Abdul Rasheed Vs. State

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Court : Delhi

Decided On : Apr-02-2014

Judge : Kailash Gambhir

Appellant : Abdul Rasheed

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: April 02, 2014 + CRL.A.694/1999 ABDUL RASHEED Through: ..... Appellant Mr. Pramod Swarup, Sr. Advocate with Mr. Akshay Verma, Advocate. versus STATE Through: + ... Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State CRL.A.1/2000 MOHD. YAMEEN Through: ..... Appellant Mr. Pramod Swarup, Sr. Advocate with Mr. Akshay Verma, Advocate. versus STATE Through: + CRL.A.4/2000 ABDUL HAMID ..... Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State ..... Appellant Through: Mr. Pramod Swarup, Sr. Advocate with Mr. Akshay Verma, Advocate. versus STATE Through: Crl.A. Nos. 694/1999, 1/2000 & 4/2000 ..... Respondent Ms. Richa Kapoor, Additional CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
KAILASH GAMBHIR, J1 The challenge in these appeals is to the impugned judgment dated 24.11.1999 and the order on sentence dated 29.11.1999, passed

by the learned Additional Sessions Judge thereby convicting these appellants for an offence punishable under Section 302/34 of Indian Penal Code, 1860 (hereinafter referred to as IPC) and sentenced them to undergo imprisonment for life with imposition of fine of Rs.50,000/- each and in default of payment of fine to further undergo simple imprisonment for five years each. The appellant Mohd. Yameen was also convicted for an offence punishable under Section 27 of the Arms Act, 1959 and sentenced to undergo R.I. for seven years with imposition of fine of Rs. 20,000/- and in default thereof to further undergo S.I. for two years. The case of the prosecution in brief can be summarized as under: That on the intervening night of 21/22nd March 1996, at about 1 a.m., all the three accused persons had gone to the house of the deceased and knocked at his door. The deceased came out of his house and all the three accused entered into a scuffle with him. One of the accused Yameen brought a churri from his house and stabbed at his chest while the other two were holding the deceased as alleged. Mohd. Aashkin the deceased was removed to the hospital at about 1.20 a.m. on 22.3.1996. Report was made to the police in the said regard by the constable on duty, upon which police came to the hospital where injured was declared unfit for statement and accordingly, the police had gone to the spot where the statement of the complainant Hajra Begum wife of the deceased was recorded. On the basis of this statement, Inspector A.K. Khan prepared the rukka and got the case registered. The injured expired and accordingly the case was converted from section 307/34 of IPC to Section 302/34 IPC. During the course of investigation blood found at the spot was recovered, certain cloths of the decdeased as well as of the accused Mohd. Yameen were also got recovered. Accused persons were arrested and the exhibits were got chemically analysed. After the completion of the investigation charges were framed against all the three accused persons to which they pleaded not guilty and claimed trial. 2. To prove its case, the prosecution had examined 21 witnesses. Statements of all the accused persons were recorded under Section 313 Cr.P.C., and in response to the incriminating evidence put to them they denied their involvement and claimed their false implication in the case. In reply to the last question calling upon them to state anything else in their defence, a common response was given which is reproduced as under:

I have been falsely and wrongly implicated in this case. In fact Aashkin was in habit of playing gambling and drinking. On the night of the incident, he was playing gambling with some unsocial elements and there was a fight between them and on account of that he sustained injuries. I along with Abdul Rashid and other people of the locality removed the deceased to the hospital-JPN. I remained there along with Abdul Rashid the whole night, but later on we were falsely implicated in this case, at the instance of the complainant since she used to keep enmity with us as there used to be quarrel amongst the ladies.

3. In their defence, the accused persons examined DW-1 Moinuddin, but his evidence was not taken into consideration, since he opted not to participate in his cross examination.

4. Representing these appellants, Mr. Pramod Swarup, learned Senior Advocate strongly argued that so far as the appellants Abdul Rasheed and Abdul Hamid are concerned, the only evidence against them is that they along with the co-accused Yameen had grappled with the deceased and in the process he had fallen down. Except this limited role, no other role had been attributed to them as per the deposition of PW-5 and PW-3, the alleged eye witnesses of the incident. Counsel also submitted that it is also an admitted case of the prosecution that all the three accused persons were unarmed and they had no premeditated plan or design to carry out the murder of the deceased. Counsel also submitted that it is also an admitted case of the prosecution that it was Mohd. Yameen who brought a churri/ knife from his jhuggi and had inflicted a single blow on the person of the deceased. Learned counsel also submitted that so far the appellants - Abdul Rasheed and Abdul Hamid are concerned, they did not inflict any injury on the person of the deceased and therefore, they cannot be held liable for the unilateral act committed by the other coaccused Mohd. Yameen. Counsel also submitted that these two appellants cannot be said to have shared any common intention with Mohd. Yameen simply because they had not returned back to their jhuggis when Mohd. Yameen had gone to his jhuggi to fetch a knife and also because they never intervened to stop Mohd. Yameen from inflicting churri blow on the chest of the deceased which is the only reason given by the learned trial court to attribute these appellants having shared common intention in committing the said offence.

5. Based on the above submissions, learned counsel for the appellant urged for outright acquittal of the accused persons - Abdul Rasheed and Abdul Hamid.

6. So far as the other appellant Mohd. Yameen is concerned, the submission of the counsel was that he was unarmed when he along with other co-accused persons called upon the deceased for talking to his uncle Abdul Rasheed on a matter concerning a quarrel between the kids. Counsel further submitted that even in the case of Mohd. Yameen he had no premeditated plan or motive to commit the murder of the deceased as he was absolutely unarmed when he had gone to call the deceased. Counsel also submitted that due to sudden quarrel and in the heat of passion, accused Mohd. Yameen had rushed to his jhuggi to bring a knife (churri) and then inflicted a single blow on the right side of the chest of the deceased without there being any intention to carry out his murder. Learned counsel further urged that at best the case of the accused Mohd. Yameen can attract Section 304 Part II IPC and in no manner it attracts an offence punishable under Section 302 IPC. In support of his arguments, counsel has placed reliance on the following judgments:

1. Jawahar Lal & Anr. Vs. State of Punjab (1983) 4 SCC159 2. Satish Narayan Sawant Vs. State of Goa (2009) 17 SCC724 3.

7. Tapas Vs. The State of NCT of Delhi Per contra, Ms. Richa Kapoor, learned APP for the State vehemently contended that the impugned judgement of conviction and the order on sentence passed by the learned trial court are well reasoned orders on proper and objective analysis of the facts and evidence adduced on record, and the findings arrived at by the learned trial court can neither be termed as perverse nor illegal. She further argued that all the three accused persons had approached the deceased at such odd hours of the intervening night of 21/22.03.1996 and all of them shared a common intention to carry out murder of the deceased. Learned counsel also argued that the learned trial court has rightly held that both the said accused persons - Abdul Rasheed and Abdul Hamid had caught hold of the deceased and made him fell down, and they did not move from the place even when the other co-accused Mohd. Yameen had gone to his jhuggi to fetch a knife (churri). Learned trial court further held that

these two accused persons even did not intervene when the third accused Mohd. Yameen had inflicted a stab blow on the chest of the deceased . Learned APP further submitted that the contention raised by the learned counsel for the appellant that these two accused persons never shared any common intention with the third co-accused has no substance as the common intention can develop even on the spur of the moment, without there being any prior meeting of minds amongst the accused persons. So far as the accused Mohd Yameen is concerned, contention raised by the learned counsel was that he had inflicted a stab blow with a sharp edged weapon of a long size on a vital part of the body of the deceased and the injury was so penetrating that it entered the right chest cavity and after cutting the ribs injured the substance of the liver. The contention raised by the learned APP was that under no circumstance such an offence can attract Section 304 Part II IPC, simply because of single knife blow inflicted by the accused Mohd. Yameen. Counsel further contended that the said offence would still attract Section 302 IPC, as the accused person had a clear intention of inflicting such a severe blow which was sufficient in an ordinary course of nature to cause death and the injury was caused with a sharp edged weapon on a vital part of the body of the deceased. In support of her arguments, learned APP for the State has placed reliance on the judgment of this Court, in the case of Amiruddin V. State (2010)ILR1Delhi 267.

8. We have heard learned counsel for the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them.

9. In the present case, criminal machinery was set in motion on the first statement made by Smt. Hazara Begum wife of the deceased. She entered the witness box as PW-5. She was also an eye-witness of the crime. PW-3 Abdul Khalid, son of the deceased was also present at the scene of the crime. There can arise no dispute with regard to the killing of the deceased Mohd. Aashkin on the intervening night of the 21/22.03.1996. The testimonies of both the eye-witnesses on material facts remained consistent and therefore, we find no reason to disbelieve their testimonies. The dispute between the parties was not a major dispute. The same was on account of some verbal duel between them on a matter concerning their kids. The exact dispute concerning the kids of the parties never surfaced. As per

the deposition of PW-3 and PW-5, the family of the deceased Mohd. Aashkin went to sleep after taking their meals but at about 12.00-12.30 midnight of 21/22.03.1996, accused Mohd. Yameen knocked the door of their jhuggi so as to call Mohd. Aashkin because his uncle Abdul Rasheed was calling him. PW-5 Smt. Hazara Begum had opened the door and when she came out, Crl.A. Nos. 694/1999, 1/2000 & 4/2000 Rasheed (appellant in Crl. A. No.694/1999) said in a loud voice kya jhagra kiya tumne, the lady told him to talk her in the morning. In the meantime her husband Mohd. Aashkin along with her son Abdul Khalid also came there, and soon thereafter, all the three accused persons brawled with her husband and in the process, her husband had fallen down. As soon as her husband fell off, Mohd Yameen rushed to his jhuggi to bring a chhuri and then stabbed her husband on the right side of his chest. The injured was immediately rushed to the hospital in a TCR brought by some neighbour and within a short time the injured succumbed to his injuries and was declared dead. The body of the deceased was sent for autopsy and as per the post mortem report he had received the following stab injuries on his external examination:

1. Stab Wound 6 x 2.8 cm x chest cavity deep over right side middle front of chest. Both margins clean cut, both angles acute. The wound is almost transversally placed. The inner end being 12 cm to the right of midline and 10 cm below the right nipple and 129 cm from the right heel. On aligning the margin the wound is 6.2 cm long. Blood oozed on pressuring the chest wall.

2. Scratch abrasion 15 cm long, placed obliquely over the upper inner aspect of right arm extending to the right axillary.

3. Scratch abrasion 1-7 cm long over the outer aspect of lower end of right forearm.

4. Stitched surgical abrasive wound 3 cm long over right side middle front of chest at the anterior axillary fold. The wound being 5.5 cm away and first lower to the right nipple.

10. As per the Post Mortem, the doctor opined that the deceased had died due to haemorrhage and shock, consequent upon injuries to liver and right kidney via

injury no.1. All the injuries were opined to be ante mortem and recent in duration. Injury no.1 could be caused by double edged sharp penetrating object while injuries No.2 and 3 were caused by pointed object. It was also opined that injury No.1 was sufficient to cause death in an ordinary course of nature.

11. Considering the facts on record, there can arise no dispute with regard to the factum of death of the deceased Aashkin on the intervening night of 21/22.03.1996. There also remained no doubt that all three accused persons were present at the scene of the crime and all of them were unarmed when they had approached to knock the door of jhuggi of the deceased. We also do not find any material on record which can suggest that there was any kind of premeditated plan or prior meeting of minds of these persons to develop a common intention to carry out the murder of the deceased. In fact as per the prosecution case Mohd. Yameen had knocked at the door of the deceased so as to call him to have a talk with Abdul Rasheed. It is also the case of the prosecution that soon after deceased Aashkin along with his son came out of their jhuggi, all the three accused persons grappled with the deceased and in the process the deceased fell down. As a consequence, Mohd. Yameen had gone to his jhuggi to bring a chhuri to inflict a stab blow on the right chest of the deceased. This act of bringing the weapon at that moment, was a unilateral act of the accused Mohd. Yameen and there is no evidence adduced on record to suggest that the other two accused persons also shared a common intention with him to stab the accused with that weapon and kill him. Undeniably, the common intention amongst assailants can even develop on the spur of the moment but then the circumstances should clearly suggest and indicate that such common intention was developed on the spur of moment. Direct proof of common intention is seldom available and therefore, the intention on the part of the assailants can only be inferred from the circumstances as proved on record.

12. There can be no strait jacket formula based on which the common intention can be inferred as proven facts of each case will be a determinative factor. In Manubhai Chimanlal Senma(Senwa) & Ors. Vs. State of Gujarat, (2004) 10 SCC173 where also two accused persons had caught hold of the deceased while the third accused person had given knife blow as a result of which he had died, the

Honble Supreme Court took a view that the two accused persons who were unarmed were not sharing common intention with the third accused person who had inflicted injuries to the deceased, therefore by a mere fact that they had accompanied the main assailant to pick up a quarrel with the deceased and being totally unarmed would not be sufficient to attribute sharing of common intention by them along with the third coaccused who was armed and had inflicted a knife blow to the deceased.

13. The facts of the case are almost identical to the fact of the above cited case. Here the accused persons were totally unarmed and they had accompanied the co-accused Mohd. Yameen to have a talk with the deceased over some trivial issue concerning some fight amongst the kids. Although, time was not right when they had gone for such a talk on that silent night of 21/22.03.1996 and even despite the fact that PW-5 wife of the deceased had told them that they could talk to her in the morning regarding such a petty issue, but in the meanwhile her husband deceased and her son Abdul Khalid came out and it is thereafter, that all the three accused persons grappled with the deceased as a result of which the deceased had fallen down. So far the role of these two accused persons are concerned they had only grappled along with the third accused with the deceased and no other role has been ascribed to them. They were totally unarmed. They never had a common intention to carry out the murder of the deceased and it is only the third accused who had gone to his jhuggi to bring out the knife and to inflict stab injury on the person of the deceased. To infer a common intention on a mere fact that they had waited till Mohd. Yameen came back with a churri and did not make any efforts to stop him from giving churri blow would not be sufficient to enrobe or inculpate these persons along with the third coaccused.

14. As per the settled principles as envisaged under Section 34 IPC, we are not persuaded to the reasoning given by the learned trial court that these two accused persons shared common intention with Mohd. Yameen because of the said conduct of them not leaving the spot of crime and not dissuading Mohd. Yameen from inflicting stab injuries.

15. These appellants, therefore, cannot be held guilty for committing an offence punishable under Section 302 IPC by application of Section 34 IPC. The judgment of conviction and order on sentence passed against them by the learned trial court is accordingly set aside. They shall be set at liberty forthwith unless required in connection with any other case.

16. Coming to the imposition of sentence to the third co-accused Mohd. Yameen who is appellant in Crl. A. No.1/2000. As per the counsel for the appellant, at best the case of this appellant can fall under Section 304 Part II IPC and accordingly, his conviction should be altered from Section 302 IPC to Section 304 Part I or Part II IPC. The argument of the learned counsel for the appellant was that the accused Mohd. Yameen was totally unarmed when he came to the jhuggi of the deceased along with other two accused persons. Counsel also argued that after a quarrel had taken place between the deceased and the accused party, it was in a heat of passion that he rushed to his jhuggi and brought out a churri to hit him with a single knife blow. Counsel also submitted that in similar cases the view taken by the Apex Court is that the case would not fall under Section 302 IPC and would attract Section 304 Part II IPC. Counsel also submitted that the appellant Mohd. Yameen had already undergone six years of sentence and he was quite young on the date of the commission of offence and just because of losing his mental equilibrium, in a heat of passion he rushed to his jhuggi to bring out a knife to hit the deceased, having no prior ulterior motives or intention to kill the deceased, the accused cannot be made to suffer his entire life. We find considerable merit in the submission of the learned counsel for the appellant. In the matter of Tapas Vs. The State of NCT of Delhi, this Court held as under:

17. In the matter of Kulwant Singh vs. State of Punjab reported in AIR 1982 SC126wherein the accused gave one blow with a dagger and the blow landed in the epigastria area. The deceased succumbed to the injury. The learned trial Court found that the accused committed the offence without any premeditation. The learned Judge also found that there was no prior enmity. He also recorded that a short, quarrel preceded the assault. However learned trial Court convicted Section302 Penal the Code appellant and for an sentenced offence him to under suffer imprisonment for life. When the matter was before the High Court it was

urged that in the circumstances of the case part I of Section 300 would not be attracted because it cannot be said that the accused had the intention to commit the murder of the deceased. The Hon'ble Supreme Court held as under: More often, a suggestion is made that the case would be covered by part 3 of Section 300Penal Code in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in the ordinary course of nature to cause death. The question is in the circumstances in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which proved to be fatal. To repeat, there was an altercation. There was no premeditation. It was something like hit and run. In such a case, part 3 of Section 300 would 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 circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be-likely to cause death and the case would accordingly fall under Section 304 Part II Penal Code.

18. In the matter of Jagrup vs. State of Haryana reported in AIR 1981 SC1552 wherein on the fateful evening the marriage of one Tej Kaur was performed. Shortly thereafter, the appellant Jagrup Singh armed with a gandhala, his brothers Billaur Singh armed with a gandasa and Jarmail Singh and Waryam Singh armed with lathies emerged suddenly and made a joint assault on the deceased Chanan Singh and the three eyewitnesses, Gurdev Singh, PW10 Sukhdev Singh, PW11and Makhan Singh, PW12 The deceased along with the three eye-witnesses was rushed to the Rural Dispensary, Rori where they were examined at 6 pm by Dr. Bishnoi, PW3 who found that the deceased had a lacerated wound 9 cm x 11/2 cm bone deep on the right parietal region, 9 cm away from the tip of right pinna; margins of wound were red, irregular and were bleeding on touch; direction of wound was anterior-posterior. The deceased succumbed to the injuries. Doctor who performed an autopsy on the dead body of the deceased. In his opinion, the death of the deceased was due to cerebral compression as a result of the head injury which was sufficient in the ordinary course of nature to cause death. In the background of these facts, the Hon'ble Supreme Court held as under: In our judgment, the High Court having held that it was more probable that the appellant

Jagrup Singh had also attended the marriage as the collateral, but something happened on the spur of the moment which resulted in the infliction of the injury by Jagrup Singh on the person of the deceased Chanan Singh which resulted in his death, manifestly erred in applying Clause Thirdly of Section 300 of the Code. On the finding that the appellant when he struck the deceased with the blunt side of the gandhala in the heat of the moment, without pre-meditation and in a sudden fight, it cannot be said that the accused intended to kill the deceased. The result, therefore, is that the conviction of the appellant under Section 302 is altered to one under Section 304, Part II of the Indian Penal Code. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of seven years.

17. In Jawahar Lal & Anr. Vs. State of Punjab, (1983) 4 SCC159 also the accused hit the deceased with a knife blow in front of left side of his chest and as per the autopsy report the injuries were found sufficient in an ordinary course of nature to cause death. The Apex Court took a view that the accused could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. The relevant paras of the said judgment is reproduced as under:

17.we should also not further dilate on this point in view of the decision of this Court in Jagrup Singh v. State of Haryana :

1981. riLJ1136 . In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted; The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance

attendant upon the death.

18. We may point out that decision in Jagrup Singh's Case 1981 CriLJ1136 was subsequently followed in Randhir Singh @ Dhire v. State of Punjab Decided on September 18. 1981 and in Kulwant Rai v. State of Punjab Decided on August 7, 1981 (Criminal Appeal No.630 of 1981).

19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, I.P.C. cannot be sustained.

20. What then is the offence committed by the 1st appellant ?. Looking to the age of the 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st appellant is shown to have committed an offence under Section 304, Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years maintaining the sentence of fine.

18. In similar circumstances, the Apex Court in Satish Narayan Sawant Vs. State of Goa, (2009) 17 SCC724held as under:

27. The aforesaid principles have been consistently followed by this Court in several decisions. Reference in this regard may be made to the decision of this Court in Ruli Ram v. State of Haryana (2002) 7 SCC691 Augustine Saldanha v. State of Karnataka (2003) 10 SCC472 State of U.P. v. Virendra Prasad (2004) 9 SCC37 Chacko v. State of Kerala (2004) 12 SCC269 S.N. Bhadolkar v. State of Maharasthra (2005) 9 SCC71 and Jagriti Devi v. State of H. P. JT2009(8) SC648 28. That being the well settled legal position, when we test the factual background of the present case on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the High Court. As

already noted, it is quite clear from the record that there was an altercation preceding the incident. The place of occurrence is a residence inhabited by both the parties and there is no evidence on record that the deceased was armed with any weapon. Initially the accused-appellant also did not have any weapon with him but during the course of the incident he went inside and got a knife with the help of which he stabbed the deceased. PW-7 in his cross examination has categorically stated that death due to stab injury was in consequence of Injury No.1 and all other injuries were superficial in nature. So, it was only Injury No.1 which was fatal in nature. Factually therefore, there was only one main injury caused due to stabbing and that also was given on the back side of the deceased and therefore, it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness. Records clearly establish that there was indeed a scuffle between the parties with regard to the availability of electricity in a particular room and during the course of scuffle the appellant also received an injury which was simple in nature and that there was heated exchange of words and scuffle between the parties before the actual incident of stabbing took place. There is, therefore, provocation and the incident happened at the spur of the moment. That being the factual position, we are of the considered view that the present case cannot be said to be a case under Section 302 IPC but it is a case falling under Section 304 Part II IPC. It is trite law that Section 304 Part II comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

29. Accordingly, we convict the appellant under Section 304, Part II of IPC and sentence him to undergo imprisonment for a period of 7 years. His bail bonds shall stand cancelled and the appellant shall surrender immediately to serve out the remaining period of sentence.

19. In the light of the aforesaid legal position, as discussed above and adverting to the facts of the present case, we find ourselves in agreement with the contentions raised by the learned counsel for the appellant that the appellant Mohd. Yameen had no intention to carry out the murder of the deceased. The fight between the accused and the deceased was sudden and it was under the heat of passion that

the accused Mohd. Yameen had rushed to his jhuggi to bring a churri so as to hit the deceased on his right chest. As per the post mortem report, the injury no.1 was proved sufficient to cause his death in an ordinary course of nature and this injury was quite a penetrating one, as it was caused by a double edged sharp object. The accused thus can be attributed sufficient knowledge to cause death of the deceased by inflicting injury on the right side of his chest.

20. While maintaining the sentence of Mohd. Yameen under Section 27 of the Arms Act, 1959, we set aside his conviction under Section 302 IPC and accordingly, convict him under Section 304 Part II IPC and sentence him for a period already undergone by him.

21. Appellant is on bail. His bail bonds are discharged. The case of the appellant is set at rest.

22. A copy of the order be sent to Jail Superintendant for information.

23. Accordingly, the appeal filed by the aforesaid appellants stands disposed of in the above terms. KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

APRIL02 2014 mg/pkb