

**AFR**

**Reserved on 23.08.2022**

**Delivered on 22.09.2022**

**In Chamber**

**Case :-** JAIL APPEAL No. - 358 of 2018

**Appellant :-** Ramesh Yadav

**Respondent :-** State of U.P.

**Counsel for Appellant :-** From Jail, Amit Kumar Srivastava

**Counsel for Respondent :-** A.G.A.

**Hon'ble Anjani Kumar Mishra, J.**

**Hon'ble Umesh Chandra Sharma, J.**

**(Delivered by Hon'ble Umesh Chandra Sharma, J.)**

1. This appeal has been preferred by the convicted accused Ramesh Yadav against the judgment and order dated 05.06.2017 passed by the Additional Sessions Judge/FTC, Bhadohi, Gyanpur.

2. By the impugned judgment, the learned trial court awarded following sentences to the accused:-

(I). Under Section 302 IPC rigorous imprisonment of life sentence and a fine of Rs.10,000/-;

(II) Under Section 324 IPC rigorous imprisonment of three years;

(III) Under Section 307 IPC rigorous imprisonment of ten years and a fine of Rs.10,000/-.

3. In brief, facts of the case are that on 16.02.2016 informant Banarsi son of Ram Nath resident of Mavaiya,

PS Gyanpur, District Bhadohi moved a written tahrir (Ex.Ka-1) that his son Ramesh Yadav today at about 12 O'clock had badly injured his wife Sukhraj Devi from a sharp edged weapon. He has admitted his wife for treatment in Gyanpur Government Hospital.

4. On the basis of written tahrir (Ex.Ka-1) a chick FIR (Ex.Ka-19) in Case Crime No.24 of 2016 under Section 324 IPC was registered and entered in GD (Ex.Ka-18). After death of injured Sukhraj Section 302 IPC was added through paper Ex.Ka-8.

5. PW-6, SSI Ram Adhar Yadav, Investigating Officer visited the place of occurrence and prepared map (Ex.Ka-6) recorded the statement of the informant and other witnesses and after finding sufficient evidence submitted the charge-sheet (Ex.Ka-14) under Sections 324, 307, 302 IPC against the accused. The case was committed to the Court of Sessions on 12.05.2016 and was transferred to the Court of Additional Sessions Judge/FTC, Bhadohi who framed the charges on 26.05.2016 from which the accused denied and requested for trial.

6. The **witnesses** who have been examined from the side of the prosecution are: (i) PW-1, Banarsi, informant; (ii) PW-2, Meena Devi, an independent witness; (iii) PW-3, Bindu Devi, sister of the accused; (iv) PW-4, Om Prakash, an independent witness; (v) PW-5, Dr. Girish Chand Rawat who examined the deceased before her death and also PW-3, Bindu Devi (injured); (vi) PW-6, Ram Adhar Yadav, Investigating Officer; (vii) PW-7, Raghvendra Singh, the

then SO of PS Gyanpur; (viii) PW-8, Amar Bahadur Singh, autopsy doctor; and (ix) PW-9, Jitendra Kumar, Constable.

7. The **documentary evidences** which have been produced from the prosecution side are: (i) Ex.Ka-1, *tahrir* of the informant; (ii) Ex.Ka-2, inquest; (iii) Ex.Ka-3, recovery memo; (iv) Ex.Ka-4 and 5 both photocopy of injury report; (v) Ex.Ka-6, map; (vi) Ex.Ka-7 and 8, certified copies of GD; (vii) Ex.Ka-9, police Form-13; (viii) Ex.Ka-10, photonash; (ix) Ex.Ka-11, letter to CMO; (x) Ex.Ka-12, letter to RI; (xi) Ex.Ka-13, photonash; (xii) Ex.Ka-14, charge-sheet; (xiii) Ex.Ka-15, arrest memo; (xiv) Ex.Ka-16, letter to Director, FSL, Varanasi; (xv) Ex.Ka-17, *post mortem* report; (xvi) Ex.Ka-18, carbon copy of GD dated 16.02.2016 regarding lodging of FIR; (xvii) Ex.Ka-19, chick FIR; and (xviii) Paper No.Ka-27, report of FSL which is not exhibited but being public document it is admissible and exhibitable under Section 293 CrPC.

8. **The applicant has taken following grounds:-**

- (i) that the judgment is against the fact and law;
- (ii) that there are material contradiction in the evidence of eye-witnesses which has not been considered by the lower court, therefore, the impugned judgment and order is not sustainable on this ground alone;
- (iii) that the excessive punishment has been provided which is against the rules established by law;

- (iv) that the learned trial court has convicted the appellant relying on inadmissible evidences and has ignored admissible evidences;
- (v) that the prosecution has not been successful in proving the prosecution story beyond doubt;
- (vi) that the prosecution could not establish the place of occurrence and the person who committed the offence;
- (vii) that the lower court has not appreciated the evidenced in accordance with law, therefore, the judgment of conviction dated 05.06.2017 be quashed and appeal be allowed.

9. In brief, evidences of PWs are reproduced herein below:

9.1. PW-1, Informant - Banarsi, father of the accused appellant and husband of the deceased has deposed that on 16.02.2016 at about 12 O'clock his wife Sukhraji Devi was washing clothes at the well. Ramesh, hiding an axe, reached there and asked to clean his clothes, she replied that today she was busy in some domestic work, she would clean the clothes tomorrow. Hearing this, Ramesh started attacking at her from the axe. Her daughter Bindu Devi came there to save her mother, Ramesh also caused injuries to her 2-3 times from the axe. Both the injured were admitted in Gyanpur Government Hospital thereafter he reached police station for lodging an FIR. This witness has proved paper no.5 (*tahrir*), Ex.Ka-1. He further deposed that Investigating Officer had recorded

his statement. He had pointed out the place of occurrence to Investigating Officer. District Hospital, Gyanpur referred the patient to BHU thereafter Sukhraji Devi was admitted to BHU and Bindu (daughter of the informant) was admitted in a private hospital by her in-laws.

9.2. After treatment Bindu Devi got recovered while wife of the informant died. Doctor of BHU had informed him that there was no hope, get her discharged and keep at the home. On 02.03.2016 after discharging from BHU when he was carrying his wife to his house and reached near *Raja Ka Talab*, she died. He reached police station with dead body where inquest proceeding was conducted and the dead body was sent for post mortem. Next day autopsy was done thereafter he completed the last rituals. This witness has also confirmed his signature and proved the inquest (Ex.Ka-2).

9.3. PW-2, Meena, an independent eye-witness, deposed that at about 12 noon when she was washing clothes at the well, Om Prakash (PW-4) was taking bath there and Sukhraji Devi (mother of the accused-appellant) was also washing clothes there, Ramesh Yadav reached at the well and asked his mother to clean his clothes. His mother replied that she would wash his clothes tomorrow then Ramesh took out a *tangari* from his shawl and started beating her. Thereafter Banarasi transported Sukhraji and Bindu to District Hospital, Gyanpur. Sukhraji died at the 16<sup>th</sup> day from the date of occurrence. Investigating Officer had visited the spot. He had recovered the axe/*tangari* in presence of her and Om Prakash from the house of the

accused and had sealed in a white cloth. This witness confirmed her thumb impression and signature of Om Prakash on recovery memo of the axe, Ex.Ka-3. According to her, the Investigating Officer had recorded her statement.

9.4. PW-3, Bindu Devi, daughter of the informant and the deceased and sister of the accused-appellant deposed that on the day of incident at about 12 O'clock when her mother Sukhraji Devi was washing clothes at the well, Meena and Om Prakash were also washing clothes and were taking bath, her brother Ramesh Yadav reached at the well and asked her mother to wash his clothes. She replied that she would wash his clothes tomorrow not today. Thereafter Ramesh took out an axe from his sweater and started beating therefrom. When she arrived to save her, he also caused her several injuries on her head and back from the axe. Thereafter her father took her and her mother at the District Hospital, Gyanpur where both were treated. Seeing serious condition of her mother, Dr. Shahi referred her mother to BHU Trauma Centre where she was admitted. He referred the witness for treatment in a private hospital therefore her husband admitted her at Orai Private Hospital where she remained for three days and was discharged 4<sup>th</sup> day. Her mother died at 16<sup>th</sup> day of the occurrence due to injury caused by her brother, Ramesh Yadav from the axe. According to this witness, she was also washing clothes at the well and the Investigating Officer had recorded her statement.

9.5. PW-4, Om Prakash has deposed that on 16.02.2016 at about 12 O'clock he was taking bath at the well. Apart from him his elder mother, Sukhraji Devi and Bhabhi Meena Devi were also washing clothes and were taking bath. At the same time Ramesh came covering himself with a shawl in which he had hidden an axe. He asked Sukhraji Devi to clean his clothes, she replied that weather is not good, let it be done tomorrow. Then Ramesh took out an axe and started beating Sukhraji. When Bindu, sister of Ramesh, came to save her, Ramesh also started hitting her with the axe. On shouting of those people they also started shouting by grabbing hold the axe, on this Ramesh ran away and went to his house. Sukhraji and Bindu were brought to Gyanpur Government Hospital for treatment where treatment was started. Due to serious condition, doctor referred Sukhraji to BHU Trauma Centre, Varanasi. Bindu was treated at Orai Private Hospital and Sukhraji was admitted in BHU for about 15 days. There as the condition became serious, the doctor discharged her on 02.03.2016. Sukhraji was being brought to her house, she died on the way. Then body of Sukhraji was brought to Gyanpur Police Station where *panchayatnama* of the dead body was written by police. *Panchayatnama* was read over by inspector and after listening, he made signature on *panchayatnama* (Ex.Ka-2). On the spot inspector had sealed the axe in white cloth and prepared recovery memo. He signed the recovery memo and Meena Devi put thumb impression on it. Inspector also taken his statement.

9.6. PW-5, Dr. Girish Chandra Rawat deposed that he was working on the same post on 16.02.2016. On 16.02.2016 Bindu wife of Rajesh Yadav, daughter of Banarasi – informant, aged about 30 years, was medically examined at about 10:30 a.m. after identification. She was brought by Mukesh Yadav. He found following injuries on her body:

*"(i) LW 3 x 2 cm, blood was coming from the wound. The wound was on the occipital bone on scalp.*

*(ii) LW 7 x 2 cm, there was bleeding from the spinal back on T-10 to L-1 lowers of spine. According to this witness all injuries can be caused by a hard and blunt object. All injuries referred for X-Ray and radiologist."*

9.7. After that Sukhraji Devi was medically examined by this witness and he found following injuries on body of the injured Sukhraji:

*"(i) LW 5 x 6 cm and the oozing blood was present in the upper part of the right temporal bone at scalp.*

*(ii) Sliced cut wound 7 x 5 cm at the left shoulder blood was oozing and humerus bone was visible.*

*(iii) LW 8 x 6 cm at the left knee upon deep bone from which blood was oozing."*

9.8. According to PW-5, the aforesaid injuries were caused by some hard and blunt object. All injuries were sent for X-Ray and to the radiologist. All the injuries were fresh. Seeing the serious condition of the patient she was referred to BHU, Varanasi. This witness had proved the photocopy of injury report of Bindu Devi and Sukhraji Devi after seeing the injury report register of District

Hospital (which was summoned in the Court) and had proved the same as Ex.Ka-4 and Ex.Ka-5.

9.9. PW-6, Ram Adhar Yadav, the Investigating Officer deposed that on 16.02.2016 he was appointed Investigating Officer of Case Crime No.24 of 2016, under Section 324 IPC, Police Station Gyanpur, District Bhadohi in which he copied the FIR GD memo, District Hospital Report GD, statement of informant and Dr. Girish Chandra Rawat. He, on the pointing out of the informant, inspected the place of occurrence and prepared the map. After search accused was found at his house. His statement was recorded. He admitted his guilt. At his pointing out an axe was recovered and the recovery memo was prepared in front of witnesses, Om Prakash and Meena Devi. On the basis of grievous hurt and on the statement of doctor on 16.02.2016 he added Section 307 IPC. On 02.03.2016 after death of the injured, Sukhraji Devi, Section 302 IPC was also added. This witness has proved map and GD, Ex.Ka-6, Ex.Ka-7 and Ex.Ka-8. He also confirmed his writing and signature at recovery memo (Ex.Ka-3) and *panchayatnama* (Ex.Ka-2), this witness has also proved police Form-13, photonash, letter to CMO and RI and *challannash* and confirmed his writing and signature on on the papers Ex.Ka-9 to Ex.Ka-13. The truss of the axe was opened and it has been exhibited as material Ex.-1. Further investigation was given to SHO, Raghvendra but it was again given to him on 29.03.2016. He recorded the statement of FIR writer Constable Santosh Kumar Mishra and Constable *Moharrir* Jitendra Kumar. He prepared *parcha* no.11 and recorded the statement of Bindu Devi

and submitted charge-sheet under Sections 324 and 302 IPC on 03.04.2016. This witness has proved charge-sheet Ex.Ka-14. Through supplementary GD No.1 he submitted that charge under Section 307 IPC is also made out, it was left mistakenly while submitting the charge-sheet so he requested that charge-sheet be treated under Section 307 IPC also.

9.10. PW-7, Raghvendra Singh, Inspector PS Gyanpur deposed that on 16.02.2016 after lodging the FIR in Case Crime No.24 of 2016, under Sections 324 and 307 IPC against Ramesh Yadav, investigation was entrusted to SSI Ram Adhar Yadav. After death of the injured on 02.03.2016, the investigation was taken back by him and *parcha* no.3 was prepared by him on 04.03.2016. After preparing *parcha* no.4, the axe, used in commission of the crime, was sent to FSL, Ram Nagar, Varanasi through Constable, Anil Yadav. On 07.03.2016 he prepared *parcha* no.5, on 09.03.2016 *parcha* no.6 and copied the statement of the witnesses and *post mortem* report. On 15.03.2016 he prepared *parcha* no.16 and wrote the statement of the informant and the witnesses. On 16.03.2016 he prepared *parcha* no.8 by which he again wrote the statement of the witnesses thereafter he was transferred. Further investigation was completed by SSI Ram Adhar Yadav. This witness has proved paper no.18-A as Ex.Ka-16.

9.11. PW-8, Dr. Amar Bahadur Singh has done *post mortem* of the deceased Sukhraji Devi aged about 58 years on 03.03.2016 at 10:30 am. This witness found that

decomposition in body had not even started. In the *post mortem* report following injuries have been mentioned:

- "(i) There was a stitched injury in the upper part of the left hand whose length was 12 cm.*
- (ii) 7 cm stitched wound adjacent to the neck on the left shoulder.*
- (iii) On the side of left arm there was the stitched wound whose length was 13 cm.*
- (iv) The injuries sustained on the left palm whose length was 7 cm from ring finger to the palm.*
- (v) There was a stitched wound of 13 cm size on the left thigh, which was 12 cm above the side of the knee.*
- (vi) Three parallel stitched wound on the right side of the head on the parietal region of 8 cm, 6 cm and 3 cm with broken bones respectively.*
- (vii) This witness found that alimentary tube and urinary tube were attached. Cause of death due to septicaemia on account of spread of poison in the body due to access to herbs. The membrane had shrivelled. The brain was shrunken. The membranes of the lungs were filled with pus. Death was within one day. Cause of death was septicaemic shock. He cannot say from which weapon injuries were caused to the deceased. He admitted that viscera was not sent for examination. According to this witness septicaemia affects the body 24 hours from the time of injuries, it depends upon which bacterium getting involved in the infection.*

9.12. PW-9, Jitendra Kumar, Constable *moharrir* deposed that chick FIR in Crime No.24 of 2016, under Section 324 IPC was prepared by Constable, Santosh

Kumar Mishra. The case was entered in Rapat No.22 at 01:50 p.m. on 16.02.2016 by him in GD. He has proved its copy Ex.Ka-18 and the chick FIR Ex.Ka-19 to be prepared by Constable *moharrir*, Santosh Kumar Mishra through his secondary evidence. According to him his statement had been recorded by the Investigating Officer. In cross-examination he denied that GD regarding lodging the case was false and manufactured.

10. After closer of prosecution evidence, statement of the accused has been recorded under Section 313 CrPC in which the witness had denied the allegations. Oral and documentary evidences produced by the prosecution, the recovery memo and charge-sheet etc. have been denied. He was stated to produce defence evidence but no oral or documentary evidence has been produced in defence. In the last he deposed that he was innocent and had been falsely implicated. He has not said himself to be a person of unsound mind nor had claimed exemption from trial under Chapter XXV CrPC.

#### **11. This appeal is decided as under:-**

11.1.(I). In this case according to the informant the accused appellant committed the crime at about 12 O'clock in the day of 16.02.2016. The informant moved tahrir, Ex.Ka-1 same day at 01:50 p.m. after admitting the injured in hospital, distance between place of occurrence and police station is 4 kms. Therefore, there is no delay in lodging the FIR. In the FIR the informant has named his son Ramesh Yadav as accused who injured and killed his

wife Sukhraji Devi from an axe. He has proved the *tahrir* Ex.Ka-1 and inquest Ex.Ka-2. In *tahrir* the informant has not endorsed that accused had also injured his daughter, Bindu Devi but in oral examination he has deposed that when Bindu Devi went to save her mother, accused also attacked on her and caused 2-3 injuries from the same axe and both were admitted in District Hospital, Gyanpur. From the circumstances, it transpires that the informant was in haste and as his wife and daughter were seriously injured, therefore, in harried manner he briefly informed the police writing few words about the incident. The FIR is an instrument only to accelerate the police machinery and to start the investigation. It is not an encyclopedia, **Rotash Vs. State of Rajasthan, 2007 CrLJ 758.** In **Krishnan and another Vs. State rep. by Inspector of Police, AIR 2003 SC 2978** it is held that the FIR filed immediately after occurrence rules out any possibility of deliberation to falsely implicate any person. In **Motilal Vs. State of UP, AIR 2010 SC 281** it is held that FIR need not contain every minute detail about the occurrence. It is not necessary that name of every individual present at the scene of occurrence is required to be stated in the FIR. In **Mohd. Maqbool Vs. State of Jammu and Kashmir, 2010 AIR SCW 3194** it is held that FIR is not substantive piece of evidence, it can only be used to corroborate its maker.

11.2. It is noteworthy that in this case the informant is the father of the accused, deceased Sukhraji is his mother and another injured is his real sister. It is also pertinent to mention that informant has only one son i.e.

accused Ramesh Yadav as the another son Mukesh had died prior to the incident due to cancer. Any enmity among the accused-appellant, deceased, informant and sister, Bindu Devi is not established, therefore, it is concluded that the FIR has correctly been lodged by the informant against the accused.

11.3.(II). In this case no major issue or motive appears to be present among the parties. As per scene of the occurrence the accused reached to his mother at the well hiding an axe and explored the reason of causing the incident by asking to wash his clothes and when she replied to wash his clothes tomorrow, he attacked from the axe. It appears that the cause of committing the crime was something else. From the evidence of PW-2, Meena Devi it transpires that the accused also used to beat his wife and children due to which his wife leaving him had gone to her parental house with her child. PW-3, Bindu Devi, sister of the accused has also admitted that wife of the accused lives in her parental house.

11.4. It appears that the accused-appellant Ramesh Yadav is not a person of cool mind and due to his aggressive behaviour his wife had left him and is living with her parents. Admittedly, the deceased was the mother-in-law of his wife. Accused might would be thinking that his wife had left him due to the shortcomings of his mother. Therefore, inventing the reason of attack he might have killed his mother.

11.5. In cases based on direct evidence there is no need to prove the **motive**. Here the prosecution has not put any substantive or reasoned motive but has put the mere fact that when deceased ignored to wash clothes of the accused-appellant same day, he started attack at her with the axe. The fact that at the time of occurrence the deceased was washing clothes at the well and there PW-2, Meena Devi, PW-3, Bindu Devi and PW-4, Om Prakash were also present, is proved beyond any doubt. In this case the informant has named his sole real son alone.

11.6.(III). In this case the place of occurrence is the well shown from Letter-A in the map, Ex.Ka-6. At this point there is no difference in the evidence of PWs-1 to 4 and the Investigation Officer, therefore, it is concluded that this occurrence took place at place-A as alleged by the prosecution and the place of occurrence has not been changed.

11.7.(IV). It is a day-light occurrence based on direct evidence of PW-1, Banarsi, father of the accused-appellant and husband of the deceased; PW-2, Meena Devi, an independent eye-witness; PW-3, Bindu Devi, daughter of the deceased and sister of the accused; PW-4, Om Prakash an independent eye-witness. There is no difference in the evidence of eye-witnesses PWs-1 to 4. Thus it is established that it is a case based on direct evidence and the evidence of the witnesses proved the prosecution case beyond reasonable doubt.

11.8.(V). In this case occurrence occurred on 16.02.2016 whereas the deceased died at *Raja Ka Talab* on 02.03.2016 when she, after discharge from Trauma Centre, BHU on account of no hope of her survival, was on the way of her home. Thereafter he directly reached concerned police station with the dead body where inquest (Ex.Ka-2) was conducted. In inquest injury on the back side of the head, on left shoulder, on left thigh and cutting wounds on forehead and left finger were noted. They also opined that these injuries were cause by son Ramesh from the axe.

12. The inquest is not substantive piece of evidence. It is only a paper to know the *prima facie* reason of unnatural death of any person whose dead body is scheduled for *post mortem*. It is found that there is no infirmity in the inquest.

13. The *post mortem* report is not a substantive piece of evidence but it is essential to know the actual cause of death. In *post mortem* report (Ex.Ka-17) dated 03.03.2016 conducted after 15 days from the date of occurrence PW-8, Dr. Amar Bahadur Singh has opined that deceased, Sukhraji Devi had died due to septicaemic shock. He on the internal and external examination of the dead body found 6 injuries, 7<sup>th</sup> injury was alimentary and urinary tube attached in the body which cannot be said to be an injury. It appears that the septicaemia developed in injuries caused by the accused. The injuries had not occurred in any accident or usual course of life. From the evidence of PW-1, informant - Banarsi, it is confirmed that

due to injuries caused by the accused there was no hope of life or survival of the deceased, therefore, she was discharged to spend few days/hours at her home, but she died on the way before reaching her home.

14. Learned counsel for the appellant has argued that it is not a case of Section 302 IPC but it is a case of Section 304, Part II IPC which shall be dealt with later on.

15. Recovery of axe and its memo Ex.Ka-3 has been proved by Pws-2, 3 and 6. Such injuries can be caused from an axe and from its blunt object.

16. Mainly, from the accused side two arguments are advanced: firstly, that at the time of occurrence the accused was a person of unsound mind so the act done by him is protected under Section 84 IPC and is no offence as it falls under the general exceptions; and secondly, that it is not a case under Section 302 IPC but it is a case under Section 304, Part II IPC.

17. First of all, it would be proper to discuss the facts regarding Section 84 IPC. According to learned counsel for the appellant, at the time of occurrence the accused was a person of unsound mind. Section 84 IPC is as under:-

**"84. Act of a person of unsound mind.—Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."**

18. This provision has been made with the reason that a person of unsound mind is incapable of forming *mens rea* that is, criminal intent. In the case of **M'Naughten, (1843) 8 Eng Rep. 718**, the accused, Daniel M'Naughten suffered from a delusion that Sir Robert Peel, the then Prime Minister of Britain had injured him and in order to take revenge, he mistook Edward Drummond, the Secretary to the Prime Minister, for Sir Robert Peel and shot him dead. When charged of murder, the accused took the defence of insanity. The medical evidence testified that he was under a morbid delusion which carried him away beyond the powers of his self-control. The jury found him "not guilty by reason of insanity". Following principles were laid down in the aforesaid case:-

*"1. Every person is supposed to be sane and to possess sufficient decree of reason to be responsible for his crimes, until the contrary is proved.*

*2. In order to establish the defence of insanity, it must be clearly proved that at the time of committing the crime, the person was so insane as not to know the nature and quality of the act he was doing, or if he did know it, he did not know what he was doing was wrong.*

*3. The test of wrongfulness of the act is in the power to distinguish between right and wrong, not in the abstract or in general, but in regard to the particular act committed."*

19. In several cases the rule of M'Naughten case have been followed in India, therefore, the reference has been made.

20. The Gauhati High Court in **Someswar Bora Vs. State of Assam, (1981) CrLJ (NOC) 51 (Gau)** held that in order to seek protection under Section 84, it must be established that "the accused, at the time of committing

the offence, was labouring under such defect of reason from disease of mind, as not to know the nature and quality of the act he was doing, or that he did not know what he was doing was wrong".

21. In the case of **Amrit Bhushan Gupta Vs. Union of India, AIR 1977 SC 608** the term unsoundness of mind or insanity denotes a state of mind in which the accused is incapable of knowing the nature of his act and that what he is doing is wrong or contrary to law.

22. In the case of **Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat, AIR 1964 SC 1563** it is held that the criminal law recognises only legal insanity as a defence under Section 84 IPC and not all kinds of medical insanities. Legal insanity is one which completely impairs the cognitive faculty of the mind, to such an extent that a person is incapable of knowing the nature of his act or what he is doing is wrong or contrary to law.

23. But, in this case no medical treatment papers or medical expert have been produced and examined and during the course of trial no application was moved to exempt the accused-appellant from the trial. In this respect Section 328(i) CrPC is important which is noted herein below:-

**"328. Procedure in case of accused being lunatic.—**  
*(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as*

*the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.*

*(2) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.*

*(3) If such Magistrate is of opinion that the person referred to in sub- section (1) is of unsound mind and consequently incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case."*

24. In this case accused-appellant had not moved any application in the trial court that he being a person of unsound mind cannot defend himself, cannot understand the language of charge, cannot reply under Section 313 CrPC and surprising that no such ground is taken in appeal, therefore, such plea cannot be raised now. Despite that learned counsel for the appellant has argued the point.

25. However, in this regard the details available on the file are cited:

25.1.(I). That in FIR PW-1, informant - Banarsi has not mentioned that his son accused, Ramesh Yadav was a person of unsound mind.

25.2.(II). That the Investigating Officer has not found the accused-appellant a person of unsound mind and none of the witnesses stated to the Investigating Officer that Ramesh was a person of unsound mind.

25.3.(III). That there is no medical report on record to prove that the accused-appellant was ever or particularly

at the time of incident, a person of unsound mind. At the time of framing charge on 26.05.2016 the accused-appellant has not moved any application that being a person of unsound mind, he is unable to understand the charge levelled against him and he is unable to face the trial. No application under Chapter XXV CrPC was moved.

25.4.(IV). That during the examination of the witnesses and at the time of recording statement under Section 313 CrPC the accused-appellant or his counsel (amicus curiae) has not claimed him to be a person of unsound mind.

25.5. PW-1, informant - Banarsi, husband of the deceased and father of the accused-appellant has not deposed in examination-in-chief that accused-appellant is a person of unsound mind and was also a person of unsound mind at the time of commission of crime. During the cross-examination this witness has deposed that he had admitted the accused-appellant in Varanasi for treatment of his mental illness and the treatment was going on since before one year. Accused-appellant, Ramesh lived well at home and used to eat and drink. When the informant gave him medicine, the accused-appellant used to throw it. His second son was a cancer patient and he was busy in his treatment, therefore, he could not make proper treatment of the accused. According to this witness, he took much pains for treatment of accused but he could not be cured. He further deposed that for the treatment of accused his younger son Mukesh used to go to Varanasi. Except the above questions no other suggestion regarding

unsoundness of the accused-appellant has been given by the amicus curiae. This witness has also not produced any document regarding mental illness and treatment of the accused-appellant.

25.6.(V). PW-2, Meena Devi has also not deposed in her examination-in-chief that the accused was suffering from any kind of unsoundness but when the amicus curiae asked her regarding unsoundness of the accused, she replied that long ago father of the accused Ramesh had got him treated at Varanasi. Accused Ramesh used to beat his wife and children also, due to which his wife left him with her child and went to her parental home. This witness has not deposed that at the time of incident the accused was suffering from unsoundness of mind.

25.7.(VI). PW-3, Bindu Devi, sister of the accused-appellant and daughter of the deceased has not deposed in her examination-in-chief that accused was unsound at the time of occurrence. Learned amicus curiae for the accused, Ramesh has not asked any question and has not given any suggestion regarding unsoundness of the accused before, after or at the time of occurrence. This witness has simply replied that at the time of occurrence her brother was not doing any job.

25.8.(VII). PW-4, Om Prakash has also not deposed in his examination-in-chief that accused was a person of unsound mind before or after or at the time of incident. Neither any question regarding the soundness of the

accused has been asked nor any suggestion has been given by the amicus curiae.

26. In **Nanhe Khan Vs. State (Delhi Administration), (1986) 2 Primes 328 (Del)** no question was put to the witnesses about the mental condition of the accused at the time of occurrence nor the accused took plea in examination under Section 313 CrPC, it was held that plea of insanity before the Appellate Court was not available. Here from all the witnesses even from PW-3, Bindu Devi, sister of the accused no question regarding insanity has been asked from the side of the accused and no plea has been taken under Section 313 CrPC or in appeal.

27. Similarly in **Tolaram Vs. State of Rajasthan, 1996 CrLJ 8 (Raj)** the accused killed his wife by bolting the door from inside and then tried to escape. He raised plea of insanity for the first time in appeal. It was held that the plea was not tenable.

28. On the basis of above discussion it is concluded that neither it is proved that accused was a person of unsound mind at the time of commission of crime or before or after the incident nor any ground of unsoundness had been taken during the investigation, trial and in appeal.

**Whether the accused has also committed the crime under Section 307?**

29. Initially the FIR was lodged under Section 324 IPC but after death of the deceased, Sukhraji Devi Section 302 IPC was added and the charge sheet was submitted under Sections 324, 307, 302 IPC.

30. So far as the injuries occurred to the injured PW-3, Bindu Devi is concerned there were two lacerated wounds which are as under:-

*"(i) 3 x 7 cm on the head;*

*(ii) on the back of the injured in the area of 7 x 2 cm with oozing blood."*

31. It has been proved that all the injuries were caused by blunt side of *kulhadi*. Such injuries may occur from the blunt side of the axe.

32. According to PW-5, Dr Girish Chandra Rawat, such injuries have been caused by hard and blunt object. Both the witnesses were referred to some other medical institutions. PW-3, Bindu Devi was treated in Aurai.

33. Section 324 IPC is being reproduced as under:-

***"324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."***

34. Considering the oral, medical and documentary evidence on record, this Court is in conformity with the conclusion of the lower court that accused had also committed the crime under Section 324 IPC for which he has been convicted and sentenced for 03 years rigorous imprisonment. This Court confirms the order of conviction passed under Section 324 IPC by the lower court.

35. The accused has also been charged under Section 307 IPC under which the lower court had convicted the accused for 10 years rigorous imprisonment and fine of Rs.10,000/-. Since injured, Sukhraj Devi had died and a charge has been framed under Section 302 IPC, the charge under Section 307 IPC remains for the crime committed against the victim PW-3, Bindu Devi.

36. According to this Court, there is no evidence on record that from the injury no.1 any bone of head had been broken and from injury no.2, the spine was cut down. It cannot be said that the injuries caused to the victim PW-3, Bindu Devi was with such intention or knowledge or under such circumstance that accused by that act would have caused her death. Therefore, this Court is of opinion that considering the nature of injuries and the fact that after 3-4 days the victim, Bindu Devi had been discharged, accused cannot be said to be guilty of an offence under Section 307 IPC. In this regard evidence of PW-5, Dr. Girish Chandra Rawat is also material, who, in cross-examination, admitted that though he had referred the injured, Bindu Devi for further treatment and no X-Ray was done in his hospital. No X-Ray report was

produced before him for preparation of supplementary medical report. Victim Bindu Devi has also not supplied her X-Ray report and the report of the radiologist for giving supplementary medical report. This witness has not given opinion that injury caused to the victim PW-3, Bindu Devi is of what nature, simple, grievous or fatal. Therefore, treating the injuries caused to the victim Bindu Devi to be simple in nature, this Court is concluding that only case under Section 324 IPC has been proved against the accused in respect of the injuries caused to the victim Bindu Devi and on the basis of above discussion no case under Section 307 IPC is proved.

### **Whether it is a murder or culpable homicide?**

37. Now the question remains as to whether the crime committed by the accused-appellant against the deceased Sukhraji Devi is an offence under Section 302 IPC or Section 304 IPC.

38. In this regard Sections 299 and 300 IPC are reproduced herein below:-

***"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.***

***300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—***

***(Secondly)—If it is done with the intention of causing such bodily injury as the offender knows to be likely to***

*cause the death of the person to whom the harm is caused, or—*

*(Thirdly)—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*

*(Fourthly)—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."*

39. The ingredients of Section 299 IPC are:—

(1) Causing of death of a human being;

(2) Such death must have been caused by doing an act or omission:

(i) There should be intention to cause death; or

(ii) With the intention of causing death, some bodily injury must have been caused which is likely to result in death; or

(iii) It should be with the knowledge that by such act, the doer is likely to cause death.

40. The three explanations appended to Section 299 IPC describe three situations when presence or absence of certain factors in causing death are treated as committing the offence of culpable homicide.

**1. Act or omission.**—On the basis of fact it can be decided that an act or omission of the accused is covered

under the definition of culpable homicide or not and whether death is direct result of such act or omission.

**2. Intention.**—Intention or *mens rea* is an essential ingredient of offence of culpable homicide which can be determined on the basis of fact and circumstances of the case. In **Jagroop Singh Vs. State of Haryana, AIR 1981 SC 1552** the Supreme Court held that while deciding cases involving the offence of culpable homicide, the weapons used by the accused, the injuries caused by him to the victim and their gravity etc. along with his *mens rea* should also be taken into consideration. In **Prabhu Vs. State of Madhya Pradesh , AIR 1991 SC 1069** the causing of injuries to daughter-in-law was held to be sufficient cause for her death, therefore, the husband and in-laws were convicted for the offence of culpable homicide under Section 299 IPC.

**3. Intentionally causing such bodily injury as is likely to cause death.**—Whether the injuries caused to the victim were sufficient for causing death of the victim can be inferred from the nature of injuries and act of the accused. Where the injury is caused on vital part of the body, therefore, death is more likely to result than an injury caused on a non-vital part of the body. An injury may be simple, grievous or superficial. The nature of weapon used by the accused is also taken into consideration while deciding his guilt **[Jagroop Singh (supra)]**. Lethal weapons such as gun, pistol, revolver, sword, spear, dagger etc. may prove more fatal than the non-lethal weapons such as lathi, stick, bamboo, fist-blow

etc. Whether the bodily injury caused by the accused was likely to cause death has to be decided objectively keeping in view the facts and circumstances of the case. In this case, accused had attacked his deceased mother with the blunt part of the axe not from the sharp edged part of the axe.

**4. With knowledge that he (accused) is likely to cause death by such act.**—Clause third of Section 299 IPC provides that causing death with the knowledge that the accused by such act is likely to cause death makes him liable for culpable homicide. In this connection, where such probability is almost **certain** then fourth clause of Section 300 IPC would be applicable making the accused liable for murder. As soon as it is proved that the incident was not accidental or due to rashness but was caused deliberately, the accused shall be convicted for the offence of culpable homicide under Section 299 IPC, **Afrahim Sheikh Vs. State, AIR 1964 SC 1263.**

41. In **Chahat Khan Vs. State, 1973 CrLJ 36 (SC)** it was held that though on the basis of single *lathi* blow generally it cannot be gathered that accused had knowledge that he can cause death of the victim but if accused is hitting the deceased with the single *lathi* blow using full force with a calculated design that it should cause the death of the victim, he will be held guilty of culpable homicide.

42. In **Vasanta Vs. State, 1983 CrLJ 693 (SC)**, the accused attacked the deceased with a knife on his chest

which seriously injured his heart and lungs causing his death. He was held guilty of culpable homicide under Section 299 IPC.

43. The Explanation-2 of Section 299 IPC being explicit, leaves no room for the accused to argue that death could have been prevented on the injured or affected victim getting medical treatment timely which would have saved the life of the victim (deceased) and the death is direct result of the act of the accused, it would be no defence for him to contend that the life of the deceased could have been saved by proper medical treatment.

44. In this case informant, PW-1 immediately transported both the injured to the hospital. On reference to BHU he then and there admitted the victim to the Trauma Centre, BHU. Therefore, it cannot be said that no timely medical treatment was provided to the deceased. Unfortunately, septicaemia developed and due to septicaemic shock she died.

45. In **Mahavir Prasad Vs. State of Rajasthan, AIR 1991 SC 272** though accused had caused simple injury to the victim but subsequently victim died of septicaemic anxiety due to improper medical treatment and negligence of the doctor, it was held that the person causing injury cannot be convicted of culpable homicide not amounting to murder under Section 304 IPC. In the case in hand, several injuries were caused by the accused out of which injury no.1 shown in Ex.Ka-5 was on upper region of right temporal bone of scalp. Doctor advised for

X-Ray and radiological opinion but the patient was referred to Trauma Centre, BHU for X-Ray, further investigation and management where she was under treatment upto 02.03.2016. No medical papers of Trauma Centre, BHU have been produced. Autopsy doctor found six stitched wounds. Injury no.6 was containing three parallel stitched wounds on the middle portion to right parietal region i.e. 8cm, 3cm and 6cm length, respectively. On the basis of variation of injuries this judicial precedent cannot be applied in favour of the accused.

46. While drawing a distinction between clause (2) of Section 299 IPC and clause 'Third' of Section 300 IPC, the Supreme Court in **State of Andhra Pradesh Vs. Rayavarpu Punnayya, 1977 (1) SCR 601.**

47. Elaborating the scheme of the Penal Code relating to culpable homicide, the Supreme Court observed as follows:-

*"In the scheme of the Penal Code, 'culpable homicide' is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not the 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 IPC practically recognises three degrees of culpable homicide. The first is, what may be called "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree", which is punishable under Section 304, Part I. Then, there is "culpable homicide of the third degree", which is the lowest type of culpable homicide and is punishable under Section 304, Part II.*

*The question to be considered by the Court is whether the accused has done an act by doing which he has*

*caused death of another. The question whether it is murder or culpable homicide will on proof of such casual connection between the act of the accused and the resultant death."*

48. In other words, it is the degree of probability of death which determines whether a culpable homicide is of a gravest nature or of lowest degree. The word "likely" used in Section 299(2) conveys a sense of probability as distinguished from mere possibility. The expression "bodily injury....sufficient in ordinary course of nature to cause death", used in clause 'Thirdly' of Section 300, connotes that death will be the most probable result of the injury having regard to the ordinary course of nature.

49. Some relevant judicial precedents are referred herein below:-

I. In **Purna Padhi Vs. State of Orissa, 1992 CrLJ 687** the deceased by the two accused sustained multiple injuries by sharp cutting weapons. The injury on the right foot of the victim led to the amputation of the right foot from the level of the ankle. The victim was removed to hospital where 18 days after the occurrence the deceased died due to uremia. As to the injury on the foot the High Court held the offence committed could not be said to be murder. But no doubt by causing the foot injury alongwith others with weapon like *farsa* and *bhujali*, the assailants must have intended to cause such bodily injury as was likely to cause death and the offence thus attracts the mischief of part I of Section 304, IPC, the accused were convicted under Section 304, Part I IPC.

II. In **Subran Vs. State of Kerala, 1993 CrLJ 1387**

**(SC)** the accused inflicted the injuries on non-vital part of the deceased which were not found to be sufficient in the ordinary course of nature to cause death but it was proved that he inflicted the injury with a knowledge that with these injuries the victim was likely to die. It was held that this case would fall under Section 299 IPC and will be punishable under Section 304, Part I.

III. In case of **Jagwshar Singh Vs. State of Bihar, 1968 Cr App R (SC) 73**

it is held that when the injury eventually produced the diseases i.e. tetanus, peritonitis, septicaemia etc. resulting in death, the accused must be held to have committed culpable homicide.

IV. In **Balbir Singh Vs. State of Haryana, 1996 CrLJ 2663 (P&H)**

the accused in a sudden fight caused injuries to deceased who died 17 days after the date of occurrence. Singh act of the accused was not preplanned, he was convicted under Section 304 IPC. Though the facts of this case are slightly different as the accused in this case reached at the well hiding axe in his clothes.

V. In **Jeevan Vs. State of Rajasthan 1996 CrLJ 3929**

facts of both the cases are almost similar. In cited case the accused was charged for causing the murder of the deceased by the blunt side of the axe and deceased had died three days after the incident. It was held that he had no intention to cause death but he had knowledge that death was likely to be caused. Hence conviction under

Section 302 IPC was altered to one under Section 304 IPC.

**VI. Nashari Naik Vs. State of Orissa, 1998 CrLJ 3948**

the accused caused lathies blows and one accused used cycle chain to cause death of the deceased. It was held that accused using lathies were guilty under Section 304 IPC and other under Section 323 IPC for using cycle chain.

50. In this case though the accused had used axe but he attacked from the blunt side of the axe. Except one wound from sharp edged side of the axe upon the hand of the deceased, remaining injuries are caused from the blunt side of the axe which shows that he had no intention to kill the deceased.

51. In this case following points are material to decide as to whether death of the deceased is culpable homicide not amounting to murder or murder. For determining this question following facts and evidences must be looked into:-

(I) Prior to this incident, the accused has never abused, beaten or meted any kind of ill-treatment upon his parents;

(II) He caused injuries to his mother but mainly from the blunt side of the axe, not from the sharp edged side.

(III) When sister of the accused intervened, he caused 2-3 injuries to her from the blunt side of the axe due to which

she had become unable to further defend her mother. Therefore, the accused had again opportunity to attack upon the deceased but he did not make any further attempt to kill his mother.

(IV) Except this fact that he used to beat his wife, there is no other instance that the accused had committed any offence against any one.

(V) That there is no supplementary report of doctor to establish that injuries were grievous or fatal in nature. The deceased was referred to BHU Trauma Centre where septicaemia developed and pus were found in some parts of her body. P.M. doctor opined that due to septicaemic shock deceased had died, though septicaemia developed during the course of treatment due to the injuries caused by the accused.

52. Considering the over all facts and circumstances of the case this Court comes to the conclusion that the criminal act of accused is not an act of murder but it is an act of culpable homicide not amounting to murder punishable under Section 304 IPC.

53. There are two Parts of Section 304 IPC. Under Part I an accused may be punished if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

54. Under Part II an accused may be punished if the act is done with the knowledge that it is likely to cause death,

but without any intention to cause death or to cause such bodily injury as is likely to cause death.

55. In this case the accused had used axe in commission of crime though except one injury from the sharp edged side of the axe rest of the injuries are caused from the blunt side of the axe to the deceased. It could not be proved that accused was a person of unsound mind and also that there was any proper reason due to which he had intention to cause death of his mother. Therefore, it can be assumed that the accused was having knowledge that from the attack of axe such bodily injury would be caused which would likely cause death. Therefore, the criminal act of accused towards the deceased is covered under the later portion (or of causing such bodily injury as is likely to cause death) of Section 304, Part I IPC.

56. On the basis of above discussion the conviction and sentence passed by the lower court under Section 302 IPC is liable to be modified under Section 304, Part I IPC and under which 10 years rigorous imprisonment and fine of Rs.5,000/- would certainly meet the ends of justice.

57. The appeal in respect of conviction and sentencing under Section 302 and 307 IPC is allowed.

58. The conviction and sentence awarded under Section 302 IPC is set aside. The accused Ramesh Yadav is convicted under Section 304, Part I IPC and ten years rigorous imprisonment and fine Rs.5,000/- is awarded. In

case of non-payment of fine he shall undergo one year additional rigorous imprisonment.

59. The conviction and sentencing under section 307 IPC is set aside and the conviction and sentence order passed under section 324 IPC is maintained.

60. All the sentences shall run concurrently. The incarceration period of the accused shall be adjusted in accordance with existing law.

61. A copy of this order be sent to the lower court concerned along with the record of the lower court and a copy also be sent to the concerned Jail Superintendent for necessary compliance.

**Order Date :-** 22.09.2022

Shahroz

(Umesh Chandra Sharma,J.) (Anjani Kumar Mishra,J.)