

**Mobin @ Sonu vs.state**

**Mobin @ Sonu vs.state**

**SooperKanoon Citation :** [sooperkanoon.com/1214031](http://sooperkanoon.com/1214031)

**Court :** Delhi

**Decided On :** Apr-07-2018

**Appellant :** Mobin @ Sonu

**Respondent :** State

**Advocate for Def. :** Ms. Aashaa Tiwari

**Advocate for Pet/Ap. :** Ms. Saahila Lamba

**Judgement :**

\$~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 1195/2015 Date of Decision:-

"7th April, 2018 MOBIN @ SONU ..... Appellant Through: Ms. Saahila Lamba, Advocate STATE versus Through: Ms. Aashaa Tiwari, APP ..... Respondent SI Kawaljeet Singh, PS Kashmere Gate CORAM: HON'BLE MR. JUSTICE SUNIL GAUR HON'BLE MR. JUSTICE C.HARI SHANKAR JUDGMENT (ORAL) % C. HARI SHANKAR, J1 The impugned judgment, dated 11th August, 2015, convicts the appellant, under Section 302 of the Indian Penal Code (hereinafter referred to as the IPC), for committing the murder of Akash, and sentences him to imprisonment for life, along with fine of 5,000/-, with six months simple imprisonment default sentence. It also extends, to the appellant, the benefit under Section 428 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C).

2. The case of the prosecution, as contained in the charge sheet, Crl Appeal 1195 of 2015 Page 1 of 67 dated 27th March, 2014, submitted by the prosecution to the Court of the learned Metropolitan Magistrate (hereinafter referred to as the learned MM) is set out as under:

2. 1 Consequent on receipt of DD No.35A (PW-16/A), SI Ashok Kumar (PW-16) and Const. Pawan (PW-12) reached a spot near the Jat Fauji Dharamshala, Jamuna Bazar, Kashmere Gate, where they found one person lying on the road, in an injured condition, near a white bus. HC Gajender (PW-11) was also present at the spot. Photographs of the injured victim were taken, whereafter he was immediately conveyed to the Sushruta Trauma Centre (hereinafter referred to as the Hospital) in the CATS Ambulance. The Mobile Crime Team was called to the spot. Leaving HC Gajender (PW-11) to guard the site where the injured victim had been found, SI Ashok Kumar (PW-16) and Const. Pawan (PW-12) proceeded to the Hospital, where MLC No.1850

was drawn up by Dr. Girish Chandra Prabhat, Medical Officer, in which it was recorded that, the patient (unknown, 35 years of age) was brought in an unconscious condition, and that on examination, no pulse, blood pressure, or respiration could be detected. It was further noted that immediate efforts for Cardio Pulmonary Resuscitation (CPR) were started, but the patient could not be revived. Accordingly, the patient was declared brought dead. The gross injury examination of the victim recorded that he had suffered (i) a penetrating wound, 6 x 3 cms on the left side of his chest, (ii) 3 x 1 cms cut injury on the left side of his lower lip, (iii) deep cut Crl Appeal 1195 of 2015 Page 2 of 67 injury, 10 x 5 cms on the left side of his neck, (iv) 3 x 2 cms penetrating wound over the left side of his lower chest , (v) 4 x 2 cms penetrating wound on his right scapular region and (vi) cut injury on his left thumb. It was further noted that the cause of death would be ascertained after autopsy. 2.2 Despite efforts, no eye witness was found available at the Hospital. However, on the return of SI Ashok Kumar (PW-16) and Const. Pawan (PW-12) to the place where the victim had been found, Abhishek Kumar Pandey (PW-3), the complainant who had conveyed information, of the occurrence, to the police, arrived at the spot. His statement was recorded, wherein he stated that (i) he was running a dhaba (food stall) nearby, (ii) on that day, i.e. 26th March, 2014, at about 11.30 pm, while he was working at his dhaba, he saw that the appellant

(who used to stay on the footpath near the shop, and whom he knew well) had caught hold of the deceased Akash, and was loudly threatening that he would not leave him alive, whereafter the appellant stabbed Akash repeatedly with a knife, as a result of which Akash fell to the ground, covered with blood, (iii) he knew Akash, who used to work as a labourer close to his shop, (iv) the police arrived at the shop a short while later and conveyed Akash to the Hospital and (v) his statement, as recorded by the Police, had been read over to him and was correct.

2.3 As the evidence in the form of the MLC (PW-19/X) read with the statement of Abhishek Kumar Pandey (PW-3) made out a CrI Appeal 1195 of 2015 Page 3 of 67 case of murder under Section 302 IPC, tehrir was accordingly drawn up by SI Ashok Kumar (PW-16), which was duly registered by Const. Pawan (PW-12). Photographs of the spot of occurrence were taken, whereafter the Crime Team Report (SOC No.369/14) was handed over, to him, by SI Nagender (PW-5), In-charge of the Mobile Crime Team. The site plan of the area was prepared by SI Ashok Kumar (PW-16) with the help of the eye witness Abhishek Kumar Pandey (PW-3). Thereafter, SI Ashok Kumar (PW-16) took a sample of the blood, lying on the spot, on a gauze, as well as blood stained earth and earth control. 2.4 SI Ashok Kumar (PW-16) then proceeded to the Hospital, with his team, where the blood stained clothes of the deceased Akash were sealed and seized, and documents prepared for inquest. The dead body of Akash was preserved in the Sabzi Mandi mortuary. The exhibits were consigned to the Malkhana. 2.5 On further investigation, PW-6 Alam was also traced, who stated that he knew the appellant and the deceased Akash well, as they both stayed closeby, and used to collect kabad, which was often sold at his shop. He stated that, since some time, there had been bad blood between the appellant and the deceased Akash, regarding their respective areas of operation, for collection of kabad. He further stated that the appellant was a known criminal, who had already suffered imprisonment, for murder, in several cases. On the basis of information provided by Alam, the CrI Appeal 1195 of 2015 Page 4 of 67 appellant was arrested from Khana No.011, and his Arrest Memo, Personal Search Memo and Conviction Slip prepared. 2.6 The disclosure statement of the appellant was recorded, in which he offered to produce the knife with which the murder of Akash had been committed. On the basis of information provided by the appellant in his disclosure statement,

SI Ashok Kumar (PW-

16) proceeded, with his staff, to Saleemgarh Fort, from where the appellant retrieved a blood stained knife as well as the T-shirt and sandals worn by him while committing the crime from a spot near the eastern side of the Fort. The recovered knife was found to be of length 30.4 cms, with blade length 18.0 cms and handle length 12.4 cms, with an inscription, CONCORD STAINLESS RUST FREE INOX, ORIGINAL, INNOVATIVE QUALITY, STAINLESS STEEL. The knife was wrapped in a white cloth and a pullanda prepared. Similar separate pullandas were prepared in respect of the T-shirt and sandals. The three pullandas were marked A B and C, and sealed with a seal marked BS. The pullandas along with the photographs taken on the spot, were deposited in the malkhana. Thereafter, Pointing out Memos were prepared, regarding the identification, by the appellant, of the place of occurrence. 2.7 After making several fruitless efforts to have the deceased identified, his postmortem was carried out on 4th April, 2014. The post-mortem report (Ex. PW-9/A) stated that six injuries No, (5), Crl Appeal 1195 of 2015 Page 5 of 67 (6), (7), (8), (9) and (10), found on the body of the deceased Akash, could possibly have been caused by the recovered knife. 2.8 The exhibits were, thereafter, dispatched to the Forensic Science Laboratory (FSL) for examination. 2.9 No further eye witnesses were found. Scaled site plan (Ex. PW-16/K) was prepared by Insp. Mahesh Kumar Draftsman, Crime Branch (PW-10). 2.10 The aforementioned charge sheet was filed, before the learned MM on 27th March, 2014. Subsequently, the reports obtained from the FSL were also placed on record. The Evidence 3. We proceed to examine the evidence on record. 3.1 PW-3 Abhishek Kumar Pandey stated, in his examination in chief, on 27th August, 2014, that, (i) on 26th March, 2014, at about 11.30 PM, while he was present at his shop, he saw the appellant fighting with the deceased Akash, threatening aaj main tujhe kisi bhi haalat mein zinda nahin chhodoonga (I will not leave Akash alive today), (ii) the appellant was stabbing Akash indiscriminately, (iii) some time later, the police reached there and Akash was removed to the Hospital, (iv) the Police recorded his Crl Appeal 1195 of 2015 Page 6 of 67 statement as Ex. PW-3/A, (v) the Police prepared the site plan in his presence which was exhibited as Ex. PW-3/B, (vi) exhibits of the blood, earth control and blood stained earth were taken into possession as Ex. PW-3/C, (vii) the appellant was subsequently

arrested, vide Arrest Memo dated 27th March, 2014 (Ex. PW-3/D), which also bore his (i.e. Abhishek Kumar Pandey's) signature and (viii) the personal search memo of the appellant was exhibited as Ex. PW-3/E. 3.2 In his cross-examination, PW-3 Abhishek deposed that (i) he worked till midnight at the dhaba, the owner of which was Vishnu Dutt Sharma, (ii) at the time of incident, two to three persons were having food at the dhaba, (iii) there was a white bus, standing about 15 in front of his dhaba, in which the driver and conductor of the bus were sleeping, (iv) at the time of incident, the appellant was wearing a maroon capri and half white baniyan, (v) he knew the appellant for the past three to four years, as he used to eat food from his dhaba, (vi) he knew the deceased Akash for the past three to four months, (vii) he had never seen any earlier quarrel between the appellant and the deceased Akash, and, to his knowledge, there was no enmity between them, (viii) he had been working at the dhaba for about five to six days, prior to the incident, (ix) no one telephoned the police regarding the incident; however, two persons from the Police came to the office next door, and learnt about the incident on seeing a large number of people gathered at the site, (x) people were roaming in the area, and were also sleeping on the footpath near his shop, at the time of incident, (xi) normally, by the time of closure of his shop at 12 midnight around eight to ten persons used to sleep on the footpath, (xii) he had not seen the appellant sleeping on the footpath, since the past three years, (xiii) though he had been working at the dhaba since five to six days, he had been working at the nearby shop since six to seven years, and (xiv) the police arrived at the site within three to four minutes. 3.3 PW-3 Abhishek was recalled for further examination-in-chief, on 10th July, 2015, on which date the appellant, who had been arrested in the interregnum, was produced in Court. PW-3 correctly identified the appellant. He went on to state that he knew the deceased Akash as he used to work as labourer near the spot in the same locality and knew the appellant prior to the incident as he used to stay on the patri situated in the same locality where the incident had taken place. PW-3 further identified the gauze and the blood stained earth which had been earlier recovered and seized by PW-16 SI Ashok Kumar in his presence. PW-3 was also shown a knife (Ex.P-6), taken out from a parcel sealed with the seal of the court, which he identified as the knife using which the appellant had injured the deceased Akash. In his cross

examination, PW-3 admitted that the knife had not been recovered in his presence. 3.4 The Arrest Memo (Ex.PW-3/D) merely noted that the appellant had been arrested at 4.15 PM on 28th March, 2014, by Insp. Bijender Singh (PW-19), and that the appellant was a Crl Appeal 1195 of 2015 Page 8 of 67 vagabond who used to stay at the footpath (patri) at Jamuna Bazar. It was further noted that the appellant was arrested for having been committed an offence under Section 302 of the IPC. The Personal Search Memo of the appellant (Ex. PW-3/E supra), which was signed by SI Ashok Kumar (PW-16) and Abhishek Kumar Pandey (PW-3), stated that, from the possession of the appellant, a bundle of bidis, a match box, and Rs.70/- in cash, were recovered. 3.5 PW-4 Const. Sudesh Kumar deposed, in his examination-in- chief, that he had taken six photographs of the site of crime, out of which only three could be developed, which were exhibited as Ex. PW-4/A (collectively). He further stated, in his examination-in- chief, on 27th August, 2014, that no finger prints or chance prints were found at the spot. 3.6 The deposition of PW-6 Alam may be reproduced, in extenso, as under: PW-6 Statement Sh. Alam, s/o Mohd. Anool, Age 25-26 years, R/o Jaat Fauzi Dharamshala, Jamuna Bazar, Delhi. On SA The accused present in the court is known to me. I also know the deceased Akash. Accused and Akash were dealing in rag pickers (kuda binane wale). Akash used to sell me the Kuda. There were some dispute between Akash and accused. I tried to pacify them but they did not pay any heed. I am running this business near Jaat Fauzi Dharamshala, Kashmere Gate. The incident had occurred on 26th of 2014. The month I do not recollect. I had gone to sleep and 10.30 pm. Next date I came to Crl Appeal 1195 of 2015 Page 9 of 67 know that the quarrel had taken place between accused and Akash in the night. I also came to know about the murder of Akash in the night by the accused. All the persons of the locality were whispering about the incident so I came to know about the murder of Akash. Witness correctly identified the accused present in the Court. At this stage, Ld. Addl. PP requests to cross examine the witness as he is resiling from his earlier statement made before the police. Heard. Allowed. XXX by Sh. V.K. Sharma, Ld. Addl. PP for State. Police had verified about his incident from me but my statement was not recorded by the police. I did not state to the police officials that I had seen the incident and I saw that at about midnight around 10.30 pm I heard noise and reached near the spot where a bus was standing. I saw that

Sonu was stabbing Akash and Sonu was uttering that he will not spare Akash and thereafter, Sonu stabbed on Akash and Akash fell down. Confronted with the statement Ex. PW6/A wherein it is so recorded. It is correct that I came to know that accused Mobin @ Sonu had murdered Akash as this information was spread in the whole locality. It is wrong to suggest that due to the fear of accused I am not stating the true facts in the court. XXX by Ms.Sunita Gupta, LAC for accused. It is wrong to suggest that there were no dispute between the accused and the deceased. It is wrong to suggest that I am deposing falsely at the instance of IO.

3.7 PW-7 Const. Omprakash deposed, in his examination-in- chief on 28th August, 2014, that, on 24th April, 2014, the MHCM had handed over, to him, the exhibits of the case, which he had Crl Appeal 1195 of 2015 Page 10 of 67 deposited at the FSL and obtained acknowledgement thereof. He further clarified that, so long as the exhibits remained in his custody, they were not tampered with.

3.8 PW-8 SI Pushpender deposed, in his examination-in-chief on 28th August, 2014, that he had joined the investigation, in the present matter, on 28th March, 2014 and that the appellant had been apprehended, by the raiding party, at Urdu Park, Meena Bazaar, near the Jama Masjid, on his being pointed out by PW-3 Abhishek Kumar Pandey. He further deposed that the appellant had made a disclosure statement, in which he disclosed that he could recover the weapon of offence, whereafter he led the Police party to a spot near the eastern wall of the Saleemgarh Fort, and pointed out the place where he had concealed the weapon of offence. He stated that the knife was recovered, from the said spot, at his instance, and that the clothes which had been worn by the appellant were also recovered therefrom, in his presence. He further stated that, on 29th March, 2014, the appellant had made a further disclosure statement in Police custody, which was reduced to writing. In his cross- examination by learned Counsel appearing for the appellant, PW-8 SI Pushpender deposed that the raiding party consisted of five members, namely the IO Insp. Bijender (PW-19) , SI Ashok Kumar Kumar (PW-16), Const. Sachin and PW-3 Abhishek Kumar Pandey (wrongly referred to as Anupam Pandey). Immediately, however, he clarified that, at the time of recovery, the complainant Abhishek Kumar Pandey was not with them. He further deposed Crl Appeal 1195 of 2015 Page 11 of 67 that, at the time of his apprehension, the appellant was sitting in a park, where 30 to 40 other persons were also sitting. He further

deposed that the appellant had made his disclosure statement at the Police Station, at about 5 pm on 29th March, 2014, and that no public person had been requested, by the IO, to join the investigation, either at the time of making of the said disclosure statement, or at the time of recovery. He further stated that no statement was recorded, by the IO, at the place of recovery. 3.9 PW-9 Dr. S. Lal, Specialist Forensic Medicine in the Subzi Mandi Mortuary, was the doctor who had performed the post- mortem on the deceased Akash. In his examination-in-chief on 9th September, 2014, he detailed the various injuries found on the body of the deceased Akash, as under: 1. Reddish abrasion 2 x 0.5 cm over the left side forehead placed 1.5 cm from the midline and 2 cm above the eye brow.

2. Reddish abrasion 2 x 1.8 cm over left side forehead just left to midline and 5 cm above the eye brow.

3. Reddish abrasion 2 x 0.5 cm on middle of forehead placed 2 cm above the apex of nose.

4. Reddish abrasion 3 x 2 cm over left cheek.

5. Incised wound 1.7 x 0.4 cm x muscle over left side chin placed 2.8 cm left to midline and 0.5 cm below the angle of mouth. The wound is obliquely placed.

6. Incised wound multiple intermingling to each other of size 10 Crl Appeal 1195 of 2015 Page 12 of 67 x 3 cm x skin deep over left side upper neck vertically placed, lower end of the wound placed 5 cm above the clavicle 2 cm from the midline. Incised wound 1.5 x 0.5 cm x skin deep over middle of neck 7. place 6 cm below the tip of chin.

8. Stab incised wound 6 x 0.4 cm x chest cavity deep over left side middle front of chest, horizontally placed, outer angle of wound is acute and in angle is blunt. The wound placed just below the nipple and 9.5 cm left to midline. The wound enter the chest cavity through 5th intercostal space in backward and downward direction to cut the upper lobe of left lung through and through. The total depth of the wound is about 12 cm and about 1 litre of blood seen in cavity.

9. Stab incised wound 3.7 x 0.4 cm x chest cavity deep over left side lower back of chest, obliquely placed, inner angle is acute and lower outer angle is blunt. The wound is placed 7 cm left to midline and 19 cm above the upper gluteal fold. The wound entered the chest cavity in downward and forward direction through 11 intercostal space in posterior aspect of chest and then perforate the diaphragm, left kidney and then give a nick in spleen. Total depth of the wound is about 8 cm.

10. Stab incised wound 3.2 x 0.4 cm x chest cavity deep over right side upper chest, obliquely placed, outer angle is blunt and either angle is acute. The wound placed 5.5 cm right midline and 10 cm below the right trapezoid fold. The wound entered the cavity 6 intercostal space on posterior aspect to perforate the right lung on upper lobe in lower aspect. Total depth of the wound is about 5 cm. PW-9 Dr. Lal deposed, in his evidence, that the cause of death was shock and haemorrhagic shock due to antemortem injury to the neck, chest and abdominal organs. He further deposed that, while Injuries Nos. 1 to 4 supra were caused by blunt force impact, CrI Appeal 1195 of 2015 Page 13 of 67 Injuries Nos. 5, 6, 7, 8, 9 and 10 were caused by a sharp edged weapon with a pointed tip, of which Injuries 6, 8, 9 and 10 were sufficient to cause death in the ordinary course of nature both individually and collectively. He estimated the time of death at about 8 to 9 days, as the body had been kept in cold storage. He proved his post-mortem report, which was exhibited as Ex. PW- 9/E. PW-9 further deposed that, on 11th April, 2014, an application had been received from Inspector Bijender Singh, SHO of PS Kashmiri Gate, along with sealed parcels, containing the alleged weapon of offence (knife), which were opened by him and the knife retrieved therefrom. He examined the knife, and the diagrammatic examination report prepared by him was exhibited as Ex. PW-9/B. He confirmed that, after examining the knife, he had opined that Injuries Nos. 5, 6, 7, 8, 9 and 10, referred to in his post- mortem report, could possibly have been caused by the knife which had been shown to him. 3.10 PW-11 HC Gajender stated, in his examination-in-chief on 9th September, 2014, that, on 26th March, 2014, at about 11:50 pm, while patrolling, he noticed that one person, smeared with blood, was lying on the road, in front of a white coloured bus, whereupon he informed the police by dialling 100. He further confirmed the arrival, on the spot, of SI Ashok Kumar (PW-16) and Const. Pawan (PW-12), soon thereafter, and of the removal, of the injured to the Hospital, by the Ambulance. He

further confirmed that he had been directed, by PW-16 SI Ashok Kumar, to remain at the spot to Crl Appeal 1195 of 2015 Page 14 of 67 safeguard the site. In his cross-examination by learned counsel for the appellant, PW-11 HC Gajender stated that the body of Akash was lying at a distance of 7 to 8 m from the bus and that, at that time, no person was inside the bus. He further confirmed that there was a dhaba situated 45 m from the body, and that the dhaba was open at the time. He clarified that he could not say whether, the time, the injured Akash was dead or alive, though attempts were made, by the persons in the ambulance, to administer first aid on the spot. He also confirmed that his statement had been recorded by the SI Ashok Kumar (PW-16).

3.11 PW-12 Const. Pawan deposed, in his examination-in-chief on 9th September, 2014, that, on 26th March, 2014, SI Ashok Kumar (PW-16) had received DD No.35-A and that he accompanied him to the spot of occurrence, where he saw one person lying in an injured condition in front of a white coloured bus. He confirmed that HC Gajender was also present at the spot, and that the CATS Ambulance reached the spot and conveyed the body of the injured to the Hospital. He further confirmed that he had accompanied SI Ashok Kumar (PW-16) to the Hospital, where the injured was declared as having been brought dead and that, later, after returning to the spot of occurrence, the statement of PW-3 Abhishek Kumar Pandey was recorded. He further stated that he had taken the original tehrir to the Duty Officer at the Police Station, who got the FIR recorded on the basis thereof, and that he handed over the computerised copy of the FIR and the Crl Appeal 1195 of 2015 Page 15 of 67 original tehrir to the SHO. He also confirmed the lifting of exhibits, from the spot, by the IO, as well as the parcelling and sealing thereof. During cross-examination by learned counsel for the appellant, PW-12 Const. Pawan stated that, after recording DD No.35-A, at the Police Station at about 11:50 PM, they left the Police Station and returned to the spot where the body of Akash had been found. He further stated that he had left the spot, with the original tehrir, at about 2:15 am, and returned by about 3:30 am.

3.12 PW-15 Ms. Poonam Sharma, Senior Scientific Officer, FSL, deposed, on 21st April, 2015, with respect to the analysis of the exhibits which had been submitted to the FSL in the present case. She confirmed that, on biological examination, blood was found on the gauze piece, the bloodstained earth, the earth control, the pants, the shirt, the wallet, the comb, the T-shirt, the sandals, the

alleged weapon of offence (i.e. the knife) and the gauze piece. She further stated that DNA was isolated from the gauze piece exhibited as Exhibit 10, which was preserved in the laboratory. Serological examination, it was confirmed, had detected human blood on the gauze piece, the bloodstained earth, the earth control, the T-shirt, the sandals, the knife and the gauze piece exhibited as Exhibit 10. She further deposed that blood grouping, by serological examination, resulted in reaction only with respect to the blood found on the gauze and the T-shirt, which were found to be of O group. The serological report of PW-15 was exhibited as Ex. PW- 15/B. Crl Appeal 1195 of 2015 Page 16 of 67 3.13 PW-16 SI Ashok Kumar deposed, in his examination-in- chief on 18th May, 2015, regarding the above events. Inasmuch as his deposition was substantially similar to the deposition of other witnesses already cited hereinbefore, no detailed allusion is required thereto. He confirmed, however, that, on his return to the spot of occurrence from the hospital, he was met by PW-3 Abhishek Kumar Pandey, who claimed to have witnessed the incident and that, therefore, he recorded his statement exhibited as Ex. PW-3/A. He stated that the said statement was read over to PW-3, who affirmed it as correct. As the statement of PW-3 Abhishek Kumar Pandey, along with the perusal of the scene of the crime, revealed commission of an offence under Section 302 IPC, PW-15 stated that he prepared a rukka (Ex. PW-16/B), which was handed over to Const. Pawan (PW-12), for registration of FIR. After registration, copies of the FIR and original rukka, he stated, were handed over to Inspector Bijender Singh, the SHO (PW-19), who assumed further investigation of the case as IO. As regards apprehending of the appellant, PW-16 deposed that, on 28th March, 2014, the appellant was apprehended from Urdu Park, at the instance of PW-3 Abhishek Kumar Pandey. He further stated that, during interrogation, the appellant disclosed that he could get the knife, used by him in commission of the crime, as well as the T- shirt and sandals worn by him on the said occasion, which had been stained with blood, recovered, from the wall situated behind the Saleemgarh Fort. After recording of the said disclosure Crl Appeal 1195 of 2015 Page 17 of 67 statement (Ex. PW-16/G), the appellant, as per the deposition of PW-16, accompanied PW-16 and his other team members to the eastern side of the Saleemgarh Fort where, from a hole in the wall, the appellant extracted the bloodstained knife, a bloodstained T- shirt of skyblue

colour and a pair of cream and black coloured sandals of Paragon make. It was further deposed that the T-shirt was of TQS brand, and was having bloodstains; similarly, the pair of sandals also had bloodstained soil adhering to the bottom of the soles. It was further deposed, by PW-16, that, thereafter, the appellant escorted them to the place of incident, where he had committed the murder of Akash, and pointed out the said spot, in respect whereof Pointing Out Memo (Exhibit PW-16/M) was prepared, which was signed by him. The various exhibits, including the parcel containing the skyblue coloured T-shirt and sandals, which had bloodstains, were shown to PW-16 and identified by him as those recovered at the instance of the appellant, and stated, by him, to have been worn by him at the time of commission of the crime. PW-16 also identified the knife as the one which was recovered at the instance of the appellant and disclosed, by him, to have been used by him in the commission of the murder of the deceased Akash. PW-16 SI Ashok Kumar was recalled for cross- examination by learned counsel for the appellant, on 18th May, 2015, during the course of which he stated that, at the time when they had reached near the Urdu Park on 28th March, 2015, searching for the appellant, several public persons were sitting in the park and that, though the IO requested them to participate in the Crl Appeal 1195 of 2015 Page 18 of 67 investigation, none of them agreed to do so. He also confirmed that the driver and the helper of the bus, near which the body of Akash had been found, were sleeping inside the bus. 3.14 It would be relevant, before proceeding further, to reproduce the translated version of DD No 35-A (Ex. PW-16/A), drawn up by ASI Devender Kumar at PS Kashmere Gate at 11:50 p.m. on 26th March, 2014, as under: This entry is being made at 11:50 PM. That, at this time, the wireless operator has communicated this information via intercom. That one man is lying injured at Yamuna Bazar near Jat Dharamshala Kashmere Gate. L/Ct Sandhu 8011/PCR999936062 entered the information in the roznamcha, which was handed over to Const. Power and SI Ashok Kumar, who were there on the spot. 3.15 The above recitation, of the happenings of 26th and 27th of March, 2014, stands vouchsafed by the deposition of PW-17 HC Harpal Singh, who had recorded the FIR, in the case, at 2:30 AM on 27th March, 2014, on the basis of the rukka sent by SI Ashok Kumar (PW-16) to Const. Pawan (PW-12). PW-17 HC Harpal Singh further confirmed that, after registration of the case, he handed over

the copy of the FIR and the original rukka to Const. Pawan, for handing over the same to Insp. Bijender (PW-19), who was, then, SHO of the Kashmere Gate Police Station, and who had taken over the investigation himself as IO. 3.16 PW-18 HC Devender, who was posted at PS Kashmere Gate, confirmed, in his examination-in-chief on 19th May, 2015, the fact Crl Appeal 1195 of 2015 Page 19 of 67 of deposit, by SI Ashok Kumar (PW-16), with him, of three sealed pullandas on 27th March, 2014, three sealed pullandas on 28th March, 2014, and two sealed pullandas on 4th April, 2014 which were, in turn, handed over, by him, on 24th April, 2014, to Const. Omprakash (PW-7), as directed by the IO Insp. Bijender, for depositing the same in FSL Rohini. He further deposed that, after depositing of the said exhibits in FSL Rohini, Const. Om Prakash handed over, to him, the receipt of such deposit, which was duly diarised by him. It was further confirmed, by him, that, on 11th March, 2015, the sealed exhibits, sealed with the seal of FSL, and another sealed envelope, containing the result of the analysis, was deposited, by him, with Const. Kuldeep Singh, and requisite entry made, in this regard, in the Register. He categorically denied the suggestion, put to him in cross-examination by learned counsel for the appellant, that the property was tampered with, while in his custody. 3.17 The last deposition was that of the IO Inspector Bijender, testifying as PW-19, on 27th May, 2015. He confirmed the above sequence of events, by deposing, in his examination-in-chief, that (i) at 11:50 PM on 26th March, 2014, while he was posted at PS Kashmere Gate as Inspector, he received information, from the PCR, that one person was lying in injured condition near the Jat Dharamshala, Kashmere Gate, whereupon DD No 35-A (Ex. PW- 16/A) was recorded in the Police Station, and marked to SI Ashok Kumar (PW-16), for enquiry, (ii) SI Ashok Kumar, thereafter, Crl Appeal 1195 of 2015 Page 20 of 67 went, with Const. Pawan (PW-12) to the site of crime, and explained the facts to him over telephone, whereupon he also reached the spot, (iii) in the interregnum, the injured person had already been removed, to the Hospital, by the CATS Ambulance, (iv) he, thereafter, called the Crime Team, which reached the spot, (v) he instructed SI Ashok Kumar (PW-16) to proceed to the Hospital along with Const. Pawan (PW-12), and instructed HC Gajender (PW-11) to remain at the spot, (vi) sometime later, SI Ashok Kumar and Const. Pawan came back to the spot where they had found the injured person, where SI Ashok Kumar recorded

the statement of Abhishek Kumar Pandey (PW-3), who claimed to be an eyewitness to the incident (Ex. PW-3/A), (vii) SI Ashok Kumar, thereafter, prepared a rukka (Ex. PW-16/B), which was handed over to Const. Pawan, for getting the FIR registered, (viii) after doing so, Const. Pawan handed over, to him, i.e. the IO inspector Bijender (PW-19), the FIR and rukka, as he had assumed further investigation of the case, (ix) a copy of the MLC was also handed over, to him, by SI Ashok Kumar (PW-16), (x) the Crime Team prepared its report, took photographs, and a copy of the said report (Ex. PW-5/8) was given to him, (xi) samples of the blood lying at the spot (in a gauze), bloodstained earth, and earth control were seized and sealed, (xii) thereafter, he went to the Hospital with SI Ashok Kumar (PW-16) and the complainant Abhishek Kumar Pandey, where the clothes of the deceased Akash were handed over, to him, in one sealed pullandas, by the doctor, which was taken into possession, by him, vide Memo Ex. PW-16/C, (xiii) Crl Appeal 1195 of 2015 Page 21 of 67 other belongings of the deceased Akash were also handed over, to him, by the doctor, which were taken into possession, by him, vide Memo Ex. PW-16/P, (xiv) the case property was, thereafter, deposited, by him, with the MHCM and, the next morning, the dead body of Akash was shifted to the Hospital by SI Ashok Kumar (PW-16) on his directions, (xv) on 28th March, 2014, he, along with SI Ashok Kumar, SI Pushpender (PW-8), Const. Sachin and the complainant Abhishek Kumar Pandey (PW-3) proceeded in search of the appellant and were ultimately able to apprehend him near Gate No 2 of the Jama Masjid at Urdu Park, (xvi) the appellant was, thereafter, interrogated by him, whereupon he confessed his guilt and disclosed that he could have the knife, with which he had committed the crime, as well as the T-shirt and sandals worn by him on the said occasion, recovered, and that they would be stained with blood, (xvii) the appellant was, thereafter, arrested vide Arrest Memo and Personal Search Memo exhibited as Exhibits PW-3/D and PW-3/E respectively, (xviii) the appellant, thereafter, took them to Saleemgarh Fort where, from a hole in the wall on the eastern side, he retrieved a bloodstained knife, bloodstained sky-blue T-shirt and one pair of cream-and-black coloured sandals of Tarragon make, (xix) the said items were, thereafter, wrapped in separate packages, converted into pullandas and sealed with the seal of the IO, (xx) the appellant, thereafter, took them to the place of

incident, where he had committed the murder of Akash, and Pointing Out Memo Ex. PW-16/M was prepared accordingly, (xxi) the appellant was, thereafter, produced Crl Appeal 1195 of 2015 Page 22 of 67 in court on 29th March, 2014, and was remanded to one days custody, (xxii) he, thereafter, recorded the supplementary disclosure statement (Ex. PW-8/B) of the appellant, (xxiii) on 30th March, 2014, the appellant was remanded to JC, (xxiv) after getting the post-mortem conducted, the dead body was cremated, and efforts, to identify it, renewed, (xxv) the post-mortem report (Ex. PW-9/8) and the subsequent opinion of the doctor who conducted the post-mortem (Ex. PW-9/B), after showing her the weapon of offence, were obtained, and the sealed pullandas of the weapon of offence deposited with the MHCM, (xxvi) on 4th July, 2014, as per his instructions, Const. Om Prakash (PW-7) took the sealed exhibits of the case from the MHCM for depositing with the FSL and, after so depositing the exhibits, Const. Om Prakash handed over the acknowledgement slip issued by the FSL to the MHCM, and (xxvii) the FSL reports (Ex. PW-15/A and PW-15/B), which were obtained later, were filed with the Court. The exhibits, sealed with the seal of the court - including the knife, sandals and T-shirt - were shown to PW-19 and identified by him. During cross-examination by learned counsel for the appellant, PW-19 deposed that, while Saleemgarh Fort was a public place, the place of recovery was deserted, with an abandoned park nearby. Statement of the Appellant under Section 313 of Cr.P.C.318 The statements of the appellant, under Section 313 of the Cr.P.C., were recorded on 3rd June, 2015 and 10th July, 2015. The Crl Appeal 1195 of 2015 Page 23 of 67 appellant either denied the allegations made against him or professed complete ignorance regarding the incident, contending that he had been falsely implicated in the case. Impugned Judgement of the learned ASJ4 Trial Court has, in the impugned judgement dated 11th August, 2015, reasoned thus: (i) The evidence of PW-3 Abhishek Kumar Pandey, who was an eyewitness to the crime, was believable. The plea, advanced by learned counsel for the appellant, to the effect that the deposition of PW-3 was inconsistent, as, at one point, he said that he had known the appellant for the last three to four years, as he was eating food from his dhaba, and had known the deceased Akash for three to four months, while, at another, he admitted to having been working at the dhaba only since five to six days prior to the occurrence of the incident, was bereft of

substance, as PW-3 had clarified, in cross examination, that, while he had been working at the dhaba since 5 to 6 days prior to the incident, he had been working at a nearby shop six to seven years prior thereto and, therefore, knew the appellant as well as the deceased Akash very well. It could not, therefore, be said that there was any material contradiction in the statement of PW-3. Rather, PW-3 narrated the manner in which the appellant, Crl Appeal 1195 of 2015 Page 24 of 67 after threatening the deceased Akash, repeatedly stabbed him with his knife until he fell to the ground. He also identified the exhibits lifted from the spot. As per the site plan (Ex. PW-10/A), the distance between the dhaba where PW-3 worked and the spot where Akash had fallen, was 10.3 m with no visible obstruction between the two points, thereby enabling PW-3 to view the incident clearly. His presence at the dhaba was also consistent with the requirements of his job. There was nothing to indicate that PW-3 was deposing falsely. (ii) Moreover, PW-3 was corroborated by PW-6, who, too, deposed that the appellant and the deceased were working as rag pickers in the area, and were having a long- standing quarrel regarding their areas of operation. PW-6 further deposed that he had made efforts to pacify the appellant and the deceased Akash, but had remained unsuccessful. The fact of dispute between the appellant and the deceased Akash, therefore, vouchsafed saved by PW-6 as well. The motive for the appellant to eliminate the deceased Akash, thereby, stood established. (iii) The events relating to investigation, arrest of the appellant and recovery effected at his instance, also stood established by the evidence of various witnesses. PW-11 HC Gajender was the first Police official who saw the deceased Crl Appeal 1195 of 2015 Page 25 of 67 in an injured condition, while he was on patrolling duty. He alerted the PCR, whereupon PW-16 SI Ashok Kumar and PW-12 Const. Pawan arrived at the spot. The CATS Ambulance also reached, and conveyed the injured to the Hospital. PW-11 was left to guard the site, whereas the others proceeded to the Hospital. He stood by his version in his cross examination, and stated that he had remained at the spot for 3 to 3 hours. His version was also corroborated by DD No 35-A, which was recorded on the basis of the information given by him. As per the said DD entry, information had been received on 26th March, 2014 at 11:50 p.m. about a man lying injured near the Jat Dharamshala, Kashmere Gate, Yamuna Bazar. (iv) A copy of the said DD No 35-A had been handed over to Const. Pawan (PW-

7), whose statement, too, vouchsafed the above incidents. PW-12 stated that, on receiving the said DD No 35-A, he, along with SI Ashok Kumar (PW-16), went to the spot where the injured was lying, and found that HC Gajender was already present there. PW-12, too testified to the conveying, of the injured Akash, to the Hospital by the CATS Ambulance, and to his proceeding, to the Hospital, immediately thereafter, along with SI Ashok Kumar (PW- 16). He further deposed that, from the Hospital, they returned to the spot where they had found the injured Akash, where the statement of PW-3 Abhishek Kumar Pandey was CrI Appeal 1195 of 2015 Page 26 of 67 recorded, on the basis thereof he had had the FIR lodged. He deposed with respect to lifting of exhibits, by the IO, from the spot and to the sealing, of the said exhibits in separate parcels. The Seizure Memo (Ex. PW-3/C) was signed by him. (v) There were separate, and consistent, DD entries, relating to the conveying of the injured Akash to the Hospital, his being declared brought dead by the concerned doctor at the Hospital, forwarding of the information to PW- 16 SI Ashok Kumar and to the SHO for necessary action, sending of the copy of the FIR to the IO at the spot and two senior police officers and the Area Magistrate through Special Messenger. (vi) The version of PW-12 Const. Pawan stood corroborated by that of PW-16 SI Ashok Kumar, who had reached the spot along with Const. Pawan and found the injured lying in front of the bus. SI Ashok Kumar further took photographs (Exhibits PW-1 to PW-16/6) of the injured Akash and the place of incident, using his mobile phone. He also corroborated the version of Const. Pawan in respect of the dispatch of the injured Akash to the Hospital, their consequent visit thereto, their return to the spot, the recording of the statement of PW-3 Abhishek Kumar Pandey, the sending of the rukka, receipt of the FIR and CrI Appeal 1195 of 2015 Page 27 of 67 lifting and sealing of the exhibits. He further deposed that, on 28th March, 2014, he had joined investigation with the IO, and had apprehended and arrested the appellant from Urdu Park, near the gate of the Jama Masjid. He also deposed with respect to the disclosure statement of the appellant, and the consequent retrieval, at the instance of the appellant, of the knife with which the offence had been committed and the T- shirt and sandals worn by the appellant at the time of commission of the said offence. He identified the exhibits when shown to him in court. Though PW-16 SI Ashok Kumar stated that the legs of the injured

Akash were towards the bus, and PW-12 Const. Pawan had stated that the head of the deceased was towards the bus, in the absence of any other incoherence between their statements, this had to be regarded as a minor discrepancy. Failure to note minor details of the spot did not materially affect the merits of the case. (vii) PW-17 HC Harpal Singh, too, supported the above version, as he was the duty officer who had recorded the FIR under Section 302 of the IPC, which was taken by Const. Pawan for handing over to the SHO at the spot. PW-17 also produced the original roznamcha Register relating to DD entries No.35-A, 4-A, 11-A and 14-A. (viii) The injuries suffered by the deceased Akash, and their CrI Appeal 1195 of 2015 Page 28 of 67 sufficiency to cause death in the ordinary course of nature, stood borne out by the post-mortem report (Ex. PW-9/A) and the evidence of PW-9 Dr. S Lal with respect thereto. (ix) The blood of the deceased was found on the T-shirt and sandals of the appellant. Further, the knife, recovered at the instance of the appellant from the hole in the wall of the Saleemgarh Fort, was opined, by PW-9, to have been sufficient to cause the wounds which resulted in the death of Akash. The recovery of the T-shirt, sandals and knife, by the accused appellant, stood borne out by the photographs relating thereto, exhibited as Ex. PW-8/A collectively. The events, therefore, took place in continuity, without any unexplained delay at any point of time. There was no probability of manipulating the recovery. The recovered articles were also immediately deposited with the MHCM, as proved by PW-18 (the IO Inspector Bijender). The non- association of any public witness at the time of recovery was attributable to the place being deserted. The evidence of PW- 15, the Senior Scientific Officer, FSL proved that the pullandas had been received with the seals intact, and that the seals tallied with the sample seal. (x) The repeated stabbing, of Akash by the appellant, and the seriousness and severity of the wounds sustained by Akash as a result thereof, clearly indicated intention, on the CrI Appeal 1195 of 2015 Page 29 of 67 part of the appellant, to kill Akash, making out a case for conviction under Section 302 of the IPC.

5. Resultantly, the learned trial court convicted the appellant under Section 302 of the IPC. Vide separate order, dated 27th August, 2015, trial court sentenced the appellant to undergo imprisonment for life, with fine of 5000/-, and default sentence of 6 months simple imprisonment. He was also extended the benefit of

Section 428 of the Cr.P.C., for the period of detention already undergone.

6. The appellant has appealed, thereagainst. Submissions of learned Counsel before this Court 7. Appearing on behalf of the appellant, Ms. Saahila Lamba essentially highlighted the discrepancies in the deposition of PW-3 Abhishek Kumar Pandey, to which attention has already been drawn hereinabove. She submitted that the said discrepancies rendered the evidence of PW-3 unreliable. The conviction of the appellant, under Section 302 of the IPC, having been confirmed on the basis of the statement of PW-3, Ms. Lamba would submit that the conviction deserved to be set aside. Without prejudice, she has sought to contend that the conviction deserved to be altered to one under the second part of Section 304 of IPC, in view of the fact that there had been a sudden quarrel between the appellant and Akash, CrI Appeal 1195 of 2015 Page 30 of 67 resulting in the appellant stabbing Akash in the heat of the moment.

8. Ms. Aashaa Tiwari, learned Additional Public Prosecutor would contend, per contra, that the findings of the learned Additional Sessions Judge are unexceptionable, and do not call for any interference. She also submits that no case, for altering the conviction of the appellant, to one under the second part of Section 304 of IPC is, was made out, in view of the fact that the appellant had inflicted as many as ten stab injuries on the deceased Akash. Without prejudice, she would submit that, at best, the case could be treated as one under the first part of Section 304 of the IPC, which would not, in any case, entail any reduction in sentence. She, therefore, prayed that the appeal be dismissed. Analysis and Conclusion 9. Having dispassionately analyzed the evidence forthcoming, and examined the submissions advanced before us by learned Counsel, we are of the view that the final decision of the learned Additional Sessions Judge, both as regards conviction as well as sentence, is entirely unassailable, and deserves to be upheld in toto.

10. On facts, there is hardly any scope for doubt or dalliance. The events of the night between 27th and 28th March, 2014, to a large extent, admit of no uncertainty. The evidence of PW-2 Jitender Singh, PW-4 Const. Sudesh Kumar (of the Mobile Crime CrI Appeal 1195 of 2015 Page 31 of 67 Team), PW-5 SI

Nagender (of the Mobile Crime Team), PW-8 SI Pushpender (of P.S. Kashmere Gate), PW-11 HC Gajender (of P.S. Kashmere Gate), PW-12 Const. Pawan (of P.S. Kashmere Gate), PW-13 Ct Prakash (of P.S. Kashmere Gate), PW-14 Const. Surenderjeet Singh (of P.S. Kashmere Gate), PW-16 SI Ashok Kumar (of P.S. Kashmere Gate), PW-17 HC Harpal Singh (of P.S. Kashmere Gate), PW-18 HC Devender (of P.S. Kashmere Gate) and the IO PW-19 Insp. Bijender (SHO, P.S. Kashmere Gate), which stand substantially subsumed hereinbefore, are largely ad idem regarding the following sequence of events, as having transpired on 26th, 27th and 28th March, 2014: (i) At 11.50 p.m. on 26th March, 2014, PW-11 HC Gajender noticed a person lying on the road near the Jat Fauzi Dharamshala, in front of a white bus, seriously injured and smeared with blood. He immediately contacted the PCR by dialing 100, whereupon information, regarding the discovery, was conveyed to the SHO of PS Kashmere Gate Insp. Bijender Singh (PW-19), who marked the case to SI Ashok Kumar (PW-16) and Const Pawan (PW-12), who, in turn, recorded DD Entry No 35A (Ex PW-16/A) and proceeded to the spot. On reaching there, SI Ashok Kumar took photographs of the area, using his mobile phone, which were later exhibited as Ex P-1

to P-16/6. The CATS Ambulance also reached, which conveyed the injured youth (Akash) to the Hospital. Thereafter, the IO Insp. Bijender Crl Appeal 1195 of 2015 Page 32 of 67 Singh (PW-19) (who had been telephonically informed by SI Ashok Kumar) and the Mobile Crime Team reached the spot. SI Ashok Kumar and Const Pawan proceeded to the Hospital, as directed by Insp. Bijender Singh, who also directed HC Gajender to remain and guard the site. These facts also stand amply borne out by DD Entry No.35A and the photographs (Ex P-1

to P-16/6) taken by SI Ashok Kumar. (ii) At 12.20 a.m. on 27th March, 2014, Akash reached the Hospital, where he was declared brought dead. (iii) At 12.25-12.30 a.m. on 27th March, 2014, PW-5 SI Nagender and PW-4 Const Sudesh Kumar reached the spot where Akash had been found. PW-4 took six photographs, of which three were developed, and exhibited as Ex PW-4/A (colly). PW-5 SI Nagender prepared his report, which was exhibited as Ex PW-5/A, which stated that Akash had already been taken to hospital. (iv) After PW-16 SI Ashok Kumar and PW-12 Const Pawan returned from the Hospital, SI Ashok Kumar met PW-3 Abhishek Kumar Pandey, who claimed to be an eye- witness to the incident,

and recorded his statement (Ex PW- 3/A). SI Ashok Kumar made his endorsement thereon, and tehrir/rukka (Ex PW-16/B) was prepared by SI Ashok Crl Appeal 1195 of 2015 Page 33 of 67 Kumar. Const Pawan proceeded to the Police Station (where he reached around 2.15 a.m.) with the original tehrir on the basis whereof he had FIR11414 registered, by HC Harpal Singh (PW-17), under Section 302 of the IPC. He returned to the site of the crime and handed over the original tehrir and a copy of the FIR to SI Bijender. Exhibits (a sample of the blood stained on a gauze, blood stained earth and normal earth control) were seized, parcelled and sealed (Ex PW-3/C) by SI Ashok Kumar. A site plan (Ex PW-3/B) of the area was prepared by the IO with the assistance of Abhishek Kumar Pandey. The pullandas containing the bloodstained gauze, bloodstained earth and earth control, were deposited, by SI Ashok Kumar (PW-19) with HC Devender (PW-18). (v) Thereafter, SI Ashok Kumar (PW-16) proceeded, again, to the Hospital, along with PW-3 Abhishek Kumar Pandey and the IO SI Bijender (PW-19), where the doctor handed over, to him, one sealed pullanda containing the clothes of the deceased Akash. Efforts were, thereafter, made, by SI Ashok Kumar and the IO SI Bijender (PW-19) to trace Sonu, but they remained futile. The IO and SI Ashok Kumar returned to the Police Station. The case property was deposited with the MHCM. (vi) On 28th March, 2014, PW-8 SI Pushpender joined the investigation. Pursuant to receipt of secret information, the Crl Appeal 1195 of 2015 Page 34 of 67 IO SI Bijender Singh (PW-19), along with, inter alia, SI Ashok Kumar (PW-16) and the eyewitness to the incident Abhishek Kumar Pandey (PW-3), apprehended the appellant near Gate No.2 of the Jama Masjid at Urdu Park. Disclosure statement (PW-16/G) was made by the appellant to the IO SI Bijender Singh, which was also signed by PW- 16 SI Ashok Kumar. The appellant disclosed, in his statement, that he could lead the Police team to the spot in the eastern wall of the Salimgarh Fort where he had secreted the knife with which Akash had been assaulted, as well as the T-shirt and sandals which he had been wearing at the time, all of which were bloodstained. Pursuant thereto, the appellant led the Police team (sans, however, Abhishek Kumar Pandey) to the said spot, from where he retrieved the knife, the T-shirt and sandals. Six photographs were taken by PW-8 SI Pushpender, which were exhibited as Ex PW- 8/A (colly), and which unequivocally bear out the said facts. The appellant, thereafter, took the Police team to the place of incident,

where he had committed the murder of Akash, whereupon Pointing Out Memo (Ex. PW-16/M) was prepared, which bore the signature of SI Ashok Kumar (PW-16). The knife, bloodstained T-shirt and bloodstained sandals were seized and sealed in pullandas Mark A, B and C, with the seal BS, which were deposited, by the IO Insp. Bijender (PW-19) with HC Devender (PW-18). Crl Appeal 1195 of 2015 Page 35 of 67 11. The above oral evidence, adduced during trial, also stands entirely supported by the documents exhibited contemporaneously therewith, as may be demonstrated thus: (i) Ex.PW-3/A was the statement, of PW-3 Abhishek Kumar Pandey under Section 161 of the Cr.P.C. He clearly states, therein, that, on the date of recording of the said statement, i.e. 27th March, 2014, at about 11.30 PM, while working at his dhaba, he saw that the appellant, whom he knew well and who used to stay on the nearby footpath, had caught hold of a man named Akash, and was shouting, loudly, that he was not going to leave him alive that day (aaj main tujhe kisi bhi haalat mein zinda nahin chhodoonga). He further stated that, the appellant was repeatedly stabbing Akash using a knife, as a result of which Akash fell to the ground, covered with blood. He said that he knew Akash, who used to work as a labourer nearby, and that, a little while after the incident, the police arrived at the spot and conveyed the wounded Akash to the Hospital. (ii) SI Ashok Kumar (PW-16) prepared his rukka (Ex. PW-3/A) on the body of the said statement of PW-3. He stated, in the said rukka, that on receiving DD No.35-A, he, along with Const. Pawan, reached the spot near the Jat Fauzi Dharamshala, where they found one man lying injured on the road in front of a white bus, and also noticed that HC Gajender was already present there. It was further stated, in Crl Appeal 1195 of 2015 Page 36 of 67 the rukka, that, once the CATS ambulance arrived, he, i.e. SI Ashok Kumar took photographs of the injured Akash, using his mobile phone, whereafter Akash was immediately sent to the Hospital in the CATS ambulance. He, thereafter, informed the SHO of what had happened and requested the Mobile Crime Team to come to the spot. The Mobile Crime Team arrived there and examined the area, by which time the SHO also reached. Leaving HC Gajender to guard the spot, he, along with Const. Pawan, reached the Hospital, where MLC No.185067 (in which the identity of the injured was shown as unknown) was drawn up by the doctor, it was stated that he had been brought dead. The rukka further stated that, thereafter, SI Ashok Kumar returned to the

spot of occurrence along with Const. Pawan where they met PW- 3 Abhishek Kumar Pandey, who claimed to be an eye witness and that, accordingly, they recorded his statement. As the statement made out a case of commission of offence under Section 302 IPC, the original tehrir was sent with Const. Pawan, to the Police Station. The said rukka bore the signatures of PW-16 SI Ashok Kumar and the endorsement by HC Harpal Singh (PW-17), to the effect that FIR11414, under Section 302 IPC was registered on the basis thereof. The FIR itself constitutes Ex. PW-17/A. (iii) DD No.35A (Ex.PW-16/A), made on 26th March, 2014, at PS Kashmere Gate by ASI Devender Kumar notes that, at Crl Appeal 1195 of 2015 Page 37 of 67 about 11.50 pm on 26th March, 2014, the wireless operator informed that one man was lying injured at Yamuna Bazar near Jat Dharamshala, Kashmere Gate, and that, after entry of the said information in the roznamcha, SI Ashok Kumar and Const. Pawan were dispatched to the said spot. (iv) DD No.4A dated 27th March, 2014 (Ex.PW-17/D) also recorded at PS Kashmere Gate by ASI Devender Kumar. The said DD entry, which was recorded at 12.20 am on 27th March, 2014, recorded the fact that telephonic information had been received to the effect that one unknown person had been taken to the Trauma Centre, and had been declared brought dead by the doctor. (v) Ex. PW-17/F, which was signed by HC Harpal at PS Kashmere Gate on 27th March, 2014, at 3.15 am noted that FIR No.1

under Section 302 IPC, was entered in the computer, and that the original tehrir and the copy of the FIR were sent to the Joint CP, SDM, DCP, Addl. CP, ACP and the area MM through Const. Prakash (PW-13), which tallied with the oral evidence of Const. Prakash during trial. (vi) Ex. PW-3/B was the site plan, drawn without scale of the area, witnessed by PW-3 Abhishek Kumar Pandely, PW-16 SI Ashok Kumar, PW-19 IO Insp. Bijender. Crl Appeal 1195 of 2015 Page 38 of 67 (vii) Ex. PW-10/A was the scaled site plan, drawn by PW-10 Insp. Mahesh Kumar, and referred to, by him in his examination-in-chief, during trial. (viii) Ex. PW-5/A, signed by SI Narender Giri (PW-5) was the detailed report prepared by SI Narender, which noted the fact that the injured Akash had already been taken to the Hospital, and a pool of blood was seen on the road. The report also advised the IO to take, into possession, samples of the blood found at site, earth control and blood stained earth. The Seizure Memo, of the said blood stained guaze, the blood

stained earth and earth control constituted Ex. PW- 3/C which was signed by SI Ashok Kumar, Const. Pawan as well as PW-3 Abhishek Kumar Pandey and which referred to the parcelling, sealing and taking into custody of the said three exhibits.

(ix) Ex. PW-3/D was the arrest memo of the appellant, in relation to FIR No.1 dated 27th March, 2014, under Section 302 of the IPC. The arrest memo, which was dated 28th March, 2014, was signed by the IO Insp. Bijender (PW-

19) as well as two witnesses, namely SI Ashok Kumar (PW-

16) and Abhishek Kumar Pandey (PW-3). (x) Ex. PW-3/E was the personal search memo of the appellant, again signed by IO Insp. Bijender, SI Ashok Crl Appeal 1195 of 2015 Page 39 of 67 Kumar and Abhishek Kumar Pandey, which notes that, from the possession of the appellant 70, a bundle of bidis and a match box were recovered. (xi) Ex. PW-16/G was the disclosure statement of the appellant, which was witnessed, by SI Ashok Kumar (PW- 16). (xii) Ex. PW-16/M was the Pointing Out Memo, recording the fact that the appellant pointed out, to the police team, the place where the crime had been committed. The exhibit was signed by IO Insp. Bijender (PW-19) and SI Ashok Kumar (PW-16) as witness. (xiii) Ex. PW-16/E, which was signed by the IO Insp. Bijender (PW-19) and witnessed by SI Ashok Kumar (PW-

16) and Const. Sachin, recorded the fact that the appellant had taken the police team to Saleemgarh Fort where he pointed out a broken part of the wall on the eastern side of the fort. (xiv) Ex. PW-16/K, which was also signed by IO Insp. Bijender (PW-19) and SI Ashok Kumar (PW-16) as witness, was the site plan of the place of recovery at the eastern wall of the Saleemgarh Fort. Crl Appeal 1195 of 2015 Page 40 of 67 (xv) Ex. PW-16/H was the sketch of the knife, which was also signed by the IO Insp. Bijender (PW-19) and SI Ashok Kumar (PW-16) as witness. (xvi) Ex. PW16J is the seizure memo relating, inter alia to the knife, the sky blue T-shirt and the sandals, by the appellant, from the hole in the wall on the eastern side of the Saleemgarh Fort. The memo, again bore the signature of the appellant as well as SI Ashok Kumar (PW-16) and Const. Sachin. (xvii) Ex. PW-19/B, signed by the IO Insp. Bijender Singh (PW-19) was the note, put up, by him on 4th April, 2014, for the subsequent medical opinion, after recovery of the

weapon of offence. (xviii) Ex.PW-16/F was a request, dated 27th March, 2014, by SI Ashok Kumar (PW-16) to the CMO, Sabji Mandi Mortuary to retain the dead body of Akash, in the mortuary, for the purpose of identification. The note also observed the dead body was being sent with Const. Surenderjit Singh (PW-14). (xix) Ex. PW-19/X was the MLC prepared by Dr. Girish Chandra Prabhat, at the time of admission of the appellant, in the Hospital. Crl Appeal 1195 of 2015 Page 41 of 67 (xx) Ex. PW-9/A was the MLC drawn up by Dr. S. Lal (PW-9) at the Sabji Mandi Mortuary on 4th April, 2014, and Ex. PW-9/B was the subsequent opinion dated 11th April, 2014, given and signed by Dr. S. Lal. The requisition, by the IO Insp. Bijender (PW-19) to Dr. S. Lal for the said subsequent opinion constitutes Ex. PW-19/C. (xxi) Ex. PW-15/A and Ex. PW-15/B were the reports from the FSL, Rohini. The aforementioned exhibits, seen in the light of the oral depositions made by the concerned witnesses before the learned Additional Sessions Judge during trial constitute a complete and unbroken chain of circumstances, traversing the entire length of time, from the receipt of the call by the PCR, regarding the fact that Akash was lying injured on the road, till the apprehension and arrest of the appellant.

12. The remainder of the depositions of the above, and other, witnesses in the case, relate primarily to the collection and sealing of exhibits, their storage in the malkhana and subsequent despatch to the FSL, the report of the FSL thereon, the production of the appellant before the learned MM, and other such events, regarding which there is no dispute; as such, it is not necessary to burden this judgement with any detailed allusion thereto. Suffice it to state that, though blood was found on various exhibits, serological analysis Crl Appeal 1195 of 2015 Page 42 of 67 was possible only with respect to the blood contained on the sky blue T-shirt and sandals, retrieved by the appellant from the hole in the wall on the eastern side of the Saleemgarh Fort, which were found to match with the blood of the deceased Akash.

13. The learned Additional Sessions Judge has relied - inevitably - on the deposition and evidence of PW-3 Abhishek Kumar Pandey, stated to be an eyewitness to the crime.

14. In evidence jurisprudence, an eyewitness to a crime is a curious creature, to be handled with kid gloves. This is for the simple reason that, if a reliable eyewitness, to a crime, is found, matters may end with him, and his evidence. It needs no detailed reference to classical legal treatises, to discern that eyewitness evidence is the best evidence, as, at its highest, circumstantial evidence could only bring the crime home, to the perpetrator thereof, beyond all reasonable doubt, whereas the evidence of a credible and reliable eyewitness would establish, fully and finally, the fact of the crime having been perpetrated by him, and him alone. For the accused in such a case, the evidence of the eyewitness is damning; ergo, the court is required to be cautious and circumspect in conferring, on a witness, eyewitness stature, as, once such stature is conferred, the well-recognised indicia, governing appreciation of circumstantial evidence, stand immediately and irrevocably dispensed with. Crl Appeal 1195 of 2015 Page 43 of 67 15. In *Shrishail Nageshi Pare vs State of Maharashtra*, (1985) 2 SCC341 it was observed as under: The evidence of the eyewitness, if accepted, is sufficient to warrant conviction though in appropriate cases the Court may as a measure of caution seek some confirming circumstances from other sources. But ordinarily, the evidence of a truthful eyewitness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc. at the instance of the accused by the police. (Emphasis supplied) 16. As regards the effect of discrepancies in the evidence of the witnesses, the principles applicable to eyewitness evidence are the same as those that apply to any other kind of ocular evidence, viz. that (i) material discrepancies would corrode the credibility of the evidence, whereas normal discrepancies would not and (ii) material discrepancies are those which are not normal, and not expected of a normal person. [*Kulesh Mondal vs State of West Bengal*, (2007) 8 SCC578 17. The importance required to be attached to credible eyewitness evidence is underscored in several decisions. In *Sambhu Das vs State of Assam*, (2010) 10 SCC374 the case of the prosecution rested solely on the evidence of the wife of the deceased - who, therefore, was undoubtedly an interested eyewitness. She stated, in her evidence, that, on being alerted by one Upendra Das, she rushed home, to find her husband being assaulted by the accused, who were many in

number. Upendra Das Crl Appeal 1195 of 2015 Page 44 of 67 was not cross-examined and, therefore, the Supreme Court opined that the evidence of the wife of the deceased would have to be eschewed to that extent. It was also seen that, in the evidence subsequently tendered by the wife of the deceased in court, she named several persons, as being amongst those who had assaulted her husband, whose names did not figure in her initial statement to the Police. Despite these circumstances, the Supreme Court held that, the remainder of the evidence of the wife of the deceased in that case being credible, the conviction of the accused, solely on the basis of her statement, could not be faulted.

18. Woodroffe and Amiralis Law of Evidence culls out the following three important guiding principles, regarding evaluation of the evidence of eyewitnesses, on the basis of various judicial pronouncements: (i) whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them, and (ii) whether there is anything inherently improbable or unreliable in their evidence, and (iii) whether they are interested witnesses; if the answer is in the negative, the evidence of the eyewitnesses would prima facie be reliable.

19. In the above context, it is important to bear in mind the Crl Appeal 1195 of 2015 Page 45 of 67 following note of caution, surrounded by Y.V. Chandrachud, J.

(as he then was) in Hallu vs State of MP, (1974) 4 SCC300(as contained in para 12 of the report):

20. There is only one more observation which we would like to make about the judgment of the High Court. The High Court has observed in its judgment at more than one place that Musammatt Dev Kunwar and Musammatt Mahatrin were implicitly reliable. It is generally not easy to find witnesses on whose testimony implicit reliance can be placed. It is always advisable to test the evidence of witnesses on the anvil of objective circumstances in the case. Not only did the High Court not do that but by persuading itself to the view that the two eyewitnesses were implicitly reliable it denied to itself the benefit of a judicial consideration of the infirmities to which we have briefly referred. (Emphasis supplied) If, therefore, eyewitness evidence is supported by circumstantial

evidence, its credibility and significance multiplies manifold. Given the crucial, and critical, character of eyewitness evidence, it would always be wise to examine whether support, for the evidence of the eyewitness, is forthcoming in the attendant circumstances available in the case.

21. Tested on the anvil of the above principles, we find no reason to disbelieve the eyewitness account provided by PW-3 Abhishek Kumar Pandey. He was, undisputedly, a disinterested witness. He explained the circumstances in which he was present within eyeshot of the occurrence, namely the fact that the dhaba where he was employed used to shut shop at around 12 midnight CrI Appeal 1195 of 2015 Page 46 of 67 every day. He was categorical, regarding the particulars of the incident, the words spoken by the appellant to the deceased Akash, as well as the fact of infliction, by the appellant, of several stab injuries on the person of Akash, resulting in his falling to the ground, covered in blood. The statement of PW-3 Abhishek Kumar Pandey has been corroborated, in all material particulars, by the evidence of other witnesses, including the police personnel who arrived at the scene pursuant to PW-3s complaint, as the recital hereinabove more than sufficiently discloses. PW-3 correctly identified the appellant in court, and was also pivotal in the apprehending, of the appellant, on 28th March, 2014. As such, the evidence of PW-3 stands corroborated by other circumstances in the case as well, thereby lending additional credibility thereto. The apprehending of the appellant, the disclosure statement given by him, the consequential retrieval, by the appellant, from the hole in the wall on the eastern side of the Salimgarh Fort, of the knife, with which the offence was committed, as well as the T-shirt and sandals worn by him at the time of commission of the said offence, the presence of blood, on the said T-shirt and sandals, of the same blood group [O]. as that of the deceased Akash, the MLC report, disclosing several stab wounds on the body of Akash, read with the opinion, of PW-9 Dr. S Lal, to the effect that the said injuries could have been caused by the recovered knife (which was identified, by the eyewitness PW-3 as the knife with which the appellant had stabbed Akash), and the fact that the appellant and Akash had indulged in a violent altercation, at the time when the appellant CrI Appeal 1195 of 2015 Page 47 of 67 was alleged to have stabbed Akash, are all circumstances which mulct the appellant unequivocally, and, being harmonious with the eyewitness account, of PW-3

Abhishek Kumar Pandey, bring the offence of murder of Akash home, to the appellant, finally and irrevocably.

22. Given this factual scenario, we are not inclined to attribute any substantial significance to the discrepancies, in the statement of PW-3 Abhishek Kumar Pandey, though they undoubtedly exist. No doubt, PW-3 was not entirely consistent, in his evidence in court, stating, at one point, that he knew the appellant for the last 3-4 years as he used to eat food from (his) dhaba and, at another, that he had been working on the dhaba about 5-6 days prior to the incident in question and, again, in cross-examination, that he knew the appellant as he used to stay on the patri situated in the same locality where the incident had taken place. Besides the fact that these supposed discrepancies do not impinge on the credibility of the incident of stabbing of Akash, by the appellant, or the manner in which it was done, but merely cast some uncertainty on the reason for PW-3 to be familiar with the appellant and Akash, we are of the view that they do not, in any manner, erode the evidentiary value of the testimony of PW-3, insofar as the actual commission of the offence of stabbing of Akash, by the appellant, is concerned. Neither, in our view, can these discrepancies take away from the fact that PW-3 did, in fact, know the appellant, as well as Akash - whether it was because he was working at the Crl Appeal 1195 of 2015 Page 48 of 67 dhaba, or at the shop next to the temple, or because of any other reason.

23. In this context, the following observations, of R. P. Sethi, J., in State of H.P. vs Lekh Raj, (2000) 1 SCC247 occurring in para 7 of the report, are of seminal significance: to to be distinguished In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor

or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* [(1974) 3 SCC767:

1974. SCC (Cri) 243]. held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish v. State of M.P.* [1981 Supp SCC40:

1981. the SCC discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki* [(1981) 2 SCC752:

1981. SCC (Cri) 593]. held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. that when (Cri) 676]. this Court held Crl Appeal 1195 of 2015 Page 49 of 67 Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person. (Emphasis supplied) 24. We are of the considered opinion that the inconsistencies, in the deposition, in court, of PW-3 Abhishek Kumar Pandey, cannot be elevated from the status of minor discrepancies to major contradictions, so as to discredit the evidentiary value of his deposition.

25. Without taking into consideration the evidence of PW-6 Alam - which, in our view, suffers from material contradictions and inconsistencies - we are, therefore, of the view that, on the analysis above, the decision, of the learned Additional Sessions Judge, that the appellant had repeatedly stabbed Akash, on the night of 27th March, 2014, and that Akash died as a result thereof, deserves to be upheld in toto. We do so.

26. Which takes us to the major plank of the submissions of Ms. Lamba, seeking succour for her client, viz., that his conviction deserves to be converted, from one under Section 302 of IPC, to the 2nd part of Section 304 of the IPC, with resultant

reduction in the sentence imposed on him. She, as already noted herein above, has emphasised the fact that the stabbing, of the deceased Akash, by the appellant, was the result of a sudden quarrel between them, Crl Appeal 1195 of 2015 Page 50 of 67 and that it cannot be said that the appellant was acting with any premeditated intention to do away with Akash.

27. PW-3 Abhishek Kumar Pandey, for his part, was categorical in stating that, to his knowledge, there was no long-standing enmity, between the appellant and Akash. We are not, however, convinced on the issue, for two reasons. Firstly, the knife, which was being carried by the appellant was 30.4 cms in length with blade length 18 cms and handle 12.4 cms. The proportions of the knife make it apparent that it was not an ordinary knife which would be carried by a rag picker in the normal course of his daily activities, and we are inclined to believe that the appellant was carrying the said weapon - which was more a dagger and less a knife - with the intention to put it to use, were the eventuality to arise as apparently it did. Secondly, the words used by the appellant, as quoted by PW-3, are also significant. The appellant was stated to have threatened Akash with the words *aaj main tujhe kisi bhi haalat mein zinda nahi chhodoonga*. The use of the word *aaj* indicates that there must have been earlier similar altercations, between the appellant and the deceased Akash, which is why the appellant emphasized that *aaj* i.e. today, he would not leave Akash alive. It does not appear, therefore, that the bad- blood between the appellant and Akash developed suddenly, on the spot, owing to the altercation between them. Further, the use of the words *zinda nahin chhodoonga* also indicates an unequivocal threat, by the appellant, to Akash, to kill him. The words used by Crl Appeal 1195 of 2015 Page 51 of 67 the appellant, therefore, militate against any presumption that there was no pre-existing enmity between the appellant and Akash. To an extent, it is possible to infer that the appellant was at least prepared to murderously assault Akash, were matters to reach that head. While, therefore, there is some substance, in the contention of Ms. Lamba, that the stabbing of Akash, by the appellant, was the result of the altercation, between the two, on the fateful night of 27th March, 2014, the appellant, apparently, had come to the spot prepared for such an eventuality, and after duly arming himself in that regard.

28. Would, however, this finding, of ours, justify conversion, of the conviction of the appellant, for causing the death of Akash, from one under Section 302, to Section 304 of the IPC?. Unfortunately for the appellant, we are of the view that the answer has necessarily to be in the negative.

29. Sections 300, 302 and 304 of the IPC read as under: 300. Murder.-. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- (Secondly) - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or - (Thirdly) - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or - Crl Appeal 1195 of 2015 Page 52 of 67 (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 (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder. (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death. (c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Zs death. (d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual. 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 death of any other person by mistake or accident. The above exception is subject to the following provisos:-

"Crl Appeal 1195 of 2015 Page 53 of 67 (First) - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. (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.-. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Illustrations (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation. (b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide. (c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers. (d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder. (e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. Crl Appeal 1195 of 2015 Page 54 of 67 This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence. (f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder. 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 such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. 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 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 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. CrI Appeal 1195 of 2015 Page 55 of 67 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. 302. Punishment for murder.-Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

304. Punishment for culpable homicide not amounting to murder.-Whoever commits culpable homicide not amounting to murder shall be punished with 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. imprisonment for 30. It is obvious that the

substantive offence, whether of murder or of culpable homicide not amounting to murder, is defined only in Section 300, with Sections 302 and 304 of the IPC dealing with the punishment liable to be awarded for murder and culpable homicide not amounting to murder, respectively. In other words, whether the offence amounts to murder, or to culpable homicide not amounting to murder, has to be decided solely by reference to Section 300 of the IPC. Section 304 of IPC plays no part whatsoever in such determination.

31. Culpable homicide is defined in Section 299 of the IPC as causing of death by doing an act with the intention of causing death, or with the intention of causing such bodily injury, as is likely to cause death, with the knowledge that he is likely by such act to cause death. Even if, therefore, the accused does not have intention of causing death, he would, nevertheless, be liable for culpable homicide, if he can be attributed either the intention of causing such bodily injury, as is likely to cause death, or with knowledge that he is likely, by such act, to cause death. We need not labour much on the intricacies of this definition, as it is an admitted position that the deceased Akash had suffered as many as six injuries, of which at least five, i.e. Injuries No.6, 7, 8, 9 and 10 were sufficient to cause death in the ordinary course of nature, both individually as well as collectively. As such, the intention of causing such bodily injury, as was likely to cause death of Akash, or the knowledge that, by causing such injury, he was likely to cause death of Akash, would necessarily be attributable to the appellant. There can be no escaping the fact, therefore, that the appellant was guilty of committing culpable homicide. That takes us to the next issue i.e. whether the killing of Akash, by the appellant, amounted to murder or fell short thereof, and would only be liable to be treated as culpable homicide not amounting to murder.

32. Section 300 starts with the words, except, in the cases hereinafter, excepted, culpable homicide is murder, if the act by which the death was caused was done, either with the intention of causing death, or with the intention of causing such bodily injury CrI Appeal 1195 of 2015 Page 57 of 67 as the offender knew was likely to cause the death of the person injured, or with the intention of causing bodily injury to any person, which bodily injury was sufficient, in the ordinary

course of nature to cause death, or with the knowledge that the act was so imminently dangerous that in all probability, it would cause death or bodily injury as was likely to cause death. These four circumstances are enveloped in clauses firstly to fourthly in Section 300. While the act of carrying a murderous weapon, the words used by him while attacking Akash, and the number, nature and extent of the injuries inflicted by him, would, in our view, bring the case within clauses Firstly and Secondly of Section 300 as well, we are, in any case, sanguine that, at any rate, clause thirdly i.e. doing of the act with the intention of causing bodily injury to the person, coupled with the fact that such bodily injury was sufficient in the ordinary course of nature to cause death, would directly stand attracted. There can be no denying the fact that, by stabbing Akash repeatedly, the appellant intended, at the very least to cause bodily injury to Akash. Equally, the MLC (Ex.PW-19/X) as well as the post-mortem report (Ex.PW-9/A) read with the subsequent opinion of PW-9 Dr. S. Lal and his evidence in court, make it apparent that each one of at least six stab injuries, inflicted on Akash, by the appellant, was, by itself, sufficient to cause the death of Akash.

33. Clearly, therefore, the act, by which the death of Akash was caused, was done, by the appellant, at least with the intention of Crl Appeal 1195 of 2015 Page 58 of 67 causing bodily injury, which was sufficient in the ordinary course of nature to cause death. Intention to cause death, it is trite, is entirely distinct from premeditation, and in no way dependent thereon. Sans any premeditation, too, intention to kill could very well exist; such intention often develops on the spur of the moment.

34. All that would be required, therefore, to be seen, in order to assess whether Section 300 of the IPC would apply or not, is whether the case fell within one or more of the exceptions contained in the said provision. Exception 1 deals with a situation in which 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. Inasmuch as there is nothing to indicate that Akash provoked the appellant to stab him repeatedly, Exception 1 to Section 300 would not apply. Exception 2 deals with the acts committed in the right of private defence and Exception 3 deals with acts committed by public servants or in aid of a public

servant. Neither of these exceptions, obviously, call for application in the present case. Neither would Exception 5 apply, as it cannot, by any stretch of imagination, be said that Akash invited the risk of death with his own consent.

35. Exception 4 to Section 300 of IPC, which is, essentially, the provision which Ms. Lamba would seek to press into service in her aid, deals with the commission of culpable homicide without Crl Appeal 1195 of 2015 Page 59 of 67 pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. In order for the said Exception to apply, therefore, it would have to be established that the act of culpable homicide, committed by the offender, was committed (i) without pre-meditation, (ii) in a sudden fight, (iii) in the heat of passion, (iv) upon a sudden quarrel, (v) without the offender having taken undue advantage of the victim and (vi) that the offender having acted in a cruel or unusual manner with all six ingredients requiring to be cumulatively satisfied.

36. Even if, therefore, the act of culpable homicide is shown to have been committed as the consequence of a sudden fight, or in the heat of passion upon a sudden quarrel, that would, by itself, not be sufficient to justify invocation of Exception 4 to Section 300 of the IPC in aid of the accused. It would, additionally, have to be shown that the offender did not take undue advantage of the victim, and that the offender did not act in a cruel or unusual manner.

37. We have already opined, hereinabove, that the accused cannot be altogether be said to have acted without premeditation, given the dimensions of the knife which he was carrying, and his choice of words while addressing Akash. Sans the question of premeditation, too, however, we are of the view that the accused clearly acted in a cruel and unusual manner and, inasmuch as Crl Appeal 1195 of 2015 Page 60 of 67 Akash was unarmed, also took undue advantage of him.

38. There can be no cast iron rule, or gold standard, by which an inference, that the offender acted in a cruel and unusual manner or having taken undue advantage of the victim, can be arrived at.

39. No doubt, there are judicial pronouncements, to the effect that, in deciding whether the offender acted in a cruel or unusual manner, the number of injuries inflicted is not a decisive consideration. However, at the same time, the nature of the injuries inflicted, and the parts of the body at which they were inflicted, have in several decisions, being regarded as indicative of cruel and unusual behaviour, on the part of the offender, so as to disentitle him to the protection of exception 4 to Section 300 of the IPC Reference to a few judicial pronouncements would be opposite, in this regard: In Subhash Shamrao Pachunde v. State of Maharashtra, (i) (2006) 1 SCC384 the Supreme Court addressed, directly, the issue of whether, in the circumstances before it, Exception 4 to Section 300 of the IPC, was or was not, attracted. In that case, of the injuries inflicted on the deceased by the attackers, three injuries were found to be sufficient, in the ordinary course of nature, to cause death. Para 18 and 19 of the decision may be reproduced as under: 18. In his opinion, Injury 1 by itself was sufficient in the ordinary course of nature to cause death. Injuries 2 and 3 can also cause death but in that case the death will not be immediate. Those injuries however would not be sufficient in the ordinary course of nature to cause death as there could be chances of survival as well as of death. It was explained by him that in his injury report he opined that Injury 2 was muscle-deep; at that time he did not probe the injury. In his cross-examination, the doctor further stated that: The direction of Injury 1 is medial up to the hilum (sic hilum) of lung (root of lung). Direction of Injury 2 is downwards. Direction of Injury 3 is medial. It is correct to say that wound caused by pickaxe (Article

5) will have lacerations on the edges of the wound. I have not noted these lacerations while describing Injury

3. It is correct to say that the weapon must enter up to the intestine for 6 inches for causing a puncture. The depth of this Injury 3 is about 6 inches. Now, I cannot definitely say that Injury 3 can be caused by Article

5. Considering the fact that the weapons pierced the body to 6 inches. It is a fact that I have described Injury 2 in MLC register as muscle-deep. This is so because at that time I did not probe the injury. Injury 1 therefore went right up to the right

19. (sic hilum) of the lung. The appellant herein did not restrain himself after inflicting one injury. He inflicted other and further injury also. The injuries, in view of the post-mortem report, admittedly were more than one. (Emphasis supplied) The Supreme Court held that, in view of the repeated blows inflicted on the body of the deceased, intention to cause bodily injuries, which were sufficient in the ordinary course of nature to cause death, was evident, thereby, bringing the offence within the ambit of the expression culpable homicide amounting to murder and disentitling the accused to the benefit of exception 4 to Section

300. CrI Appeal 1195 of 2015 Page 62 of 67 (ii) In Kikar Singh v. State of Rajasthan, (1993) 4 SCC238 the Supreme Court held, definitely, as under, with respect to whether in the facts of a particular case, Exception 4 to Section 300 of the IPC would, or would not, apply. Para 8 and 9 of the decision may be reproduced as under: fresh blow becomes a 8. The counsel attempted to bring the case within Exception

4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion;

(2) upon a sudden quarrel;

(3) without the offender's having taken undue advantage;

(4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon,

the one who uses such weapon must be held to have taken an undue advantage denying him to Exception

4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception

4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder. the entitlement Crl Appeal 1195 of 2015 Page 63 of 67

9. The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section

302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4. (Emphasis supplied)  
(iii) In Mahesh Balmiki @ Manna vs. State of Madhya Pradesh, 2000

(1) SCC319 a single blow, inflicted with a knife, entering through the intercostal space between the sixth and the seventh ribs and fracturing both of them with depth of wound as 19 cm was held itself sufficient to disentitle the attacker to the benefit of exception 4 to Section

300. The Supreme Court ruled, in para 8 of the report, as under: In the present case the impact of the single blow with the knife has been disastrous. Therefore, it cannot be said that the appellant has not taken undue advantage or not acted in a

cruel or unusual manner. It was further held, in the said decision, as under: The nature of the injury, whether it is on the vital or non- vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to CrI Appeal 1195 of 2015 Page 64 of 67 determine the required intention or knowledge of the offender and the offence committed by him. In the instant, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

40. Applying these indicia to the present case, the post-mortem report, as proved by the evidence of PW-9 Dr. S. Lal, during trial, indicates that as many as ten wounds were inflicted, on the person of the unfortunate Akash, by the appellant. Of these, six wounds, i.e. Injuries No.6, 8, 9 and 10 were individually sufficient to cause death. Injury No.5 was incised 1.7 x 0.4 cm x muscle deep over left side chin. Injury No.6 was in the nature of multiple intermingling wounds of a vital incised of 10 x 3 cm x skin deep over left side upper neck, vertically placed. Injury No.7 was a wound 1.5 x 0.5 cm, over the middle of the neck. Injury No.8 was a stab wound 6 x 0.4 cm in the chest cavity deep over the left side of the middle front of the chest, which entered the chest cavity through the fifth intercostal space, cut the upper lobes of the left lung through and through and was 12 cm deep; 1 litres of blood was seen in the cavity. Injury No.9 was also a stab wound, 3.7 x 0.4 cm in the chest cavity, over the left side of the lower part of chest, which entered the chest cavity through the eleventh intercostals space and perforated the diaphragm, left kidney, nicked the spleen and was of 8 cm depth. Injury No.10 was, again, a stab wound 3.2 x 0.4 cm CrI Appeal 1195 of 2015 Page 65 of 67 in the chest cavity, deep, over the right side of upper chest which entered into the cavity through the sixth intercostal space on posterior aspect and perforated the right lung. It would be facile to suggest that, in inflicting such wounds, the appellant did not act in a cruel and unusual manner. The fact that Akash was unarmed, whereas the accused, who was armed with the knife, was stabbing him

repeatedly, would also indicate that the accused took undue advantage of Akash. The body of Akash was covered with blood, as is apparent not only from the evidence of various police personnel, but also by a bare glance at the photographs taken on the occasion, to which reference, has already been made, hereinabove. We are constrained, therefore, to deny, to the appellant, the benefit of Exception 4 to Section 300 of the IPC, so as to reduce the seriousness of the crime from murder to culpable homicide not amounting to murder.

41. The inevitable sequitur to the above discussion has to be that the accused has been correctly held, by the learned Additional Sessions Judge, guilty of committing the murder of Akash. Conclusion:

42. We are, therefore, in agreement with the finding, of the learned Additional Sessions Judge, to the effect that the appellant was guilty of committing the murder of deceased Akash, and was, therefore, rightly convicted under Section 300 of the IPC and CrI Appeal 1195 of 2015 Page 66 of 67 punished thereunder. Inasmuch as the appellant has been awarded the minimum 43. sentence that may be awarded under Section 302 of the IPC, i.e. imprisonment for life, no scope exists, for us to interfere on that score either.

44. As a result, the appeal of the appellant is dismissed.

45. Trial Court record be sent back with copy of the judgement. Intimation be sent to the Superintendent Jail. (C.HARI SHANKAR) JUDGE (SUNIL GAUR) JUDGE APRIL07 2018 gayatri CrI Appeal 1195 of 2015 Page 67 of 67

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**