

**Ram Pal Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/752289](http://sooperkanoon.com/752289)

**Court :** Rajasthan

**Decided On :** Nov-21-1951

**Reported in :** 1952CriLJ1165

**Judge :** Atma Charan, C.J.

**Appellant :** Ram Pal

**Respondent :** State

**Judgement :**

Atma Charan, C.J.

1. The accused-appellant stands convicted Under Section 304(2) of the I.P.C. and sentenced to undergo five years' rigorous imprisonment for having committed culpable homicide not amounting to murder causing the death of one Narain by giving him two blows with a stick.

2. The fact that the accused-appellant so caused the death of the deceased is clear from the evidence of Mt. Ganga (P.W. 4) and Surja (P.W. 9) as also from the 'confession' of the accused-appellant made before a Magistrate. The counsel for the accused-appellant at the time of argument in appeal did not challenge the evidence to the effect. The main contention of the counsel is that the offence of the accused-appellant in so giving the deceased two blows with a stick actually comes within the purview of Section 325 of the I.P.C. and not within the purview of Section 304(2) of the I.P.C.

3. The post-mortem examination on the body of the deceased was performed two days after his death. He was found to have had his left humerus fractured in the middle and the ribs in the mid-axillary line. The internal examination further showed that the body had almost completely decomposed. The probable cause of death, in the opinion of the medical officer was haemorrhage due to the rupture of the spleen and lung.

4. The evidence produced on behalf of the prosecution is clearly to the effect that there was no previous enmity between the accused-appellant and the deceased and that the 'marpit' started over an exchange of abuses between the two as the maize crop of the accused-appellant had been grazed by the pigs of the deceased over which the latter was a chowkidar.

5. The stick (Ex. 4) was examined by me. It is a light and short stick and, therefore, It could not be said that the accused-appellant has either the intention or the knowledge that was likely to cause the death of the deceased by giving him two blows therewith. The evidence on the record of the trial Court clearly goes to show that the spleen of the deceased was enlarged at the time. It accordingly appears to me that the death of the deceased took place because of the accidental rupture of his enlarged spleen at the time. The offence of the accused-appellant in the circumstances clearly falls within the purview of Section 325 of the I.P.C. and not within the purview of Section 304(2) of the I.P.C. The accused-appellant in his memo of appeal admits that the case could fall at the most Under Section 325 of the I.P.C.

6. The accused-appellant has already undergone over six months of his sentence of imprisonment, and is now on bail. It would, in my opinion, meet the ends of justice if the sentence of imprisonment is reduced to that already undergone.

7. The appeal accordingly is partly allowed, the conviction of the accused-appellant is altered from one under Section 304(3), I.P.C. to one Under Section 325 of the I.P.C. and the sentence is reduced to the period already undergone: the accused appellant is on bail, and his bail bond is cancelled.

