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Mannu Vs. the State

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Court : Delhi

Decided On : Apr-29-2014

Judge : Kailash Gambhir

Appellant : Mannu

Respondent : The State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: April 29, 2014 + CRL.A. 512/2000 MANNU Through: ..... Appellant Ms. Nidhi Raman, Amicus Curiae Versus THE STATE Through: ..... Respondent Mr. Sunil Sharma, APP for the State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT
KAILASH GAMBHIR, J1 By this appeal filed under section 374 of Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C.), the appellant seeks to challenge the impugned judgment dated 29.05.2000 and order on sentence dated 30.05.2000 whereby the Appellant - Mannu was convicted for committing an offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as IPC) and was sentenced to undergo rigorous imprisonment for life, further to pay fine of Rs.10000 and in case of default, to undergo simple imprisonment for a period of six months.

2. The facts germane to the case of the prosecution are that - PW-3 H.C Chander Bhan while on patrolling duty at the Chabutra of Gurudwara Bangla Sahib received information from a devotee that a quarrel had taken place in the NDMC Park. The criminal law machinery in this case was set in motion by DD No.14A (Ex. PW18A). On 14.06.1995, ASI Dharam Singh (PW18) was on emergency duty from 8 a.m to 8 p.m at P.S Parliament Street. Pursuant to the receipt of the aforesaid information he along with Constable Bhagat Ram (PW-13) reached at the spot i.e Jai Singh Road. At the spot one PCR Van, H.C Chander Bhan (PW-3), Constable Nirmal Singh, injured Shera and the appellant Mannu met him. Subsequently, ASI Dharam Singh (PW-18) took the injured in the PCR Van to R.M.L Hospital where the doctor declared the injured as brought dead. Thereafter, he along with the Addl. S.H.O reached at the spot where H.C. Chander Bhan handed over to him a kirpan along with the cover. The kirpan and cover of the kirpan were recovered at the spot and was sealed by A.S.I Dharam Singh. Thereafter, the investigation was handed over to the S.H.O, Gurnam Singh Randhawa. The accused was detained at the spot and he recorded the statement of HC Chander bhan. The rukka was sent for registration of the case. The photos of the scene of occurrence were taken. The I.O. inspected the spot, site plan was prepared, Tat which was lying at the spot in the park was sealed in a parcel, along with the sample soil was also taken into possession. The old turban lying at the spot was taken into custody. Thereafter, he came to Jai Singh road near quarter No.2. Some blood was lying at the spot. He also took sample of concrete from the spot. The accused mannu who was detained at the spot was sent for medical examination by ASI Dharam Singh. He recorded the statement of eye witness Prakash Chander. He recorded the statement of other witnesses. After his examination, the accused was brought back to the NDMC park and was arrested. His personal search was taken and after interrogation of the accused, they went back to the police station. All the exhibits were deposited in the malkhana on 15.06.95. Accused was medically examined on 15.06.1995. The post-mortem of the deceased was conducted and the exhibits were sent for analysis and after completion of the investigation challan was filed.

3. To prove its case the prosecution examined as many as 19 witnesses. After the completion of prosecution evidence, statement of the accused person was

recorded under Section 313 of Cr.P.C. wherein the entire incriminating evidence was put to him and in reply he pleaded innocence and false implication.

4. On behalf of the Appellant - Mannu, arguments were addressed by Ms. Nidhi Raman, Advocate (Amicus Curiae). The State was led by Mr. Sunil Sharma, Learned Additional Public Prosecutor.

5. Addressing arguments on behalf of the appellant, Ms. Nidhi Raman, Advocate categorised her submissions under various heads, the same are outlined as under:I. Gaps, infirmities, prosecution: contradictions and lacunae in the 6. As per the counsel for the appellant the genesis of the prosecution case is shrouded in mystery and the two eye-witnesses have been introduced to make out a semblance of a case. The infirmities, gaps and contradictions which were pointed out by the counsel for the appellant are detailed as under: a) The MLC(Ex PW6/A) of the deceased mentions that an unknown person with alleged history of being found unconscious on Jai Singh Road was brought to the casualty at 11:30 p.m. on the night of 14.06.1995, however in the deposition of PW-3 , it has been categorically stated that the deceased did tell his name while on his way to the hospital. b) The DD entry to show that PW-3 H.C Chander Bhan was on patrolling duty at that time at Gurudwara Bangla Sahib was not produced and proved by the prosecution. Therefore, there is nothing substantive on record to prove the presence of Constable Jai Ram Singh at the spot. c) As per the case of the prosecution, the deceased was brought to the hospital by the PCR officials, ASI Dharam Singh (PW-18) and Ct Bhagat Ram (PW-13). However, names of none of these persons including ASI Dharam Singh who was the senior most official finds mention in the MLC. PW-7 Prakash Chander also claims that the deceased was well- known to him and he knew the name of the deceased. Further ASI Dharam Singh (PW-18) who claims to have accompanied the deceased to the hospital has stated in his statement that the deceased informed him that his name was Shera, yet no one informed the doctor in the hospital. d) In the MLC it is recorded that an unknown person had been brought dead by Constable Jai Ram Singh of PCR Van with the alleged history of being found unconscious on Jai Singh Road. The two police officials (PW-13 and PW-18) who were travelling in the same PCR Van with the deceased to the hospital gave absolutely two different versions in their

respective statements. e) As per the prosecution case, the place of occurrence was NDMC Park but the DD Entry, MLC and the Post Mortem Report, all show that the deceased was found unconscious on Jai Singh Road which clearly demonstrate that the scene of occurrence was Jai Singh Road, Gurudwara Bangla Sahib and not NDMC Park. f) PW-5, Dr Sanjeev Tandon deposed that Injury No.2 (stab wound) had pierced the left lung and the anterior wall of the heart, yet the deceased was able to walk from the Park to Jai Singh Road which according to the prosecution was at a distance of 230 mtrs . g) As per the prosecutions version, no call was received by the PCR van, still it failed to establish how it reached at the spot. This is clear from the evidence on record including the evidence of PW-3, H.C Chander Bhan who stated that he did not send any intimation to the Police Station nor made any call to the PCR. h) That the deceased did not reveal the name of the accused to PW-3 H.C Chander Bhan nor made any statement regarding the incident although he had ample time and opportunity to do so. i) When a suggestion was put to PW-3 H.C Chander Bhan in his cross examination that if the accused made any attempt to run away on seeing H.C Chander Bhan, because as per the normal human conduct, the appellant if he was actually involved in the crime, could not have gathered the courage of continuing to fight and stab the deceased in front of a police officer. j) The MLC of the accused show that it was recorded at 3:30 a.m. however, the incident allegedly took place at 10:45 p.m. Evidence on record suggests that till 3:15 a.m. the accused remained on the spot. The SHO has himself said that Mannu, the accused herein was taken to the hospital at 3:15 a.m. Thus, the medical examination of the accused was conducted after 4.5 hours when he could have been sent immediately with the injured and this fact further casts a doubt on the prosecution case. k) The exhibits were sent to CFSL after more than 20 days of the incident. Even the Rukka was sent to the Police Station at 12:50 a.m., however the incident occurred at 10.45 p.m. Thus the counsel urged that the case of the prosecution suffers from proven improbabilities, infirmities and contradictions and does not inspire confidence. II. Ocular Evidence:

7. The story of the prosecution is that PW-3 H.C Chander Bhan while on patrolling duty at the Chabutra of Gurudwara Bangla Sahib received information from a devotee that a quarrel took place in the NDMC Park. Counsel submitted that this

devotee has not been named or produced in the witness box. Hence the Honble Court should draw adverse inference against the prosecution for non- examination of material witnesses in the case.

8. It is a settled law that where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available but was not examined, the prosecution case can be termed as suffering from deficiency and withholding of such a material witness would oblige the Honble Court to draw an adverse inference against the prosecution.

9. The statement and evidence of the alleged eye- witness PW-7 Prakash Chander lacks credence and reliability and his presence at the spot is also highly doubtful. A reading of his testimony and the testimony of H.C Chander Bhan clearly show that they were not present at the place of occurrence. The name of Prakash Chander (PW-7) does not find mention in the Rukka and the FIR. According to PW-7 about a month prior to the incident there was a quarrel between the accused and the deceased in which the accused sustained head injuries. This is entirely false as the material/evidence on record show that the quarrel took place between one Deepak tea stall owner and the accused a month prior and not between the accused and the deceased Shera.

10. It is pertinent to state here that there is no mention of the deceased Shera in this DD entry. This can be clearly seen from DD No 17-A dated 05.05.1995. (Ex PW4/A). The owner of Deepak Tea Stall could have thrown some light on the incident and was a material witness but was conveniently discarded from being examined by the prosecution.

11. Furthermore, PW-7 stated in his cross examination that in the alleged quarrel between the accused and the deceased had caused head injury to the accused with the help of a crutch of another person. However, his statement is patently false as the MLC of the accused shows that there was no such head injury. In respect of PW-7 Prakash Chander it is also very surprising that at 10:45 p.m he could see the incident very minutely in the darkness of the Park when he himself is blind from one eye.

12. It is also very intriguing that PW-7 as per his deposition was always present whenever the accused was being beaten up or when he was supposed to beat anyone. He seems to be an omnipresent witness in the present case.

13. That the glaring discrepancies would be noticed in the testimonies of PW-3 H.C Chander Bhan and PW-7 Prakash Chander with regard to the narration of the incident which affect the very core of the prosecution case. The statement of PW-7 implicating the accused suffers from improbabilities, does not inspire confidence and is not free from suspicion. Its non-corroboration by other witnesses or evidence makes it a weak piece of evidence.

14. In these circumstances the ratio laid down by the Honble Supreme Court in catena of judgements is that when the prosecution relies upon the testimony of a sole eye-witness, then such evidence has to be wholly reliable and trustworthy and if the evidence of the sole eyewitness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation for the conviction of the accused. Counsel in this regard referred to the following judgements of the Honble Supreme Court: (i) (2012)4 SCC722 Govindaraju alias Govinda vs State (ii) (2005) 10 SCC196 Pohlu vs State III. Medical evidence and other evidence in support:

15. The whole story about the accused having wiped the blood on the kirpan with his hands is a fabricated one. This is corroborated by the CFSL Report which says that no blood was found on the kirpan. In similar circumstances i.e. when no blood was found on the weapon of offence, the Honble Supreme Court and a Division Bench of this Honble Court have set aside the conviction of the Appellant. Reference in this regard was placed on the following judgements: (i) (2010) 13 SCC706 Shaike Bade vs State of A.P (ii) ILR Delhi Series 1986 Volume II: Imtiaz Ahmed vs State 16. The prosecution has also been unable to produce the blood stained clothes of the accused. A version has been put forth that the accused was in his undergarments at that point of time. The undergarment (Kachha) has also not been produced. If the accused was actually sitting on the chest of the deceased and giving kirpan blows, the undergarment would have been soaked with blood. The undergarment (Kachha) was admittedly not sent to CFSL.

17. That PW-3 HC Chander Bhan stated that when he took the deceased from the Park to the road, the deceased was leaning upon him. Even PW-7 Prakash Chander stated the same. However, even though the deceased was bleeding profusely, surprisingly H.C Chander Bhans clothes not smeared in any blood stains casts a doubt on the prosecution story. Thus it is manifest that PW-3 H.C Chander Bhan does not seem to be a witness to the crime at all and has reached there only after everything was over. To support this argument counsel placed reliance on the following judgments: (i) Khima Vikamshi & Ors vs State of Gujarat: (2003) 9 SCC42023(1983) DLT478 Man Singh & Anr vs the State (ii) ILR Delhi Series 1986 Volume II: Imtiaz Ahmed vs State (iii) 52 (1993) DLT351 Rishi Pal & Ors vs State IV No motive 18. Counsel also submitted that the prosecution has failed to prove any motive for the crime. According to the prosecution the dispute this time was over a gunny bag. It is inconceivable that over a small piece of tat and that too after the accused had already snatched it from the deceased as per the testimony of PW-7, he ran after the deceased to kill him. V Conversion of sentence from 302 IPC to 304 (I) or (II) IPC19 Lastly, it was submitted by the Learned Counsel that even if the case of the prosecution is accepted at its best, it is a case covered under Part II of Section 304 of the Indian Penal Code keeping in mind the below mentioned significant features: i. Admittedly there was a sudden fight which allegedly happened between the Accused and the Deceased over a piece of gunny bag. ii. There was no pre-meditation: The accused was not carrying any weapon with him and is alleged to have taken the kirpan of the deceased to stab him. iii. The alleged act has been committed in a fit of rage. iv. The accused has not taken any undue advantage or acted in a cruel manner. v. Admittedly as per PW-3 HC Chander Bhan the accused did not apprehend or know that the injured would die. vi. The accused made no attempt to run away from the spot. vii. There are no other criminal cases pending against the accused in any other Court Counsel submitted that reference in this regard could be made to the following judgments of the Honble Supreme Court: (i) (2009)15 SCC635 Gurmukh Singh vs State of Haryana (ii)JT201312) SC28 Chandera @ Chandera Ram vs State of Chhattisgarh The counsel thus urged and prayed for the discharge of the Appellant/accused to meet the interests of justice.

20. Per contra, learned APP for the State vehemently refuted the said submissions of learned counsel for the appellant and contended that the case of the appellant is an open and shut case based on the testimony of two eye witnesses and both the testimonies remained coherent, cogent and clinching throughout. They are also duly supported by the medical and forensic evidence leaving no space for any doubts. Learned APP also submitted that the learned trial court went into each and every aspect of the material placed on record by the prosecution and the defence raised by the accused at the time of recording of his statement under Section 313 of Cr. P.C. and counsel for the appellant has not been able to point out any illegality or perversity in the reasoning given by the learned trial court to convict and sentence the appellant for committing an offence punishable under Section 302 IPC. Learned APP thus strongly urged that the appeal filed by the appellant is devoid of any merit and the same may be dismissed.

21. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the records of the learned Trial Court.

22. The incident took place near a devout place of worship, known for its purity and religious beliefs, Gurudwara Bangla Sahib. Gurudwara Bangla Saheb is the most prominent Sikh Gurudwara and is known for its association of 8th Sikh Guru - Guru Harkishan Singh. The victim in the present case was a sevadar at the Gurudwara Bangla Sahib. God creates, we destroy, how true that is in our society that for some psychological satisfaction, a human develops a tendency, an urge, fear or anxiety to rip off a persons life in seconds and at that spur even forgets the outcome that he would have to suffer at the hands of law, and that there can be no escape from the clutches of law. Such was the fate of the deceased in the present case, who was slaughtered by the accused. The incident took place in the NDMC maintained park which adjoins the said Gurudwara. As per the case of the prosecution, the tussle between the accused and the victim was over a piece of gunny bag (taat) which was given by the Management of the Gurudwara to the sewadars for sleeping purpose. The night of 14th June 1995, was the peak of summers and probably due to this reason, the accused was only wearing an underwear and there was no other cloth on his body. HC Chander Bhan (PW-3)

and Prakash Chander (PW-7) are the star witnesses of the prosecution as they themselves had seen the actual occurrence of crime on the night of 14 th June 1995 in the NDMC Park of Gurudwara Bangla Saheb.

23. It is a settled legal principle that if the evidence of an eye witness is found cogent, truthful and reliable then, his sole testimony can lead to the conviction of an accused person (Ref: Sunil Kumar v. Sate of Govt. of NCT of Delhi(2003) 11 SCC376. The evidence of an eye witness before whom the crime is committed is the best person to give a true and correct account of the incident and therefore, the testimony of an eye witness if found reliable and trustworthy has to be placed at a higher pedestal to prove the case of the prosecution. In assessing the value of eye witness, two things are to be considered; whether in the circumstance of the case, it is possible to believe his presence at the scene of the occurrence and; second, whether there is anything inherently improbable or unreliable in his evidence. (Ref: AIR 1980 SC3073 AIR 1997 SC234 AIR 1994 SC826.

24. The maxim falsus in uno falsus in omnibus is not applicable to criminal trials in India, however it is a moral duty of the court to disengage the truth from falsehood to shift the grain from the chaff instead of taking an easy course of rejecting the evidence in its entirety, merely based on few infirmities. Minor contradictions, variations, omissions, discrepancies and improvements in the evidence of any witness cannot be attached undue importance to discard the entire prosecution case if otherwise on vital aspects or on core of the prosecution case, the testimony of such witness or witnesses is found truthful, reliable and trustworthy. It is also settled legal position that it is the duty of the prosecution to prove its case beyond any shadow of doubt and no person accused of an offence can be convicted based on mere probabilities or assumptions. Moreover, the legal dicta is well settled on the point that more serious the crime, greater the responsibility of scrutinizing the evidence adduced by the prosecution as well as the defence, and this onerous task should be adhered to in the most meticulous and objective manner before arriving at any final conclusion.

25. With the legal dicta as discussed in the foregoing paras, let us now examine as to whether the counsel for the appellant succeeds in throwing any serious doubts

on the prosecution case particularly to discredit or impeach the testimonies of the two eye witnesses i.e. HC Chander Bhan (PW-3) and Prakash Chander (PW-7).

26. As per the deposition of Prakash Chander (PW-7), he himself was serving as a sevadar in Gurudwara Bangla Saheb and he very well knew both the accused and the victim. At the time of the incident, at 10.30 PM on 14th June 1995, Prakash Chander (PW-7) was also lying in the same NDMC Park along with a few others when he witnessed the quarrel to have taken place between the accused and the victim over a gunny bag. During the quarrel, Prakash Chander (PW-7) saw the accused snatching the gunny bag from the victim and thereafter the victim running towards the shop. The accused then caught him near a tree and took out a kripan from the possession of the victim and started hitting him with the kripan while sitting on him. He could not see how many blows were given by the accused to the victim because accused sat with his back facing towards him. He also saw PW-3 HC Chander Bhan to have reached at the spot who took both the accused and the victim from the park towards the road behind the toilet. In his cross-examination, he stated that he was working as sevadar in the Gurudwara Bangla Saheb for the last five years. He also deposed that at the time of the incident, 5-6 persons were sleeping in the park and after the incident, seeing the police these persons went away. He also deposed that he did not get up from his place as he was under the apprehension of getting stabbed if he would interfere. He also deposed that at the time of the incident, the accused was only wearing an underwear (kachha) and he did not see any blood stains on his body. He also deposed that he did not see any blood stains on the clothes of PW-3 HC Chander Bhan. He also deposed that he could only see from one eye. He also stated that even earlier, a quarrel had taken place between the deceased and the victim on 5th May 1995. He also deposed that when HC Chander Bhan took the victim Shera towards the road, he could see that the victim was alive. The presence of PW-7 also cannot be disputed because of the fact that his statement was recorded by the police under Section 161 of Cr. P.C. while he was available at the spot and he was also witness to the seizure memo of samples of the soil (Ex.PW-3/E) collected from the spot, seizure memo of Pagri of the deceased (Ex.PW3/f), seizure memo of the old gunny bag (taat) and personal search memo of the accused proved on record as Ex.PW-3/H. Despite a lengthy crossexamination of this witness, we do not find that the defence could

succeed to create any dent to disbelieve his testimony. Many questions were put to him to dispute his presence and even with regard to his working as a sevadar in the Gurudwara Bangla Saheb but nothing could be elicited by the defence to disbelieve his presence at the spot of the crime or even his being a sevadar in the said Gurudwara Bangla Saheb.

27. HC Chander Bhan (PW-3) is the other important witness being the eye witness of the crime, who was the first one to reach at the spot after having come to know about some altercation to have taken place in the NDMC Park. After he had reached the spot, he saw that there was a clean shaven person and a Sardar who were grappling with each other. He also saw that a clean shaven person pinned down the sardar on the ground .He further saw that the clean shaven person was having a small kripan in his right hand and was inflicting blows with the kirpan on the sardar who was lying on the ground. He saw that he was being hit on the chest with the kirpan. This witness tried to snatch the kirpan from the hand of clean shaven person and in that process the clean shaven person had rubbed and cleaned the blood from the kirpan. This witness had overpowered both the persons and took both of them out of the park towards the road. The injured person told his name as Shera to this witness while blood was oozing out from his body. The victim sat near the police quarters on Jai Singh road and fell down as he was suffering from pain. In the meantime another constable Nirmal Singh had reached there and after handing over both the said persons to the said constable, PW-7 started moving towards Ashok Road in search of vehicle to remove the injured to the hospital. But in the meanwhile a PCR Van had reached there. The PCR officials alongwith ASI Dharam Singh and Bhagat Ram had removed the injured to the hospital while PW-3 HC Chander Bhan and Constable Nirmal Singh remained at the spot alongwith the accused. After sometime SHO of Police Station Parliament Street, ASI Dharam Singh and SI also reached at the spot and they were informed that the injured Shera had expired. ASI Dharam Singh had recorded the statement of PW-3 Chander Bhan which carried the endorsement of ASI Dharam Singh and then sent the rukka (Ex.PW-18/B) to the Police Station for registration of the FIR. He further deposed that he had handed over kripan to ASI Dharam Singh and sketch of the Kirpan was drawn by ASI Dharam Singh which is proved on record as Ex.PW-3/B, and also bears his signatures. PW-3 is also the

witness to the seizure and recovery of the gunny bag (Taat), pagri, and blood stained earth sample which were lifted from the spot by the police and sample of the soil and personal search memo of the accused. He is also a witness to the sketch of the cover of kirpan. The defence could not succeed to shatter his evidence despite his grueling cross-examination. The testimonies of these two eye witnesses find corroboration in the testimonies of PW-13 Bhagat Ram, PW-18 ASI Dharam Singh and PW-16 - Inspector B.S. Rana and PW-19 Inspector Gurnam Singh. The ocular evidence of this witness finds corroboration by medical evidence and forensic evidence proved on record by the prosecution.

28. Learned counsel for the appellant made a desperate but vain attempt to find fault with the testimonies of prosecution witnesses especially the two eye witnesses but nothing substantial was pointed out to disbelieve the case of the prosecution. To say that no DD entry was produced to show that PW-3 HC Chander Bhan was on patrolling duty at Gurudwara Bangla Saheb; the names of PCR officials were not found mentioned in the MLC of the deceased; failure of ASI Dharam Singh (PW-18) to inform the name of the deceased to the doctor of the hospital; PW-18 ASI Dharam Singh, Constable Bhagat Ram giving two different versions about the disclosure/non-disclosure of his names by the victim - Shera while he was being taken to the hospital in the PCR Van; variations with regard to the place of occurrence; how the deceased received fatal injury on the road which was at a distance of 230 sq. yds. and DD entry was recorded after a gap of 15 minutes from the time of incident; PCR Van reaching at the spot without receipt of any information about the incident; non-disclosure of the name of the accused by the deceased to HC Chander Bhan although he had ample time to disclose the same; ample time for the accused to run away if he had actually committed the crime; delayed medical assistance to the accused after a gap of 4-5 hours; sending of exhibits to CFSL after more than 20 days of the incident; are only the peripheral aspects of the case but in no manner the same can corrode the credibility of the prosecution case. As already stated above, Gurudwara Bangla Saheb is a prominent place of worship and thousands of people almost round the clock pay visit to the gurudwara to seek blessings and there is nothing unusual that PW-3 Chander Bhan was on a patrolling duty in the vicinity of the said gurudwara. We also do not find anything unusual that the PCR had reached at the

Jai Singh road at its own where the victim and the accused were brought by PW-3 - HC Chander Bhan. The non disclosure of the name of Shera by PW-18 to the doctor, who attended the deceased also cannot be held fatal to throw over broad the case of the prosecution which is otherwise found reliable, credible and trustworthy.

29. So far as the variation with regard to the place of occurrence as pointed out by counsel for the appellant is concerned, the argument merits outright rejection as indisputably the victim and the accused were brought to the Jai Singh Road from the spot of the crime by HC Chander Bhan(PW-3) and there is nothing wrong if the DD entry and the postmortem entry records the name of the place where the victim was found unconscious. This fact, will however not change the place of actual occurrence of the site which will remain the NDMC Park adjoining the Gurudwara Bangla Saheb.

30. So far the contention of counsel for the appellant that the accused did not make any attempt to run away, had he been actually involved in the crime or the fact that he would not have the courage to continuously stab the victim in front of police officer, also do not cut much ice as HC Chander Bhan(PW-3) had over powered the accused and it is not the version of HC Chander Bhan(PW-3) that the accused kept on inflicting blows after he had seen him. As per his testimony, he saw the accused giving kirpan blows to the sardar who was lying on the ground and then he tried to intervene to snatch the kirpan from his hand. The blows therefore, were already inflicted by the accused on the victim before the intervention of HC Chander Bhan. The other discrepancies pointed out by learned counsel for the appellant are also totally inconsequential being of very trivial and insignificant nature.

31. It is a settled legal position that the Courts are not to get swayed by minor contradictions or insignificant discrepancies if otherwise testimony of a witness is cogent, credible and trustworthy on the material aspects of the case. No witness even the most genuine one would be in a position to give the exact account of the scne of crime minutely or to describe what preceded the incident and what exactly happened post incident. Some minor discrepancies, variations and improvements

are bound to occur due to multiple factors governing the human behaviour and the background of a particular witness under examination and, therefore, unless such discrepancies and improvements affect the core of the prosecution case, no undue importance should be given to such minor discrepancies, variations and improvements which usually creep in the testimony of any witness, due to multiple factors.

32. The Honble Supreme Court in various judgments has time and again held that unless there are vital improvements, they cannot by itself affect the credibility of a witness and unless contradictions are of material dimensions they should not be used to jettison the evidence in its entirety and trivial discrepancies ought not to obliterate the otherwise acceptable testimony of a witness. It was observed in Dhanvir and Others vs. The State, 85 (2000) DLT711 that human memory is not a mere computer where memory can be fed or restored for all times to come and later on when retrieved it would be verbatim the same. A human being, when he describes some incident in a natural course, some variation is bound to take place and so long as the variations are natural and minor, they ought to be ignored.

33. In the recent case of Gangabhavani Vs. Rayapati Venkat Reddy and Ors 2013(11)SCALE132, the Honble Supreme Court while giving the judgment categorically observed that:

CONTRADITIONS IN EVIDENCE:

9. In State of U.P. v. Naresh: (2011) 4 SCC324 this Court after considering a large number of its earlier judgments held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to

form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. A similar view has been reiterated by this Court in Tehsildar Singh and Anr. v. State of U.P. : AIR 1959 SC1012 Pudhu Raja and Anr. v. State, Rep. by Inspector of Police : JT2012(9) SC252 and Lal Bahadur v. State (NCT of Delhi) : (2013) 4 SCC557.

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.

34. In the light of the aforesaid legal position, we are of the firm view that the minor discrepancies, inconsistencies and variations pointed out by the counsel for the appellant are not so material that the same can create any dent on the truthfulness of the prosecution witnesses, particularly the two eye witnesses - HC Chander Bhan (PW-3) and PW-7 Prakash Chander.

35. Dealing with the next contention raised by the learned counsel for the appellant that the prosecution neither recorded the statement of Constable Jai Ram Singh nor examined him as a witness although he was the only person whose name was found to be mentioned in the MLC and would have been the best person to depose about the incident and similarly, non examination of Head Constable Sucheta, who went to inform the PCR and likewise non-examination of

the devotee who had informed HC Chander Bhan(PW-3) about the quarrel to have taken place in the NDMC Park. Undoubtedly, the name of constable Jai Ram Singh does find mention in the MLC of the victim Shera and he was one of the police official who was present in the PCR. HC Chander Bhan (PW-3) in his cross-examination has referred to the person - Constable Jai Ram Singh in the PCR van. There were other police officials also in the PCR Van including the driver of the PCR Van. One police official in the PCR van was Constable Bhagat Ram and he was duly examined by prosecution as PW-13. PW-18 - ASI Dharam Singh had also reached the hospital and he also entered into the witness box to support the case of the prosecution. Thus the examination of PW-13 - Constable Bhagat Ram and PW-18 - ASI Dharam Singh who were present at the time of medical examination of the victim, non-examination of Constable Jai Ram Singh cannot have any bearing to affect the otherwise credible evidence of the prosecution. On the same analogy, non-examination of HC Sucheta who had informed the PCR, in no way can affect the case of the prosecution. So far as the non-examination of the devotee is concerned, PW-3 HC examination he categorically stated that he did not note down the name of the person who had informed about the quarrel in the NDMC Park as many people had passed through that area to move towards the Gurudwara side at that time.

36. It is a settled legal position that it is not the plurality or quantity of the evidence, which ultimately decides the fate of any prosecution case. The evidence is to be weighed and not counted. The general rule is that it is not the numerical strength of witnesses but the inherent strength of any witness which is the guiding factor for the prosecution to prove its case, therefore, it is not that particular number of witnesses in a case will be required to prove any particular fact if such a fact can be proved by any single credible witness. We thus, do not find any force in the contention raised by counsel for the appellant to disbelieve the prosecution version due to non examination of the said three witnesses.

37. The next contention raised by counsel for the appellant was that there was no blood found on the weapon of offence and therefore, the story of the prosecution cannot be believed. PW-3 - HC Chander Bhan was very categorical in stating in his examination in chief that the accused person rubbed and cleaned the blade of

the kirpan at the time when he tried to snatch the kirpan from his hand. When such coherent deposition of PW-3 is there, there was hardly any possibility of existence of blood on the kirpan. Learned counsel for the appellant also argued that no bloodstains were found on the clothes of the accused and also that of PW-3 HC Chander Bhan. As per the admitted case of the prosecution, the accused was only wearing the underwear and nothing else on his body and therefore, it is not unusual that the underwear did not carry any stains of blood. So far as non existence of any bloodstains on the clothes of PW3 HC Chander Bhan are concerned the explanation has been given by the witness in his cross-examination where he had stated that he held the accused Mannu by his hand while the deceased Shera was walking along with him. He further clarified that his clothes did not get any bloodstains from the injured Shera while he was talking to him and proceeding towards the road. We find no reason to disbelieve the clarification given by him that his clothes did not get any blood stains from the injured Shera. Even otherwise, the statement of the witness is to be read as a whole and once the court finds no reason to disbelieve his presence at the spot and his narration of what he had seen in front of his eyes is credible, we are not convinced to accept that his presence can be disbelieved because his clothes were free from bloodstains of the deceased. We also cannot loose sight of the fact that the presence of PW-3 HC Chander Bhan at the spot of crime is duly corroborated by other prosecution witnesses mainly PW-7 Prakash Chander, SHO, and others. Even the FIR of the case was registered on the statement of PW-3 HC Chander Bhan.

38. Learned counsel for the appellant also argued that there is a clear discrepancy between the medical and the ocular evidence as in the ocular evidence, the case of the prosecution is that the deceased was inflicted with injuries with kripan while in the post mortem report the opinion given was that the injuries were caused by double edged weapon. The answer to this argument has been given by the counsel for the appellant herself by giving reference to the subsequent opinion of doctor proved on record as Ex.PW-5/B wherein, he stated that the weapon has slightly curved in the front portion and therefore, the injuries caused on the body of the victim may be inflicted from a slightly curved weapon. The said subsequent opinion given by PW-5 - Dr. Sanjiv Tandon, Senior Head of Department of

Forensic and Medical, Lady Harding Medical College stating that the weapon examined by him was slightly curved is also in consonance with the sketch of the weapon of offence proved on record as Ex.PW-3/B which clearly shows that the kirpan was a curved one in the front portion. In the light of the said medical evidence of PW-5, we do not find any force in the aforesaid contention raised by counsel for the appellant.

39. Learned counsel for the appellant also raised a contention that the prosecution has failed to prove any motive on the part of the accused to commit the said crime. Learned counsel for the appellant also argued that it will be inconceivable that over a small piece of taat, the accused could be provoked to the extent of eliminating the deceased. The case in hand is based on eye witness account and therefore, failure of the prosecution to prove motive on the part of the accused cannot throw over board the case of the prosecution which is otherwise found to be of an unimpeachable character. Motive assumes importance in cases wholly depending upon the circumstantial evidence and where ocular evidence is very clear and convincing and the role of accused persons in the crime can be clearly established, the failure to prove motive for the crime is hardly of any consequence. (Ref: Yunis @ Kariya etc. Vs. State of Madhya Pradesh, AIR 2003 SC539 40. In the light of the above legal position, we are not persuaded to accept the argument raised by learned counsel for the appellant that failure of the prosecution to prove motive on the part of the accused can result in demolishing the otherwise clear and convincing evidence of the prosecution.

41. Learned counsel for the appellant has also referred to the discrepancies in the testimonies of PW-3 and PW-7 particularly with regard to the narration of the incident but this aspect has already been dealt by us at a great length in the preceding paragraphs and therefore, needs no further discussion.

42. Dealing with the last contention raised by learned counsel for the appellant that even if the case of the prosecution is accepted as it is, then at best the same can be covered under Section 304 Part II of IPC. To examine this contention raised by counsel for the appellant, let us first refer to the injuries sustained by the deceased on his person as per the post mortem report proved on record in the evidence of

PW-5 - Dr. Sanjeev Tandon. The following anti mortem injuries were received by the deceased as per the post mortem report: a. Abrasion of 3X2 cm present on the right lateral centhus of eye b. Stab wound of 1.5X0.5 cm present on left side of the chest, 5 cm below left nipple & 124 cm above left heel left feet. The wound is directed medically upward having fine border and sharp edges. c. Wound of 1.6 cm, 0.5 cm above left illiaccrest in mid axillary lone. The wound is present 102 cm above left heel wound is muscle deep. d. Injury No.2 is piercing through left lung and anterior wall of the heart.

43. The post mortem Report further states that it was the injury No.2 that pierced the left lung due to which the left lung had collapsed. It further states that the injury No.2 had also pierced the heart on the interior of body. Based on the aforesaid injuries, post mortem report opined that the death of the deceased was because of shock due to hemorrhage as a result of injury no.3 and 4 and stab wound No.2 was individually fatal in ordinary course of the nature.

44. To satisfy whether the offence in the facts of the present case fall under murder or culpable homicide not amounting to murder, we must see whether the case is squarely covered within clause thirdly of Section 300 of IPC. The legal position in this regard has been most appropriately summed up in Virsa Singh v. State of Punjab reported in (1958) 1 SCR1495 laying down the guidelines which the prosecution must prove before the case can be brought under third exception of Section 300 of IPC and the same are as under:

First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved; These are purely objective investigations. Thirdly, it must prove 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. 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.

45. After laying down the aforesaid guidelines, the Honble Judge further went on to observe as under:

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 Crl.A. No.512/2000 Page 35 of 46 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.

46. As would be seen from the above observations and tests laid down by the Apex Court, the determinative factor in Section 300 (thirdly) is an intentional injury which must be sufficient to cause death in the ordinary course of nature and it would be immaterial whether the offender had knowledge that the act of that kind will result in death. To find out whether the offender had intention to cause such fatal injury which in the ordinary course of nature was sufficient to cause death, the factors which are required to be kept in mind are - a) The force with which the blow has been dealt with; b) The type of weapon used c) Vital or organ or the particular part of the body attracted; d) Nature of injury caused; e) Origin and genesis of the crime and the circumstances attending upon the death. (Referred to Jagrup Singh vs. State of Haryana, (1981) 3 SCC616 2001 AIR SCW1021 47. Reverting back to the facts of the present case, it would be seen that the accused was seen sitting on the chest of the deceased hitting with the deadly weapon like kirpan on the vital part of his body which in fact has pierced through his left lung and the heart as well. The said injury was held to be sufficient to cause death of the victim in the

ordinary course of the nature. The stab injury as caused by the accused on the chest of the deceased was not accidental or unintentional. The act of the accused is squarely covered by section 300 (thirdly).

48. Now the moot question is whether the case of the appellant is covered by exception 4 of Section 300 of IPC or not. Exception 4 to Section 300 would be attracted when four requirements, as are envisaged in the said exception 4 are satisfied, namely - 49. a) It was a sudden fight. b) There was no pre-meditation c) The act was done in a heat of passion. d) Without the offender having taken undue advantage or acted in a cruel or unusual manner. The existence of all the four requisites must be adjudged in all probabilities and in absence of the existence of any of the four requisites, exception 4 will have no application.

50. The Apex Court in a recent case in Ankush Shivaji Gaikwad vs. State of Maharashtra, reported in (2013) 6 SCC770 has reiterated the principles where the accused can be given benefit of Exception 4 to Section 300 IPC after giving reference to many previous judgments of the Apex Court on the same subject. The relevant paras of the judgments are reproduced as under:

9. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the Appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the Appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the Appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the Appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the Appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the

least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the Appellant and his companions took to their heels - a circumstance that shows that the Appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the Appellant all that was said by the Appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the Appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the Appellant to the benefit of Exception 4 to Section 300 of the Indian Penal Code.

10. Time now to refer to a few decisions of this Court where in similar circumstances this Court has held Exception 4 to Section 300 of the Indian Penal Code to be applicable and converted the offence against the Appellant in those cases from murder to culpable homicide not amounting murder. In Surinder Kumar v. Union Territory, Chandigarh: (1989) 2 SCC217 this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed: ... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no 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 is it 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. (Emphasis supplied) 11. We may also refer to the decision of this Court in Ghapoo Yadav and Ors. v. State of M.P. : (2003) 3 SCC528 where this Court held that in a heat of passion there must be no time for the passions to cool down and that the parties had in that case before the Court worked themselves into a fury on account of the verbal altercation in the beginning. Apart from the incident being the result of a sudden quarrel without premeditation, the law requires that the offender should not have taken undue advantage or acted in a cruel or unusual manner to be able to claim the benefit of Exception 4 to Section 300 Indian Penal Code. Whether or not the fight was sudden, was declared by the Court to be decided in the facts and circumstances of each case. The following passage from the decision is apposite: ...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. Indian Penal Code is not defined in the Indian Penal Code. 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 have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and 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

provision means 'unfair advantage'. xxx xxx xxx ...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased....This goes to show that in the heat of passion upon a sudden quarrel followed by a fight the accused Crl.A. No.512/2000 Page 40 of 46 persons had caused injuries on the deceased, but had not acted in cruel or unusual manner. That being so, Exception 4 to Section 300 Indian Penal Code is clearly applicable... (Emphasis supplied) 12. In Sukbhir Singh v. State of Haryana : (2002) 3 SCC327 the Appellant caused two Bhala blows on the vital part of the body of the deceased that was sufficient in the ordinary course of nature to cause death. The High Court held that the Appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court this Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 Indian Penal Code. In cases where after the injured had fallen down, the Appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed: ...All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 Indian Penal Code. After the injuries were inflicted and the injured had fallen down, the Appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner. (Emphasis supplied) 13. Reference may also be made to the decision in Mahesh v. State of MP : (1996) 10 SCC668 where the Appellant had assaulted the deceased in a sudden fight and after giving him one blow he had not caused any further injury to the deceased which fact situation was held by this Court to be sufficient to bring the case under Exception 4 to Section 300 of the Indian Penal Code. This Court held: ...Thus, placed as the Appellant and the deceased were at the time of the occurrence, it appears to us that the Appellant assaulted the deceased in that sudden fight and after giving him one blow took to

his heels. He did not cause any other injury to the deceased and therefore it cannot be said that he acted in any cruel or unusual manner. Admittedly, he did not assault PW-2 or PW-6 who were also present also with the deceased and who had also requested the Appellant not to allow his cattle to graze in the field of PW-1. This fortifies our belief that the assault on the deceased was made during a sudden quarrel without any premeditation. In this fact situation, we are of the opinion that Exception-4 to Section 300 Indian Penal Code is clearly attracted to the case of the Appellant and the offence of which the Appellant can be said to be guilty would squarely fall Under Section 304 (Part-I) Indian Penal Code... (Emphasis supplied) 14. To the same effect are the decisions of this Court in Vadla Chandraiah v. State of Andhra Pradesh : (2006) 14 SCALE108 and Shankar Diwal Wadu v. State of Maharashtra : (2007) 12 SCC518 51. In the facts of the present case, the prosecution has failed to prove any motive on the part of the accused to carry out the murder of the deceased although a feeble attempt was made towards this direction. However the prosecution succeeded in proving the fact that an argument had taken place between the accused and the deceased over a gunny bag (taat), which led to a sudden fight between the two of them. The prosecution has further proved that the accused was not carrying any weapon of offence with him and in fact he snatched the weapon of offence i.e. Kirpan from the deceased and from the same weapon he had inflicted blows on his chest. It is also a matter of record that the deceased could walk down from the spot to the main road himself without much support from PW-3 - HC Chander Bhan and it is thereafter, that after reaching the main road he became unconscious. It has also come in the evidence of PW-3 HC Chander Bhan that the accused never thought that the said injuries inflicted by him would result in the death of the deceased. In our view in the facts of the present case, exception 4 of Section 300 IPC is attracted as there was a sudden fight between the accused and the deceased at the spur of the moment and there was no premeditation on the part of the accused to carry out the murder of the deceased and the act was done in a heat of passion and the offender not having taken undue advantage or acted in a cruel or unusual manner.

52. Taking the cumulative view of the facts and circumstances of the case and the legal position discussed above, we are of the view that the case of the appellant

does fall under Exception 4 of Section 300 IPC.

53. The next question as to whether the case falls under Section 304 of Part I or Part II of IPC. The distinction between the two Parts of Section 304 of IPC was drawn up by the Apex Court in Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC648 in the following words: ..... For punishment Under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death....

54. It will also be useful to refer the decision of the Apex Court in Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh : (2006) 11 SCC444wherein the Apex Court enumerated some of the circumstances relevant in finding out whether there was any intention to cause death on the part of the accused and observed as under: ...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls Under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from

the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other Crl.A. No.512/2000 Page 44 of 46 special circumstances with reference to individual cases which may throw light on the question of intention...

55. Adverting back to the facts of the case in hand, we are of the opinion that the accused was seen sitting on the chest of the deceased, hitting with the deadly weapon like kirpan on the vital part of his body which infact had pierced his left lung and the heart as well and as per the post mortem report proved on record as Ex PW-5/A, this injury was held to be sufficient to cause death of the victim in the ordinary course of the nature. These circumstances in which injury was inflicted with the help of a kirpan on the vital part of the body of the deceased with all force that it led to piercing through his left lung and the heart as well, we cannot subscribe to the contention raised by counsel for the appellant that the case would fall under Section 304 Part II of the Indian Penal Code. We are of the considered view that the appellant had the requisite intention that the injury which was caused by him with the help of kirpan on the vital part of his body, was likely to cause his death and therefore, the case would more appropriately fall under Section 304 Part I of the IPC.

56. In view of the aforesaid, the appeal filed by the appellant is partly allowed and the conviction of the appellant is modified from Section 302 IPC to Section 304 (Part I) and accordingly sentence imposed upon the appellant is modified from life imprisonment to the rigorous imprisonment for a period of ten years with fine as already imposed by the learned trial court.

57. The appellant in the present case was declared proclaimed offender and the State is accordingly directed to take steps to arrest him for undergoing the remaining period of sentence.

58. Copy of this judgment be sent to the Jail Superintendant for information and compliance.

59. Let Ms.Nidhi Raman amicus curiae be paid her fee as per the norms fixed by the Delhi High Court Legal Services Committee for her able assistance to this court.

60. The appeal stands disposed of in the aforesaid terms. KAILASH GAMBHIR, J.

SUNITA GUPTA, J.

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