MOHD. RAFIQ @ KALLU

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 856 of 2021)

SEPTEMBER 15, 2021

[K. M. JOSEPH AND S. RAVINDRA BHAT, JJ.]

Penal Code, 1860 – s.302 and s.304 – Prosecution case that Sub-Inspector (SI) motioned a truck, driven by the accused/ appellant, to stop – Instead of applying brakes, the accused tried to speed away, upon which SI boarded the truck from its left side – It was alleged that the appellant warned SI not to do so and that he would get killed – Nevertheless, SI boarded the truck – Appellant pushed him, as a result of which SI fell off the truck and he was run over by the rear wheels of the truck – SI died – Appellant fled with the truck – However, later he was arrested and charged with committing murder – The Trial Court convicted the appellant as charged and sentenced him to rigorous imprisonment for life – The High Court confirmed his conviction u/s.302 IPC – On appeal, held: No motive or animus against the deceased was proved – A general expression of the extreme threat, (without any real intention of carrying it, since the truck was not laden with any contraband or was not used for any illegal or suspect activity), cannot be given too much weight– It was established that SI did fall off the truck, which continued its movement, perhaps with greater rapidity – However, this does not prove that the appellant, with deliberate intent, drove over the deceased and he knew that the deceased would have fallen inside, so that the truck's rear tyre would have gone over him – The act resulting in SI's death was not pre-meditated – The instinctive reaction of the appellant was to resist; he disproportionately reacted, which resulted in the deceased being thrown off the vehicle – Such act of throwing off the deceased and driving on without pausing, appears to have been in the heat of passion, or rage – On facts, the appellants should be convicted for the offence punishable under the first part of s.304 IPC, as he had the intention of causing such bodily harm, to the deceased, as was likely to result in his death – The conviction recorded by the courts below, is altered to one u/s.304 Part I, IPC – The sentence too is

A *therefore modified – Instead of rigorous imprisonment for life, the appellant is hereby sentenced to 10 years' rigorous imprisonment.*

Allowing the appeal, the Court

HELD: 1. On the facts of this case, there can be no serious dispute that the prosecution established the main elements of its factual allegations: the receipt of information of the breaking of the forest barrier; positioning of the deceased Sub-Inspector (SI), with a *posse* of policemen on the road; the identification of the appellant, as one who drove the truck; gesturing by the deceased to the appellant to stop the truck; the latter slowing down the vehicle; attempt by the SI to board the vehicle, and his being shaken off the truck, on account of the driver refusing to stop, and, on the other hand, speeding the vehicle. Even if the prosecution version that the appellant having threatened to kill the deceased were to be accepted, one cannot set much store by it, because no motive or no *animus* against the deceased was proved. A general expression of the extreme threat, (without any real intention of carrying it, since the truck was not laden with any contraband or was not used for any illegal or suspect activity), cannot be given too much weight. What is of consequence, is that upon the deceased falling off the truck, the appellant drove on. Here, the prosecution established that the truck was driven, without heed; however, it did not establish the intention of the driver (i.e. the appellant) to run over the deceased. This point, though fine, is not without significance, because it goes to the root of the *nature of the intention.* Did the appellant intend to kill SI? This Court thinks not. Clearly, he *knew* that SI had fallen off; he proceeded to drive on. However, whether the deceased fell in the direction of the rear tyre, of the truck, or whether he fell clear of the vehicle, has not been proved; equally it is not clear from the evidence, that the appellant knew that he did. What was established, however was that he did fall off the truck, which continued its movement, perhaps with greater rapidity. This does not prove that the appellant, with deliberate intent, drove over the deceased and he knew that the deceased would have fallen inside, so that the truck's rear tyre would have gone over him. In these circumstances, it can however be inferred that the

B

C

D

E

F

G

H

appellant intended to cause such bodily injury as was likely to cause SI Tiwari's death. [Para 14][174-G-H; 175-A-E]

2. All the essential elements show that the appellant did not have any previous quarrel with the deceased; there was lack of *animus*. The act resulting in SI's death was not pre-meditated. Though it cannot be said that there was a quarrel, caused by sudden provocation, if one considers that the deceased tried to board the truck, and was perhaps in plain clothes, the instinctive reaction of the appellant was to resist; he disproportionately reacted, which resulted in the deceased being thrown off the vehicle. Such act of throwing off the deceased and driving on without pausing, appears to have been in the heat of passion, or rage. Therefore, it is held that the appellant's conviction under Section 302 IPC was not appropriate. [Para 15][175-F-G]

3. Section 304 IPC Code provides punishment for culpable homicide not amounting to murder (under Section 299 IPC). In the facts of the present case, this court is of the opinion that the appellants should be convicted for the offence punishable under the first part of Section 304 IPC, as he had the intention of causing such bodily harm, to the deceased, as was likely to result in his death, as it did. Having regard to these circumstances, the conviction recorded by the courts below, is altered to one under Section 304 Part I, IPC. The sentence too is therefore modified - instead of rigorous imprisonment for life, the appellant is hereby sentenced to 10 years' rigorous imprisonment. [Para 16][176-A-C]

State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. **(1976) 4 SCC 382 : [1977] 1 SCR 601;** *Pulicherla Nagaraju @ Nagaraju Reddy v. State of Andhra Pradesh* **(2006) 11 SCC 444 : [2006] 4 Suppl. SCR 633 – relied on.**

Case Law Reference

[1977] 1 SCR 601	**relied on**	**Para 12**
[2006] 4 Suppl. SCR 633	**relied on**	**Para 13**

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.856 of 2021.

From the Judgment and Order dated 27.02.2018 of the High Court of Madhya Pradesh Principal Seat at Jabalpur in Criminal Appeal No.1570 of 1995.

B Ms. Ritu Gangele, Anil Kumar Gautam, Advs. for the Appellant.

Gopal Jha, Shreyash Bhardwaj, Nishant Verma, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **S. RAVINDRA BHAT, J.**

1. The appellant is aggrieved by a judgment of the Madhya Pradesh High Court[1] which confirmed his conviction for the offence punishable under Section 302 of the Indian Penal Code ("IPC"), and the sentence of rigorous imprisonment for life imposed on him.

D 2. The facts are that Police Station Jabera received information in the evening of 09.03.1992 that a truck (CPQ 4115) had broken the Forest Department barrier and collided with a motorcycle. The receipt of this information (by means of telephonic conversation) alerted the police. It was further alleged that Sub Inspector (SI) D.K. Tiwari along E with others were stationed at a vantage point, on the main road, when the truck reached there. SI Tiwari motioned the truck to stop; it was driven by the appellant. Instead of applying brakes, the accused tried to speed away, upon which SI Tiwari boarded the truck from its left side. At that stage, it is alleged that the accused/appellant warned SI Tiwari not to do so and that he would get killed. Nevertheless, SI Tiwari boarded F the truck. Immediately, the appellant pushed him, as a result of which SI Tiwari fell off the truck and he was run over by the rear wheels of the truck. SI Tiwari died. It is further alleged that the appellant fled with the truck. He was later caught, arrested and charged with committing murder of SI Tiwari.

G 3. In the trial before the Addl. Sessions Judge, Damoh, the prosecution relied upon the depositions of 18 witnesses, besides several exhibits, including the postmortem report, seizure of articles from the site and the deposition of medical witness (PW-6). The prosecution

H [1] Dated 27.02.2018 in Crl. A. 1570/1995

essentially relied upon the statements of PW-2, PW-10, PW-11, PW-14 & PW-15, i.e. the principal eye witnesses. The accused also led oral evidence of three witnesses, including that of Majeed, DW-1, who deposed that he was the conductor who was in the truck when the incident had occurred.

4. After duly considering the entire evidence and materials led before it, the Trial Court, by its judgment and order[2] convicted the appellant as charged and sentenced him to rigorous imprisonment for life. The appeal against the conviction and sentence was rejected by the impugned order.

5. It was argued on behalf of the appellant by Ms. Ritu Gangele, Advocate that a close reading of the evidence disclosed that the depositions of PW-2, PW-10, PW-14 and PW-15 contain fatal contradictions and exaggerations. It was pointed out that the prosecution version about the deceased boarding the truck from its left side and being pushed by the appellant was highly improbable given that two witnesses had clearly deposed that the latter, i.e. the accused continued to drive the truck. It was submitted that if such was the position, unless the prosecution established that the deceased had actually boarded the truck and sat in it near the driver, it was impossible for the accused to have pushed him with such force that he would have fallen off and gotten crushed under the rear wheels.

6. Learned counsel also pointed out to depositions of PW-2 and PW10 and submitted that several improvements were made to the original statements, recorded during the course of the investigation. It was stated that firstly the statement made during the investigation by PW-2 did not mention how the accused was identified when he was in the truck at 09.45 p.m. whereas the deposition of PW-2 stated that he could identify the accused in the light of the cabin and tube light on the street. She also pointed out that PW-2 improved upon his previous statement during the course of the trial inasmuch as he had not previously stated that the appellant had freed his left hand to push the deceased and that at the same time he continued to drive with his right hand. Most crucially, it was submitted by the learned counsel that the witness nowhere had stated previously that the truck had sped after slowing down – a position that he deposed to during the course of trial.

[2] Dated 04.11.1995 in SC 123/1992

A 7. It was next submitted that the depositions of all the other so-called eye witnesses were suspicious because they spoke in unison about the incident in a manner identical to the deposition of PW-2. Learned counsel pointed out to the improbability of four persons observing an incident in the same manner, although they were located at different points or places, but painting the same picture given that the incident had occurred in the dark. It was submitted that all the witnesses were not standing at the same spot but dispersed at different points. In these circumstances, the nature of the light, i.e. how well lit the area was as well as the distance of the concerned witnesses from the concerned location, i.e. where the incident occurred, became crucial. The Courts below ignored these important features and held the appellant guilty of murder. Learned counsel submitted that there was no material on record pointing towards any motive on part of the accused. She highlighted that the deceased was not in uniform but rather in plain clothes and that his efforts to board the vehicle were resisted by the appellant who did not know that he was a public servant. It was submitted that the question of the appellant having any *animus* or intention to commit murder therefore did not arise.

8. Mr. Gopal Jha, appearing for the State urged the Court not to interfere with the concurrent findings and conviction recorded by the Trial Court and the High Court. He submitted that both the courts carefully weighed the evidence and concluded that the appellant deliberately pushed SI Tiwari when he boarded the truck. What is more, the appellant had also threatened to kill him if SI Tiwari interfered with the movement of the truck. When SI Tiwari did not heed and actually boarded the truck, the appellant, in a cold-blooded manner, pushed him out, and instead of stopping the truck, deliberately ran over SI Tiwari. The medical evidence also substantiated the prosecution version that the truck had run over SI Tiwari since his body disclosed multiple injuries, including ruptured spleen and intestines and that his skull had cracked open. It was submitted that the arguments on behalf of the appellant with respect to contradictions in the depositions of the witnesses could not outweigh the overall effect of the evidence led before the Court which clearly showed that SI Tiwari was pushed and deliberately ran over by the appellant. These, submitted, the learned counsel, established the intention to kill beyond reasonable doubt.

Analysis and Conclusions

9. Having carefully considered the record, the evidence of the trial court and the High Court, as well as the contentions made before this court, the only question which arises is as to the precise nature of the criminal liability of the appellant. There can be no serious dispute about the occurrence of the incident; all the eye witnesses – especially PW-2 deposed about the receipt of information about a speeding truck which had run through a Forest Department barrier and which was also involved in an incident with a motorcycle. SI Tiwari was alerted about this information and therefore positioned himself along with a few others, on the road. The evidence also discloses that the incident occurred in the close vicinity of a police station. By the side of the police station, there was a medical store. The incident apparently occurred at 09.45 P.M. according to the eye witnesses; in any case, the copy of the First Information Report reveals that it was recorded at 10:10 PM; it reflects the time of the incident to be 9:50 PM. There is some contradiction between the statements made during the investigation by the prosecution witnesses about the source of light: PW-2 admitted that he had not mentioned about any light and that he deposed about it for the first time in court and that he could identify the accused from a distance of about 50 feet due to the light source within the truck's cabin. There cannot be serious dispute on this aspect because there is no argument that the appellant was in fact driving the truck. What is more important however, is the exact sequence of events. The depositions of PW-2, PW-14 and PW-15 are consistent in that the truck had slowed and that SI Tiwari asked the appellant to stop it. When the appellant did not pay heed, SI Tiwari attempted and did board the truck. The appellant at that point allegedly pushed SI Tiwari. This point becomes crucial because the witnesses consistently deposed that SI Tiwari boarded the left side of the truck. If so, the accused would have had to use both his hands depending on how secure SI Tiwari was in the truck. However, PW-2's deposition discloses that the accused appellant continued to drive with his right hand and used his left hand to push SI Tiwari.

10. The High Court, we notice, did not go by the prosecution version entirely and observed in the impugned judgment that SI Tiwari fell off the truck on account of "excessive speed of the truck". If that is the position, the prosecution's version that the appellant pushed him and deliberately ran over SI Tiwari is implausible. The deposition of PW-10

A says that the appellant on being asked to stop had in fact slowed the truck after which a short altercation with SI Tiwari took place and then the deceased boarded the truck. PW-10 also deposed that the truck was driven *"in an oblique manner"*. Given all these factors, the propensity of the eye witnesses, PW-2, PW-10, PW-14 and PW-15 to improve upon the actual incident and introduce exaggerations cannot be ruled out
B as they were the deceased's colleagues and subordinates. There can however, be no doubt that the incident broadly occurred in the manner the prosecution alleged: upon receipt of the information of the truck being involved in a previous incident with the forest department barrier, SI Tiwari positioned himself along with others in front of the police station.
C When the appellant arrived at the spot in the truck, SI Tiwari gestured him to stop. Momentarily, he stopped down; after this SI Tiwari boarded from the left side of the truck. It is after this point that the prosecution version seems improbable and somewhat riddled with contradictions. If one considers the fact that at least two eye witnesses turned hostile and that depositions of PW-2 and PW-10 disclose clear improvements, much
D importance cannot be given to the words uttered by the appellant to SI Tiwari, warning that if he tried to board, he would be killed. Likewise, there is no discussion about the map or the course that the truck took after SI Tiwari fell from the truck, i.e., whether it speeded up and that the appellant intended to drive over and crush SI Tiwari, and that the
E position where SI Tiwari fell was known by the appellant to be within the line of the rear tyre of the moving truck.

11. The question of whether in a given case, a homicide is murder[3], punishable under Section 302 IPC, or culpable homicide, of either description, punishable under Section 304 IPC has engaged the attention
F of courts in this country for over one and a half century, since the enactment of the IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings by this court. The use of the term "likely" in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300 IPC which defines murder, however refrains from
G the use of the term *likely,* which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide

[3] Sections 299 and 300 IPC define the two offences. They are extracted below :
299. Culpable homicide*.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause*
H

and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

---

death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented. Explanation

Explanation 3.—The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

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

Secondly —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be in

-flicted 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.

Illustrations

****

****

******

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the

A 12. The decision in *State of Andhra Pradesh v Rayavarapu Punnayya & Anr*[4] notes the important distinction between the two provisions, and their differing, but subtle distinction. The court pertinently pointed out that:

B *"12. In the scheme of the Penal Code, "culpable homicide" is genus and "murder" its specie. All "murder" is "culpable*

---

death of any other person by mistake or accident. The above exception is subject to the following provisos:—

First —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

C *Secondly —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

Thirdly —That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

****

D *******

******

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Illustration Z attempts to horsewhip A, not in

E *such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the a ssault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.*

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers

F *given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

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 having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or

G *commits the first assault.*

Exception 5.—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.

Illustration A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder."

H [4] 1976 (4) SCC 382

homicide" but not vice- versa. Speaking generally, "culpable homicide" sans "special characteristics of murder", is "culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the greatest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304..

13. The academic distinction between "murder" and "culpable homicide not amounting to murder" has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300."

13. The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in *Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh*[5]. This court observed that:

"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

[5] (2006) 11 SCC 444

A *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*
B *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.*
C *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*
D *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*
E *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.*
F *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."*

14. Coming back to the facts of this case, as observed earlier,
G there can be no serious dispute that the prosecution established the main elements of its factual allegations: the receipt of information of the breaking of the forest barrier; positioning of the deceased SI Tiwari, with a *posse* of policemen on the road; the identification of the appellant, as one who drove the truck; gesturing by the deceased to the appellant to stop the truck; the latter slowing down the vehicle; attempt by the SI to board the

H

vehicle, and his being shaken off the truck, on account of the driver refusing to stop, and, on the other hand, speeding the vehicle. Even if the prosecution version that the appellant having threatened to kill the deceased were to be accepted, one cannot set much store by it, because no motive or no *animus* against the deceased was proved. A general expression of the extreme threat, (without any real intention of carrying it, since the truck was not laden with any contraband[6] or was not used for any illegal or suspect activity), cannot be given too much weight. What is of consequence, is that upon the deceased falling off the truck, the appellant drove on. Here, the prosecution established that the truck was driven, without heed; however, it did not establish the intention of the driver (i.e. the appellant) to run over the deceased. This point, though fine, is not without significance, because it goes to the root of the *nature of the intention.* Did the appellant intend to kill SI Tiwari? We think not. Clearly, he *knew* that SI Tiwari had fallen off; he proceeded to drive on. However, whether the deceased fell in the direction of the rear tyre, of the truck, or whether he fell clear of the vehicle, has not been proved; equally it is not clear from the evidence, that the appellant knew that he did. What was established, however was that he did fall off the truck, which continued its movement, perhaps with greater rapidity. This does not prove that the appellant, with deliberate intent, drove over the deceased and he knew that the deceased would have fallen inside, so that the truck's rear tyre would have gone over him. In these circumstances, it can however be inferred that the appellant intended to cause such bodily injury as was likely to cause SI Tiwari's death.

15. All the essential elements show that the appellant did not have any previous quarrel with the deceased; there was lack of *animus.* The act resulting in SI Tiwari's death was not pre-meditated. Though it cannot be said that there was a quarrel, caused by sudden provocation, if one considers that the deceased tried to board the truck, and was perhaps in plain clothes, the instinctive reaction of the appellant was to resist; he disproportionately reacted, which resulted in the deceased being thrown off the vehicle. Such act of throwing off the deceased and driving on without pausing, appears to have been in the heat of passion, or rage. Therefore, it is held that the appellant's conviction under Section 302 IPC was not appropriate.

[6] In fact the owner of the truck deposed during the trial.

A 16. Section 304 IPC[7] Code provides punishment for culpable homicide not amounting to murder (under Section 299 IPC). In the facts of the present case, this court is of the opinion that the appellants should be convicted for the offence punishable under the first part of Section 304 IPC, as he had the intention of causing such bodily harm, to the deceased, as was likely to result in his death, as it did. Having regard to
B these circumstances, the conviction recorded by the courts below, is altered to one under Section 304 Part I, IPC. The sentence too is therefore modified - instead of rigorous imprisonment ("RI") for life, the appellant is hereby sentenced to 10 years' RI. The direction to pay fine, is however, left undisturbed.

C 17. The appeal succeeds and is allowed in the above terms. No costs.

Ankit Gyan Appeal allowed.

---

[7] ***304. Punishment for culpable homicide not amounting to murder***.—*Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.."*