SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Pramod Vs. State of U.P.

Pramod Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/487783

Court : Allahabad

Decided On : Oct-19-2000

Reported in : 2001CriLJ925

Judge : J.C. Gupta and S.K. Agarwal, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 299, 300, 302, 304, 323, 354, 452, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 313; General Rules - Rule 50

Appeal No. : Criminal Appeal No. 2936 of 1980

Appellant : Pramod

Respondent : State of U.P.

Advocate for Def. : A.G.A. and ;A.K. Jain, Adv.

Advocate for Pet/Ap. : P.N. Mishra, Adv.

Judgement :

J.C. Gupta, J.

1. Pramod sole appellant in the above mentioned appeal, has challenged the order dated 19-12-80 passed by the then Session Judge, Lalitpur in Sessions Trial No. 40 of 1980 whereby he has been convicted and sentenced to life imprisonment

under Section 302 of the Indian Penal Code and four years R.I. under Section 452 of the Indian Penal Code. Both the sentences are to run concurrently.

2. The deceased of this case was Smt. Kiran who at the time of occurrence was staying in the house of her father Kadore Lal in village Talbehat within the circle of Police station Talbehat, Lalitpur. Appellant also belonged to the same village.

3. The wood cut profile of the prosecution story is that about two and half years prior to the occurrence in question, appellant Pramod had assaulted Brij Kishore brother of Smt. Kiran and a report in respect thereof was made against the appellant. On the same evening appellant came to the residence of Brij Kishore, abused and assaulted Kiran and her mother. An FIR of this incident was lodged by Kiran against the appellant and when the appellant was being tried in Court, she deposed against him as a prosecution witness. On account of all these factors, appellant was bearing enmity towards her.

4. The prosecution case further is that on 1-3-80, which was the day of 'Holi' festival, Smt. Kiran, her mother Smt. Bhuwan P.W. 2, father Kadore Lal P.W. 3, sister Usha, brothers Brij Kishore and Ashok were sitting in the 'Paur' of their house, time was about 8.30 p.m. Appellant Pramod suddenly appeared there. He was armed with a Knife. He asked Smt. Kiran as to why she appeared as a witness against him. Smt. Kiran asked him to go away and do whatever he could. This reply infuriated appellant Pramod and he gave a knife blow on the back of Kiran and ran away with knife. It is alleged that at the time of occurrence a lantern was burning in the Paur.

5. After the accused had fled, Smt. Kiran who had fallen on the ground on receiving knife injury was placed on a four wheel hand cart (Hath Thelia), which was standing nearby and was carried to hospital where she was declared dead. Leaving her corpse in the hospital, her father Kadore Lal got the First Information Report Ex. Ka. 2 ascribed by his elder son-in-law Govind Das P.W. 8 and lodged the same at police station on the same night at 9.30 p.m.. P.W. 9 Head Constable Guru Prasad prepared check report Ex. Ka. 6 and registered the case in the General Diary vide its copy Ex. Ka.-7. Sri Yugraj Shastri P.W. 12 was posted at the relevant time as Station officer at police station Talbehat. He took up

investigation and recorded the statement of First Informant and then reached the hospital where dead body of deceased Kiran was lying. He completed inquest proceedings and sent the dead body in a sealed cover to mortuary for post mortem examination. Thereafter, he visited the scene of occurrence and took blood stained and plain earth into his possession through Memo Ex. Ka. 4. He also made spot inspection and prepared its site plan Ex. Ka. 17. He recorded statements of P.W. 2 Smt. Bhuwan, P.W. 7 Anil Kumar, P.W. 10 Km. Usha and others. After completing investigation on 17-3-80, charge sheet Ex. Ka. 18 was submitted against the accused.

6. Dr. R. P. Gupta, P.W. 1 conducted autopsy on the dead body of Smt. Kiran on 2-3-80 at 3 p.m.. Only one ante mortem injury was found which is reproduced below :

Incised wound 2.5 cm x 1 cm x cavity deep on the back of right side chest at the level of transverse process of 10th thoracic vertebra, 2.5 cm away from the midline. The wound was transversely placed, spindle shaped and was directed forward.

7. In the internal examination, a cut between 10th and 11th ribs (inter coastal space) on right side was found underneath the injury. Pleura was also found incised and the right pleural cavity was full of free and clotted blood about two litres in quantity. Right lung was also cut on the lower lobe, back aspect. Stomach was full of semi digested food material. Similarly small intestines also contained semi digested food whereas large intestines had faecal matter. In the opinion of doctor cause of death was shock and hemorrhage on account of ante mortem injury. The post mortem report is Ex. Ka. 1.

8. Before the trial Court the prosecution produced 12 witnesses in all. P.W. 1 is Dr. R.P. Gupta who had performed post mortem of the dead body of deceased Kiran. P.W. 2 Smt. Bhuwan, P.W. 3 Kadore Lal and Km. Usha P.W. 10 are eye witnesses. P.W. 4 Constable Devi Sharan had carried the dead body from hospital to mortuary. P.W. 7 Anil Kumar Pandey is a witness of inquest report while P.W. 8 Govind Das is the scribe of F.I.R. P.W. 11 Rajendra Singh is Head Moharrir who prepared check report and registered the case in the General Diary and P.W. 12

Yugraj Prasad Shastri is the investigating officer. Rest of the witnesses were of formal nature.

9. The case of the appellant before the trial Court was of total denial. He however produced three witnesses in defence; namely D.W. 1 Ram Prakash, D.W. 2 Shiv Darsan and D.W. 3 Roop Singh who deposed that Smt. Kiran was not having good relations with her husband and was having extra marital relations with one Rajendra Singh.

10. On evaluation of evidence the learned Sessions Judge has found the appellant guilty and convicted and sentenced him to life imprisonment under Section 302 IPC and four years R.I. under Section 452 IPC.

11. Learned counsel for the appellant Sri P.N. Mishra and learned A.G.A. Sri A.K. Jain appearing for the State were heard at length.

12. In his endeavour to create doubt in the correctness of the findings recorded by the trial Court regarding culpability of the appellant, learned counsel for the appellant made various submissions before this Court, of which main being that the motive as alleged by the prosecution for commission of murder by the appellant has not been fully established; that all the witnesses of fact examined from the side of the prosecution are highly interested, being closely and thickly related to the deceased; that availability of light at the time of alleged occurrence is highly doubtful; that the deceased was a lady of disrepute and the possibility of her having been stabbed by some stranger in darkness is not ruled out; that the F.I.R. is ante timed and that in any view of the matter even if prosecution case is accepted, the offence will not fall under Section 302 of the Indian Penal Code.

13. From the autopsy report, Ex. Ka. 1, of deceased Kiran and evidence of Dr. R.P. Gupta P.W. 1 it is evident that the deceased had sustained one stab injury on her back which resulted in her death, as such her death was homicidal in nature. Since learned counsel for the appellant has not assailed nor disputed the fact of Smt. Kiran dying a homicidal death, we refrain ourselves from dilating further on this issue. Therefore, the questions left for our determination are whether it was appellant Pramod who was responsible for causing the stab injury on Smt. Kiran in

the manner alleged by prosecution and, if so, what offence has been committed by him ?

14. First of all we come to the motive part of the prosecution story. The F.I.R. itself makes a mention of motive and it is stated therein that accused Pramod was inimical to the deceased and a litigation was pending in Court in which the deceased and her family members had given evidence against Pramod and on account of this animosity he came to the first informant's house on the day of occurrence at about 8.30 p.m. and asked Smt. Kiran as to why she had given evidence against him. On this Smt. Kiran asked him to get out of the house and do whatever he can. Before the trial Court Smt. Bhuwan P.W. 2 mother of the deceased gave out details of the enmity stating that a case proceeded between her daughter Kiran and appellant Pramod in which Kiran had lodged an F.I.R. against the appellant and had also given evidence. For these reasons appellant was bearing enmity against Kiran. In cross examination this witness further stated that prior to the incident in question Pramod and Ashok had assaulted her son Brij Kishore alias Munna. This incident had occurred about two and half years prior to the date of occurrence. An F.I.R. was lodged in respect thereof by her son Brij Kishore. On the same day both Pramod appellant and Ashok had assaulted her daughter Kiran with fists and kicks and when she tried to save her daughter, she too was assaulted. A case proceeded against appellant Pramod and Ashok in which she, her son Brij Kishore and Kiran gave evidence against the appellant. P.W. 3 Kadere Lal father of deceased Kiran also deposed almost the same facts. Km. Usha P.W. 10 sister of deceased Kiran proved signature of Smt. Kiran on the check report dated 24-2-78 prepared on the basis of report lodged by Smt. Kiran regarding the previous incident. The said report has been brought on record as Ex. Ka. 12. A perusal of the said report would show that Smt. Kiran had lodged an F.I.R. against Ashok Kumar son of Ram Swaroop and the present appellant Pramod Kumar alleging therein that the accused persons named in the said report assaulted her and her mother. The report was registered under Section 452/323/354/504/506 IPC at P.S. Talbehat. From the side of appellant copy of judgment of the case which proceeded on the basis of the report lodged by Smt. Kiran, has been filed as Ex. Kha. 7, which indicates that both Ashok Kumar and Pramod Kumar were acquitted by the trial Court by the order dated 19-5-80. A

perusal of the judgment further fortifies the prosecution allegation that deceased Smt. Kiran Kumari, P.W. 2 Smt. Bhuwan and Brij Kishore had appeared as prosecution witnesses in that case. The case ended into acquittal only on 19-5-80 which supports the prosecution case that on the date of occurrence i.e. 1-3-80 the said case was pending in Court wherein Smt. Kiran Kumari and others had appeared as prosecution witnesses. From the evidence on record it is fully established that the appellant Pramod was certainly nursing a grudge against the deceased on account of her and other family members having given evidence against him in a case which was still pending on the date of occurrence. The other incidents with her and her family members discussed above also point in the same direction. It was argued by the appellant's counsel that this alleged motive cannot be considered strong and sufficient for the commission of murder of Smt. Kiran at the hands of the appellant. It is well established that motive is a fact which is primarily known to the accused himself and it may not be possible for the prosecution in each and every case to explain what actually prompted or excited the accused to commit the particular crime and where there is direct evidence regarding the assault the question of motive becomes more or less academic or recedes in the background. If the evidence is succinctly clear, absence or inadequacy of motive is not of much consequence. In the present case evidence regarding existence of motive has been furnished by the prosecution and in the circumstances of the case, it cannot be said that the appellant had no motive to make an assault on Smt. Kiran on the fateful day. It is clear and deducible from the evidence of three eye witnesses.

15. It was next argued by the appellant counsel that all the three witnesses of fact namely Smt. Bhuwan P.W. 2, Kadore Lal P.W. 3 and Km. Usha P.W. 10 are interested witnesses in as much as they are closely related to the deceased as P.W. 2 Smt. Bhuwan is the mother, P.W. 3 Kadore Lal is father and P.W. 10 Usha is sister of the deceased.

16. The appellant's counsel strenuously urged before us that the evidence of these prosecution witnesses is unreliable and therefore, this Court should reject the same and hold that the prosecution case has not been established beyond reasonable doubts. In his endeavour to support his argument, the learned counsel

took us through their evidence. After scrutinizing the same carefully, we find ourselves unable to accept this submission of the learned counsel. Time and again it has been emphasized by the Apex Court that the evidence of close relatives who testified to the facts relating to the occurrence cannot be rejected on the ground that they happened to be relatives of the victim and mere fact of relationship, far from being foundation of criticism is often a sure guarantee of truth. As per the prosecution case incident in question had occurred at about 8.30 p.m. in the house of the deceased. It was the day of Holi festival and it has also come in evidence that Kadore Lal P.W. 3 and Smt. Bhuwan P.W. 2 had invited their eldest son-in-law Govind Das for dinner. Presence of the aforesaid witnesses in their house at that particular hour was thus most natural and probable. It is also a common practice amongst Hindus. They have all stated in the trial Court that at the time of incident they were talking to each other along with deceased Kiran in the 'Paur' of their house and a lantern was burning there. As already stated above it was a day of Holi festival and if the aforesaid witnesses had assembled in the Paur of their house for a chat, it was quite natural that some source of artificial light must have been there. It is true that in the First Information Report presence of lantern in the Paur was not mentioned, but this omission is hardly of any help to the defence in the facts and circumstances appearing in the case. In any view of the matter it is of common knowledge that on the day of Holi we have full moon in the sky. The appellant used to reside in the same locality and since he had a conversation with Smt. Kiran before he launched an attack upon her with knife, he must have come in close proximity to the deceased and therefore, there would not have been any difficulty for the witnesses to identify him. The evidence of prosecution witnesses is found wholly consistent with the medical evidence and is fully supported by attending circumstances appearing in the case. It has come in the evidence that soon after the incident Smt. Kiran was carried to hospital by her father Kadore Lal P.W. 3 and when she was declared dead on arrival in the hospital, Kadore Lal lost no time in making the F.I.R. at the police station on the same evening at 9.25 p.m. after getting it scribed by his son-in-law Govind Das who was also produced at the trial as P.W. 8 and he deposed that he had scribed the F.I.R. on 1-3-80 in the hospital on dictation of Kadore Lal. He categorically denied the defence suggestion that the report was scribed at the police station in consultation with

police. A vain attempt was made from the defence side to create a doubt that Smt. Kiran might have been stabbed by some other enemy than the appellant and in that effort some bald suggestions were thrown to P.W. 2 to the effect that though Smt. Kiran was married to Shri Ram of Poora Kalan Pacchehat, she deserted him and started living in village Talbehat and that Shri Ram then had come to village Talbehat and started living with Lal Singh overseer who got him employed and that Kiran had developed illicit relations with Lal Singh, overseer. Suggestions were also put to the effect that sub-Inspector Aslam had also developed illicit relations with Kiran. It was also suggested to P.W. 2 Smt. Bhuwan that Smt. Kiran had developed intimacy with one Rajendra Singh Thakur and on account of which the wife of Rajendra Singh was annoyed with Smt. Kiran and she had assaulted Smt. Kiran at the later's house. Smt. Bhuwan P.W. 2 categorically denied all these suggestions and no cogent material has been brought on record to substantiate these suggestions. We also do not find any force in these defence suggestions and are not prepared to believe that these close relations of the deceased, who were undoubtedly present in their house at the time of incident would falsely implicate the present appellant leaving out the real assailant. Since the incident had taken place inside the house these persons are the best witnesses of it.

17. In the facts and circumstances appearing in the case, the prosecution witnesses who were relatives of the deceased and were living in the same house could not be said to be interested witnesses as they were the most natural and probable witnesses and they would have been the last persons to have shielded the real culprit or nominated an innocent person.

18. Learned counsel for the appellant during the course of his arguments tried to challenge the presence of these witnesses by urging that had these witnesses been present at the scene of occurrence, they must have themselves made an attempt to save the deceased or to apprehend the appellant on the spot particularly when they were close relatives of the deceased and present nearby her. After carefully examining the evidence of the witnesses, we find absolutely no weight in this submission of the learned counsel for the appellant. Their evidence clearly indicates that the appellant abruptly appeared at the scene of occurrence and entered into an altercation with the deceased and thereafter suddenly inflicted

a knife blow on the back of the deceased. None of the witnesses was asked as to why they did not make any effort to save Smt. Kiran and why they did not apprehend the appellant on the spot. In any view of the matter as the events had occurred in a short duration and with speed that before the witnesses present there could have realized the happening the appellant had succeeded in running away after stabbing deceased Kiran. Only one blow was inflicted. Therefore, the mere fact that the witnesses could not themselves make any effort to save the deceased or prevent the attack by the appellant on Smt. Kiran or could not apprehend the appellant on the spot will not be conductive to doubt the presence of witnesses on the basis of their conduct being contrary to nature.

19. The First Information Report was lodged by Kadore Lal promptly after the incident that is within an hour of the occurrence giving out a vivid account as to why, where and in what manner the appellant assaulted the deceased. The F.I.R. was scribed by Govind Das P.W. 8 eldest son-in-law of Kadore Lal who had arrived at the house of Kadore Lal soon after the incident was over. It was but natural for him to have accompanied Smt. Kiran to hospital along with his father-in-law Kadore Lal. No enmity or malice whatsoever was suggested to Govind Das. The F.I.R. of the present case thus carries with it full corroborative value. Nothing could be pointed out by the learned counsel for the appellant which could create even a slightest doubt in our mind that the F.I.R. had not come into existence at the time it purports to be. The contents and time of lodging the F.I.R. in the circumstance cannot be suspected.

20. The evidence of the defence witnesses is of no value and carries us nowhere to doubt the correctness of the prosecution story. All these witnesses were produced in support of the defence suggestion that the deceased was having some sort of intimacy with one Rajendra Singh, which suggestion has been categorically denied by the prosecution witnesses. Be that as it may, assuming for the sake of argument that deceased was having some sort of intimacy with Rajendra Singh that fact by itself will not lead to an inference that Smt. Kiran was assaulted by Rajendra Singh or his wife. Had it been so there is no reason why he or she would not have been nominated by the prosecution witnesses as the assailant of the deceased particularly when they are close relatives of the

deceased who would be the last persons to substitute an innocent person with the real assailant of the deceased.

21. On a careful scrutiny of evidence on record in the light of attending circumstances, we are unable to accept the submissions raised by the learned counsel for the appellant challenging the findings of the learned Sessions Judge holding appellant guilty for causing the death of Smt. Kiran in the manner alleged by the prosecution and our irresistible conclusion is that the prosecution has succeeded in proving beyond reasonable doubt that it was the appellant who inflicted knife injury on Kiran as a result of which she died.

22. Next it has to be seen as to what offence Is made out against the appellant Is he to be held guilty for the offence of murder, culpable homicide not amounting to murder or any other lesser offence ?

23. It was argued with vehemence before us by the learned counsel for the appellant that in the case in hand even as per the prosecution story appellant had given only one stab blow on the back of the deceased and no other blow was repeated, hence he could be convicted only under Section 304, Part II of the Indian Penal Code and in support of his submission reliance has been placed on a few decisions such as Kulwant Rai v. State of Punjab AIR 1982 SC 126, Hari Ram v. State of Haryana AIR 1983 SC 185 : (1983 Cri LJ 346), Shital Singh v. State of Punjab AIR 1983 SC 652 : (1983 Cri LJ 1042) and Sheo Prasad v. State of U.P. 1984 U.P. Criminal Report 240 : (1985 Cri LJ (NOC) 17). On a plain reading of these decisions it becomes at once clear that the conclusions therein were arrived in the light of peculiar facts and circumstances of those particular cases and not solely on the basis of the fact of the deceased receiving only one injury. It will thus be hazardous to lay down as a general proposition of law of universal application that whenever one blow by means of a lethal weapon or by a stabbing instrument is dealt on the person of the deceased, the case would not come within the purview of any of the clauses of Section 300 of the Penal Code and that the case would fall invariably under Section 304 part 1 or part II. Conclusion in this regard would depend on the own facts and circumstances of the case and in appropriate cases conviction under Section 302 would be legal and proper.

24. In the case of State of Karnataka v. Vedanayagam 1994 (7) JT (SC) 559 it was laid down by the Apex Court that the view that whenever there is a single injury by a single accused and when there is no premeditation the offence would be culpable homicide is not correct.

25. In that particular case there was neither any quarrel nor a fight between the deceased and the accused. The accused uttered some words against the deceased and then stabbing was followed with a dragger on the left side of the chest of the deceased. These facts clearly indicated that the accused intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death.

26. Therefore, for finding out whether the appellant is guilty for the offence of murder or culpable homicide not amounting to murder, we have to minutely examine the facts and circumstances appearing in the present case.

27. Before we advert to examination of facts and circumstances of the case, it may be necessary to refer to a few decisions of the Apex Court. Explaining clause Thirdly of Section 300, I.P.C. Hon'ble Vivian Bose, J. in the leading case of Virasa Singh, AIR 1958 SC 465 : (1985 Cri LJ 818) observed as under (at page 467 of AIR) :

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly

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 be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental of unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the inquiry 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 inquiry is purely objective and inferential and have nothing to do with the intention of the offender.

28. 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 clause '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 inquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

29. In short, to bring a case within the mischief of clause 'Thirdly' a bodily injury should be present which was intended by the accused and such injury should be sufficient to cause death in the ordinary course of nature. The academic distinction between murder and culpable homicide not amounting to murder has vexed the Courts since the Indian Penal Code was brought on the book of statute. Quite often the Courts loose sight of the true scope and meaning of the terms used by the legislature in Section 299 and 300, I.P.C. For finding out whether the act of the accused falls within the ambit of Section 300 or Section 299 the safest course is to keep in focus the keywords used in various clauses of these sections. Under Clause (b) of Section 299, a person commits culpable homicide if the act by which the death is caused is done with the intention of causing such bodily injury as is likely to cause death. Under the corresponding clauses 'Secondly' and 'Thirdly' of Section 300 culpable homicide becomes murder, if the act is done (a) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused or (b) with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in ordinary course of nature to cause death. Where the bodily injury intended to be inflicted is sufficient to cause death in the ordinary course of nature

the offence will fall under clause 'Thirdly' of the Section 300, I.P.C. The distinction between Clause (a) of Section 299 and clause 'thirdly' of Section 300 thus lies upon the degree of probability of the death resulting from the intended bodily injury. If from the intentional act of injury committed the probability of death resulting is high, the finding should be that the accused intended to cause death or such bodily injury as is sufficient in ordinary course of nature to cause death and conviction should be of murder; if on the other hand there was probability in a less degree of death ensuing from the act committed, the finding should be that the accused intended to cause injury likely to cause death and the conviction should be of culpable homicide not amounting to murder. This is so because 'likely' always includes a chance of survival. The difference between these corresponding clauses is one of degree of probability of death resulting from the intended injury. Under clause 'thirdly' the emphasis is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high degree of probability of death, in the ordinary course of nature. When this sufficiency exists and death ensures and the causing of such injury is proved to have been intended, the offence would be murder. For finding out whether that particular injury was intended to be caused, entire facts and circumstances of the case should be examined minutely because intention is an invisible state of mind which has to be gathered from various circumstances objectively such as, the nature of the weapon used, the ferocity of attack, multiplicity of injuries, the circumstances in which attack was made, whether in the course of a sudden quarrel or a trivial issue or the same was made with pre-meditation etc. and all other surrounding circumstances.

30. In the present case from the evidence on record it is fully established that Smt. Kiran had sustained a stab injury on her back as is evident from the post-mortem report and the statement of Dr. R.P. Gupta P.W. 1. It is thus proved that a bodily injury was present on the deceased. As far as nature of injury is concerned it was a stab wound chest cavity deep which had even incised internal organs like ribs, pleura and right lung. According to Dr. Gupta P.W. 1 the weapon causing the said injury had penetrated about 6-7 cm deep. It has next to be discerned whether the appellant did not intend to inflict this particular injury i.e. to say whether it was accidental or unintentional or that some other kind of injury was intended. As per

the statement of P.W. 2 Smt. Bhuwan, Smt. Kiran was given knife blow while she was in a sitting posture. Accused inflicted the blow on the right side back of deceased Kiran while holding knife in his right hand and bending the neck of Kiran from his left hand. It is thus apparent that the appellant did not aim to inflict any injury on the chest of the victim, neck or even on the left side of back of chest. Though he bent the neck of the deceased yet he did not cause any injury on the most vulnerable portion of the body i.e. neck. Only one blow was inflicted which was not repeated. The blow was given during altercation when the victim asked him to get out of her house. Though the injury sustained by Smt. Kiran was sufficient to cause death in the ordinary course of nature yet from the circumstances appearing in the case it cannot conclusively be inferred that appellant intended to cause this particular injury. Since he inflicted injury on right side of back of the deceased it could well be presumed that the appellant caused the death of the deceased with the intention of causing such bodily injury as was likely to cause death. Thus in the circumstances appearing in the case, it will be safe to hold the appellant guilty of the offence punishable under Section 304, Part I of the Indian Penal Code and not under Section 302, I.P.C.

31. Now coming to the question of sentence, we find that at the time of incident the appellant was about 17 years of age. The incident had occurred on 1-3-80 and the statement of appellant-accused under Section 313, Cr.P.C. was recorded on 5-12-80 wherein he had stated his age to be 18 years. There is no note of the learned Session Judge to the contrary. Rule 50 of the General Rules Criminal as framed by this Court requires and cast a duty on the trial Court that if the Court considers the age given by an accused to be under estimate or over estimate it should form its own opinion and make a mention of the same in the record. It further enjoins upon the trial Court a duty to order medical examination of the accused about his age in cases where offence is punishable with death or life imprisonment. The fact that no other estimate of age has been given by the learned Session Judge nor any inquiry held in that regard, we find absolutely no reason as to why the statement of the accused regarding his age as given before the trial Court be not accepted. It is well established law that while selecting an appropriate sentence the Court should weigh the aggravating as well as mitigating and extenuating circumstances going in favour of the accused. It is thus clear that at the time of

incident which had occurred on 1-3-80 the appellant was a young lad of about 17 years of age. By this time after a gap of more than 20 years he must be about 37 years of age. With passage of time the passions of both sides must have cooled down and there is nothing on record to indicate that the appellant had any criminal history or that he had indulged in criminal activities during the pendency of appeal. Taking all these circumstances into consideration, we feel that the sentence of five years R.I. and a fine of Rs. 20,000/- shall meet the ends of justice. In case of default of payment of fine, the appellant shall undergo one year further R.I. Conviction of the appellant under Section 452, I.P.C. is maintained but sentence therefor is reduced to two years R.I.

32. For the reasons assigned above, this appeal is partly allowed and the order of conviction and sentence passed by the trial Court is modified to the extent that the appellant is convicted under Section 304, Part I, I.P.C. and he is sentenced to undergo five years Rigorous Imprisonment and to pay of fine of Rs. 20,000/- and in default of payment of fine to undergo further R.I. for one year. Out of the fine deposited or realized a sum of Rs. 10,000/- shall be paid to legal heirs of deceased Kiran. His conviction under Section 452, I.P.C. is maintained, but sentence for that offence is reduced to two years R.I. Both the sentences as modified above shall run concurrently. The appellant is on bail. He shall be taken into custody forthwith to serve out the sentences as modified by this Court. C.J.M. concerned is directed to get compliance made of this order forthwith. He shall send compliance report to this Court within three months.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com