Narender vs.state

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Court : Delhi

Decided On : Aug-24-2017

Appellant : Narender

Respondent : State

Advocate for Pet/Ap. : Mr. Singhal

Judgement :

$~16&17 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + + Date of Judgment:

24. h August, 2017 Through : Mr.Rajender Chhabra, Advocate ..... Appellant versus ..... Respondent Through : Ms.Radhika Kolluru, APP with Inspector Raj Pal Singh, PS Mangolpuri CRL.A. 461/2015 NARENDER STATE CRL.A. 481/2015 Through : Mr.K.Singhal, Advocate AKASH @ PATTA versus STATE Through : Ms.Radhika Kolluru, APP with Singh, ... Respondent ..... Appellant Pal Inspector Raj PS:Mangolpuri, Delhi CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE CHANDER SHEKHAR G.S.SISTANI, J.

(ORAL) 1. The appellants have filed the present appeals under Section 374 (2) read with Sections 383 and 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the judgment dated 18.10.2014 and the order on sentence dated 19.11.2014 passed by the Trial Court in Sessions Case 75/2012 arising out of FIR2772012 PS Mangol Puri by which the appellants have been convicted for the

offence under Sections 3
of the Indian Penal Code, Crl.A. 461/2015 & 481/2015 Page 1 of 18 1860 (IPC). Appellant Narender has also been held guilty and convicted under Sections 25/
of the Arms Act, 1959. Both the appellants have been sentenced to life imprisonment and a fine of Rs.10,000/- and in case of default, further rigorous imprisonment of six months for the offence under Sections 3
IPC. Additionally, appellant Narender has been sentenced to undergo rigorous imprisonment for five years and fine of Rs.5,000/-, and in default of payment of fine, rigorous imprisonment of three months for the offences under Sections 25/
of the Arms Act.

2. Learned counsel for the appellants and the State have addressed arguments. Since both the appeals arise out of a common judgment, the same are being disposed of by a common order.

3. At the outset, learned counsel appearing for the appellants, submit that the appellants do not contest the matter as far as the judgment on conviction is concerned, however, they contend that the case does not fall within Section 302 IPC and contest the matter on the conviction so recorded.

4. The case of the prosecution, as noticed by the Trial Court, is as under:-

"the dinner he went 1. Briefly stated the present case was registered on the basis of the statement of complainant Raj Kumar S/o Suresh Kumar R/o E-134, 135, Mangol Puri, Delhi. According to the complainant he lives with his family at the above mentioned address and deals in the business of T.V. and Fridge Covers at Karol Bagh, Delhi. According to the complainant on 01- 08-2012, he came to his home after his work and before taking from his neighbourhood shop, i.e. Himanshu General Store, situated at E-148, Mangol Puri. According to the complainant he reached at the said shop at about 10:30 p.m and saw that in front of gali No.4 near E Block Park Gate, accused persons were quarrelling with one Sunil s/o Suresh resident of the same block as that of the complainant.

2. According to the complainant Sunil was demanding his Rs. 150/- from Narender @ Badal and Akash @ Patta but they to buy butter Crl.A. 461/2015 & 481/2015

Page 2 of 18 were refusing to pay the money. On this pretext a quarrel had taken place between them. According to the complainant Narender @ Badal said to his brother Akash @ Patta that today, they would teach a lesson to Sunil and then he would not demand money again from them.

3. According to the complainant thereafter Akash @ Patta caught hold of Sunil and Narender @ Badal stabbed him on his chest and stomach as a result of which blood started oozing from the body of Sunil and he fell down near the Gate of E Block Park. After stabbing Sunil, both Narender @ Badal and Akash @ Patta ran away from there.

4. According to the complainant in the meantime Jaggi brother of Sunil reached there. Some public persons also gathered there and somebody informed the police. PCR came and removed Sunil to the hospital alongwith his brother Jaggi. According to the complainant later on he came to know that Sunil had expired in the hospital.

5. FIR No.2
was registered at PS Mangol Puri and investigation went underway. During the course of investigation accused persons were arrested. After completion of investigation final report U/s 173 Cr.P.C. was prepared and was filed in the court of Metropolitan Magistrate who after completing all formalities committed the case to the court of sessions for trial. the 5. Charges were framed by the Trial Court against the appellants under the Section 3
IPC and against the appellant Narender, a separate charge under Sections 25/27/
of the Arms Act was framed. Both the appellants pleaded not guilty and claimed trial. To bring home the guilt of the appellants, the prosecution examined 29 witnesses in all. The statements of the appellants were recorded under Section 313 Cr.P.C., wherein they denied all the incriminating circumstances and claimed false implication. No evidence was led by the defence.

6. After analysing the testimonies of PW-1, PW-2 and PW-4 and the medical evidence [postmortem report (Ex.PW-20/A)]., the Trial Court held Crl.A. 461/2015 & 481/2015 Page 3 of 18 that the prosecution was able to prove that both the accused/appellants had shared a common intention, in furtherance of which they

quarrelled with Sunil (deceased) and in the quarrel, the deceased received injuries and died.

7. Mr.Chhabra and Mr. Singhal, learned counsel for the appellants have submitted that appellant Akash was 19 years of age at the time of the offence, while appellant Narender was 20 years of age. Neither do both the appellants have any past history of criminality or case, complaint or kalandara of any nature. It is also submitted that both the appellants are real brothers and post their arrest, their father expired. During the pendency of the appeal, even the mother of the appellants has expired. Learned counsel contend that, even as per the case of the prosecution, there was no past enmity between the deceased and the appellants. They belonged to the same area and were known to each other. While placing strong reliance on the testimonies of PWs-1, 2 and 4, learned counsel submitted that it categorically emerges that it was a chance meeting between the deceased and appellant Narender at a pan shop, which belonged to PW-1. It is during the chanced meeting, that a quarrel erupted between appellant Narender and the deceased, when Sunil demanded return of Rs.150/-. Learned counsels further contend that the testimony of PW-4 would show that, initially the quarrel was between appellant Narender and the deceased and appellant Akash reached the place of the incident subsequently.

8. Attention is drawn to the cross-examination of PW-4, where on a suggestion made by the Addl. PP to PW-4, he stated that when deceased demanded return of Rs.150/-, the quarrel intensified and on the spur of the moment and the heat of passion, four knife blows were inflicted on the deceased, out of which three were fatal, which resulted in his death. Learned counsel submit that, even as per the Trial Court, the motive was return of Crl.A. 461/2015 & 481/2015 Page 4 of 18 money, there was no premeditation and there is no evidence on record to show that appellant Narender was carrying a knife with him. Also, there is no evidence on record to show how the knife was procured, except the sketch of the knife, which showed that it was an unusual knife, having blades on both the sides and not a lethal weapon. It is also submitted that appellant Narender had only exhorted that he would teach the deceased a lesson and had not exhorted that he would kill. Learned counsel have placed strong reliance on the decision of the Supreme

Court in Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC770and also a judgment delivered by a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in Harender Singh v. State of Delhi, 2016 Cri LJ107 9. Per contra, learned counsel for the State submits that there is no infirmity in the judgment and the order on sentence passed by the Trial Court. The present case would fall within the provisions of Section 302 IPC as rightly recorded by the Trial Court. The testimonies of three eye-witnesses would leave no room for doubt that appellant Akash had caught hold of the deceased, while appellant Narender had inflicted four stab injuries on the deceased. The attention of the Court is drawn to the post-mortem report, which prescribes the nature of the injuries and also shows that injury nos.1, 2 and 3 were fatal, which resulted in the death of the deceased.

10. We have heard the learned counsel for the parties and perused the record.

11. In order to appreciate the rival contentions of the parties, it would be necessary to examine the testimonies of the eye-witnesses. Sumit (PW-1) deposed that he is running a grocery shop at E-148, Mangol Puri, Delhi under the name and style of Himanshu General Store and on 01.08.2012 at about 10:30 PM, the deceased came alongwith one boy to purchase cigarette from Crl.A. 461/2015 & 481/2015 Page 5 of 18 his shop. After taking cigarette, the deceased alongwith that boy went towards E-Block Park. He went on to depose that the younger of the two accused, i.e. appellant Akash, came to his shop and had purchased a cigarette from him and then went towards the deceased who was standing inside the park. He further deposed that the unknown boy who was accompanying the deceased had left the park by that time and appellant Akash started quarrelling with the deceased. He further deposed that at that time, appellant Narender, who is the elder brother of appellant Akash, also joined in the quarrel. He further deposed that he saw the deceased falling down and when he went towards him he saw that deceased was bleeding from the stomach. He further deposed that he had seen the appellants leaving the park after the deceased had fallen down. On the next day he was called by the police and he saw both the appellants sitting in the police station. PW-1 further deposed that he told the police officials that he had seen the appellants and the deceased quarrelling.

12. This witness was cross-examined by Addl. PP for the State wherein he denied stating in his statement to the police that accused persons were quarrelling with the deceased on some money matters. He admitted that he had stated to the police in his statement (Ex.PW-1/C) that appellant Akash had caught hold of the deceased. This witness was then cross-examined by the defence when he stated that he closes his shop at about 10:30 PM. He knew accused persons prior to the incident as they are the residents of the same gali/lane. He had not seen the deceased prior to the date of the incident.

13. Another eye-witness was Raj Kumar (PW-2), who deposed that on 01.08.2012, he had gone to the nearby shop namely Himanshu General Store at about 10:30 PM to fetch butter. One boy whose name he came to know later on was standing in front of lane near gate of C-Block park and Crl.A. 461/2015 & 481/2015 Page 6 of 18 both the appellants were quarrelling with the deceased. He deposed that appellant Akash caught hold of him and appellant Narender was grappling with him. He further deposed appellant Narender gave a blow with something to the deceased because of which he fell down and both the appellants ran away. When he went near the deceased, he saw that he was bleeding from his chest and in the meanwhile many persons gathered at the spot and the police also arrived there. The witness was then cross-examined by the Addl. PP before the Trial Court wherein he stated that both the appellants reside in his neighbourhood in the back lane of his house. He admitted that deceased Sunil was asking for Rs.150/- from both the appellants and because of this, both the appellants were quarrelling with the deceased. He denied the suggestion that appellant Narender had given knife blow on the chest and stomach of the deceased. He further stated that appellant Akash had caught hold of the deceased and appellant Narender had given blow on the chest of the Sunil with something.

14. During cross-examination by the counsel for the defence, PW-2 stated that the place of incident is situated in a thickly populated area. He stated that both the appellants are residing in the back lane of the house and he had seen them prior to the incident. He denied having any enmity with the appellants. He stated that he had not heard the exact conversation made between the deceased and the accused as he was standing at the shop which is at a distance of 10-15 steps from

the place of incident. He stated that besides both the appellants and the deceased, one other person was there at the place of the incident and the said person was with the deceased.

15. Subhash (PW-4) deposed that about 3 years prior to the date of the incident he was residing at E-Block Mangol Puri, where his sister Veena Crl.A. 461/2015 & 481/2015 Page 7 of 18 resides. On 01.08.2012, one day prior to Raksha Bandhan, he visited the house of his sister and in the evening he went to meet his friend Sunil. At about 10:30 PM, he alongwith the deceased were present at E-Block park where appellants quarrelled with the deceased for Rs.150/- as the deceased was asking his Rs.150/- from appellant Narender and in that quarrel, deceased received knife injury at the hands of the appellants. He further deposed that he cannot tell which of the appellants had inflicted knife injury. He further deposed that at the time of quarrel both the appellants were grappling with the deceased and at that time, a knife injury was inflicted to him. Deceased suffered injuries on his chest and stomach. He then rushed to the house of the deceased to inform his relatives. PW-4 was also cross- examined by the Addl. PP before the Trial Court wherein he stated that both the appellants refused to return the money of deceased, so quarrel intensified between them. He further deposed that appellant had told that aaj sunil ko sabak sikha dete hai jis se sunil hamse dubara paise nahi mangega (Lets teach Sunil a lesson, so he does not ask for money again). He admitted that appellant Akash caught hold of the deceased and appellant Narender gave knife blow on the chest and stomach of the deceased.

16. PW-4 was then cross-examined by the defence, when he stated that the appellants were not known to him personally but once he had seen appellant Akash when he was with the deceased. He stated that when the quarrel started, appellant Akash was not present at the spot. He cannot say which of the two appellants had stabbed the deceased and further stated that when appellant Akash came to the spot and joined appellant Narender, it was then deceased received stab wounds. He stated that he could not tell if any person known to him was present amongst public persons who gathered there as he was perturbed and immediately left for the house of the deceased. He further Crl.A. 461/2015 & 481/2015 Page 8 of 18 stated that the appellants fled from the spot. This witness

was re-examined by the Addl. PP for the State and he stated that his version that out of the two appellants, one of them had inflicted knife injury to Sunil is correct.

17. We may also notice the medical evidence. Dr.Manoj Dhingra (PW-20) had conducted the postmortem of the deceased alongwith Dr.Vivek Rawat and as per the postmortem report (Ex.PW-20/A), following injuries were found on the person of the deceased: (a) Stab wound 3 cm X18 cm X6cm, obliquely placed in right axillary fossa along the anterior axillary line, 123 cm from right heel & 9 cm lateral to right nipple with tailing seen at lower angle of the wound. (b) Stab wound 3.5 cm X1cm X cavity deep (up to heart) obliquely placed over lower front of chest, 115 cm from the heel along the midline of body with tailing seen at lower angle of the wound. (c) Stab wound 3.5 cm X15 cm. X cavity deep (up to lung) obliquely placed over left mammary (precordial) area, 117 cm from the heel & 12 cm from the midline of the body with tailing seen at lower angle of the wound. (d) Stab wound 3.6 cm X2cm X6cm obliquely placed over right loin area, 93 cm from the heel & 10 cm from the midline of body with tailing seen at lower angle of the wound.

18. All wounds are wedge shaped with blunt upper end and acute lower end in shape. It was opined that the death is due to shock associated with damage to chest structures under injuries No.1, 2 and 3 which are ante mortem and sufficient to cause death in the ordinary course of nature.

19. It is settled law that the testimony of a hostile witness need not be disregarded in toto and the part of the testimony inspiring confidence may be relied upon. We need not burden this opinion with judicial pronouncements Crl.A. 461/2015 & 481/2015 Page 9 of 18 in this regard, suffice to mention that one may usefully refer to Radha Mohan Singh @ Lal Saheb and Ors. v. State of U.P., (2006) 2 SCC450(paragraph 7); Jodhraj Singh v. State of Rajasthan, (2007) 15 SCC294(paragraphs 11 - 14); Paramjeet Singh v. State of Uttarakhand, (2010) 10 SCC439(paragraph 15 - 20); Raja v. State of Karnataka, (2016) 10 SCC506(paragraph 32); and Arjun v. State of Chhattisgarh, (2017) 3 SCC247(paragraph 15). We are of the opinion that the Trial Court had rightly appreciated the ocular account of the aforegoing eyewitnesses, even though all of them were hostile, and concluded that on the fateful day, there was an altercation

between the appellants and the deceased, during the course of which, appellant Akash caught hold of the deceased and the appellant Narender inflicted injury on the person of the deceased resulting in his death. Accordingly, the judgment of the Trial Court cannot be faulted with, atleast to the extent the order of conviction is concerned.

20. We proceed to analyse the remaining bone of contention between the parties, i.e. the applicability of Section 302. In India, the offence of culpable homicide has been categorized into three degrees, i.e. culpable homicide of first degree - the gravest form - being murder; culpable homicide of second degree - when the accused intended to cause death or such bodily injury - being culpable homicide punishable under Section 304 Part I; and finally culpable homicide of third degree - where only knowledge can be imputed to the accused - being culpable homicide punishable under Section 304 Part II [See Chacko v. State of Kerala, (2004) 12 SCC269(paragraph 9)]..

21. In the present case, the Trial Court has convicted the appellants of gravest offence, i.e. murder under Section 302. According to us, the Trial Court has overlooked the fact that the three eyewitnesses have consistently deposed that there was a quarrel between the deceased and the appellants Crl.A. 461/2015 & 481/2015 Page 10 of 18 when the deceased had sought repayment of Rs.150/- given by him. This had resulted in a sudden fight where both sides grappled with each other and in its course, the appellant Akash caught hold of the deceased while appellant Narender inflicted stab injuries. In this background, it would be necessary to examine the applicability of Exception 4 to Section 300 IPC.

22. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was member, in Kamaljeet v. State, MANU/DE/1752/2017 (paragraph

40) observed that [t].o bring a case under the exception, fourfold requirement must be satisfied: first, there must be a sudden fight; second, absence of pre-meditation; third, the accused must have been overcome with the heat of passion; and fourth, the accused must not have taken undue advantage or acted in a cruel or unusual manner. 23. In Sayaji Hanmant Bankar v. State of Maharashtra, (2011) 14 SCC477 the convict had thrown a water pot and a kerosene lamp on the

deceased (his wife) after a quarrel with her, the burn was exasperated by the fact that the deceased was wearing a nylon sari resulting in her death. The Apex Court found that there was a sudden fight and modified the conviction from Section 302 IPC to Section 304 Part I IPC. The relevant paragraphs read as under: 8. It is clear from the reading of aforesaid Exception 4 that if the act is done without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel and if the offender does not take any undue advantage or act in a cruel or unusual manner, then Exception 4 will be attracted.

9. We have gone through the evidence carefully. It seems that as soon as the accused entered the house, there appeared to be some quarrel with his wife and in that fight first, he threw a water-pot and thereafter a kerosene lamp. The burning seems to be more out of the fact that unfortunately at that time, the lady was wearing a nylon sari. Had she not been Crl.A. 461/2015 & 481/2015 Page 11 of 18 wearing a nylon sari, it is difficult to imagine how she could have been burnt to the extent of 70%. In our view this was a case which clearly falls under Exception 4 to Section 300 IPC since there was a sudden fight. There was no premeditation either. Therefore the appellant-accused is liable to be convicted for the offence punishable under Section 304 Part I.

10. We, accordingly, alter the conviction of the accused from Section 302 IPC to Section 304 Part I IPC and sentence him to the period already undergone by him. The sentence of fine remains the same. (Emphasis Supplied) 24. In Sandhya Jadhav v. State of Maharashtra, (2006) 4 SCC653a solitary knife blow was given to the deceased when he attempted to intervene and separate the convicts trying to assault his uncle. The Supreme Court converted the conviction to Section 304 Part I observing as under: 8. For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First

Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the Crl.A. 461/2015 & 481/2015 Page 12 of 18 subsequent conduct of both parties puts them in respect of guilt upon equal footing. A sudden fight implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the fight occurring in Exception 4 to Section 300 IPC is not defined in IPC. 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 or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation.

It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression undue advantage as used in the provision means unfair advantage. (Emphasis Supplied) Crl.A. 461/2015 & 481/2015 Page 13 of 18 [Also see Abhijeet Raj v. State (Govt. of NCT of Delhi), MANU/DE/1264/2016 and Jagtar Singh v. State of Delhi, 190 (2012) DLT445 25. In Surinder Kumar v. UT, Chandigarh, (1989) 2 SCC217 the Apex 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 prov ided 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. The relevant portion reads as under: 7. 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) 26. In Ankush Shivaji Gaikwad (Supra), the Apex Court was dealing with a case wherein owing to the barking of a dog, the accused had hit the dog, leading to a scuffle, during the course of which, the appellant therein hit the Crl.A. 461/2015 & 481/2015 Page 14 of 18 deceased with an iron rod resulting in his death. We may also note that prior to the incident, the appellant had threatened that the deceased would be beaten like a dog and the Apex Court found that the same showed that the intention of the appellant was at best to belabour him and not to kill him. The relevant portion reads as under: 11.3. 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 IPC. 27. Coming back to the case at hand, we are of the opinion that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II IPC. (Emphasis Supplied) 27. The coordinate bench, of which one of us (G.S. Sistani, J.) was a member, in Harender Singh (Supra) was faced with a situation wherein the appellant had inflicted two stab injuries on the body of the deceased during the course of a fight between the hockey team and boxing team of Aurobindo College and had converted the conviction from one under Section 302 IPC to one under Section 304 Part I. The relevant portion reads as under: Crl.A. 461/2015 & 481/2015 Page 15 of 18 36. The hot blood of these college youngsters of the hockey team and the boxing team reveal the intent was to show force and superiority by one against the other and the incident of 30.04.2001 cannot be used as a motive as the boys belong to the same college and would have come across each other on every single day after 30.04.2001 and 08.05.2001 was not a special date or occasion for the offence to have been committed. To the contrary, as per the testimony of PW- 18, there was a quarrel. On hearing noises, he went down, he separated the two groups, brought members of the hockey team inside the building, but a second fight erupted where on the spur of the moment, the appellant inflicted one fatal blow with a knife on the deceased in the fight of two groups.

37. As per the testimonies of PW-4, 11 and 12, besides the appellant and the deceased, there were other boys and it was a case of free for all and the knife blow could have been inflicted on anyone. In this case, it cannot be said that the blow was actually aimed at the fatal part of the body as it was a free for all had the

intent been to murder and thus, it sans the element of intent to murder and in the heat of passion the injury was inflicted. The appellant did not take any undue advantage nor acted in a cruel or unusual manner.

38. In the case of Sukhbir Singh v. State of Haryana reported in (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 the Hon'ble Supreme 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 as under: 19. .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 Crl.A. 461/2015 & 481/2015 Page 16 of 18 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. 43. Considering the facts and the circumstances of the case, the background of the matter pertaining to two groups of college students being hockey team and boxing team, two incidents of the same date within a very short span of time, number of injuries on vital part, conduct of the appellant before and after the incident, and the sudden altercation and exchange of hot words, the occurrence took place without premeditation in the heat of passion upon a sudden quarrel, we are of the considered view that it is a case of culpable homicide not amounting to murder within the ambit of Exception 4 of Section 300 of the Indian Penal Code. (Emphasis Supplied) 28. Coming to the case at hand, the eyewitness account reveals that there was a chance meeting between the appellants and the deceased near the E- Block Park, after the deceased and appellant Akash had come to purchase cigarettes. Thereafter, the appellant Narender also joined and a quarrel ensured over the issue of demand of repayment by the deceased. A

sudden fight erupted, during the course of which, the appellant Akash caught ho ld of the deceased, while the appellant Narender inflicted stab injuries. It is clear that the incident happened in the spur of the moment in the heat of passion, which is evinced by the fact that it was a chance meeting. There was no premeditation as even the exhortation of appellant Akash was aaj sunil ko sabak sikha dete hai jis se sunil hamse dubara paise nahi mangega (Lets teach Sunil a lesson, so he does not ask for money again) meaning there was no intention to kill the deceased. The appellants had not even acted in a cruel Crl.A. 461/2015 & 481/2015 Page 17 of 18 or unsual manner as they fled the moment the deceased fell and did not take advantage of his helpless position. Accordingly, all the essentials of Exception 4 of Section 300 stand satisfied. The conviction deserves to be converted. Having regard to the situs of the injuries sustained by the deceased, the appellants must be imputed with the intention of causing such bodily injury as likely to cause death, if not the intention to cause death, and thus, the sentence is to be awarded under Section 304 Part I IPC.

29. Having regard to the culpability of the appellants, we are of the view that the ends of justice would be met if the appellants are sentenced to imprisonment for eight years under Section 304 Part I IPC. The order of the Trial Court with regard to fine shall be read as for one under Section 304 Part I and remains the same.

30. Thus, the appeal is partly allowed and orders of conviction and sentence are modified in the above terms.

31. Trial Court record be returned along with copy of this judgment.

32. Copy of this Judgment be sent to the concerned Jail Superintendent for updating the jail record.

33. In view of the aforegoing order, Crl.M.B. 786/2017 in Crl.A. 481/2015 seeking interim suspension of sentence is rendered infructuous and accordingly, dismissed. G.S.SISTANI, J.

CHANDER SHEKHAR, J.