



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



D.B. Criminal Appeal (Db) No. 274/2019

Laxman Das S/o Shri Khem Chand, Aged About 49 Years, By
Caste Gnagar, R/o House No. 107, Gali No. 3, Sanjay A Colony,
Police Thana Pratapnagar, Jodhpur (Raj.).

(Lodged In Central Jail Jodhpur).

-----Appellant

Versus

State, Through P.p.

-----Respondent

For Appellant(s) : Mr. Kaushal Sharma.
For Respondent(s) : Mr. Rajesh Bhati, PP.

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE ANUROOP SINGHI**

Judgment

BY THE COURT: (Per Hon'ble Mr. Justice Vinit Kumar Mathur)

Reserved on 23/09/2025

Pronounced on 03/10/2025

1. The instant appeal under Section 374(2) Cr.P.C. has been preferred by the appellant Laxman Das S/o Shri Khemchand, against the judgment dated 21.08.2019 passed by the learned Additional Sessions Judge No.5, Jodhpur Metro, in Sessions Case No.239/2017, arising out of FIR No.260/2017, whereby the accused-appellant stands convicted for the offence under Section 302 of the IPC.
2. By the said judgment, the learned trial Court has sentenced the appellant to undergo imprisonment for life till the remainder of his natural life along with a fine of Rs.50,000/-,



and in default of payment of fine, further to undergo simple imprisonment for six months.

3. The brief facts necessary for deciding the present appeal are that on 29.06.2017, the complainant, Bhishma Kumar, submitted a written complaint to the Station House Officer, Pratap Nagar Police Station, Jodhpur, stating therein that on the same day (29.06.2017) at about 5:30 a.m., his brother-in-law, Laxman Das S/o Shri Khemchand, resident of Sanjay-A Colony, Gali No. 3, Pratap Nagar, Jodhpur, assaulted his nephew, Nishant Rathod s/o Laxmandas, with a *Nawala* (a sharp-edged tool, which is being used by a cobbler) on the back of his neck while he was sleeping. On hearing his cries, the complainant's sister awoke and raised an alarm, whereupon the family members and neighbours gathered. It was alleged that the accused Laxman Das thereafter fled from the spot. Due to the assault, the injured Nishant sustained a bleeding injury on his neck and was immediately taken to Goyal Hospital in a serious condition, where he underwent treatment. The complainant's sister narrated the incident to him, on the basis of which the written complaint was lodged.
4. On the basis of the above written complaint, a formal FIR No.260/2017 (Exhibit P/20) was registered at Police Station Pratap nagar, District Jodhpur against the accused for the offences under Sections 307, IPC. During treatment, Nishant succumbed to his injuries.





5. After completion of investigation, police filed a charge-sheet against the accused-appellant for the offences under section 302, IPC.
6. Learned Trial Court framed, read over and explained the charges under Sections 302 IPC to the accused-appellant, who denied the charge and sought trial.
7. During the trial, the prosecution examined as many as 15 witnesses. In support of its case, the prosecution also produced documentary evidence, Exhibits P-01 to P-20.
8. The statement of the accused-appellant was recorded under Section 313 Cr.P.C. He denied all incriminating circumstances put to him, stating that the prosecution witnesses had deposed falsely, that the evidence was fabricated, and that he was innocent. The accused-appellant produced documentary evidence, Exhibits D-01 to D-03.
9. Learned counsel for the appellant submits that the appellant was/is a short-tempered person and was not maintaining proper mental balance while dealing with his wife and children. He submits that the incident happened in the heat of passion and there was no intention to cause fatal injuries to his son Nishant. He submits that no father howsoever frustrated or dejected may be, will not cause fatal injuries to his children. Learned counsel submits that even as per the statement of PW-1 Bhisma Kumar, who is brother-in-law of the accused-appellant it has come on record that the appellant was temperamentally weak and of eccentric nature. He often quarreled with his wife and children. He



further submits that even as per PW-6 Jassi (his wife) and PW-7 Mahima, it has come on record that the accused-appellant used to beat his wife and children for no reason whatsoever. The statements of PW-1 Bhisma Kumar, PW-6 Jassi and PW-7 Mahima clearly show that the appellant was a person of unstable mind set.

10. Learned counsel submits that on the basis of the prosecution story and the allegations leveled against the appellant, conviction under Section 302 of the IPC is disproportionate as firstly there was no intention to cause death, secondly, there was no repetition of blows and thirdly, the incident occurred in heat of passion. Learned counsel therefore, prays that taking into consideration above facts and circumstances of the case, the conviction of the accused-appellant may be converted from Section 302 IPC to Section 304 Part-II of the IPC.
11. Learned Public Prosecutor opposed the prayer made by learned counsel for the accused-appellant and submits that the learned trial court after taking into consideration all the facts and circumstances of the case, has rightly convicted and sentenced the accused-appellant for the offence under Section 302 of the IPC and therefore, no interference, is warranted in the impugned judgment of conviction and sentence passed by the learned trial court.
12. We have considered the submissions made at the bar and have also gone through the entire record.



13. The deceased in the present case is Nishant, who is the son of the accused-appellant. The accused-appellant is a cobbler by profession. The incident occurred while the accused-appellant and his son was sleeping and in the early morning of the fateful day, the accused-appellant inflicted an injury on the neck of Nishant with a *Nawala*. After hearing the cries of Nishant, his mother and wife of the accused-appellant PW-6 Jasai and her daughter PW-7 Mahima rushed to Nishant and he was taken to Goyal Hospital immediately. He was treated for almost 24 days, however, he succumbed to the injuries suffered in the incident.
14. PW-1 Bhishma Kumar is the brother-in-law of the accused-appellant, who in his statement, has narrated the incident as told by his sister PW-6 Jassi. He has also stated in his cross-examination that his sister Jassi and Laxman Das (present appellant) often were quarrelling with each other and the present appellant was an eccentric person.
15. PW-6 Smt. Jassi is the wife of the accused-appellant. She has stated that the accused-appellant and her son Nishant were sleeping together and the accused-appellant inflicted injuries upon him with a *Nawala* and after hearing his cries, when she went to him, he was lying in a pool of blood, therefore, with the help of neighbors, Nishant was taken to Goyal Hospital where he died on 23.7.2017. She further stated that her husband was a short-tempered person and, at times when he lost control, he used to beat their children.



16. PW-7 Mahima is the daughter of the accused-appellant and sister of the deceased. She also stated that her father used to beat them sometimes for the mistakes committed by them and sometimes for no reason.

17. PW-10 Dr Gurcharan, who conducted the autopsy of the deceased has stated that the cause of death was the injury on the neck suffered by the deceased.

18. PW-13 Mool Singh is the investigating officer, who investigated the matter, collected the samples of blood, arrested the accused-appellants and made recoveries in the present case also fortified the version of the prosecution witnesses.

19. Ex.P/13 is the post-mortem report wherein the cause of death is shown to be shock due to spinal cord injury sufficient to cause death in the ordinary course of nature.

20. The facts in the present case reveal that accused-appellant inflicted a single injury to his son deceased Nishant while he was sleeping with him in the house. As per the prosecution witnesses (PW-1 Bhishma Kumar, PW-6 Jassi and PW-7 Mahima), the accused-appellant was a short-tempered person lacking mental balance. At times, he lost control and often beat his children, sometimes for their mistakes and sometimes for no reason whatsoever.

21. We are of the view that in ordinary circumstances, no parent would cause fatal injury to their children, howsoever frustrated or dejected he or she may be. They will never do something, which may end up in losing their child. In the



present case, the accused-appellant has though inflicted injury with a *Nawala* to his son on the neck, but there is no repetition of the blow.

22. In the considered opinion of this Court, there was no intention or pre-meditation on the part of the accused-appellant to inflict such an injury to his son, which was likely to cause death in ordinary course of nature.

23. The Hon'ble Supreme Court in the case of Gurmukh Singh Vs. State of Haryana, reported in 2009 (15) SCC 635 has held as under:

"12. There are significant features of the case which are required to be taken into consideration in awarding the appropriate sentence to the accused:

- (1) Admittedly, the incident happened at the spur of the moment;*
- (2) It is clear from the evidence on record that the appellant was not using that path everyday.*
- (3) The appellant gave a single lathi blow on the head of the deceased which proved fatal;*
- (4) The other accused did not indulge in overt act therefore, except the appellant, the other co-accused namely Niranjana Singh, Harbhajan Singh and Manjit Singh have been acquitted by the trial court;*
- (5) The incident took place on 8.1.1997 and the deceased remained hospitalized and ultimately died on 14.1.1997;*
- (6) The trial court observed that there was no previous enmity between the parties.*

Therefore, it is abundantly clear that there was no pre-arranged plan or that the incident had taken place in furtherance of the common intention of the accused persons. When all these facts and circumstances are taken into consideration in proper perspective, then it becomes difficult to maintain the conviction of the appellant under section 302 IPC.

13. Section 304 IPC reads as under:

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

14. **** **** **** ****





15. In *Gurmail Singh & Others v. State of Punjab* (1982) 3 SCC 185, the accused had no enmity with the deceased. The accused gave one blow with the spear on the chest of the deceased causing his death. The injury was an incised wound. The Sessions Judge convicted the accused under section 302 IPC and sentenced him to rigorous imprisonment for life. The High Court affirmed the same. This Court, while taking into consideration the age of the accused and other circumstances, converted the conviction from section 302 IPC to one under section 304 Part II IPC and sentenced him to suffer rigorous imprisonment for five years and a fine of Rs.500/-, in default to suffer rigorous imprisonment for six months.

16. In *Kulwant Rai v. State of Punjab* (1981) 4 SCC 245, the accused, without any prior enmity or pre-meditation, on a short quarrel gave a single blow with a dagger which later proved to be fatal. This Court observed that since there was no pre-meditation, Part 3 of section 300 of the Indian Penal Code could not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the facts and circumstances of that case, the conviction of the accused was altered from section 302 to that under section 304 Part II IPC and the accused was sentenced to suffer rigorous imprisonment for five years.

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

- | | | | | |
|-----|------|------|------|------|
| 18. | **** | **** | **** | **** |
| 19. | **** | **** | **** | **** |
| 20. | **** | **** | **** | **** |
| 21. | **** | **** | **** | **** |
| 22. | **** | **** | **** | **** |
| 23. | **** | **** | **** | **** |

24. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- a) Motive or previous enmity;
- b) Whether the incident had taken place on the spur of the moment
- c) The intention/knowledge of the accused while inflicting the blow or injury;
- d) Whether the death ensued instantaneously or the victim died after several days;
- e) The gravity, dimension and nature of injury;
- f) The age and general health condition of the accused;





- g) Whether the injury was caused without premeditation in a sudden fight;
 h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
 i) The criminal background and adverse history of the accused;
 j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
 k) Number of other criminal cases pending against the accused;
 l) Incident occurred within the family members or close relations;
 m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.

25. When we apply the settled principle of law which has been enumerated in the aforementioned cases, the conviction of the appellant under section 302 I.P.C. cannot be sustained. In our considered view, the accused appellant ought to have been convicted under section 304 Part II I.P.C. instead of under section 302 I.P.C.

26. We accordingly convert the conviction and sentence of the appellant Gurmukh Singh from section 302 IPC to one under section 304 Part II IPC and sentence him to suffer rigorous imprisonment for seven years. The fine as imposed by the trial court and as upheld by the High Court is maintained. The appellant would be entitled to get benefit of section 428 of the Code of Criminal Procedure.

27. ****' ****' ****' ****'

24. In the present case also, we find that the accused-appellant was not having any enmity with his son and there was no pre-meditation for inflicting fatal injury. Since the accused-appellant was a person of unstable mind, he caused injury upon his son.
25. In view of the discussion made above, the present criminal appeal is partly allowed. The conviction and sentence imposed upon the accused-appellant Laxman Das by the





judgment dated 21.08.2019 passed by the learned Additional Sessions Judge No.5, Jodhpur Metro, in Sessions Case No.239/2017 is converted from Section 302 of the IPC to one under Section 304 Part II IPC and he is sentenced to suffer Rigorous Imprisonment for 7 (Seven) years. The fine as imposed by the learned trial court is upheld and maintained as such. The accused-appellant would be entitled to get benefit of Section 428 of the Cr.P.C.

(ANUROOP SINGHI),J

(VINIT KUMAR MATHUR),J

28-kartikcpgoyal/-