

Ashok Kumar Vs. State

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Court : Delhi

Decided On : Mar-14-2014

Judge : Reva Khetrapal

Appellant : Ashok Kumar

Respondent : State

Advocate for Pet/Ap. : Mr. Ajay Verma, Mr. Prateek Sisodia, Ms. Rajdipa Behura

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL. APP. NO.351/1998
ASHOK KUMAR Through: Appellant Mr. Ajay Verma and Mr. Prateek Sisodia,
Advocates Through: Respondent Ms. Rajdipa Behura, APP for the State.
versus STATE % Date of Decision : March 14, 2014 CORAM: HON'BLE MS.
JUSTICE REVA KHETRAPAL HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT

: REVA KHETRAPAL, J.

1. This appeal calls into question the judgment of conviction and order on sentence passed by the learned trial court whereby the Appellant has been convicted for the offences under Sections 302/307/427 IPC and sentenced to undergo RI for 7 years and a fine of ` 1,000/-, in default of which, to undergo SI for 15 days for the offence under Section 307, RI for one year for the offence under Section 427 IPC and life imprisonment for the offence under Section 302 IPC.

2. The factual matrix which led the trial court to convict the Appellant (who has since been declared a proclaimed offender) and to sentence him as aforesaid is that on the night intervening 1 st and 2nd January, 1995 at about 4.00 a.m., the Appellant who was driving bus No.DEP7007 drove over the jhuggi of PW2 Makhan Lal causing grievous injuries to Makhan Lal, his wife PW3 Kishan Devi and his son Jaipal, who were sleeping in the said jhuggi and also the adjoining jhuggi where PW1 Sheela, daughter of Makhan Lal was sleeping with her husband PW4 Ram Kewal. After ramming into the jhuggis, the said bus collided with the wall adjoining the jhuggis. The Appellant was overpowered at the spot. The police vehicle removed the injured to AIIMS where the doctor declared Jaipal as brought dead.

3. The criminal law machinery was set into motion at 4.10 a.m. when Head Constable Azad Mohammad No.1083/PCR at police post Govind Puri, New Delhi was informed through wireless that one bus had rammed into a jhuggi near Giri Nagar, bus stand of 425, and police may be sent at the spot where bus No.DEP7007 was standing. On receipt of this information, DD No.24 was entered in the roznamcha and copy of the DD No.24 (Ex.PW8/A) was handed over to Assistant Sub-Inspector Vir Singh (PW8) for taking appropriate action. PW8 along with Constable Shyamvir thereupon went to the place of occurrence at Giri Nagar where he noticed a bus had run over the jhuggis near the boundary wall of the school. The driver was in the vehicle. On coming to know that the injured persons had already been shifted to AIIMS hospital, PW8, Assistant Sub-Inspector Vir Singh reached the hospital where he met the injured persons and was told that Jaipal was brought dead. He recorded the statement of Ram Kewal (Ex.PW4/A), which he sent to the police station along with his endorsement (Ex.PW8/B) through Constable Mahabir. He then returned to AIIMS with the FIR (Ex.PW5/A) at around 6.00 a.m. and recorded the statements of the injured persons, namely, Makhan Lal (PW2), Kishan Devi (PW3) and Sheela (PW1). Thereafter, he along with Ram Kewal (PW4) reached the spot at 6.30 a.m. The SHO was present at the spot and he (PW8) was informed that the investigation had been entrusted to Sub-Inspector Bijender Singh (PW11).

4. Sub-Inspector Bijender Singh (PW11) then posted as In-charge of Police Post Govind Puri after being entrusted with the investigation of the case, as per the

orders of the SHO reached the spot, prepared the site plan (Ex.P-X1) on the pointing out of Ram Kewal (PW4) and got the spot photographed vide Ex.PW4/1 to Ex.PW4/6. At the spot, he took bus No.DEP7007 into police possession and prepared seizure memo (Ex.PW11/A). Thereafter, he arrested the Appellant present at the spot after interrogation and conducted his personal search vide memo Ex.PW11/B. He then recorded the statements of the witnesses. On the following day, i.e., 3.1.1995, he got conducted the postmortem of the dead body of the deceased Jaipal. It may be usefully noted at this juncture that Assistant Sub-Inspector Vir Singh (PW8) on the basis of the statement of Ram Kewal (Ex.PW4/A) had recommended the registration of the case under Sections 279/337/304A IPC. Subsequently, he recorded the supplementary statement of Ram Kewal (PW4) at the hospital itself after recording the statement of Kishan Devi (PW3) and Makhan Lal (PW2), which, as per the case of the prosecution, was recorded after about 20-25 minutes of the first statement to clarify the position arising from the statements of PWs Makhan Lal (PW2) and Kishan Devi (PW3). On the basis of the statements of the prosecution witnesses including the supplementary statement of Ram Kewal (PW4), the case was converted from one under Section 304A IPC to Section 302 IPC on 2.1.1995 itself.

5. As noted above, autopsy was performed by Dr. J.N. Tirkey (PW13), who after noting the external injuries on deceased Jaipal opined that the cause of death was shock as a result of ante mortem injuries produced by blunt force, as could be produced in a run over vehicular accident. The injuries were sufficient to cause death in the ordinary course of nature. Individually also, laceration of liver was sufficient to cause death in the ordinary course of nature as well as laceration of right lung.

6. During investigation, the MLCs of PW1 Sheela (Ex.PW6/A), PW2 Makhan Lal (Ex.PW6/B) and their respective X-ray reports i.e Ex.PW6/C and Ex.PW6/D were collected. After investigation, the accused was sent up for trial under Sections 302/325/307/427 IPC.

7. Charge under Sections 302/307/427 IPC was framed against the Appellant, who pleaded not guilty and claimed trial.

8. The prosecution, in order to establish its case, examined 13 witnesses. The defence chose not to adduce any evidence.

9. The learned Sessions Judge, on analysis of the evidence, came to hold the Appellant guilty of the offences under Sections 302/307/427 IPC.

10. We have heard Mr. Ajay Verma, Advocate appointed by this Court as amicus curiae to represent the Appellant, who is a proclaimed offender and Ms. Rajdipa Behura, learned Additional Public Prosecutor for the State and perused the oral evidence and the exhibited documents on record.

11. The learned amicus curiae, in the first instance, drew our attention to document Ex.PW4/X, which is the supplementary statement of the first informant Ram Kewal (PW4) recorded on 2.1.1995 itself. The gist of his said statement under Section 161 Cr.P.C. was that he was working as a helper in Asia Travels, Govind Puri. Ashok (the Appellant) was also working in the said Asia Travels as a driver about two months ago and both their buses used to be parked in Giri Nagar. He (Ram Kewal) had become friendly with a girl named Sheela (PW1) and had expressed to Ashok his (Ram Kewals) desire to marry her. Thereupon, Ashok, after convincing Makhan Lal (PW2), father of Sheela, got Ram Kewals marriage with Sheela solemnized at Kalkaji Mandir about two months ago. After the marriage, he (Ram Kewal) and his wife constructed a jhuggi adjoining to the jhuggi of his father-in-law and started living in Giri Nagar. Ashok used to visit him at his jhuggi several times in the night and it appeared from his bad activities that he wanted to establish illicit relations with his (Ram Kewals) wife Sheela, but due to his (Ram Kewals) presence Ashok did not have the courage to take any wrong step. Ram Kewals mother-in-law, father-in-law and wife Sheela were not happy with Ashok due to his visits to their jhuggi at night and on this issue an altercation had ensued between Ashok and his in-laws. On 1.1.1995, at about 8.00 p.m. in the night when he (Ram Kewal) was not present at his jhuggi, Ashok came to his jhuggi. His visit was objected to by Ram Kewals wife Sheela and his in-laws, which turned into a quarrel between Ashok and them. As a result of this quarrel, Ashok sustained a minor injury and left from their jhuggi after threatening his mother-in-law, father-in-law, brother-in-law and wife that he (Ashok) will kill all of them. He

came to know about the said quarrel on being told by his mother-in-law, father-in-law and wife. At about 4.00 AM in the night, the bus struck them and they received injuries. He thought that Ashok might have lost control over the bus and on the assumption that this was an accident he (Ram Kewal) had given his earlier statement. But now he had come to know that this was not an accident, rather Ashok had willfully rammed the bus into their jhuggies with a view to kill all of them.

12. It was contended by Mr. Ajay Verma that the aforesaid statement made by PW4 Ram Kewal was an afterthought and concoction with a view to implicate the Appellant for the murder of his brother-in-law. The case was initially registered against the Appellant for rash and negligent driving of bus No.7007, but later converted at the behest of prosecution witnesses into one under Section 302 IPC as the prosecution witnesses wanted to wreak vengeance on the Appellant for having caused the death of Jaipal, the 15 year old son of PW2 Makhan Lal and PW3 Kishan Devi and on account of the grievous injury sustained by PW1 Sheela, the daughter of PW2 and PW3. Learned amicus curiae stressed upon the fact that there were several lacunae in the investigation which entitled the Appellant to the benefit of acquittal. One such lacuna was that no mechanical inspection of the bus was got done by the Investigating Officer though it was the case of the defence that the Appellant had lost control over the bus on account of brake failure as is borne out by the order dated 2.5.1996 passed by the learned Additional Sessions Judge at the time of framing charge. Reference, in particular, was made to para 6 of the said order, which reads as under:

6. Ld. counsel for accused Sh. Anil Sethi on the other hand, argued that this is a case of pure accident and the police in connivance with Makhan Lal, has made out a case of murder. Ld. counsel contended that the brakes of the bus had failed and when the accused turned the bus towards right for going to the petrol pump to take diesel, the brakes failed and he lost control of the bus. Ld. counsel further contended that the bus climbed a patri which was about two feet high and then the bus rammed into the jhuggis. It is submitted by ld. defence counsel that mechanical inspection of the bus was not done deliberately as it could have exposed the prosecution case since the brakes of the bus were not working.

13. Apart from the lacunae left in the investigation of the case, learned amicus curiae sought to press into service the fact that the material prosecution witnesses, namely, PWs1, 2, 3 and 4 were hostile to the case of the prosecution in material particulars. He also sought to place reliance on the site plan Ex.P-X1 to contend that a bare look at the site plan was sufficient to show that the Appellant had lost control of the bus on taking a right turn from M.B. Road towards Giri Nagar and as a result thereof, the bus had mowed down the jhuggis and rammed into the wall adjoining the school. He relied upon the judgment of this Court reported in ILR (2006) II DELHI882 Abdul Subhan v. State (NCT of Delhi) and the judgment of the Supreme Court in (1973) 4 SCC23 Nageshwar Shri Krishna Ghobe v. State of Maharashtra to contend that where investigation has been conducted in a very casual and superficial manner and important evidence which was available and should easily have been forthcoming has not been brought before the Court for wholly inadequate, if not flimsy reasons, it cannot be said that the accused was driving his vehicle rashly and negligently. In the present case, he contended, the accused was not charged for rash and negligent driving but for a heinous offence like murder and it was, therefore, all the more incumbent upon the prosecution to establish the case against the accused beyond any iota of doubt. The poor investigation of the case coupled with the unsatisfactory statements made by the prosecution witnesses were insufficient to bring home the guilt of the accused.

14. Ms. Rajdipa Behura, learned counsel for the State, on the other hand, contended that it is settled law that any lacuna left in the investigation could not be availed of by the defence for the acquittal of the accused. Ms. Behura referred to the post mortem report of the deceased Jaipal, which opined that the cause of death was shock caused by multiple ante mortem injuries produced by a blunt force as could be produced in a run over vehicular accident. She contended that the nature of the injuries set out in the post mortem report were themselves sufficient to show that the accused had run over the jhuggi of the deceased and the PWs with the intention of killing them. The learned trial Judge had himself gone for site inspection as borne out by the judgment and noted that the inspection of the site of the crime had clearly revealed the position as is disclosed in the site plan Ex.PX1. The learned Judge noted that Ravi Dass Marg is a wide road, which has a central verge. The bus came from the side of M.B. Road. In

front of the place where the jhuggis were situated at an angle, there is a cut in the middle verge of the road. It is there that a right turn was taken. In the event of brake failure, the bus could not have taken a right turn or a U-turn, for when the bus is required to take a turn it is required to slow down and if the brakes had failed, while slowing down the bus, in that situation, the driver of the bus will not take the turn, but will take the bus straight and park it to the left side of the road instead of taking right turn inviting danger from the traffic which was likely to come from the opposite side, i.e., from the other side of the road. The learned Judge also noted that if turn is taken and the bus is slow and assuming brake failure is there, it appears highly improbable that the bus would run over the jhuggis which were situated towards the wall of the primary school at that time as depicted in site plan Ex.P-X1 and were at a distance over the patri and that too at an angle of 120 at least. Unless the bus is at a high speed, the bus cannot reach the jhuggis which were situated on a higher slope.

15. Learned Additional Public Prosecutor also submitted that the failure of the investigating agency to carry out the mechanical inspection of the vehicle was not a fact which would have much bearing on the case, in that the witnesses have deposed that the bus was driven after the incident from the site of the occurrence and was not towed away and this indicates that there was no brake failure and as such there was no necessity of mechanical inspection of the bus. Further, the prosecution witnesses in their statements recorded on 2.1.1995 itself had alleged that the accused had rammed into their jhuggis by a bus with the intention of killing them and thus the story of murder had come into existence immediately after the crime. By necessary implication, the probability of the incident being an accident was ruled out and hence no necessity was felt by the Investigating Officer of having the mechanical inspection of the vehicle conducted.

16. Learned Additional Public Prosecutor also contended that though the defence had raised the plea of brake failure at the time of framing of charge, the defence did not choose to examine the owner of the bus. Once the plea of failure of brakes was taken, it was incumbent upon the defence to have examined the owner of the bus to prove that the bus was delivered back to him with brake failure. Further, at the time of the recording of the statement under Section 313 Cr.P.C., the accused

did not state that the brakes had failed and he had lost control of the bus. Instead, he stated that he was not driving the bus itself in the first place. Thus, from the owner of the vehicle, the authenticity of the plea that the accused was not driving the bus ought to have been established by the defence. However, no defence witness was examined in spite of opportunity being given for the purpose. In the absence of any evidence to that effect, the defence version cannot be accepted. Learned Additional Public Prosecutor also contended that the fact that the accused was driving the bus was admitted by the accused at the time of framing of charge. However, in the order framing charge, it was noted that the plea of the accused was that the accused was driving the bus but the brakes had failed. In his statement under Section 313 Cr.P.C., however, the accused denied that he was even driving the bus at the time of the incident. The latter statement of the accused being patently false, the said plea must be considered as an additional circumstance inculcating the accused [See *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC116].

17. As regards the contradictions and discrepancies in the evidence of the material prosecution witnesses and the need of the learned Additional Public Prosecutor to cross-examine the said witnesses, Ms. Behura submitted that the said contradictions were minor in nature and did not strike at the root of the prosecution case. Thus, there is no contradiction in the deposition of the witnesses on the aspects that the accused had visited Sheela's jhuggi on the night of 1st January, 1995, that Sheela had called her parents, that Sheela's parents had admonished the accused resulting in an altercation between Sheela's father and the accused and the accused had left the jhuggi in anger, and that on getting infuriated after being pushed out from Sheela's jhuggi the accused had rammed his bus into her jhuggi and the adjoining jhuggi of her father resulting in grievous injuries to Sheela and the death of her younger brother Jaipal.

18. At this juncture, we may note that the oral evidence on record of PWs 1 to 4 contain some discrepant statements, for which reason the said PWs were declared hostile during trial. It is, however, well settled in law that the evidence of a hostile witness can be relied upon by the prosecution as well as by the defence. In *Rameshbhai Mohanbhai Koli v. State of Gujarat*, (2011) 11 SCC111 the said

principle has been reiterated stating that: (SCC p. 117, paras 16-17)

16. It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof. (Vide Bhagwan Singh v. State of Haryana [(1976) 1 SCC389:

1976. SCC (Cri) 7]., Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC233:

1976. SCC (Cri) 566]., Syad Akbar v. State of Karnataka [(1980) 1 SCC30:

1980. SCC (Cri) 59]. and Khujji v. State of M.P. [(1991) 3 SCC627:

1991. SCC (Cri) 916]..

17. In State of U.P. v. Ramesh Prasad Misra [(1996) 10 SCC360:

1996. SCC (Cri) 1278]. this Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in Balu Sonba Shinde v. State of Maharashtra [(2002) 7 SCC543:

2003. SCC (Cri) 112]., Gagan Kanojia v. State of Punjab [(2006) 13 SCC516: (2008) 1 SCC (Cri) 109]., Radha Mohan Singh v. State of U.P. [(2006) 2 SCC450: (2006) 1 SCC (Cri) 661]., Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC360: (2009) 1 SCC (Cri) 188]. and Subbu Singh v. State [(2009) 6 SCC462: (2009) 2 SCC (Cri) 1106]. .

19. On a careful scrutiny of the testimonies of the four witnesses PWs 1 to 4, it is seen that they are consistent as regards the fact that the accused had rammed into their jhuggis by a bus as a result of which the jhuggis had fallen down causing the death of Jaipal and grievous injuries to PW1 and PW2. In our opinion, this supports the prosecution version that the accused had driven the motor vehicle,

bus No.DEF7007 and deliberately rammed the same into the jhuggis. All the four prosecution witnesses have identified the accused in the Court. Thus, it stands established on record from the testimonies of these witnesses that the incident did occur and the accused had mowed down their jhuggis. Further, the following aspects become clear:(i) On the intervening night of 1st and 2nd January, 1995, the accused was driving bus No.DEF7007 (ii) The aforesaid bus belonging to Asia Travels rammed into the jhuggis of PWs 1 to 4 and mowed down both the jhuggis. (iii) Grievous injuries were sustained by Jaipal on vital parts of his body, which, in the opinion of the doctor who conducted the autopsy, were sufficient to cause death in the ordinary course of nature. Individually also, laceration of liver was sufficient to cause death in the ordinary course of nature as well as laceration of right lung. (iv) Grievous injuries were sustained by PW1 Sheela, who is still unable to perform her daily activities and has been incapacitated therefrom. (v) Grievous injuries were sustained by PW2 Makhan Lal as well as by other PWs. (vi) 20. The accused was involved in the commission of the crime. The only issue which, to our mind, survives for consideration is whether the crime was committed by the accused with previous deliberation or pre-mediation so as to warrant his conviction under Section 302 IPC and the sentence of life imprisonment imposed upon him by the learned trial Judge or whether believing the prosecution version that a quarrel had taken place between the parties just a few hours prior to the incident relating to the insistence of the accused upon visiting Sheela (PW1) [in the absence of her husband Ram Kewal (PW4)]. and such a quarrel had resulted in the accused getting infuriated to the extent that he drove his bus into the jhuggis of Sheela and her father, is not substantiated by credible evidence.

21. In the aforesaid context, we may usefully refer to a recent decision of the Supreme Court in Khachar Dipu alias Dilipbhai Nakubhai v. State of Gujarat, (2013) 4 SCC322 where the factual score was somewhat identical. In the said case, three days prior to the date of the occurrence, two of the accused persons had a dispute regarding dumping of manure with the brother of the complainant and there were altercations which led to an inimical relationship between the parties. On the date of the occurrence, when the deceased, who was the brother of the complainant, was going to his field by cycle, one of the accused persons with the intention of extinguishing the life spark of the deceased, dashed his motor

vehicle from behind and when the deceased was thrown off from his cycle, the said accused tied him behind the motor vehicle and dragged him for about 10 kms and threw the dead body at some distance and destroyed the evidence. The learned Sessions Judge, on analysis of the evidence, came to hold that accused No.1 was guilty of the offence punishable under Section 304 Part I IPC and, accordingly, sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of ` 500/and, in default, to suffer further simple imprisonment of one month. As far as the other accused persons were concerned, who had allegedly abetted the offence, they stood acquitted of the charges. Aggrieved by the aforesaid judgment, the accused and the State of Gujarat preferred criminal appeals before the High Court. The High Court opined that the learned Sessions Judge had erred in recording the conviction under Section 304 Part I IPC and not under Section 302 IPC. On further appeal to the Supreme Court, the Supreme Court after noting that the dashing of the cycle by the motor vehicle in question stood established and that there was sufficient proof that after the accident, there was dragging of the deceased by the vehicle in question (though it could not be said with certainty about the distance), opined that it could safely be concluded that the intention was to cause bodily injury and such injuries as were caused were sufficient in the ordinary course of nature to cause death. It was held that when such injuries are inflicted, it will be a travesty of justice to hold that it was an accident without the intention to cause death.

22. Reverting to the case in hand, we have already concluded supra that the accused was involved in the commission of the crime which resulted in the brutal death of a 15 year old innocent child, apart from grievous injuries on the person of PW1 Sheela and PW2 Makhan Lal. It is also apt to reiterate that the accused had in the course of the trial given up his plea that it was an accident because of brake failure or due to his negligence. He, in fact, has taken the plea of complete denial by stating that he was not driving the vehicle at all on the fateful night. Under these circumstances, the quarrel between the accused and the parents of the deceased relating to the insistence of the accused upon visiting Sheela in her jhuggi assumes significance. There is evidence to show that the jhuggis were situated on the patri which was about 2 feet high and the bus had climbed on to the patri to run over the jhuggis and that too at 4.00 a.m. Here again, it is apt to note that the

bus was admittedly a school bus which, it stands established on record, used to pick up the children for school not before 5.30/6.00 a.m. Thus, it can safely be concluded that there was a clear intention to cause bodily injuries to the family of Ram Kewal and that such injuries were sufficient in the ordinary course of nature to cause death.

23. In the above context, we may refer to the decision in *Virsa Singh v. State of Punjab*, AIR 1958 SC465 wherein Vivian Bose, J., speaking for a three-Judge Bench, laid down what is required for the prosecution to prove to bring the case under Section 300 Thirdly. It has been stated therein that first, it must be established, quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved and these are purely objective investigations; thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and once these three elements are proved to be present, the enquiry proceeds further; and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Thereafter, it has been stated as follows: [*Virsa Singh case* (AIR 1958 SC465:

1958. Cri LJ818, AIR p. 467, para 13]. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face

the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

24. In *State of A.P. v. Rayavarapu Punnayya* [(1976) 4 SCC382:

1976. SCC (Cri) 659]., after referring to the law laid down in *Virsa Singh* case [AIR 1958 SC465:

1958. Cri LJ818 and *Rajwant Singh v. State of Kerala* [AIR 1966 SC1874:

1966. Cri LJ1509 , the Court proceeded to enunciate that: [SCC, pp. 388-89, para 21]. whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 of the Penal Code.

25. Recently, in *Rampal Singh v. State of U.P.* [(2012) 8 SCC289: (2012) 3 SCC (Cri) 860]. , after referring to the pronouncements in *Rayavarapu Punnayya* [(1976) 4 SCC382:

1976. SCC (Cri) 659]., Vineet Kumar Chauhan v. State of U.P. [(2007) 14 SCC660: (2009) 1 SCC (Cri) 915]., Ajit Singh v. State of Punjab [(2011) 9 SCC462: (2011) 3 SCC (Cri) 712]. and Mohinder Pal Jolly v. State of Punjab [(1979) 3 SCC30:

1979. SCC (Cri) 635]., the Supreme Court opined thus: {Rampal Singh case [(2012) 8 SCC289: (2012) 3 SCC (Cri) 860]. , SCC p. 301, para 25} The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the principle of exclusion. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, culpable homicide amounting to murder. Then secondly, it may proceed to examine if the case fell in any of the Exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our Criminal Jurisprudence and are accepted as rights of the accused.

26. In view of the enunciation of the law laid down in the case of Khachar Dipu (supra) and the other decisions referred to hereinabove having regard to the evidence on record, we are of the opinion that the conviction in the present case is required to be converted from one under Section 302 IPC to Section 304 Part I IPC and the conviction under Section 307 IPC to one under Section 325 IPC. The conviction under Section 427 IPC is not being interfered with. We accordingly sentence the Appellant to rigorous imprisonment for a period of five years and to pay a fine of ` 500/and, in default, to suffer further simple imprisonment of one month. The Appellant having been declared proclaimed offender and having served a period of nearly three years and eight months sentence as per his latest nominal roll on record, he shall serve out the balance sentence without remission as and when he is traced out.

27. The appeal stands disposed of in the above terms. REVA KHETRAPAL
JUDGE V. KAMESWAR RAO JUDGE March 14, 2014 km

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