2025:CGHC:12886

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1478 of 2022

A

... Appellant

versus

State Of Chhattisgarh Through Police Station Kartala, District : Korba, Chhattisgarh

... Respondent

For Appellant	**:**	Mr. Vikas Kumar Pandey, Advocate.
For Respondent/State	**:**	Mr. Bharat Gulabani, Panel Lawyer

Hon'ble Mr. Ramesh Sinha, Chief Justice

Judgment on Board

18/03/2025

1. Challenge in this appeal, filed under Section 374(2) of the Criminal Procedure Code, 1973 (*for short, the Cr.P.C*) is to the judgment of conviction and order of sentence dated 17.08.2022 passed by the learned Special Juvenile Court (FTC) Korba, District Korba, in Sessions Trial No. 1/2021,whereby the appellant has been convicted for the offence under Section 302 of the Indian Penal Code (*for short, the IPC*) and sentenced to undergo simple imprisonment for 10 years with fine of Rs. 100/-, and in default of payment of fine, to undergo further simple imprisonment for one month.

2. Today, the matter is listed for hearing on IA No. 1, application under Section 389 of the Cr.P.C. for suspension of sentence and grant of bail to the appellant, however, with the consent of learned counsel for the parties, the matter is heard finally.

3. The case of the prosecution, in brief, is that on 11.06.2019, after having dinner at 8:00 p.m., the complainant Mela Ram Kanwar (PW-1) was sleeping in the courtyard of his house with his wife Sukrita Bai (PW-2) and daughters Ranu Kanwar (hereinafter referred to as '*the deceased*') and Anasuiya Kanwar. At around 10:00 p.m., the appellant/child in conflict with the law (*hereinafter referred to as 'the appellant*) who is the son of Mela Ram Kanwar (PW-1), returned home after roaming in the village and woke up the deceased, who is the sister of the appellant, and asked her to give him food. The deceased angrily scolded the appellant and gave her the food. After having the meals, the deceased scolded the appellant and gave her two slaps. On this, the appellant became so angry that he picked up the axe kept nearby and gave two blows on the head because of which the deceased fell on the ground and died. By this time, the complainant had woken up. The said incident was informed by the complainant to his wife and other neighbours. Since it was late at night and there was no means for travelling, the First Information Report was lodged on 12.06.2019. Crime was registered on the report and investigation was started.

4. During the investigation, the scene of the incident was inspected and a spot map was prepared, inquest was prepared and the body was sent for postmortem, statements of witnesses related to the incident were recorded and the appellant was arrested on 12.06.2019 after the crime was found to have been committed and he was sent to the Child Protection Home for proper custody after informing his family about the

arrest. On the basis of the memorandum statement of the appellant, the axe used in the incident was seized in presence of witnesses. The axe used in the offence and the clothes worn by the deceased, blood stained and plain soil were also seized from the scene of the incident and were sent to FSL Bilaspur for examination. The investigation report of the Director State Forensic Science Laboratory was also obtained regarding the said seized property. After complete investigation, charge sheet bearing No. 75/19 was filed for the offence under Section 302 of IPC against the appellant under custody and presented before the Juvenile Justice Board, Korba. The said case was transferred to the court of Special Juvenile Court (FTC), Korba, for trial as it was a crime of heinous nature.

5. When the charge was framed against the appellant for the offence under Section 302 of the IPC, he denied the charges and prayed for trial.

6. In order to bring home the offence, the prosecution examined as many as 10 witnesses namely Melaram Kanwar (PW-1), Smt. Sukrita Bai (PW-2), Kamal Singh Rathia (PW-6), Dayaram (PW-4), Antaram (PW-5), Santosh Kumar Sonwani, Assistant Teacher, (PW-3), Dayaram Kanwar (PW-4), Antram (PW-5), Kamal Singh Rathiya (PW-6), Barkha Meshram (PW-7), Dr. Shekhar Lal Kanwar (PW-8), Gajanand Yadav (PW-9) and Sunil Kumar Kurre (PW-10) and exhibited as many as 27 exhibits.

7. The statement of the appellant under section 313 Cr.P.C was recorded by the learned trial Court wherein he stated that he was innocent and had been falsely implicated in this case. The appellant on being asked whether he wishes to give any evidence in his defence, he stated that he would give evidence in his defence, however, no evidence was presented on behalf of the appellant.

8. The learned trial Judge, after considering the evidence on record, has convicted the appellant as detailed in the opening paragraph. Hence, this appeal.

9. Mr. Pandey, learned counsel for the appellant submits that the learned trial Court has not appreciated the facts and evidence available on record while passing the order of conviction. The said judgment suffers from legal infirmity and perversity. There are omissions and contradiction in the statement of the witnesses. Even if the incident is taken to be on its face value, the appellant cannot be convicted for the offence under Section 302 of the IPC but at the most, it would fall under Section 304 of the IPC as the appellant used the but side of the axe and not the sharp edge of the axe to cause the injuries. Had the appellant any intention to cause murder of the deceased, he could have used the sharp edge of the axe for assault. It is further submitted that looking to the age of the appellant, a lenient view ought to have been taken by the learned trial Court and the sentence awarded also deserves to be reduced suitably.

10. On the other hand, Mr. Bharat Gulabani, learned counsel for the State/ respondent submits that the learned trial Court has passed the judgment of conviction and order of sentence after proper appreciation of the materials available on record which deserves no interference. The appellant has committed a heinous crime with a deadly weapon like axe and as such, this appeal deserves to be dismissed.

11. I have heard learned counsel appearing for the parties, perused the pleadings and materials available on record with utmost circumspection.

12. The fact that the death of the deceased was homicidal in nature has not been disputed by either of the parties. Dr. Shekhar Lal Kanwar (PW-8) is

the Medical Officer who had conducted the postmortem in which he found *rigor mortis* present over body. Clotted blood was present over left cheek of the both nostril. Blood was coming out from left parietal region back of left ear (4.5 x 2 c.m.) and bone deep fracture on left parietal bone, contusion over the right fronto-parietal region below scalp with clotted blood present (8x4.5 c.m). Bone was intact and clotted blood was present in the brain material. He had opined the cause of death to be hemorrhage and shock due to head injury which seemed to be homicidal in nature and the duration of death was within 12-16 hours of the postmortem.

13. The injuries sustained by the deceased as per the postmortem report (Exhibit P/20) reads as under:

> "*Body lying supine in position, eye closed, mouth semi open, wore red and white colour frock and red ladies slip, pink colour underwear. Rigor mortis present over body. Clotted blood was present over left cheek and both nostril. Blood comes from left parietal region back of left ear (4.5 x2cm) and bony deep fracture on left parietal bone contusion over the right fronto parietal region below scalp with clotted blood present (8x4.5 c.m.) bone was intact. Clotted blood present in brain material.*
>
> *The cause of death is hemorrhage and shock due to head injury which seems to be homicidal in nature.*
>
> *Duration since death to PM is 12-16 hours.*"

14. The said witness (PW-8) has also answered the query made by the police with regard to the seized axe and has opined that the same could have caused the injuries sustained by the deceased. As such, the finding of the learned trial Court that death of deceased was homicidal in nature, is a finding of fact based on the evidence available on record, it is neither

perverse nor contrary to the record and this Court affirms the said finding that death was homicidal in nature.

15. Now, the next question is, whether the appellant is the author of the offence in question?

16. The complainant Melaram Kanwar (PW-1) is the father of both the deceased as well as the appellant. He is an illiterate person and has denied having seen the occurrence despite the fact that the FIR was lodged by him. He has deposed before the learned trial Court that the appellant was not in fit state of mind. Sukrita Bai (PW-2) is the mother of the appellant and the deceased. She has also turned hostile and denied of having seen any incident. Antram Kanwar (PW-5) is the elder brother of the father of the appellant and deceased. He has also turned hostile and denied of having any knowledge regarding the reason of death of the deceased. However, he admitted that his brother Melaram (PW-1) had informed him that his son i.e. the appellant had killed her daughter with an axe. Dayaram Kanwar (PW-4) has stated that he was acquainted with both the deceased and the appellant and on the date of incident, at about 11:00 in the night, Antram Kanwar (PW-5) came and informed him that the deceased had expired. It was informed that the appellant had killed the deceased. He was given notice by the police for inquest proceedings. He is also the witness to the memorandum (Exhibit P/89), seizure memos (Exhibit P/9 and P/10). Kamal Singh Rathiya (PW-6) is the witness to memorandum (Exhibit P/8) and seizure memo (Exhibit P/9 and P/10). Barkha Meshram (PW-7) is the Patwari who had prepared the spot map (Exhibit P/13).

17. The FIR was lodged by the father of the appellant and the deceased wherein he has clearly stated that the appellant had assaulted the

deceased with an axe on the head, though he has turned hostile before the learned trial Court. It is obvious that the parents of the deceased would not depose against their own son i.e. the appellant as they have lost their daughter and the assailant is their own son who would be behind the bars, if convicted. The dead body was found in their own house and neither the appellant nor his parents could explain as to how the deceased sustained the injuries as such, the learned trial Court has not committed any error in arriving at a finding with regard to the fact that the appellant is the author of the crime.

18. Now the further question that would be required to be considered is whether the learned trial Court was justified in convicting the appellant for the offence punishable under Section 302 of the IPC and sentencing him to undergo simple imprisonment for 10 years?

19. The father of the appellant Melaram Kanwar (PW-1) and other prosecution witnesses who are the relatives of the deceased as well as the appellant, though have turned hostile and not supported the prosecution case, but what can be culled out from reading of the deposition, especially the deposition of Melaram Kanwar (PW-1) is that his son i.e. the appellant was not in his senses and at one point of time, he admits that the appellant had assaulted the deceased with the axe but not from the 'but side' of the axe. It has further come in the evidence that the appellant used to go anywhere in the night and he was not in a fit state of mind. The weapon of assault has also been recovered and seized at the instance of the appellant and in the memorandum (Exhibit P/8), he has explained the manner in which he assaulted the deceased. The deceased and the appellant are sister and brother and the appellant could not have any intention of causing murder of the her own sister and

that too, on a mere scolding. The deceased was angry as the appellant used to come home late at night and used to wake her up demanding food. This made the deceased to scold and slap the appellant which infuriated the appellant and he assaulted the deceased with the 'but side' of the axe.

20. The aforesaid finding brings us to the next question for consideration, whether the case of the appellant is covered within Exception 4 to Section 300 of the IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as contended by learned counsel for the appellant ?

21. The Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**[1] has observed as under:-

> *"21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year."*

22. The Supreme Court in the matter of **Gurmukh Singh v. State of**

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1 (2002) 3 SCC 327

Haryana[2] has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

> *"23. 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 fro 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.*

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2 (2009) 15 SCC 635

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.

24. 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."

23. Likewise, in the matter of **State v. Sanjeev Nanda**[3], their Lordships of the Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

24. Further, the Supreme Court in the matter of **Arjun v. State of Chhattisgarh**[4] has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

"20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under :(SCC p. 220, para 7)

"7. To invoke this exception four requirements must be satisfied, namely, (I) it was a sudden fight; (ii) there was no

3 (2012) 8 SCC 450

4 (2017) 3 SCC 247

premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly."

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

"9. …. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provisions means "unfair advantage".

25. In the matter of **Arjun** (supra), the Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and not the intention to

cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

26. Further, the Supreme Court in the matter of ***Rambir v. State (NCT of Delhi)***[5] has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

> *"16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:*
> *(i) There must be a sudden fight;*
> *(ii) There was no premeditation;*
> *(iii) The act was committed in a heat of passion; and*
> *(iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner."*

27. As the appellant was a juvenile on the date of offence, it would be beneficial to take note of the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short, the Act of 2015*) The relevant provisions reads as under:

> "***2. Definitions***. *- In this Act, unless the context otherwise requires, -*
>
> *xxx xxx xxx*
>
> *(12) 'child' means a person who has not completed eighteen years of age;*
>
> *xxx xxx xxx*
>
> *(13) 'child in conflict with law' means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;*
>
> *xxx xxx xxx*
>
> *(35) 'juvenile' means a child below the age of eighteen years;'*

5 (2019) 6 SCC 122

xxx xxx xxx"

28. Further, the relevant definition of with regard to the nature of offences under the Act of 2015 reads as under:

> *"(33) ''heinous offences' includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;;*
>
> *xxx xxx xxx*
>
> *(45) 'petty offences' includes the offence for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment upto three years;*
>
> *xxx xxx xxx*
>
> *(54) 'serious offences' includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is -*
>
> > *(a) minimum imprisonment for a term more than three years and not exceeding seven years; or*
> >
> > *(b) maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.*
>
> *xxx xxx xxx"*

29. Where no minimum sentence is prescribed for the offence and the prescribed maximum sentence is more than seven years, then it is to be considered as serious one. The Supreme Court, in ***Shilpa Mittal v. State of NCT of Delhi & Another*** {Criminal Appeal No. 34/2020, decided on 09.01.2020} has observed as under:

> *"36. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the*

judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz. offences where the maximum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter."

30. Section 14 of the Act of 2015 deals with inquiry by the Juvenile Justice Board regarding child in conflict with law. The said Section reads as under:

*"**14. Inquiry by Board regarding child in conflict with law**. — (1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.*

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the

same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,—

> *(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);*
>
> *(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.*"

31. Section 15 of the Act of 2015 deals with the preliminary assessment into heinous offences by the Board. The same reads as under:

> ***15. Preliminary assessment into heinous offences by Board.—****(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:*
>
> *Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.*
>
> *Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*
>
> *(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):*
>
> *Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:*
>
> *Provided further that the assessment under this section shall be completed within the period specified in section 14.*"

32. Section 18 of the Act of 2015 deals with orders regarding child found to be in conflict with law. The same reads as under:

> ***"18. Orders regarding child found to be in conflict with law****.—*

xxx *xxx* *xxx*

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

33. Section 19 of the Act of 2015 is with regard to the power of the Children's Court. Section 19(1) of the Act of 2015 reads as under:

*"**19. Powers of Children's Court**.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—*

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18."

34. Section 21 of the Act of 2015 is in regard to the order that may not be passed against a child in conflict with law. It reads as under:

"21. Order that may be passed against a child in conflict with law. - No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force."

A bare perusal of the aforesaid provision would reveal that no no child in conflict with law can be awarded death penalty or sentence of imprisonment for life without the possibility of release, for any such

offence, either under the provisions of this Act or under the provisions of the IPC (45 of 1860) or any other law for the time being in force.

35. A plain reading of the above provisions clearly indicates that a child who is alleged or found to have committed an offence and who has not completed the age of 18 years on the date of commission of the offence, is a child in conflict with law and the Juvenile Justice Board, which is a quasi judicial body, is tasked with deciding whether a child aged 16-18 years who is alleged to have committed a heinous offence should be tried as an adult. This decision is based on a 'preliminary assessment' of the child's mindset at the time of the alleged offence. If the Board decides that the child should be tried as a juvenile, the maximum punishment is limited to three years, regardless of the crime's severity or the child's age. Alternatively, if the Board decides that the juvenile in conflict with law should be tried as an adult, it may order transfer of the trial of the case to the Children's Court which has rightly been done in the present case. Thereafter, if the after the receipt of preliminary assessment by the Juvenile Justice Board under Section 15 of the Act of 2015, the Children's Court decides under 19(1) of the Act of 2015 that there is need for the trial of the child in conflict with law as an adult and concludes the trial of the said child resulting into his or her conviction, the provisions of the IPC applies. This means punishments corresponding to the severity of the offence can be given, similar to those for adult offenders. The important exception to this is the death penalty and life imprisonment without the possibility of release as per the provisions of Section 21 of the Act of 2015. There is a bar to impose the death penalty and life imprisonment without the possibility of release but the same can be imposed with the possibility of release.

36. The learned trial Court has committed an error of law firstly, by convicting the appellant for the offence punishable under Section 302 of the IPC and, secondly, by sentencing him to undergo simple imprisonment for 10 years. If an accused is convicted for the offence under Section 302 of the IPC, the punishment that could be awarded is either life imprisonment or death sentence with fine. There is no other punishment prescribed under Section 302 of the IPC. Furthermore, the said sentence could have only be awarded only with the possibility of release, and not otherwise, as has been provided under Section 21 of the Act of 2015.

37. Reverting to the facts of the present case in light of principles of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that as per evidence of the prosecution witnesses, there was neither any motive nor any premeditation on the part of the appellant to cause death of deceased and the appellant was infuriated for the reason that the deceased who is his sister, had scolded and slapped for coming home late at night and out of that anger and in a heat of passion, the appellant assaulted his sister with an axe, and gave only two blows and that too, from the 'but side' and not the sharp edge of the axe. As soon as the deceased fell on the ground, the appellant did not gave any further blow with the axe. The appellant did not had any intention to cause death of deceased, but by causing such injuries, he must have had the knowledge that such injuries inflicted by him would likely to cause death of the deceased, as such, his case would fall within the purview of Exception 4 of Section 300 of IPC, as the act of the appellant herein completely satisfies the four necessary ingredients of Exception 4 to Section 300 IPC i.e. (i) there must be a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion and (iv) the appellant had not taken any undue advantage or acted in a cruel or

unusual manner.

38. Considering the above-stated facts, also considering the evidence of the prosecution witnesses, the nature of injuries sustained by the deceased and the fact that the appellant is in jail since 12.06.2019, it would meet the end of justice if the conviction of the appellant under Section 302 of the IPC is altered/converted to Section 304 Part-II of the IPC.

39. Accordingly, conviction of the appellant under Section 302 of the IPC is set aside, however, he is convicted under Section 304 Part-II of the IPC and sentenced to undergo simple imprisonment for six years.

40. The appellant is stated to be in jail. He shall serve out the sentence as modified by this Court.

41. The criminal appeal is **partly allowed** to the extent indicated herein-above.

42. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentences to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

43. Let a certified copy of this judgment alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Preeti / Amit

HEAD NOTE

When a child in conflict with law is tried as an adult for any serious offence for which the sentence prescribed is life sentence, the same can very well be awarded subject to the restraint that it may be awarded with possibility of release, and not otherwise.