

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Criminal Appeal (D.B.) No. 210 of 2017**

[Against the Judgment of conviction and Order of sentence dated 23<sup>rd</sup> December, 2016 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No.209 of 2009 arising out of Chanho P.S. Case No. 20 of 2008 corresponding to G.R. Case No. 1103 of 2008]

Baiju Oraon Son of Late Dahru Oraon, R/o Barahiya, P.O. & P.S. Chanho, District Ranchi

... .. **Appellant**

Versus

The State of Jharkhand ... .. **Opp. Party**

**with**

**Criminal Appeal (D.B.) No. 232 of 2017**

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Somra Oraon Son of Baiju Oraon, R/o Barahiya, P.O. & P.S. Chanho, District Ranchi

... .. **Appellant**

Versus

The State of Jharkhand ... .. **Opp. Party**

**P R E S E N T**

**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
**HON'BLE MR. JUSTICE ARUN KUMAR RAI**

.....

For the Appellants : Mr. Rajveer Singh, Advocate  
For the Respondent : Mrs. Nehala Sharmin, Spl. P.P.  
[Through Virtual Mode]

.....

**C.A.V. on 03/02/2026                      *Pronounced on 11/02/2026***  
***Per Sujit Narayan Prasad, J.:***

1. Since both the appeals arise out of the common Judgment of conviction and Order of sentence dated 23<sup>rd</sup> December, 2016 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No.209 of 2009 arising out of Chanho P.S. Case No. 20 of 2008 corresponding to G.R. Case No. 1103 of 2008, as such they have been tagged together and taken up together for

analogous hearing and are being disposed of by this common order.

**Prayer**

**2.** The instant appeals are directed against the Judgment of conviction and Order of sentence dated 23<sup>rd</sup> December, 2016 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No.209 of 2009 arising out of Chanho P.S. Case No. 20 of 2008 corresponding to G.R. Case No. 1103 of 2008, whereby and whereunder both the appellants are convicted under section 302 r/w 34 of IPC and appellant Somara Oraon is further convicted under section 324 of IPC. Both the appellants are directed to undergo RI for life u/s 302 of IPC and a fine of Rs.2000/- each and in case of default they have to further undergo SI for six months. Appellant Somra Oraon is also sentenced to undergo RI for three years u/s 324 of IPC. Both the sentences passed against the convict Somra Oraon shall run concurrently.

**Prosecution Case:**

**3.** Prosecution case as per fardbeyan dated 20.03.2008 of the informant Bariya Urain(P.W.-9) aged about 36 years wife of late Fagu Oraon resident of village- Barhiya, PS-Chanho, Distt-Ranchi recorded by S.I M.Tudu of Chanho P.S. Distt-Ranchi on 20.03.2008 at 20 hours at Barahaiya PS-Chanho Distt-Ranchi, is that on 20.03.2008 at about

6.30 PM she was standing at her door and her husband Fagu Oraon(deceased) was standing in the courtyard. They were constructing house of mud, on their own share of land, beside their old house to which her brother-in-law (*bhainsur*) Baiju Oraon(appellant) and his family was opposing. Today they had soaked soil for the purpose of constructing wall. At this her brother-in-law Baiju Oraon told that he will not allow them to construct the wall. At this her husband told him why he is doing so, if they will not construct house where they will live. At this her brother-in-law Baiju Oraon took out a sword from his house and his son Somra Oraon (appellant) took out a *baluwa* and both started assaulting her husband in the courtyard by aforesaid weapons indiscriminately, so, her husband fell down. Then both the accused persons assaulted on the neck of her husband and her husband died immediately. She informed the neighbours then they gathered on the spot.

**4.** On the basis of aforesaid fardbeyan of informant Chanhoo P.S. Case No.20/2008 dated 20/08/2008 u/s 324, 302, 34 of IPC was registered against the appellants.

**5.** After investigation police filed charge-sheet against the appellants u/s 302, 324/34 of IPC and cognizance of the offences were taken and the case was committed to the court of Sessions. Charges u/s 302/34 and u/s 324/

34 of I.P.C were framed against both the appellants which was read over and explained to accused persons to which they pleaded not guilty and claimed trial.

6. The prosecution has altogether examined nine witnesses out of whom P.W.-1 Baria Oraon, is the informant of the case; P.W.-2 Dahru Oraon, is father of the deceased; P.W.-3 is Fakri Oraon; P.W.-4 is Sunil Lal; P.W.-5 Sumar Devi, is the mother of the deceased; P.W.-6 Likhu Oraon, is brother of the deceased; P.W.-7 is Dr Chandra Sekhar Prasad; P.W.-8 is Dr. Kapil Deo Singh and P.W.-9 Kameshwar Kumar Singh, is the investigating officer of the case.

7. The learned trial court, on appreciation of the evidences produced on behalf of the prosecution and defence, found the allegation proved against the appellants and accordingly, passed the judgment of conviction and order of sentence as referred herein above, which is under challenge in the instant appeal.

**Argument on behalf of appellants**

8. Learned counsel for the appellants has taken the following grounds, in assailing the impugned judgment of conviction and order of sentence, as under: -

I. The prosecution has miserably failed to establish the charge said to be proved, beyond all reasonable doubt, in establishing the charge said to be

committed by the appellants under section 302/34 of the IPC.

- II.** The impugned judgment of conviction has been passed on the evidence of sole eye witness, the informant of the case, P.W.-1, who is none other than the wife of the deceased, and a highly interested witness.
- III.** P.W.-1 in her testimony has deposed that partition of the land had already been executed in between Baiju Oraon and her husband and the same has been executed before four persons of the same village the same was put down in writing, hence it can be apparently inferred that there was no dispute in between the deceased and the appellant with regard to land. Therefore, the ingredient of motive is lacking.
- IV.** Further submission has been made that P.W.-5 Sumar Devi, the mother of the deceased has deposed in paragraph-1 of her examination-in-chief that construction of the house was already completed and even asbestos roof was put up in the place, but nobody objected at the time of construction. This statement itself shows that there was no enmity in between the deceased and the appellants.

- V.** P.W.-2, the father of the deceased has stated that he did not see Baiju and Somra, the appellants herein, committing murder of the deceased, Fagu. Further at paragraph-3, he has deposed that when he reached at the place of occurrence, he saw Baiju and Dula were present there and there was no weapon of assault in their hands.
- VI.** Submission has been made that if the appellants had committed murder, they would have fled away from the place of occurrence but they did not, which shows that they are innocent and has been trapped in the case.
- VII.** Further submission has been made that P.W.-4, who is witness to search-cum-seizure and independent witnesses did not support the case of the prosecution.
- VIII.** Further anomaly has been shown that the alleged weapon of assault has neither been produced before the Court nor marked as material exhibit to prove the factum of murder.
- IX.** Learned counsel for the appellants has further submitted that all the defense witnesses have categorically deposed that the deceased had connection with extremist group but later on the deceased turned spy of police and even on the date

of occurrence there was party by the extremist in the house of the deceased and for that reason the deceased could have been murdered but that aspect of the matter has not been considered by the learned trial court.

- X.** In alternate, submission has been made that even if the entire prosecution story will be accepted to be true then also no ingredient of Section 302 of the Indian Penal Code is available rather at best it is a case of under Section 304 (Part-I) of the Indian Penal Code.
- XI.** Such submission has been made on the basis of the fardbayan and evidence of the prosecution witnesses wherein it has been stated by the informant P.W.-1 that prior to the assault, altercation and scuffle took place between the deceased and Baiju Oraon (appellant) on the issue construction of new house.
- XII.** Further submission has been made that informant has stated in her evidence that before the assault appellants were not armed with weapon.
- XIII.** It has been contended that from the aforesaid narration of the prosecution version, it is clear that there was no premeditation of mind to commit murder of the deceased by the appellant.

- XIV.** The learned counsel appearing for the appellants based upon the aforesaid grounds has submitted that the conviction under section 302 IPC is not established against the appellants and hence, the impugned judgment is fit to be quashed and set aside.
- XV.** The learned counsel for the appellants, based upon the aforesaid ground, has submitted that the impugned judgment suffers from illegality, hence not sustainable in the eyes of law.

**Argument on behalf of the State**

**9.** While on the other hand, Mrs. Nehala Sharmin, learned Spl. P.P. appearing for the State, defending the impugned judgment of conviction has raised the following arguments in response to the grounds taken by learned counsel for the appellants, as referred hereinabove: -

- I.** There is no error in the judgment of conviction and order of sentence since culpable homicide is there and admittedly all the witnesses have deposed about the assault given by appellants, which ultimately resulted into death of the deceased, which finds support from the medical evidence.
- II.** Further submission has been made that from the testimony of the informant PW-1, who is the eye witness of the case, time place and manner of

occurrence is established which is further corroborated by recovery of weapon used by the accused in the occurrence.

- III.** Further submission has been made that informant PW-1 had deposed that accused persons got weapons from their house and assaulted the deceased on his head and neck resulting into severe bleeding injuries on the person of the deceased Fagu. The injuries present on the vital part of the dead body i.e. head and neck, severe cut injuries were found by the doctor PW-7, hence, it is quite established that intention of the accused persons was to commit murder of the deceased.
- IV.** From the testimony of the PW-9 investigating officer of the case, it is evident that he has recovered *baluwa*, stained with blood from the house of the accused Somra Oraon on the basis of disclosure made by the accused Somra Oroan.
- V.** In this case motive is also established that accused persons were objecting to the construction of the house by the deceased and his wife and when they failed to stop the deceased, they committed his murder.
- 10.** Learned counsel appearing for the State based upon the aforesaid premise has submitted that the impugned

judgment does not suffer from any error hence the instant appeal is fit to be dismissed.

**Analysis**

**11.** We have heard learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned trial in the impugned judgment as also gone through the testimonies of the witnesses as available in the Trial Court Record as also the exhibits.

**12.** This Court, before appreciating the argument advanced on behalf of the parties as also the legality and propriety of the impugned judgment, deems it fit and proper to refer the testimonies of the prosecution witnesses.

**Testimony of witnesses:**

**13.** P.W.1 Bariya Urain, is the informant of the case and wife of deceased Fagu Oraon. She has stated in her evidence that occurrence is dated 20<sup>th</sup>, in the previous month of Holi festival. It was 6 PM and she was at the door of her house and she was constructing house. Partition of land had taken place between her husband and brother-in-law (*bhaisur*) Baiju Oraon. They were constructing house in their portion. Her brother-in-law Baiju Oraon was saying that he will not allow them to construct the house. Her husband told him that he had

four children and if he will not construct house how they will live. Informant further stated on this matter quarrel took during the day and in the evening Baiju and Somra Oraon were already prepared. Informant further stated that first of all scuffle took place between both the brothers Baiju and Fagu. Thereafter, Somra brought *baluwa* and Baiju came with sword. Baiju and Somra cut the throat of her husband which was slightly attached. Informant further stated that she tried to escape, then she was chased and Somra gave *baluwa* blow which struck on her left hand from behind. Thereafter, she went to village *chowkidar* and he telephoned at the police station, then officer-in-charge came.

**14.** In her cross-examination informant has stated that her house and house of the accused persons both are facing each other. Partition took place, on paper, in presence of four villagers. Informant further stated that there is no house in the vicinity to her house and the house of the accused and house of Jatru Oraon is at some distance and in the village, houses are scattered. Her husband had three brothers, Baiju was eldest then her husband Fagu and the younger one is Lakhu. Informant further stated that at the time of occurrence her three children had gone to Demta and his eldest child live outside. She was constructing house with her husband

over the last three months and Eastern wall was ready and they had to only put tiles (*Khapra*). Informant further deposed that tension was between parties for last one month. She was present in the court yard with her husband. Accused persons committed murder of her husband in her presence. Informant further stated Somra and Baiju both cut her husband. Informant denied the suggestion that her husband was ill. Informant further stated that she had stated before the police regarding partition. Accused had also assaulted her and she was treated for the injuries. Firstly, accused persons were empty handed and thereafter, they had brought weapons. When scuffle was going on between Baiju and her husband then, in the meantime Somra brought weapons and thereafter, both committed murder of her husband.

**15.** PW-2 Dahru Oraon, is the father of the deceased Fagu Oraon. P.W.-2 has stated in his evidence that about 1 ½ years ago his son Fagu was killed in front of his house and Somra and Baiju had cut Fagu. P.W.-2 further stated that he asked the accused what they have done, then they had also threatened him. Baiju is also his son and accused Somra is son of Baiju. To the court question he stated that he had not seen the occurrence.

**16.** Despite repeated calls nobody appeared on behalf of these accused persons to cross-examine P.W.-2. To court

question P.W.-2 stated that he had not seen the murder being committed by Somra and Baiju. He reached soon after the occurrence and when he reached, he found Fagu Oraon lying down having injuries on head. Somra had fled away and Baiju and Hula were there and at that time there were no weapons in their hands. P.W.-2 further stated that informant Bariya, is the wife of the deceased Fagu and she also received injuries in her hand when the accused blew weapons. Bariya was present at the time of occurrence but when she was attacked by the weapons she escaped.

**17.** PW-3 Fakri Oraon has stated in his evidence that on 20.03.2008, murder took place in his village. P.W.-3 further stated that police had taken his thumb impression on the inquest report.

**18.** PW-4 Sunil Lal has stated in his evidence that incident occurred three years ago. At that time, at 9PM in the night, he was at his house. P.W.-4 further stated that he did not know how murder took place. Police had not seized anything before him. P.W.-4 was declared hostile by the prosecution.

**19.** In his cross-examination by the prosecution, he deposed that he had not stated before the police that on *halla*, when he reached at the place of occurrence, Somra and Baiju were caught and Baiju disclosed that Baluwa

had been hidden and it was recovered from the house of Baiju and seizure list was prepared regarding recovery on which he signed. On his cross-examination by the defence, P.W.-3 stated that he had not given thumb impression on any documents and he does not know anything about the occurrence.

**20.** PW-5 Sumar Devi, is the mother of the deceased Fagu Oraon and accused Baiju Oraon. She has stated in her evidence that her son Fagu had died, but, she does not know how he died. Fagu Oraon constructed house on his land and house was ready and it was covered with asbestos and during the construction of the house nobody had objected. Baiju and Likhu are brothers of Fagu. She further stated that quarrel took place between Baiju and Fagu, in which Fagu died. In her cross-examination she stated that she did not see assault on Fagu.

**21.** PW-6 Likhu Orion, is the brother of the deceased. P.W-6 has stated in his evidence that Fagu had died about three years ago and at the time of occurrence he was not present in his house. His sister-in-law Bariya urain told him that Baiju and Somra had Killed her husband Fagu. P.W.-6 has identified his signature on the inquest report, which was marked as Ext.-1. In his cross-examination he stated that at the time of occurrence he had gone to

Khelari from where he returned at 5 PM. He further stated that he had not the occurrence.

**22.** PW-7 Dr. Chandra Sekhar Prasad, had conducted the post mortem examination on the dead body of the deceased Fagu Oraon. P.W.-7 has stated in his evidence that on 21.03.2008 he was posted as Assistant professor in department of FMT RIMS Ranchi and at 11.30 hours, he had conducted the post mortem examination upon the dead body of the deceased Fagu Oraon son of Sri Dahru Oraon, resident of Barhaiya PS-Chanho Distt-Ranchi, a male aged about 40 years. He found following features on the dead body of the deceased:

General features – The built was average. The rigour mortis was present all over the body. The abdomen was slightly distended. There was dry mud over hands and legs. The cloths were soaked with blood.

Injuries: -

A) Incised wounds –

I) 13 cm x 2 cm x bone deep on left cheek and adjoining left mastoid region cutting the underline bone.

II) 13 cm x 2 cm x bone deep on left cheek and adjoining left lateral neck cutting the soft tissue and base of skull bone.

III) 9 cm x 2 cm x soft tissue on left lateral neck situated 2 cm below the preceding injury.

IV) 9 cm x 2 cm x bone deep on left forehead cutting the underlying bone and brain matter.

V) 2 cm x ¼ cm x soft tissue on left palm back.

OPINION: -

1. Above noted injuries were anti mortem caused by heavy sharp cutting weapon.

2. Death was due to above noted injuries.

3. The time since death 6 hours to 24 hours from the time of post mortem examination.

Doctor further stated that this report was prepared by him and bears his signature which has been marked as Ext-2.

**23.** P.W.-8 is Dr. Kapil Deo Singh, had examined the injured informant Bariya Urain. P.W.-8 has stated in his evidence that 20.03.2008, he was posted as medical officer at PHC, Chanho. On that day at about 9 PM, he had examined Bariya Urain wife of late Fagu Oraon and treated her. He found lacerated wound above left elbow on the upper arm and age of the injuries was within six hours. Doctor stated that the injury was simple in nature caused by hard and blunt substance. He identified his writing in the injury report marked as Ext-3.

**24.** P.W.-9 Sub inspector of police Kameshwar Kumar Singh, is the investigating officer of the case. Investigating officer has stated in his evidence that on 20.03.2008, he was officer in charge of Chanho PS. On that day Munu Tudu SI received information and he went to the place of occurrence and had recorded fardbeyan of Bariya Urain wife of the deceased Fagu. On the basis fardbeyan Chanho PS case no 20/2008 was registered. Investigating officer further stated endorsement regarding registration of the case is in his handwriting which has been marked as Ext.-4. Formal FIR was filled by *munsi* of the police station which bears his signature marked as Ext.-4/1. Investigating officer further stated that he went to village Barhaiya to the house of deceased and prepared the inquest report of deceased Fagu Oraon. Inquest report is in the writing of Munu Tudu which bears his signature. Inquest report was marked as Ext.-1/1. Investigating officer stated that he recorded confessional statement of Somra Oraon which has been marked Ext-5. On pointing by Somra Oraon, he recovered blood stained *baluwa* from the house of Somra Oraon and prepared seizure list. He also collected blood-soaked earth from the place of occurrence. This seizure list is in his pen and bears his signature which he identifies marked as Ext.-6. Both the accused Somra and Baiju were arrested from the spot.

PW-9 also identified his signature on the arrest memo marked as Ext.-7 and Ext.-8. He recorded restatement of the informant. Investigating officer further stated that place of occurrence is situated in village Barhaiya which is situated in the west of the old house of informant and which is court yard of half constructed house and there was soil soaked in water (*gilawa*) and dead body was lying nearby with blood on the earth. There was injury on the head of the dead body, on the left-hand palm, below the left ear and near left eyebrow. Dead body was sent for post mortem to RIMS and next day accused persons were remanded by the court. Seized materials was sent to FSL for examination on 29.03.2008. He received post mortem report on 30.03.2008. Finding the sufficient materials, he filed chargesheet against both the accused persons u/s 302, 324 of IPC read with 34 of IPC on 30.04.2008.

**25.** In his cross-examination, investigating officer stated that he started investigation of this case at 20 hours on 20.03.2008. He was on patrolling with SI Manu Tudu when the information was received, then both went to the place of occurrence. Investigating officer further stated that courtyard was just outside the house which was surrounded from four sides. Many villagers were present near the dead body. Blood-soaked soil was sent for examination but the examination report is not present

today in the court. He also sent weapons for examination to FSL but the report is not today in the court and the said weapon is also not present in the court. Likhu and Fakri Oraon were witnesses of the inquest report. He prepared map of the place of occurrence which he mentioned in case diary. Wife of deceased was also injured in the occurrence. The reason behind occurrence is construction of the new house by the deceased.

**26.** On behalf of the defence DW-1 Birsa Oraon stated that he belongs to village- Barhaiya. Occurrence took place on Holi festival. He was present in the village at that time. He further stated that his house is about 100 yards away from the house of the accused. Deceased used to quarrel with him. His village is surrounded by forest. Extremist are also present in the forest had connection. On the date of occurrence, he heard that there was party in the house of the deceased. On that day he had not seen the accused persons in their house. He has not seen who committed murder.

**27.** DW-2 Shankar Yadav deposed that he knows both the accused persons. His house is at 200 steps from their house. Fagu was murdered on the day of *Fagua*. He was in his house. Fagu used to quarrel with villagers. There is extremist in the area with whom deceased had

connection. He does not know how he was murdered. He had not seen both the accused on that day.

**28.** DW-3 Mathura Pahan deposed that occurrence took place in the year 2008 at the time of *Faguwa*. His house is at about 10 steps away from the house of the accused. He had seen dead body of Fagu. Fagu was arrested in connection with extremist case. He used to threaten villagers. He was also in touch with police. He heard visit of extremist in the village on that day. He cannot say who committed murder.

**29.** DW-4 Etwā Lohra resident of Barhiya PS-Chanho, Distt-Ranchi aged about 65 years deposed that it was day of *Faguwa*. He does not remember year. He was not present in the village on that day. He further stated his villager Fagu was murdered. His house is about ten steps away. He further stated Fagu was member of extremist group and nobody goes to sit with Fagu.

**30.** Ongoing through the evidence, we find that on the day of occurrence on 20.03.2008, at about 6.00 PM in the evening, there was quarrel and scuffle between both the brothers i.e. Fagu Oraon (deceased) and Baiju Oraon (appellant), regarding construction of new house, which was being constructed by the Fagu Oraon, beside his old house and the same was objected by the Baiju Oraon. In the meantime, both the appellants came armed with

sword and *baluwa* and assaulted Fagu Oraon, with sword and *baluwa*, as a result of which Fagu Oraon was killed.

**31.** Hence, from the evidence of the prosecution witnesses, the admitted facts which emerges are-

- I. Informant side and appellants are members of same family.
- II. Fagu Oraon(deceased) and Baiju Oraon(appellant) are own brothers and Somra Oraon(appellant) is the nephew of Fagu Oraon(deceased).
- III. On the day of occurrence Fagu Oraon(deceased) was constructing new mud house besides his old house.
- IV. Due to construction of new mud house, tension was prevailing between both the brothers Fagu Oraon(deceased) and Baiju Oraon(appellant).

**32.** Since the learned counsel for the appellants has contended that even if the entire prosecution story will be accepted to be true then also no ingredient of Section 302 of the Indian Penal Code is available rather at best it is a case of under Section 304 (Part-I) of the Indian Penal Code, therefore, this Court is now delving upon the issue that whether it can be said to be a case under Section 302 or Section 304 Part-I of the Indian Penal Code.

**33.** At this juncture it would be pertinent to see the legal position and certain judicial pronouncements regarding applicability of the offence committed under Section 302 or 304 Part-I of IPC.

**34.** Section 300 of IPC defines murder with reference to culpable homicide defined in section 299 of IPC. If the requirements given in clause 1 to 4 of section 300 of IPC are fulfilled, then, culpable homicide will amount to murder, but the act shall not fall in exceptions given in section 300 of IPC. If the act falls within anyone of the exceptions given in section 300 of IPC, then, it will be culpable homicide not amounting to murder.

**35.** Section 300 of Indian Penal Code speaks about murder under which it has been stipulated that 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.

**36.** It is, thus, evident that the punishment under Section 302 of the IPC shall not apply if any of the conditions mentioned above, are not fulfilled. This means that if the accused has not intentionally killed someone then murder cannot be proved. Apart from this, Section 300 of the IPC mentions certain exceptions for offence of murder which are as follows: -

- (i) If a person is suddenly provoked by a third party and loses his self-control, and as a result of which causes the death of another person or the person who provoked him, it won't amount to murder subject to proviso as provided.
- (ii) When a person under the right of private defence causes the death of the person against whom he has exercised this right without any premeditation and intention.
- (iii) If a public servant, while discharging his duty and having lawful intention, causes the death of a person.
- (iv) If it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender' having taken undue advantage or acted in a cruel or unusual manner.
- (v) Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen

years, suffers death or takes the risk of death with his own consent.

**37.** All these exceptions mentioned above shall come under purview of Section 304 of IPC and will be termed as culpable homicide not amounting to murder.

**38.** Now, coming to the judicial pronouncement, in case of ***Arumugam v. State*, (2008) 15 SCC 590**, Hon'ble Apex court has dealt with applicability of Exception 4 of Section 300 IPC. The relevant paragraph of this judgment is quoted hereinbelow-

*“9. The substantive plea relates to the applicability of Exception 4 of Section 300 IPC. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.*

*“17. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the First Exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be*

*placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1.*

*There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.*

*18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.*

*19. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In Kikar Singh v. State of Rajasthan [(1993) 4 SCC 238 : 1993 SCC (Cri) 1156 : AIR 1993 SC 2426] it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage."*

**39.** In the case of **Surain Singh v. State of Punjab, (2017) 5 SCC 796** at paragraph 13 and 14, the Hon'ble Apex Court has held as under: -

*“13. Exception 4 to Section 300 IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The Exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A “sudden fight” implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.*

*14. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in*

*Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".*

**40.** In ***Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444***, the Hon'ble Apex Court enumerated some of the circumstances relevant to finding out whether there was any intention to cause death on the part of the accused.

The Court observed as under: -

*"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section*

*302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. ...”*

**41.** This Court, on the basis of the legal position as to Section 302 and 304 Part I of IPC as discussed hereinabove as also after taking into consideration the law laid down by Hon'ble Apex Court in the case of **Arumugam v. State (Supra)**, **Surain Singh v. State of Punjab (Supra)** and **Pulicherla Nagaraju v. State of A.P. (Supra)**, wherein the difference has been carved out in between the culpable homicide amounting to murder and culpable homicide not amounting to murder, is

proceeding to examine the evidence of the prosecution witnesses.

**42.** Reverting to factual aspects of the present case, we find that informant side and appellants are members of same family. Fagu Oraon(deceased) and appellant Baiju Oraon are own brothers and appellant-Somra Oraon is the nephew of the deceased Fagu Oraon.

**43.** On going through the evidences of P.W.-1 Bariya Urain, who is the informant and wife of the deceased Fagu Oraon and P.W.-5 Sumar Devi, who is mother of both the Fagu Oraon(deceased) and Baiju Oraon (appellant), this Court finds that both P.W.-1 and P.W-5 have stated in their evidence that Fagu Oraon was constructing new house and for the said reason quarrel had taken place between the parties.

**44.** In order to find whether there was premeditation of mind to commit murder of Fagu Oraon and it was sudden fight and scuffle and the act was done in a heat of passion; it would be necessary to see the ingredients of the exception 4 to Section 300 of IPC.

**45.** For invoking exception 4 to Section 300 of IPC, four ingredients must be satisfied, i.e., - (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

**46.** Hence, this Court is proceeding to examine whether the present case falls under exception 4 to Section 300 of IPC and for this it would be fruitful to go both into the fardbeyan and evidence of P.W.-1 Bariya Urain, the informant and wife of the Fagu Oraon (deceased), who is the sole eye witness to the alleged occurrence.

**47.** Informant P.W.-1 Bariya Urain has stated in her fardbeyan that on the date of occurrence they were constructing new house of mud, on their own share of land, besides their old house to which her brother-in-law (*bhainsur*) Baiju Oraon(appellant) and his family was opposing. On the day of occurrence informant party had soaked soil for the purpose of constructing wall, then, her brother-in-law Baiju Oraon told that he will not allow them to construct the wall.

**48.** Now coming to the evidence of to the Informant P.W.-1 Bariya Urain, this Court finds that P.W.-1 has stated in her examination-in-chief that land was partitioned and on the day of occurrence they were constructing house in their portion. Her brother-in-law Baiju Oraon was saying that he will not allow them to construct house. Then, first of all scuffle took place between both the brothers Baiju(appellant) and Fagu (deceased). Thereafter, Somra (nephew of the deceased) brought *baluwa* and Baiju came

with sword and assaulted Fagu as a result of which Fagu died.

**49.** Further, on going to the cross-examination of Informant P.W.-1, this Court finds that at Paragraph-6 and paragraph-12 of her cross-examination, informant has deposed that firstly scuffle had taken place between Baiju(appellant) and Fagu (deceased). Then, at paragraph-11 of her cross-examination, informant has specifically deposed that firstly appellants were unarmed and later, on appellants came armed with weapon like sword and baluwa.

**50.** At this juncture it would be pertinent to reiterate paragraph-29 the judgment of ***Pulicherla Nagaraju v. State of A.P.(supra)***, wherein Hon'ble Apex court has enumerated some of the circumstances relevant to finding any intention, to cause death, on the part of the accused as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II.

**51.** At paragraph-29 of ***Pulicherla Nagaraju v. State of A.P.(supra)***, Hon'ble Apex Court laid down that pivotal question of intention, shall be decided with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. In this case Hon'ble Apex Court explained by giving example that in many petty or insignificant matters like plucking of a fruit,

straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths, and, in such cases usual motives like revenge, greed, jealousy or suspicion may be totally absent, there may be no intention and there may be no premeditation and in fact, there may not even be criminality.

**52.** In the case at hand also, ongoing both through the fardbeyan and evidence of prosecution witnesses, this Court finds that background of the case was construction of new house by the informant's husband Fagu Oraon which led to altercation and scuffle between both the brothers i.e. Fagu Oraon (deceased) and Baiju Oraon(appellant).

**53.** The informant side and appellants are members of same family. Fagu Oraon (deceased) and Baiju Oraon(appellant) are own brothers and Somra Oraon(appellant) is the nephew of the deceased Fagu Oraon and construction of house by the one brother Fagu (deceased) was objected by the other brother Baiju Oraon (appellant), which, ultimately resulted in death of Fagu Oraon.

**54.** Before proceeding further, it is pertinent to note that informant P.W.-1 has stated in her evidence that land was partitioned on paper and they were constructing the

house on their own share of land. But, no document of partition of land has been brought on record to support that construction of house was being done by the informant side on their own share of land.

**55.** This Court, on the basis of evidence of sole eye witness, who is the informant of the case of the case [P.W.-1], finds that firstly there was scuffle between both the brothers Fagu Orao(deceased) and Baiju Oraon(appellant), as has been stated by the informant herself in paragraph-6 and paragraph-12 of her cross-examination. Thereafter, in heat of passion appellants had assaulted Fagu resulting in death of the Fagu.

**56.** Further, absence of premeditation between the accused/appellants can be inferred from the deposition of the informant P.W.-1, who at paragraph-11 of her cross-examination, has specifically deposed that firstly accused appellants were unarmed and just after scuffle accused/appellants came with the *baluwa* and sword and had assaulted her deceased husband. Hence, it is the own deposition of informant that appellants were not armed from before and only after the altercation and scuffle between the parties had taken place regarding issue of construction of house, appellants came armed with weapon and killed the deceased, therefore it is evident

that there was absence of premeditation on the part of the appellants.

**57.** Here, it is pertinent to note that after the killing of Fagu, both the appellants did not flee away from the place of occurrence, as investigating officer of the case had deposed that he had arrested both the appellants/accused persons Somra and Baiju from the spot.

**58.** Further, Informant P.W.-1 has stated in her cross-examination that there is no house in the vicinity to her house and in the village, houses are scattered. Hence, both the appellants had ample opportunity to escape from the place of occurrence, but, both the appellants did not flee away and so, the appellants had not taken any undue advantage.

**59.** In the backdrop the aforesaid discussion and the judicial pronouncements and the evidence of prosecution witnesses and also taken into consideration the fact that there is no premeditation between the appellants, this Court is of the view that the killing of the deceased was not intentional and it occurred due to spur of moment over the matter of construction of new house between both the brothers Fagu Oraon (deceased) and Baiju Oraon (appellant), which resulted in altercation and scuffle between the parties resulting into death of Fagu Oraon.

**60.** Thus, on evaluation of the testimony of the witnesses and the material available on record, we hold both the appellants guilty for the offence under Section 304 Part I of the I.P.C. instead of Section 302 IPC.

**61.** Accordingly, this Court is of the view that the judgment impugned convicting the appellants under Section 302 I.P.C. needs to be interfered with by modifying it to that of conviction of the appellants under Section 304 Part-I of the Indian Penal Code.

**62.** Accordingly, impugned Judgment of conviction and Order of sentence dated 23<sup>rd</sup> December, 2016 passed by learned Additional Judicial Commissioner-V, Ranchi in Sessions Trial No.209 of 2009 arising out of Chanhoo P.S. Case No. 20 of 2008 corresponding to G.R. Case No. 1103 of 2008, is hereby modified and the appellants are held guilty for the offence punishable under Section 304 Part I of IPC.

**63.** So far as the conviction under Section 324 IPC passed against the accused appellant Somra Oraon (appellant in **Criminal Appeal (D.B.) No. 232 of 2017**) is concerned the same requires no interference.

**64.** It transpires from the record that the appellants have remained in jail for more than twelve years, therefore, this Court is of the considered view that in the facts and

circumstances of the case, sentence is reduced to period undergone by the appellants.

**65.** In consequence thereof, the appellants are directed to be released forthwith if not wanted in any other case.

**66.** Accordingly, the instant appeal stands dismissed with the aforesaid modification in the judgment of conviction and order of sentence.

**67.** Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

**68.** Pending Interlocutory Application(s), if any, stands disposed of.

**I Agree**

**(Sujit Narayan Prasad, J.)**

**(Arun Kumar Rai, J.)**

**(Arun Kumar Rai, J.)**

**11/02/2026**

**Jharkhand High Court, Ranchi**

Alankar / **A.F.R.**

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