



2026:AHC:23412-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
JAIL APPEAL No. - 192 of 2022

Dharmendra @ Chandra Prakash

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: From Jail, Harish Chandra Tiwari
Counsel for Respondent(s)	: A.G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

Per Hon'ble Chandra Dhari Singh, J

1. The instant criminal appeal has been filed by appellant-Dharmendra alias Chandra Prakash against a judgment and order dated 08.06.2022 passed by the Additional Sessions Judge, Court No. 4, Jhansi in Sessions Trial No. 336 of 2014 arising out of Case Crime No. 80 of 2014, under Section 302 IPC whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 20,000/- under Section 302 IPC and in case of default in payment of fine, he was further directed to undergo additional imprisonment of one year.

Brief Facts of the case

2. The facts that formed the bedrock of the present criminal appeal, in short compass, are that a written report was handed over by the first informant Rohit Kumar, son of Kailash Narain at police station Uldan at 01:30 AM on 23.07.2014 that on 22.07.2017 at about 08:30 PM, his cousin Dharmendra (hereinafter referred to as the accused-appellant), son of Vishwanath Srivas, who is permanent resident of village Dhabari, police station Tahrauli, district Jhansi and is presently residing with his grand-maternal father (Nana) at village Rajpura, police station Uldan, district Jhansi. Since accused used to consume intoxicant, there had been altercations between husband and wife. On hearing the shrieks from inside the house of the appellant, when he along with Jugul Kishore and Lalta Prasad went inside the house, they saw the accused assaulting his wife-Smt Neetu Devi from sickle (*Hansia*) on her face and neck. The FIR further recounts that on arrival of the witnesses, accused fled away with bloodstained *Hansia* (sickle) and in bloodstained clothes, which he was wearing at the time of occurrence. The information in respect of the aforesaid incident was communicated to the father of the deceased, who also arrived at the spot. On account of the injuries received, Smt. Neetu Devi (hereinafter referred to the deceased) succumbed to the injuries.

3. On the basis of the aforesaid report, a case was registered at Case Crime No. 80 of 2014, under Section 302 IPC, police station Uldan, district Jhansi.

4. After the registration of the first information report, the law set into motion and investigation of the case was taken up by PW-7, Inspector Satyendra Singh, who after completing necessary formalities, submitted charge sheet against the accused under Section 302 IPC. Bloodstained sickle and bloodstained clothes of the accused were also sent to Forensic Science Laboratory, Agra.

5. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 336 of 2014. The learned Additional Sessions Judge/Special Judge (SC&ST Act, Jhansi vide order dated 15.09.2015 framed the charges against the accused-appellant under Section 302 IPC, which was read over and explained to him.

6. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as seven witnesses, out of which PW-1, Rohit Kumar is the first informant of the case, PW-2, Jugul Kishore, PW-3, Lalta Prasad are the witnesses of facts, remaining witnesses are formal one.

7. PW-1, Rohit Kumar is the first informant of the case. In his examination-in-chief, he has reiterated the versions given in the FIR. He further deposed that on 23.07.2014, on the pointing out of the accused, the investigating officer recovered weapon of assault, i.e. bloodstained sickle (*Hansia*) and bloodstained clothes of the accused, on which he put his signature, which he proved as Ext. Ka-2 and Ka-3. He was also the witness of

inquest. He also stated that accused-appellant is his cousin and he along with several persons of the village have seen the accused committing the murder of the deceased.

8. PW-2, Jugul Kishore in his examination-in-chief has deposed that he knows the appellant well. He used to live in a rented house in his neighbourhood. Accused-appellant and the deceased used to quarrel over intoxication by the accused. On 22.07.2014 at about 08:00-08:30, on hearing the hue and cry from the house of the appellant, when he along with Rohit and Lalta Prasad went inside the house, they saw the accused assaulting his wife (deceased) on her face from sickle (*Hansia*). They tried to apprehend the appellant, but as he was armed with sickle, no one could dare to go beside him and accused managed to escape. Accused's wife died at the spot. He further deposed that he was also the witness of inquest.

9. PW-3, Lalta Prasad, in his examination-in-chief has deposed that on the date of occurrence, accused was living in the vacant house of his maternal grandfather along with his wife and children. There had always been altercation between the accused and the deceased as the appellant used to consume intoxicant. On 22.07.2014 at 08:00-08:30 PM, he was standing at the shop of Sita Ram. On hearing the shrieks of the deceased, when he along with Jugul, Rohit and other persons of the vicinity went to the house of the appellant, he saw appellant assaulting the deceased on her face and neck from sickle. On seeing them, the

accused fled away. He saw the accused assaulting his wife in the light. Since, the accused was armed with sharp edged weapon, he could not muster courage to go near him. He further deposed that he was also the witness of inquest.

10. PW-4, Dr. Ram Naresh, in his examination-in-chief has deposed that at about 3:00 PM on 23.07.2014, he conducted the autopsy on the cadaver of the deceased and found the following ante mortem injuries:

- 1. Incised wound of size 08 cm x 01 cm x bone deep on nose and face left side 2.5 cm below the tip of nose. 2 cm below the lower lid of left eye, edges are clean cut. Clotted blood present underlying bone fractured.*
- 2. Incised wound of size 12 cm x 5 cm x bone deep on left side of neck just above the thyroid cartilage directed obliquely up to the left ear lobe Underlying soft tissue trachea, esophagus and blood vessels of left side of neck damaged. Clotted blood present.*

11. In the opinion of the doctor, the cause of death of the deceased was shock and haemorrhage as a result of antemortem injuries.

12. PW-5, Ghanaram Chaudhary, in his examination-in-chief has deposed that on 23.07.2014, he was posted at police station Uldan at Head Constable. On that date on the written report of Rohit Kumar, he prepared Chik FIR at case crime No. 80 of 2014, under Section 302 IPC, police station Tahrauli, district Jhansi against the appellant, which he proved as Ext. Ka-6.

13. PW-6, Vijay Pratap Singh, in his examination-in-chief, has deposed that on 23.07.2014, he was posted at police station Uldan as Sub-Inspector. On that date, on the directions of the investigating officer, he conducted inquest on the body of the deceased. He also prepared required documents, sealed the dead body and handed over to Constable Raja Ram and Rajesh Kumar for getting postmortem done. At that time, the investigating officer collected plain and bloodstained earth, the memos whereof were prepared by him. On the pointing out of the appellant, bloodstained sickle (*Hansia*) was recovered by the investigating officer from the hut, inside the field of Ram Sahai, the memo of the same was prepared by him. He also prepared memo of bloodstained clothes of the accused on the dictation of the investigating officer.

14. After the closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. in which he denied the circumstances appearing against him and claimed innocence by pleading false implication in the crime in question and claimed trial.

15. Learned Additional Sessions Judge, Court No. 4, Jhansi after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

16. Being aggrieved and dissatisfied with the order of conviction and sentence as aforementioned, the appellant has preferred the instant appeal.

Submission on behalf of the appellant

17. Learned counsel for appellant-accused at the very outset submits that he restricts his argument only to the extent for conversion of the sentence from Section 302 to Section 304 IPC and submits that since, there was no premeditation and the incident took place in a heat of passion, considering the injuries received by the deceased, the case shall not traverse beyond the purview of Section 304 I.P.C.

18. Learned counsel for the appellant further submits that motive to commit the incident in this case is absent

Submissions on behalf of the State

19. On the other hand, Shri R.K. Gupta, learned Additional Government Advocate representing the State submitted that the accused caused injury by sickle on the neck and face of the deceased, which resulted in her death and there was no grave or sudden provocation, the learned Trial Court on appreciation of the entire evidence on record, has rightly convicted and sentenced the appellant for the offence punishable under Section 302 IPC.

Analysis and conclusion

20. Heard Shri Harish Chandra Tiwari, learned *Amicus Curiae* for the appellant and learned Additional Government Advocate.

21. As an abundant precaution, we have gone through the postmortem report and evidence of the prosecution witnesses. From the perusal of the postmortem report and the evidence of the Medical Officer, we do not find

any reason to interfere with the finding that the death of the deceased is homicidal. We also do not find any reason to interfere with the finding of the trial court that it is the appellant who caused injuries to the deceased resulting in her death.

22. Having come to the conclusion that the appellant is liable for the death of the deceased, we will have to now examine whether the offence committed by the appellant would come under the ambit of Section 302 IPC or it can be altered to one under Section 304 IPC as argued by the learned counsel for the appellant.

23. For better appreciation of the contention of learned counsel for the appellants, we would like to refer certain pronouncement of Hon'ble Supreme Court on the point in question insofar as the appellant is concerned.

24. In ***Jagtar Singh Vs. State of Punjab*** (1983) 2 SCC 342, accused on the spur of moment inflicted a knife blow on the chest of the deceased. The injury proved fatal. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The Apex Court observed that quarrel was of a trivial nature and even in such a trivial quarrel appellant wielded a weapon like a knife and landed a blow on the chest. In these circumstances, it is inadmissible to infer that the accused at least could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. The Court altered the conviction of the appellant from Section 302 IPC to Section 304 Part II IPC and sentenced the accused to suffer rigorous imprisonment for five years.

25. In **K. Ramakoteswara Rao Vs. State of A.P.**, 1986 Cr.L.J. 680, a sudden quarrel arose between the accused and the deceased and the deceased threatened the accused with dire consequences. The accused stabbed the deceased with knife. The Court convicted the accused under Section 304 Part-I IPC.

26. In **Surinder Kumar Vs. Union Territory, Chandigarh**, (1989)2 SCC 217, Hon'ble Apex Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. Hon'ble Supreme Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300, Hon'ble Supreme Court held thus:

"..... To invoke this exception four requirements must be satisfied, namely, (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. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a

decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

27. In **V. Sreedharan Vs. State of Kerala**, AIR 1992 SC 754, the accused, as a result of provocation caused in the heat of passion upon a sudden quarrel, chased the deceased to some distance and then gave the single fatal blow, it was held that the whole incident was a continuous sequence. Hence the conviction of the accused was shifted from Section 302 to Section 304 Part-I IPC.

28. In **Bhera Vs. State of Rajasthan**, 2000 SCC (Cri) 1230, accused and the deceased quarrelled and while quarrelling the accused in anger suddenly took out the knife and gave knife blow on the chest of the deceased which resulted in his death. The Apex Court set aside the conviction of the appellant under Section 302 IPC, instead convicted him under Section 304 Part II IPC and sentenced him to 5 years imprisonment.

29. In **Mochi Raju Vs. State of Gujarat**, JT 2001 (10) SC 398, accused appellant and the deceased started fighting and during the quarrel appellant took out the

knife from the pocket and gave one blow to the deceased on his chest. The Apex Court while convicting the appellant for an offence under Section 304 Part II, sentenced him to five years rigorous imprisonment.

30. In **Sukbhir Singh v. State of Haryana** (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court, Hon'ble Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

31. In **Sukhbir Singh Vs. State of Haryaba**, (2002) 3 SCC 327, the appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 IPC. In cases where after the injured had fallen down, the appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed:

“...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.

32. In **Ghapoo Yadav Vs. State of M.P.** (2003) 3 SCC 528, Hon'ble Supreme Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 IPC. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case.”

33. In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh** (2006) 11 SCC 444, the Hon'ble Court held thus:

"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 a 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 pre-meditation. In fact, there may not even be criminality."

34. In **Sudhakar Vs. State of U.P.**, (2012)8 SC 289, Hon'ble Supreme Court held as under:

"Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the appellant to cause the death of the deceased. Taking into account the statement of P.W.1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the appellant inflicted a single blow which unfortunately caused severe

damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by learned counsel for the appellant, we are convinced that the offence alleged and as found proved against the appellant can be brought under the First Part of Section 304 of IPC. Accordingly, while affirming the conviction of the appellant, we are only altering the same as falling under Section 304 Part I of IPC in place of Section 302 of IPC. As far as the sentence imposed on the appellant in as much as we reached at the conclusion that the conviction should fall under Section 304 Part I of IPC, taking note of the sentence already undergone, we find from the Imprisonment Certificate that the appellant is in jail from 12.07.2004 and he is 60 year old, P.W.1, who is the wife of the appellant, is left all alone and the appellant having suffered imprisonment for more than eight years, we hold that the sentence already undergone would be sufficient punishment apart from the fine imposed with the default sentence as per the judgment of the Trial Court and as affirmed by the High Court. The appeal stands partly allowed with the above modifications of the charge and the sentence imposed on the appellant.”

35. In the light of the above pronouncements of Hon'ble Apex Court, we shall now proceed to consider whether

case against the accused-appellant falls within the ambit of Section 302 IPC or Section 304 IPC.

36. PW-1, Rohit Kumar, who is the first informant and cousin of the deceased in his deposition has stated that there had always been quarrel between the deceased and the accused over consuming intoxicant. On the day of incident, on hearing the shrieks from inside the house of the appellant, when he along with Jugul Kishore, Lalta Prasad and several other people of the vicinity went inside the room, he saw that the accused assaulting his wife on her neck. On seeing them, the accused-appellant managed to escape. In his cross-examination, PW-1, Rohit Kumar has stated that accused-appellant was habitual of consuming intoxicant (Ganja), which was told to him by the parents of the accused-appellant and that he has also seen the appellant consuming intoxicant (Ganja). He further deposed that at the time of incident no person was present in the room except the appellant and the deceased. The later portion of the evidence of PW-1 suggests that the appellant had every opportunity to inflict more injuries, but he had not taken any undue advantage or acted in a cruel manner.

37. PW-2, Jugul Kishore, in his examination-in-chief has deposed that on the date of incident, on hearing the hue and cry from the house of the appellant, when he along with Rohit and Lalta Prasad went inside the house, they saw the accused assaulting his wife (deceased) on her face from sickle (*Hansia*). In his cross-examination, which was done on 18.05.2016, PW-2 has stated that since the habit of the accused was not good, his maternal uncle

and other members of family called the accused to village so that he may improve his habit. There was always controversy between the accused and his wife deceased over consuming intoxicant. Appellant used to consume liquor and Ganja.

38. PW-3, Lalta Prasad, in his deposition has stated that on 22.07.2014 at 08:00-08:30 PM, he was standing at the shop of Sita Ram. On hearing the shrieks of the deceased, when he along with Jugul, Rohit and other persons of the vicinity went to the house of the appellant, he saw appellant assaulting the deceased on her face and neck from sickle. In his cross-examination, which was done on 21.06.2016, he deposed that the accused was living in the village 5-6 months prior to the incident in question. He wanders around drunk and consume Ganja. Accused-appellant used to beat his wife after consuming intoxicant.

39. On the conjoint reading of deposition of evidence of PW-1, Rohit Kumar, PW-2, Jugul Kishore and PW-3, Lalta Prasad, it is evident that the appellant was accustomed to consuming intoxicant and the incident in question took place over a petty dispute of consuming intoxicant. The incident was the result of sudden fight, there was no premeditation, act was done in a heat of passion and that the assailant had not taken any undue advantage or acted in a cruel manner. There was also no motive of the incident.

40. The cumulative effect of all these circumstances, in our opinion, should entitle the appellants to the benefit of Exception 4 to Section 300 IPC.

41. In view of the aforesaid legal proposition enunciated by Hon'ble Supreme Court and looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above, the conclusion is irresistible that the death was caused by the acts of the accused-appellant done with the intention of causing such bodily injury as would likely to cause death and, therefore, the offence would squarely come within the ambit of Section 304 part-I IPC, instead of Section 302 IPC.

42. In view of the above conspectus, the conviction of the appellant under Section 302 IPC cannot be sustained. This Court is reluctant in endorsing the life imprisonment. Accordingly, the conviction of the appellant under Section 302 IPC is set aside, instead, he is convicted under Section 304 Part-I IPC and sentenced to rigorous imprisonment of ten years. Appellant is stated to be in jail since 23.07.2014. He shall be released forthwith unless wanted in any other case provided he has completed the modified sentence of ten years.

43. Consequently, the appeal is partly allowed with the aforesaid modification in the impugned judgement and order dated 08.06.2022 passed by the Additional Sessions Judge, Court No. 4, Jhansi.

44. Office is directed to transmit the lower court record along with a copy of this order to the court concerned for compliance.

45. Shri Harish Chandra Tiwari, learned *Amicus Curiae* shall be paid a sum of Rs. 15,000/- (rupees fifteen thousand) only towards his assistance rendered to the Court in deciding this appeal.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

February 03, 2026

Ishrat