$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 29th September, 2026.
DATE OF DECISION: 28th October, 2026.
UPLOADED ON : 29th October, 2026.

\# **CNR No. DLHC010110952026**

\+ **CRL.A. 274/2026 & CRL.M.(BAIL) 581/2026**

SHANKAR LAL .....Appellant

Through: Mr. Shivek Trehan, DHCLSC with Mr. Akash Chandna, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Hitesh Vali, APP. for the State SI Varun, Insp. Pramod, PS Madhu Vihar.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DINESH BHATT

JUDGMENT

DINESH BHATT, J.

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant under Section 415(2) read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 against the judgment dated 23rd December, 2025 and the order on sentence dated 07th January, 2026 passed by the ASJ-(FTC), Shahdara District, Karkardooma Courts, Delhi in FIR NO. 425/2017, P.S. Madhu Vihar, Delhi, Section 302 IPC.

3. *Vide* judgment dated 23rd December, 2025, the accused was convicted under Section 302 of Indian Penal Code for having committed the murder of deceased Balbir and *vide* order on sentence dated 07th January, 2026 the Appellant was sentenced to rigorous imprisonment for life and to pay fine of

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

Rs. 50,000/- for offence punishable under Section 302 of IPC in default of payment of fine, he was required to undergo simple imprisonment for two years.

4. The facts relevant for deciding the present appeal are that on 27th November, 2017 at about 1:15 am the accused along with his neighbour/known person and deceased were travelling in the TSR. They got down at ISBT Anand Vihar where PW1 was working as a helper at a kiosk of cold drinks and chips and accused along with two boys purchased *gutka* from his shop. Accused started quarrelling with one of the two boys and in the quarrel, he picked up a *danda* placed upon a temporary barricade and hit the same upon the head of the boy with whom he was quarrelling. The deceased fell down after sustaining the blow and the accused hit another blow from the *danda.* Thereafter the accused tried to flee but shopkeepers, auto drivers and other public persons gathered and apprehended the accused and handed him over to the police.

5. PW3 had taken the deceased to the hospital in his TSR where the deceased was examined by the doctor (PW8). MLC was then prepared and he was declared brought dead. Thereafter the post mortem was conducted by PW9 who prepared the post mortem report Ex.PW9/A and mentioned that the cause of death was shock due to cranio-cerebral damage consequent upon blunt force/blunt object impact on head which was sufficient to cause death in ordinary course of nature. Viscera of deceased were preserved. Blood-soaked gauze piece and all clothes and shoes of deceased in sealed parcel were handed over to IO with sample seal. Police had conducted the investigation at the site, had collected, blood stained earth, *danda* (weapon of offence), etc. from the spot. IO had also seized the blood stained jacket of the accused in

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

the presence of witnesses. IO sent them to FSL and arrested the accused, completed investigation and filed the chargesheet. After obtaining FSL report, a supplementary chargesheet was filed. Charges under Section 302 IPC were framed against the accused, to which he pleaded not guilty and claimed trial.

6. Prosecution examined 24 witnesses. Thereafter, statement of the accused under Section 351 BNSS was recorded. After completion of the prosecution evidence, statement of accused under Section 351 of BNSS was recorded where accused denied all the allegations and stated that he was innocent. He stated that the witnesses as had deposed falsely against him, deceased was in inebriated condition, he fell down of his own and his head struck against the hard brick road floor. He had not given any *danda* blow to the deceased. He was caught by the public unnecessarily and had done nothing wrong. He, however, chose not lead any defence evidence.

7. Since PW1 is the only eyewitness in the case his evidence in entirety is reproduced hereunder for the purpose of proper appreciation:

> *"02.08.2018*
> *PW-1 /On SA*
> *Statement of Sh. Nandan Singh Negi aged about 38 years s/o Balam Singh Negi r/o Village Gora, Post Office Jorasi, District Nainital. Presently residing at Shop No. 46-47, ISBT Kashmiri Gate, Delhi. Occupatoin – Helper in that shop.*
>
> *I am working as helper at the kiosk of cold drink and chips etc. situated near the entry gate of ISBT, Anand Vihar. On 27.11.2017, at about 1:15 am, one person had purchased gutka from our shop, two other boys were also present with him. After buying gutka from our shop, the person who had purchased gutka from our shop, started quarreling with one of those two boys who accompanied him. Thereafter, he picked up a danda which was placed there as in temporary barricade and*

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

hit on the head of the boy with whom he was quarreling. The said boy fell down on the ground after sustaining the blow of danda on his head. He again hit with the said danda on the boy who fell down on the ground. The second also blow also hit on the head of the said boy. On seeing this incident, other auto-drivers who were present near the spot, also gathered there. After hitting the boy, said persons tried to escape from the spot but he was apprehended with the help of auto-driver by the public persons. One auto-driver namely Abdul took the injured boy to hospital in his TSR with the help of a guard. I do not recollect the name of the said guard, so far I remember his name as Dheer Pal. Police arrived at the spot. Police made inquiries from me and I narrated the aforesaid facts to the police and recorded my statement. My said statement is ***Ex.PW1/A****, it bears my signatures at point A, which purchased gutka from our shop and hit the boy on his head with danda, if shown to me as he was stout and in my estimate, he was aged 35 years. The said person is present today in the court (the witness stares at the accused standing in the dock and then identified him, witness has correctly identified the accused). After apprehending the accused, he was taken to police post at ISBT, Anand Vihar. I do not know, if the name of the accused was also revealed at the spot when he was apprehended. I do not know the name of deceased.*

[At this stage, Ld. Addl. P.P. for the State requests to cross-examine the witness as he is resiling from his previous statements made before the police. Heard. The request is allowed].

XXX by Sh. Rakesh Mehta, Ld. Addl. P.P. for the State.

It is correct that when the accused was apprehended by auto-driver with the help of public, his name was revealed as Shankar son of Ravi Chaudhary r/o 372, Samaypur, Tola, Khurja Gate, Chandausi, Sambhal. It is also correct that police arrived at the spot and accused was handed over to the police. It is correct that

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

the boy who sustained head injury, died. It is wrong to suggest that the name of the said boy was revealed Balveer s/o of Mahesh r/o A-11/B-2, IIT Campus, Delhi (confronted with statement Ex. PW1/A where it is so recorded at point A to A). It is correct that the rough site plan of place of incident was prepared by the police at my instance. It is correct that accused and the deceased boy were quarreling even prior to purchase of gutka from our shop. It is correct that during the quarrel, accused was shouting by saying that "tera hamesha yahi rahta hai, aaj tera khel hi khatam kar deta hun".
XXXX by Sh. Pawan Kumar Sharma, Advocate for the accused.

It is correct that presently I am residing at Shop no. 46-47, ISBT Kashmiri Gate, Delhi. I am presently residing in a room in Canteen no. 6, ISBT, Sarai Kale Khan, Delhi.
(Reply to court question – I clarify that I am doing my job at Shop no. 46-47, ISBT Kashmiri Gate and it is not my place of abode. I am living in ISBT, Sarai Kale Khan in a room being Canteen no. 6. I keep on shifting my place of work as per the tenure of contract or the returns in the business to my proprietor).
XXXX continue.

I was getting salary of Rs. 350/- per day plus meal twice a day. I am living at the above said address with my three and four friends. On the date of incident, I was right duty. I was alone at the shop. There is another shop near my shop (Vol. That shopkeeper had also witnessed the incident). That shop remains open for 24 hours. I do not know how and by which of mode of conveyance, those boys had come. They did not come straightway in my shop, they were standing nearby shop prior to purchase of gutka from my shop. They were present at a distance of about 4-5 feet from my shop. No public person gathered at the time of incident. No one intervened in the quarrel between the accused and the deceased. The accused and the deceased hurling abuses

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

to each other but were not fighting prior to purchase of the gutka. The danda was lying at a distance at about 3 to 4 from the place of incident. The length of the danda was about 3 to 4 feet in length. Two dandas were in cross (X) position. At that time, some auto-drivers used to remain present near the place of incident and at the time of the incident, some auto-drivers were present. It is correct that the accused had purchased two gutkas from my shop. It is wrong to suggest that I did not sell gutka. It is correct that gutka selling is prohibited by the Supreme Court. It is wrong to suggest that accused did not purchase gutka from our shop. The accused and the deceased were drunk. It is wrong to suggest that accused did not lift any danda or that he had not beaten the deceased or did not hit on the head of deceased with any danda. It is wrong to suggest that I was not present at my shop at the time of incident. It is wrong to suggest that I did not witness the incident. It is wrong to suggest that I am deposing falsely at the instance of the police. I do not remember whether the said danda was of bamboo stick or solid danda. The distance between the accused and the deceased was about four feet from each other when accused gave danda blow on the left side of his head. The deceased fell down on his left side after sustaining the danda blow. Deceased fell down on the left side of my shop about five feet from my shop. The width of the pavement in front of my shop, is about 4-5 feet. Accused was apprehended after chasing upto 10 to 12 meters. There were 6 to 7 auto-drivers and some public persons who chased the accused. Accused was taken to the police post and thereafter, police arrived at the spot after 1 or 2 minutes of the incident. Those auto-drivers were present at the spot, who apprehended the accused when police arrive there. I do not know if police made inquiries from those auto-drivers or not. My statement was recorded when SHO arrived at the spot. I signed my statement. My statement was recorded after about two hours of the incident. I do not remember the

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

time when it was recorded but it was recorded on 27.11.2017. I do not know the cause of dispute between the accused and the deceased. Accused and deceased were imbalance/inebriated condition. The injured person was taken to hospital by auto-driver Abdul, a guard namely Dheer Pal and some policemen. It is correct that I did not accompany them. In the morning also, my other statement was recorded about 7:00/8:00 am at police post. The other shopkeeper had also given his statement. It is wrong to suggest that no such incident had taken place in my presence. It is wrong to suggest that I cooked up a story and deposing the same in the court about his incident.
RO&AC"

8. The evidence of this witness clearly establishes the fact that the accused, in a quarrel, had hit the deceased with the *danda* available at the spot and caused injuries resulting in death.

9. There is another witness who was an eyewitness and was also travelling with the accused and deceased in the TSR on the day of incident i.e. PW5 who however deposed that accused as well as deceased were travelling with him in his TSR and deceased was in inebriated condition and fell down of his own and suffered injuries on the head due to fall after alighting from the TSR. But the testimony of the said witness was not found reliable and was rejected by the ld. Trial Court on the ground that his deposition was not acceptable considering the post mortem report exhibit PW9/A in which six injuries were noted at the time of post mortem of the deceased and PW9 had categorically ruled out the possibility that such injuries could have been caused by way of fall upon rough ground surface or even rock under the influence of liquor or drugs. Further, the said witness was a neighbour/known of the accused and, therefore, the possibility of having been won over cannot be ruled out. Ld.

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

Trial Court also gave other reasons for discarding PW5's testimony particularly that the weapon of offence was recovered from the spot, which had blood stains and had matched with the DNA of the deceased. The jacket of accused seized after the incident was also found containing blood of the deceased and there was no explanation given by the accused for the same during the trial.

10. There is thus no infirmity in finding by the ld. Trial Court for not believing the testimony of PW5.

11. The prosecution had also cited PW2 PW3 and PW4 as eyewitnesses, however, they did not support the prosecution in entirety but still confirmed that they were present near the entry gate of ISBT Anand Vihar and they heard the noise of *pakdo pakdo,* they had gone there and had found a man lying in injured condition having injuries on his head, one *danda* was also lying near the spot and PW1 was also present there. One driver Abdul and guard Dheer Pal were also present. The person who had caused injuries was caught when he tried to run away and his name was told to be Shankar son of Ravi, Auto drivers and police officials had also assembled at the spot and they took the assailant to the police post. Auto driver Abdul along with guard lifted the injured in the TSR and took him to hospital.

12. All these witnesses have confirmed and corroborated the story of PW1 to the extent that the deceased had suffered injuries and the weapon of offence, i.e., *danda* was lying on the spot and told that the accused had hit the injured by a *danda* on his head. PW1 himself not only confirmed the sequence of events but also correctly identified the accused and deposed that after the quarrel has taken place accused had picked up the *danda* from the temporary barricade and hit the same on the head of the injured (since deceased), he fell

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

down and he gave another blow on his head. Injured was taken to hospital.

13. No material contradiction has been pointed out to show from the testimony of these witnesses as to why they could not be believed and nothing has been shown on the record as to why any of them would have deposed falsely against the accused.

14. PW19, Assistant Director Forensic Science Laboratory, Rohini had received 7 sealed parcels from SHO PS Madhu Vihar and had conducted biological examination as well as DNA examination. She had detected blood and the DNA of the deceased and opined that it matched with the shirt of deceased, pant of deceased, sweat shirt of deceased, vest of deceased, jacket of accused (wrongly mentioned as jacket of deceased), blood stained earth, blood sample of deceased from spot and wooden *danda*. Witness had further clarified in her examination that DNA examination had confirmed that blood of the deceased was found on the jacket of accused exhibit C and her detailed report was exhibit PW19/A.

15. One important clarification is required to be made in regard to article referred to ‘as jacket of deceased’ as mentioned in Ex. PW19/A in FSL examination report dated 27.03.2018. None of the parties has argued or raised this issue but this fact seems to have been erroneously mentioned as jacket of the deceased instead of ‘jacket of accused’ in the above said report. This point is otherwise clear from the seizure memo Ex. PW13/A wherein it is mentioned that jacket of the accused was seized in presence of the witnesses ASI Harbir and HC Bhagat Singh by the IO and sealed with the seal of ‘KP’. The Forensic Science Laboratory Report Ex. PW19/A mentioned that they have received three sealed parcels, three plastic containers and one sealed envelope. The sealed parcel with the seal of LBSH DFMT were containing Ex. A1 to A7

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

described as clothes tissues of the deceased. Parcel B was also sealed with the seal of LBSH DFMT containing Ex. D, blood in gauze of deceased. Parcel 'C' was the sealed cloth parcel which was sealed separately with the seal of 'KP'. This jacket as referred to jacket of deceased thus appears to be a typographical error and it should have been jacket of the accused. This fact is further corroborated from the seizure memo Ex. PW13 and the testimony of the attesting witnesses.

16. PW13, PW14, PW15, PW22 have deposed that, PW22 was posted at SHO PS Madhu Vihar. PW13, PW14 and PW15 were posted as ASI and Head Constable at police post Anand Vihar Bus Stop. On 27th November, 2017 at about 1:15am on hearing the noise they have come to the spot and found that PW1 and TSR driver PW3 Abdul who produced accused Shankar Lal, one security guard Dheer Pal was also present there and one person was lying on floor in injured condition and blood was found there, they were told that the accused Shankar has inflicted bamboo blows on the head of the injured lying on the floor. They immediately shifted the injured in the TSR of Abdul with the help of the security guard and PW15 accompanied them on the instruction of the PW14. Accused was apprehended. PW14 had gone to the Lal Bahadur Shastri Hospital where injured was declared brought dead and shifted to mortuary. PW14 had then gone to the spot of the incident and recorded the statement of PW1. PW22 had also reached the spot and crime team was called. *Rukka* was prepared. FIR was registered. The investigation was thereafter being taken over by the PW22 who inspected the spot. Site plan was prepared and the accused was interrogated and was arrested and had recorded his disclosure statement. PW2 also seized the *danda*, jacket of accused, blood present on the spot, earth control, vide seizure memos Ex.PW9/D and

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

Ex.PW13/A respectively. PW13, PW14 and PW22 had correctly identified the jacket of accused P1 in the Court and also PW2 had identified *danda* (weapon of offence) in the Court. Accused had hit the deceased with a wooden stick (*danda*) on his head which caused injuries which resulted in death of the deceased. The post-mortem report also categorically mentioned that the injuries found on the person of the deceased was sufficient to cause death in ordinary course of events.

17. The finding of the Ld. Trial Court to the extent that the accused had hit the *danda* on the head of the deceased causing his death is corroborated from the oral evidence as well as the documentary evidence in the form of MLC and post-mortem report and no infirmity is found in respect of the same. The only question left for consideration is as to whether the finding of Ld. Trial court in the facts and circumstances of the case made the accused entitled to any benefit of Exception 4 Section 300 IPC or not.

18. Ld. Counsel for the Appellant vehemently argued that even as per the prosecution story there was no previous enmity between the accused and the deceased. There was a sudden quarrel between the two and the accused was not carrying any weapon of offence and had picked up the *danda* which was lying near the spot as a temporary barricade and had hit the same on the head of the deceased in a state of passion. There was neither any intention or premeditated preparation. Therefore, he was at least entitled to benefit of Exception 4 and, therefore, his case was a fit case to be converted from Section 302 to Section 304 IPC.

19. He has relied upon the following judgments: -

(i) ***Virsa Singh vs State of Punjab, AIR 1958 SC 465: 1958 SCC OnLine SC 37 SC***, stating that in the said judgment it was held that the four facts the

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

prosecution must prove before a case falls under clause thirdly of Section 300 IPC, including that the particular bodily injury intended to be inflicted was objectively sufficient in the ordinary course of nature to cause death.

(ii) ***Basdev vs State of PEPSU, AIR 1956 SC 488 (SC),*** stating that as per the judgment the knowledge is attributed to an intoxicated man as if he were sober, but intention must be gathered from the attending circumstances paying due regard to the degree of intoxication.

(iii) ***Narayan Yadav vs State of Chhattisgarh, 2025 SCC OnLine SC 1603***: ***2025 INSC 927 (SC)*** stating that in the said judgment it was mentioned that 'fight' necessarily involves two parties; stage-wise approach to the distinction between murder and culpable homicide

(iv) ***Camilo Vaz vs State of Goa, (2000) 9 SCC 1 (SC)*** stating that as per the judgment a danda-blow struck with knowledge that it was likely to cause death, but without intention to cause death, falls under Section 304 Part II IPC.

(v) ***Pulicherla Nagaraju vs State of A.P., (2006) 11 SCC 444 (SC)*** stating that as per the judgment circumstances from which intention is to be gathered, including whether the weapon was carried or picked up from the spot, whether the act was in the course of a sudden quarrel, absence of prior enmity and whether a single blow or several blows were dealt.

(vi) ***Surain Singh vs State of Punjab, (2017) 5 SCC 796 (SC)*** stating that 'undue advantage' means unfair advantage; The number of wounds is not a decisive factor; a person who picks up a handy weapon on a sudden quarrel is entitled to the benefit of Exception 4; conviction altered to Section 304 Part II.

(vii) ***Atul Thakur vs State of Himachal Pradesh, (2018) 2 SCC 496 (SC)***

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

stating as per the judgement that six knife-blows in a sudden fight; neither the weapon used nor the multiplicity of blows can by itself deny the benefit of Exception 4; Multiple blows cannot be the sole basis for denying Exception 4; an overall view of the established facts must be taken.

(viii) ***Sukhbir Singh vs State of Haryana, (2002) 3 SCC 327 (SC)*** stating that as per the judgment what the defence must probabilise under Exception 4; a sudden fight implies mutual provocation and the time gap between quarrel and fight is the material consideration.

(ix) ***Sanjay vs State Govt. of NCT of Delhi & connected matter (Del.), CRL. A. 48/2025 & CRL. A. 65/2025***, decided on 08.04.2026 stating that as per the said judgment weapon picked up at the spot and 'not brought from home or kept ready', quarrel over a cigarette; no premeditation; Exception 4 applied where only a single wound was caused on the spur of the moment and no undue advantage was taken; sentence of the period already undergone held adequate.

(x) ***Mukesh vs State (NCT of Delhi) (Del.), CRL. A. 85/2025***, decided on 10.08.2026 stating that as per the judgment drunken scuffle between co-workers; weapon 'readily available at the site of the crime' and not specially brought; Exception 4 attracted; Section 304 Part II carries a maximum of ten years; appellant released on the custody already undergone.

(xi) ***Shantilal Vs State of M.P. (2007) 11 SCC 243 (SC)*** stating that as per the judgment imprisonment in default of payment of fine is not a sentence but a penalty; the fine and the default term must not be harsh or excessive.

20. On the other hand, Ld. Counsel for the Respondents have also filed written arguments stating that a quarrel had taken place between the Appellant and the deceased and thereafter Appellant picked up a bamboo stick lying at

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

the spot and struck the deceased on his head. After the deceased fell down, the Appellant inflicted another blow on his head and thereafter members of the public apprehended the Appellant and handed him over to the police. Deceased was removed to the hospital where he was declared brought dead and PW9 had categorically given his opinion in his post-mortem report that the cause of death of the deceased was due to shock consequent upon cranio-cerebral damage caused by blunt force impact on his head which was sufficient to cause death in the ordinary course of nature. The blood on the wooden *danda,* DNA examination on the jacket of the accused had all connected the accused with the death of the deceased. The Ld. Trial Court has rightly rejected the fact that Exception 4 to Section 300 IPC was not applicable. He has also relied upon the judgment ***Virsa Singh (supra).***

21. Ld. Counsel for the Appellant has further urged that the second blow theory was a material improvement as this fact was not mentioned by PW1 in his statement under Section 161 CrPC. Similarly, PW3, PW5 and PW13 and the disclosure statement of the Appellant all mentioned that a single blow was inflicted. PW1 was declared hostile and in cross-examination by the prosecution he was put a leading question to which he agreed. Thus, this fact was not beyond doubt and no conviction can be based on any such fact. Ld. Counsel further submitted that in any case in this case Exception 4 of Section 300 IPC was applicable and has stated that even as per prosecution case the ingredients of the Exception were satisfied.

22. Ld. Counsel for the Respondent submitted that PW1 had mentioned in his examination-in-chief that the accused had stated "*tera hamesha yahi rehta hai aaj to iska kaam khatam kar deta hun"*. Ld. Counsel for the Appellant has stated that the Ld. Trial Court itself held that it cannot be said with certainty

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

that he had intention to cause death of the deceased. This finding is in favour of the Appellant and the State has not appealed against it, in support of his other contention that this was a fit case to attract the benefits under Section 304 (II) IPC.

23. In this regard, it is important to note that this fact was not mentioned by the witness PW1 in his examination-in-chief and only after he was declared hostile, in cross-examination he was given certain suggestions to which he replied 'It is correct that during the quarrel, accused was shouting by saying "*tera hamesha yahi rehta hai, aaj tera khel hi khatam kar deta hun*". In this regard, it is also important to note that the statement of the witness recorded under Section 154 Cr.PC and signed by him Ex. PW1/A mentions the fact that one boy purchased *gutka* from his shop and thereafter two boys started quarrelling with each other and it suddenly got converted into a fight (*jhagda marpit mein tapdil ho gaya*). Thereafter the boy who had purchased the *gutka* in loud voice shouted and threatened the deceased to finish him and picked up a *danda* kept as temporary blockade and hit it on the injured's head, injured fell down and blood started oozing out and accused tried to flee but PW1 with the help of one Abdul and other public person apprehended him by chasing him. Even though the witness had mentioned this fact in his statement to the police that he had threatened the deceased that he would finish him but this fact was not mentioned by the witness during his initial examination-in-chief.

24. Further, it is important to note that this witness in his statement Ex. PW1/A had only mentioned about one *danda* blow (*aur gutka kharidane wala ladka wahi par rasta rokne ke liye rakha baans ka danda uthakar dusre ladke ke sir par bahot jor se de mara jo danda lagte his dusra ladka gir pada aur uske sir se khoon nikalne laga aur danda marne wala ladka wahan se bhagne*

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

laga jisko maine auto-driver Abdul ke maddad se va publilc a logon ke maddad se bhagkar pakda) while in his examination-in-chief recorded in the Court had mentioned that accused had inflicted *danda* blow on injured's head and when he fell down he inflicted second *danda* blow on his head. Though no material contradiction in the cross-examination of PW1 has been shown in regard to the aforesaid fact of accused having given second *danda* blow after the injured fell down on the ground, this may be due to the lack of giving minute detail at the initial stage at the time of recording of statement by the police. However, considering the fact that the witness had not mentioned in his examination-in-chief but only admitted about the accused having extended threat to finish him before he hit *danda* on his head entitles the accused to benefit of doubt on this part of the witness statement.

25. The facts which are apparent from the testimony of witnesses' available on record in this regard are that the accused and deceased did not have any previous enmity. They had started quarrelling at the spot after they had purchased *gutka* from the shop of PW1 and during that quarrel accused had suddenly picked up a *danda* which was lying near the spot as a temporary barricade and hit the same on the victim's head. Victim (deceased) had fell down and accused gave another blow on his head and thereafter tried to flee when people caught him and handed over him to the police.

26. The Ld. Trial Court in para 9 of its judgment has given the sequence to proceed in a case where distinction under Section 300 and 304 IPC is required. The Ld. Trial Court has given a finding that accused did not intend to cause death of the deceased but had intended to cause such bodily injury which was sufficient in ordinary course of nature to cause death. The Ld. Trial Court came to the conclusion that the accused/Appellant was not entitled to benefit

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

of Exception 4 as he had acted in an unusually cruel manner as after the deceased had fallen down he had given another blow on his head which clearly pointed out that he had acted in a cruel and unusual manner and, therefore was not entitled for the benefit.

27. For appreciation of this fact it is important to note that the requirement of Exception 4 to Section 300 is that culpable homicide is not murder if it is committed without premeditation in a sudden fight in heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in cruel or unusual manner. The Ld. Trial Court had heavily relied on the fact that after the accused had given *danda* blow on the head of the deceased he fell down but he gave another blow on the head and therefore this second blow was an act of the accused of having acted in a cruel and unusual manner.

28. For the appreciation of this part of the evidence it is important to refer to the decision of the Coordinate Bench of this Court in ***Mukesh vs. State (NCT of Delhi), 2026 SCC OnLine Del 5961,*** wherein a similar question of law had arisen. The relevant portion is reproduced hereinbelow:

> *"20. The Supreme Court in Virsa Singh v. State of Punjab, 1958 SCC OnLine SC 37, has explained the meaning and scope of Clause (3) of Section 300 IPC in the following terms:*
>
> *"14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly".*
>
> *15. First, it must establish, quite objectively, that a bodily injury is present.*
>
> *16. Secondly, the nature of the injury must be proved; These are purely objective investigations.*

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and.

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

21. As per the MLC, Ex. PW 18/A, of the deceased there was only one visible injury of stab wound 3cm × 3cm in

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

left iliac fossa. The trial court records the doctor's finding in the post-mortem report, Ext. PW 21/A, in the following terms:

> *"28. In fact, the PM report No. TC-743/15 dated 15-12-2015 of deceased Rishi pal i.e. Ex. PW 21/A shows that there were antemortem injuries present on his body which were mentioned as follows:* ***"Surgical stitched wound measuring 3 cm is present obliquely 6 cm from umbilicus in 4 o'clock position in left Iliac region of abdomen****". As per the opinion on the said PM report, it had been categorically stated that the cause of death of the deceased was* ***'haemorrhagic shock due to stab injury to abdomen which was sufficient to cause death in ordinary course of nature'*** *and the said injury had been caused with a sharp weapon."*

22. As per the testimony of PW 1 Lalit, which appears to be credible, the fatal injury has been inflicted by the Appellant by inserting some object into the abdomen of the deceased. The offence weapon i.e. scissor, was also recovered at the instance of the Appellant. The post mortem report also records the injury present on the dead body was sufficient to cause death in the ordinary course of nature. Therefore, seen in the light of law laid down in Virsa Singh (supra), we are of the view that the trial court has rightly recorded that the requisites for the offence under Clause (3) of Section 300 IPC have been established by the prosecution.

23. However, the law is well settled that even if the case falls within any of the four clauses of Section 300 IPC, it could still be an offence of culpable homicide not amounting to murder, if any of the Exceptions to Section 300 IPC are attracted. Reference in this regard may be had to the decision of the Supreme Court in Sita Ram Kuchhbedia v. Vimal Rana, 2026 SCC OnLine SC 293, wherein it was observed that when the Court is confronted with a question whether an offence disclosed by the proved facts is "murder" or "culpable homicide

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

not amounting to murder," it would be appropriate to approach the issue in the following structured manner:

> ***"47. At the first stage**, the Court must determine whether the accused has committed an act which has caused the death of another, that is to say, whether the case involves a homicide. If such causal connection between the act of the accused and the death is established, the enquiry then proceeds to the second stage, that is to say, whether the act so committed amounts to "culpable homicide" within the meaning of Section 299 IPC.*
>
> *48. If the answer to this question is prima facie in the affirmative, the Court must then enter upon the third stage of enquiry viz. whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of Section 300 IPC, which define murder. If the case does not fall within any of the four clauses of Section 300, the offence would be culpable homicide not amounting to murder, punishable under either Part I or Part II of Section 304 IPC, depending upon whether the case attracts the second or the third clause of Section 299 IPC.*
>
> ***49. Even if the case falls within the four clauses of Section 300 IPC, the Court must further examine whether any of the Exceptions to Section 300 IPC are attracted. If the case is covered by any such Exception, the offence would fall back to Section 299, that is, culpable homicide not amounting to murder."***
>
> ***(emphasis supplied)***

24. The only controversy which thus, survives for the consideration of this Court, lies within a narrow compass, i.e., whether the Appellant is guilty of offence of murder under Section 302 IPC or it would attract any of the Exceptions to Section 300 IPC, to constitute an offence of culpable homicide not amounting to murder punishable under Section 304 IPC.

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

25. Section 304 IPC deals with the cases not covered by Section 302 and it divides the offence into two distinct classes, i.e. (i) those in which the death is intentionally caused; and (ii) those in which death is caused unintentionally but knowingly. The cases of the first category are punishable under Section 304 Part I, whereas the cases under the second category are punishable under Section 304 Part II of the IPC.

26. The intention being the state of mind, is to be gathered from a cumulative effect of the circumstances proved on record. As laid down by the Supreme Court in Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500, few or several of the factors in combination will be decisive for ascertaining whether there was any intention to cause death. The relevant extract from the said decision reads thus:

> ***"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***

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

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. Be that as it may."*

27. The learned counsel for the appellant, on the basis of the evidence on record, has in effect, tried to bring the case within Exception 4 to Section 300 IPC, which reads as under:

300. Murder—

xxxx xxxx xxxx

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner."

"36. A Co-ordinate Bench of this Court in Sanjay Singh v. State (NCT of Delhi), 2026 SCC OnLine Del 4184,

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

noting the circumstances, where two men, who were friends, were drinking together and had a fight over a trivial issue of payment for a bottle of liquor, which led to a sudden rage in a state of intoxication, leading to the Appellant therein picking up a brick that was lying outside and striking the deceased, opined that there was no intention to cause death, and accordingly, the offence under Section 302 was altered to one under Section 304 Part II of the IPC. The relevant extract from the said decision reads thus:

"45. The circumstances of the case in hand fit squarely within this well-settled principle. The two men were friends. They were drinking together. The quarrel arose without warning over something as trivial as payment for a bottle of liquor. The deceased slapped the Appellant. The Appellant, in a state of intoxication and sudden rage, picked up a brick that was lying outside and struck the deceased. There was no prior plan. The Appellant was not carrying any weapon. There was no motive to kill. *There was no intention, in the legal sense of the term, to cause death, but there was knowledge, that striking a person repeatedly on the head with a brick is likely to cause death.*

xxx *xxx* *xxx*

49. Having considered the entire evidence on record, this Court is of the view that though the Appellant had the knowledge that repeated blows with a brick on the head could likely cause death, the material on record does not establish a deliberate intention to commit murder within the meaning of Section 300 IPC. The present case would therefore fall within the ambit of Section 304 Part II IPC.

xxx *xxx* *xxx*

52. Accordingly, the conviction of the Appellant

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

under Section 302 IPC is altered to one under Section 304 Part II of the IPC*. The sentence of rigorous imprisonment for life awarded by the Ld. trial court is modified and reduced to rigorous imprisonment for a period of eight years. The fine imposed by the Ld. trial court shall remain undisturbed."*

(emphasis supplied)

29. Considering the principle of law applicable to this situation, the facts of the present case show that it was neither a case of previous animosity nor accused had acted in a premeditated manner. A sudden quarrel between accused and deceased started at the spot. Accused was not carrying any weapon but had picked up the *danda* which was lying at the spot as a temporary barricade and hit the same on deceased's head. He fell down and accused had given a second blow on the head of the deceased but in our opinion the Ld. Trial Court overlooked the subtle difference between the act of a person in heat of passion which might have resulted in more than one blow but since both the two acts had occurred within a short period of time where the Appellant appears to have had no cooling time and, therefore, benefit of Exception 4 could have been considered.

30. In ***Sukhbir Singh v. State of Haryana (2002) 3 SCC 327***, the Court has held that a minimum time gap which preserves the heat of passion and random blows given during this period are not inherently cruel. Inflicting two swift blows in a state of emotional outburst cannot be said to be automatically branded as cruel or unusual.

31. In the present case overall facts clearly show that Exception 4 to Section 300 was attracted and, therefore, the case is a fit case for alteration of conviction of the Appellant from Section 302 IPC to one under Section 304

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34

Part II IPC.

32. A perusal of the nominal roll of the Appellant shows that he has already served 05 years 10 months 14 days in jail as on 30.06.2026 besides earning remission of 9 months.

33. Considering the aggravation and mitigating circumstances as noted by the Ld. Trial Court, the Appellant is convicted for the offence under Section 304 Part II IPC and is sentenced to 07 (seven) years rigorous imprisonment along with fine of Rs. 50,000/- in default to undergo simple imprisonment of 1½ (one and half) years.

34. The order be sent to the concerned Jail Superintendent for necessary information and compliance.

35. Ordered accordingly.

DINESH BHATT
JUDGE

PRATHIBA M. SINGH
JUDGE

OCTOBER 28, 2026
SS/rs/Jayant

Signature Not Verified
Signed By:MONIKA RANA
Signing Date:29.10.2026 11:34