case of **B.N. Kavatakar and Another Vs. State of Karnataka**, reported in **1994 SUPP (1) SCC 304**, we are of the considered opinion that the offence would be one punishable under Section 304 part-I of the IPC.

43. From the upshot of the aforesaid discussions, it appears that the death caused by the accused was not premeditated, accused had no intention to cause death of deceased, the injuries were though sufficient in the ordinary course of nature to have caused death, accused had no intention to do away with deceased, hence the instant case falls under the Exceptions 1

and 4 to Section 300 of IPC. While considering Section 299 as reproduced herein above offence committed will fall under Section 304 Part-I as per the observations of the Apex Court in **Veeran and others Vs. State of M.P. Decided, (2011) 5 SCR 300** which have to be also kept in mind.

44. In latest decision in **Khokan Alias Khokhan Vishwas vs. State of Chhattisgarh, (2021) 2 Supreme Court Cases 365** where the facts were similar to this case, the Apex Court has allowed the appeal of the accused appellant. The decision of the Apex Court in the case of **Anversinh v. State of Gujarat, (2021) 3 SCC 12** which was related to kidnapping from legal guardian, wherein it was established that the Court while respecting the concerns of both society and victim, propounded that the twin principle of deterrence and correction would be served by reducing the period of incarceration already undergone by the accused. In our case, this is not that gruesome murder where the accused cannot be dealt with in light of all these judgments. Judgments in **Pravat Chandra Mohanty v. State of Odisha, (2021) 3 SCC 529 & Pardeshiram v. State of M.P., (2021) 3 SCC 238** will also enure for the benefit of the accused.

45. In view of the aforesaid discussions, we are of the view that appeal is liable be partly allowed and the conviction of the appellant under Section 302 IPC is liable to be converted into conviction under Section 304 (Part-I) IPC.

46. Accordingly, appeal is partly allowed and the appellant is convicted for the offence under Section 304 (Part-I) IPC and is sentenced to undergo ten years of incarceration with remission. We maintain the fine amount and default sentence, which will start if fine is not deposited after ten years with remission.

47. Record and proceedings be sent back to the Court below forthwith.

48. This Court is thankful to learned Advocates and Mr. Mohd. Furkan Khan, Law Clerk (Trainee) of this Court for ably assisting the Court.

Order Date :- 20.10.2022
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(Nalin Kumar Srivastava, J.)(Dr. Kaushal Jayendra Thaker, J.)