Durg Pal Vs. State

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SooperKanoon Citation : sooperkanoon.com/50634

Court : Delhi

Decided On : Apr-15-2015

Judge : G. S. Sistani

Appellant : Durg Pal

Respondent : State

Advocate for Def. : Mr. Sunil Sharma

Advocate for Pet/Ap. : Mr. Sitab Ali Chaudhary

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 1733/2014 Date of decision:

15. 04.2015 DURG PAL Through: Appellant Mr. Sitab Ali Chaudhary, Advocate Versus Respondent STATE Through: Mr. Sunil Sharma, APP for State with SI Vineet & Inspector Ranbir Singh, PS - Gita Colony. CORAM: HONBLE MR. JUSTICE G.S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J.

1. Present appeal has been filed by the appellant under section 374 (2) of Criminal Procedure Code, and is directed against the impugned judgment dated 23.09.2014 and order on sentence dated 26.09.2014 passed by the learned Additional Sessions Judge, Karkardooma Courts, in sessions case No.12/13

whereby the learned Trial Court directed the appellant to undergo imprisonment for life under section 302 IPC with fine of Rs. 10,000/- and in default of payment of fine to further undergo Rigorous Imprisonment for one year.

2. Brief facts of the case, as noted by the learned Trial Court, are as under:

On 27.10.2012, an information was received at Police Station Geeta Colony that police officials had beaten a rickshaw puller at Rani Garden Pushta near Dump yard and that the rickshaw puller had sustained injuries. The information was recorded vide DD No.10-B which was marked to HC Jaiveer who proceeded to the spot with Constable Carlos Toppo. On enquiry, it was revealed that the injured had been taken to Dr. Hedgewar Hospital by his brother Jasbir. HC Jaiveer along with Constable Carlos Toppo reached Hedgewar Hospital and obtained the MLC of Ram Bharose, who was unfit for statement. On enquiry, it was found that Ram Bharose had been referred to GTB Hospital. HC Jaiveer then rushed to GTB Hospital. Statement of brother of the injured namely Jasbir was recorded in which he stated that a rickshaw puller Durg Pal was having unnatural sex with a bitch during previous night and when Ram Bharose objected to this, a quarrel took place between them. The fellow rickshaw pullers pacified both of them but Durg Pal was still furious and he went away giving threats to Ram Bharose. At about 3.00 - 4.00 am, Durg Pal returned and hurled abuses to Ram Bharose and started quarrelling with him. He hit something on the head of Ram Bharose and thereafter ran away from there. On this statement, FIR was registered under Section 308 IPC. During treatment, Ram Bharose succumbed to his injuries. The case was converted to Section 302 IPC. The postmortem of the body of the deceased was conducted in GTB Hospital. On 29.10.2012, accused Durg Pal was arrested on the basis of a secret information from Old Delhi Railway Station while he was trying to flee to his native village. On interrogation, he confessed his crime and at his instance, the weapon of offence i.e. iron pipe was recovered. Subsequent opinion regarding the weapon of offence was received from the doctor who conducted the postmortem of the deceased and according to him, the injury caused to deceased was possible by the recovered weapon of offence. On completion of investigation, charge sheet was filed against the accused under Section 302 IPC. After compliance of Section 207 Cr.PC, the case was committed to Sessions Court,

Charge under Section 302 IPC was framed against the accused to which he pleaded not guilty.

3. To establish the guilt of the appellant and to prove its case, prosecution examined as many as 15 witnesses.

4. The learned Trial Court, after scrutiny of the evidence, found that the prosecution has been able to prove the case against the appellant and accordingly convicted him for the offences and imposed the sentence as has been stated hereinabove.

5. While arguing the appeal, learned counsel for the appellant Mr. Sitab Ali Chaudhary contended that the appellant has been falsely implicated in this case, the judgment passed by the learned Trial Court is contrary to the facts and law and is based on surmises and conjectures, thus it is liable to be set aside 6. It is contended by the learned counsel for the appellant that the investigation was not conducted properly and all the public persons who joined in the investigation were interested witnesses. PW1Jasbir is the brother of the deceased and the other eye witnesses namely PW3 Jai Pal, PW4 Rampal and PW5 Sarvesh examined by the prosecution belong to the native village of the deceased and are therefore interested witnesses and hence their testimonies cannot be relied upon.

7. Elaborating his arguments further, the learned counsel for the appellant submitted that PW1 Jasbir, brother of the deceased admitted in his statement that there were 40-50 rickshaw pullers sleeping where the incident took place but the prosecution has failed to join most of them as witnesses in the investigation which creates a doubt regarding the genuineness of the case.

8. Learned counsel for the appellant further contends that the recovery of the alleged weapon of offence is doubtful as no public witnesses were joined when recovery was being effected and further there is no concrete evidence on record to prove that the weapon recovered was the one used in the commission of the offence.

9. It is further contended by the learned counsel for the appellant that PW3 Jai Pal and PW4 Rampal had stated in their testimony that they have not seen the appellant beating the deceased which is an important piece of evidence in the light of the fact that PW7 Dr. Neha Gupta has deposed in her statement that:

The injuries mentioned in the PM are possible due to any blunt force impact and the possibility of fall cannot be ruled out.

Further all the public witnesses have admitted that the deceased had consumed liquor on the fateful night and hence there is a possibility that the deceased had fallen down and injured himself.

10. It is further contended by the learned counsel for the appellant that the first information recorded vide DD No.10-B stated that some police officials have beaten up a rickshaw puller which points out the guilt of the police officials and which proves that the appellant has been falsely implicated in the present matter.

11. Counsel for the appellant further submits that the prosecution has failed to prove the motive behind the alleged crime. The motive established by PW1 Jasbir, PW3 Jai Pal, PW4 Rampal and PW5 Sarvesh in their testimony fails in the light of the fact that there was no previous animosity between the appellant and the deceased and PW1 Jasbir has himself admitted in his testimony that they were friends.

12. Lastly, counsel for the appellant urged that even if allegations against the appellants are believed to be true, the case falls under Section304 of IPC and not 302 of IPC.

13. On the other hand Mr. Sunil Sharma, learned counsel for the State contended that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt as the present case is based on direct evidence and PW1 Jasbir, brother of the deceased has proved that the deceased died due to head injuries caused by the appellant and the testimony of PW1 finds corroboration with the testimonies of other eye witnesses i.e., PW3 Jai Pal, PW4 Rampal and PW5 Sarvesh.

14. It is further contended by the counsel for the State that the prosecution has been able to prove the recovery of weapon of offence i.e. iron danda at the instance of the appellant.

15. Counsel for the state further submits that motive is clearly established from the conduct of the appellant as when the quarrel took place between the deceased and the appellant, the appellant had extended threat to the deceased and after about 4-5 hours, appellant came back to hit the deceased. This proves that appellant had intention to murder the deceased and trial Court rightly convicted the appellant under section 302 of IPC.

16. We have heard learned counsel for both the parties and perused the impugned judgment along with the evidence placed on record.

17. The case as set down by the prosecution is that the appellant was having unnatural sex with a bitch and when the deceased tried to stop him a scuffle took place between the two. The other rickshaw pullers intervened and pacified the two and thereafter the appellant left after extending threats to the deceased. At about 3.00 or 4.00 AM on 27.10.2012 the appellant returned and hit the deceased on the head with an iron rod and ran away. Thereafter the deceased succumbed to his injuries on the same day.

18. PW1Jasbir, the brother of the deceased in his testimony deposed that on 28.10.12 at about 11 PM the appellant Durgpal was performing unnatural sex with a bitch and on being stopped by the deceased, the appellant refused and for this reason a quarrel took place between them. PW1 further deposed that he along with other rickshaw pullers namely, PW3 Jaipal, PW4 Rampal and PW5 Sarvesh, intervened and pacified both of them. PW1 next deposed that appellant threatened aaj jitna maarna hei maar lo, phir mauka nahi milega and thereafter left from there. PW1 also deposed that at about 3.004.00 am appellant again came back and abused his brother (deceased) due to which PW1 Jasbir, PW3, PW4, PW5 woke up and saw that appellant had hit an unknown object on the head of deceased and when PW1 tried to apprehend the appellant, he managed to run away leaving behind his chappals and angochha and at about 6.30 PM, deceased expired in the hospital on the same day. PW1 on examination stated that the incident took place

on the night of 26/27.10.2012 and in cross examination, he admitted that the deceased and appellant were friends and were residing together. PW1 further stated that he did not see the appellant coming at 3.00-4.00 AM as he was sleeping and woke up on hearing the abuses hurled by appellant. PW1 also stated that deceased had taken liquor on the day of incident but denied that deceased had fallen on the bricks under the influence of liquor and received injuries.

19. PW3 Jaipal, another eye witness to the incident in his testimony deposed that on 26.10.2012 in the night, a quarrel took place between the appellant and the deceased and when he intervened, deceased told him that the appellant was performing sex with a bitch. PW3 further deposed that at about 4.00 AM, he got up on hearing some noise and saw that the deceased was bleeding from his ear and was in pain. PW3 next deposed that he also saw the appellant running away from the spot and when he tried to apprehend him, the appellant managed to flee away.

20. PW4 Rampal deposed that on 26.10.2012 at about 11.00 PM, a quarrel took place between the deceased and the appellant at the rickshaw garage and when PW4 intervened, the deceased told him that the appellant had performed unnatural sex with a bitch and when deceased objected appellant started quarrelling with him. PW4 further deposed that the deceased gave slaps to the appellant to which appellant threatened aaj jitna maarna hein maar le, aaj tumhara aakhri time hei and thereafter appellant left from the spot. PW4 next deposed that at around 3.00-4.00 AM on hearing the shouts PW4 woke up and saw that the appellant had hit on the head of the deceased either with danda or pipe which appellant was having in his hand and thereafter appellant fled from the spot. PW4 stated in his cross examination that he did not see the appellant performing unnatural sex with a bitch and he heard the same from the deceased. PW4 further stated in his cross examination that at about 3.00-4.00 AM he saw that the deceased was having head injury and he had not seen the appellant hitting the deceased with any weapon. PW4 further stated that when he woke up on hearing the noise the appellant had already left and some bricks and stones were also lying on the spot.

21. PW5 Sarvesh deposed that on 26.10.2012 at about 11.00 PM, a quarrel took place between appellant and deceased as the appellant was indulging in unnatural sex with a bitch and the deceased was stopping him from doing so. Thereafter Appellant threatened the deceased that he would kill him and left from the spot. PW5 next deposed that at about 4.00 AM upon hearing the noise, he woke up and saw that the appellant was beating the deceased with a wooden danda. The said wooden danda was lying near the spot when police reached there and police had seized the same. In his cross examination, PW5 denied the suggestion that he had not seen the appellant performing unnatural sex with a bitch and further denied the that he had not seen the appellant hitting danda to the deceased.

22. After perusing the depositions made by the witnesses, the learned Trial Court observed that both PW1 and PW5 have supported the case of prosecution and have corroborated the testimonies of each other. Trial Court further observed that both PW1 and PW5 witnessed the incident and their testimonies are found to be cogent as they have withstood the test of cross examination. Thus trial court held that there is no reason to disbelieve the testimonies made by PW1 Jasbir and PW5 Sarvesh and they can be relied upon.

23. However, the learned Trial Court disbelieved the testimony made by PW4 Rampal and found that PW4 made different statements at different intervals. Because of the glaring contradictions in the testimony of PW4, Trial Court held that it is inconsistent and cannot be relied upon.

24. With regard to weapon of offence, trial court observed that from the testimonies of aforesaid witnesses it is apparent that there are material contradictions as to the weapon used for the commission of an offence and the place and manner in which the recovery was effected. Hence the recovery of weapon of offence cannot be relied upon. There is no evidence that weapon of offence was an iron rod or some other similar object. The case of the prosecution is that the weapon of offence (ExPW15/D) is a metal pipe covered with rubber band recovery of which was effected after four days from a place accessible to general public and the weapon was not lying hidden in any manner. However PW5 in his cross examination stated that weapon of offence (wooden danda) was lying

near the spot where the deceased was hit by the appellant and when the police reached there, the police had seized the same. In our view no finger prints were lifted from the danda (weapon of offence) which was recovered at the instance of the appellant and also no public witness was joined when the recovery was being effected. Thus, there are serious contradictions with regard to the date, place and manner of recovery made and under such circumstances the recovery of the weapon of offence is doubtful.

25. In our view the case of the prosecution rests on the testimony of star witness PW1 Jasbir who is the brother of the deceased. PW1 has proved that the deceased died because of head injuries caused to him by the appellant and further the testimony of PW1 is duly corroborated by the testimony of other eye witness PW5 Suresh.

26. With regard to the contention raised by the counsel for the appellant that the testimony of PW1 cannot be relied upon as PW1 is the brother of the deceased and hence an interested witness does not hold ground as the question of credit worthiness of the evidence of relative of victim is concerned, it is well settled that though the Court has to scrutinize such evidence with great care and caution but such evidence cannot be discarded on the sole ground of their interest in the prosecution. The relationship per se does not affect the credibility of a witness. The Supreme Court in Namdeo vs. State of Maharashtra (2007) 14 SCC150observed as follows:

37. Recently, in HarbansKaur v. State of Haryana : (2005) 9 SCC195he conviction of the accused was challenged in this Court, inter alia, on the ground that the prosecution version was based on testimony of relatives and hence it did not inspire confidence. Negativing the contention this Court said: (SCC p. 198, para

7) 7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused.

38. From the above case law, it is clear that a close relative cannot be characterised as an "interested" witness. He is a "natural" witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

27. In our opinion, the testimony of PW1 and PW5 as discussed above are consistent and we agree with the view taken by the learned trial court that their testimonies are reliable and it is possible for them to have seen the deceased hitting the appellant.

28. Regarding the other contention raised by the counsel for the appellant that other eye witnesses cited by the prosecution belong to the native village of deceased and appellant did not belong to their village, hence it is possible that they are trying to falsely implicate the appellant. In our opinion all the witnesses are rickshaw pullers who are independent witnesses, further the incident took place at the rickshaw garage and there is no reason why their testimonies cannot be relied upon as they are the most natural witnesses whose presence at the spot cannot be doubted and having no animosity so as to falsely implicate the appellant.

29. The next contention raised by the counsel for the appellant was that other rickshaw pullers who were present at the spot were not made a witness. It is well settled that conviction can be based even on the testimony of a single witness if found truthful and credible as laid down by the court in the case of Kartik Malhar vs State of Bihar 1996 (1) RCR (Crl.) 308. Thus it is not necessary to make every party a witness and if the testimony of a single witness is found to be true and credible, conviction can be based on the testimony of that sole witness.

30. Regarding the testimony of PW3 Jaipal who was declared hostile, we are of the view that his entire testimony cannot be disbelieved; such part of the testimony which inspires confidence can still be relied upon. In the case of Sat Paul v. Delhi

Administration 1976 CriLJ295 it was observed that:

Even in a criminal prosecution when a witness is crossexamined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of is testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of is testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

31. In another case of Syad AkbarVs.State of Karnataka (1980) 1 SCC30it was similarly held as under:

As a legal proposition, it is now settled by the decisions of this Court, that the evidence of a prosecution witness cannot be rejected wholesale, merely on the ground that the prosecution had clubbed him 'hostile' and had cross-examined him.

32. Applying the law discussed above we are of the opinion that the testimony of PW3 Jaipal to the effect that when he woke up due to the commotion, he saw the deceased bleeding and the appellant running away from the spot can still be relied upon to prove the presence of appellant at the spot and also his conduct which proves that appellant was guilty and that is why he fled from the spot after committing the crime.

33. In the present case, the circumstances set out have demonstrated that there is some motive for commission of crime as a quarrel took place between the appellant and the deceased prior to the incident where the appellant had extended threat to the deceased. In the case of Udaipal Singh v. The State of Uttar Pradesh

AIR 1972 SC54 it was held that:

In cases where only circumstantial evidence is available at the outset one has to normally start looking for the motive and the opportunity to commit the crime. If the evidence shows that the accused having a strong motive had the opportunity of committing the crime and the established circumstances on record considered along with the explanation, if any, of the accused, excluded a reasonable possibility of anyone else being the real culprit, then the chain of evidence can be considered to be 34. so complete, as to show that within all human probability, the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence. It was further held that if the explanation of the accused is found to be absurd, it should be held to be inconsistent with the innocence of the accused and incapable of any other hypothesis that of the guilt of the accused.

The last submission of the learned Counsel for the appellant is that in any event, the present case does not fall within Section 302 of IPC and the appellant be given benefit of Section 304 of IPC. In order to consider the contention of learned Counsel for the appellant, it would be fruitful to have a look at the law relating to culpable homicide and murder. Section 299 of IPC Culpable homicide.-Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Section 300 of IPC Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or Secondly- If it is done 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 Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, or Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause

death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

35. To understand what constitutes Culpable homicide and Murder it will be useful to refer to the following judgments passed by the Apex Court: In the case of Chacko @ Aniyan Kunju and Ors. Vs. State of Kerala 2004) 12 SCC269 it was held by Honble Supreme Court that : All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type 10. The academic of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. Distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

1. Clause (b) of Section 299 corresponds with Clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of

Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause.

2. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding Clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in Clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature. In another case of Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh (2006) 11 SCC444 the Honble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed:

...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 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 special circumstances with reference to individual cases which may throw light on the question of intention...

Similarly in Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC528and Sukbhir Singh v. State of Haryana (2002) 3 SCC327 it was observed that : ...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....

36. In view of the aforesaid dictum, let us now examine the present case in the light of abovementioned settled law. We may say that the appellant had not taken undue advantage of the situation and gave only a single blow on the head of the deceased so it cannot be said that the appellant had intention to cause death of the deceased. Furthermore, the appellant in the present case did not act in a cruel or unusual manner so the case is clearly covered under Section 304 of the IPC which is defined as underWhoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life]., or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Section 304 consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above. The distinction between 304 Part I and Part II has been drawn by the Honble Supreme 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....

37. In the case of Vijay Ramkrishan Gaikwas V. State of Maharashtra (2012) 11 SCC592 it was observed that . The occurrence thus has the features of an incident in which an injury is inflicted in a sudden fight without premeditation in the heat of passion upon a sudden quarrel within the contemplation of exception 4 to Section 300 of murder as defined in the said section. It is true that only one injury was caused to the deceased but the same is not conclusive by itself, for even a single injury can in a given case constitute murder, having regard to the weapon used

and the part of the body chosen for inflicting the injury. The legal position in this regard is well settled by the decision of this Court in Bavisetti Kameshwara Rao alias Babai v. State of Andhra Pradesh :

2008. (15) SCC725 (Para

13) It is seen that where in the murder case there only a single injury is, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II Indian Penal Code. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the Learned Counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous. In another case of Jai Prakash v. State (Delhi Administration), 1991(2) SCC32 the Apex Court held as under:

...when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death, it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in Virsa Singh case the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that

is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries 38. inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused... While deciding the present appeal the aforestated principles culled out by the Apex Court are to be kept in view. In the present case it is in evidence that a quarrel took place between the appellant and the deceased. There was no premeditation or preplanning as that is why the appellant after the quarrel took place, left from there and came again after few hours to hit the deceased. The appellant had no motive to commit murder of the deceased and one injury was caused to the deceased in a heat of passion as there were heated arguments and exchange of words when they quarrelled. From the totality of the circumstances as narrated above coupled with the nature of guilt, it stands established that the case falls under section 304 of IPC.

39. For the reasons stated above, we alter the conviction of the appellant from Section 302 of IPC to one under Section 304 Part II of the IPC. The order of sentence is accordingly modified to eight years. Accordingly, the appeal is partly allowed in the aforestated terms.

40. Trial Court Record be sent back. SANGITA DHINGRA SEHGAL, J G. S. SISTANI, J APRIL15 2015/sc