

**Basheer Vs. State by Sub-inspector of Police, Madurai**

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**Court :** Chennai

**Decided On :** Jan-19-1993

**Reported in :** 1993CriLJ2173

**Judge :** K.A. Thanikkachalam and;K.M. Natarajan, JJ.

**Appeal No. :** Criminal Appeal No. 710 of 1986

**Appellant :** Basheer

**Respondent :** State by Sub-inspector of Police, Madurai

**Advocate for Def. :** Mr. S. Shanmughavelayutham, Addl. Public Prosecutor

**Advocate for Pet/Ap. :** Mr. A.A. Selvam, Adv.

**Judgement :**

**K.M. Natarajan, J.**

1. The first-accused in S.C. No. 14 of 1986, on the file of the learned Principal Sessions Judge, Madurai, has preferred this appeal, challenging the legality and correctness of his conviction under section 302 of the India Penal Code and sentence to undergo imprisonment for life. The appellant herein, who is A. 1 before the Trial Court and four others were tried for the following five charges :

(1) A. 1 - 148 I.P.C.

(2) A. 2 - 147 I.P.C. to A. 5

(3) A. 1 - 302 I.P.C.

(4) A. 2 - 302 read with 149 I.P.C. to A. 5

(5) A. 5 - 336 I.P.C.

On the allegation that on the night of 25-5-1985 at about 10.30 p.m. at Madurai East Mada Street, near automatic telephone exchange, they formed themselves into an unlawful assembly, with intention to create disturbance and attacked the deceased and during the course of the same transaction A. 1 stabbed the deceased on the right flank and as a result of the same he died on 27-5-1985 at about 4 p.m. at the Government Rajaji Hospital and it is further alleged that the other accused also assisted the first-accused in committing the said offence and further A. 5 picked up a soda-bottle from the nearby shop and threw it into the shop of the deceased. To substantiate the above charges, the prosecution examined P.Ws. 1 to 15 and filed Ex. P. 1 to P. 27 and marked M.Os 1 to 8. The case of the prosecution, as seen from the evidence, oral and documentary, can be briefly stated as follows : The deceased was running a night-stall in the platform at East Mada Street near automatic telephone exchange and used to sell eatables. P.W. 3 is his brother. P.W. 2 his brother-in-law and another Abdulla and P.W. 1 also were employed in the said shop. All the five accused used to visit the said shop during night hours and take eatables. They used to pay money if they had and if they have no money, they used to put the dues on account. It has been so entered in A. 2's account by the deceased and his brother P.W. 3.

2. On the day of occurrence, on 25-5-1985, at about 10 p.m., all the five accused, as usual, came to the stall of the deceased and had eatables and for that they had to pay a bill for Rs. 9.50. When P.W. 3 demanded the money, they asked him to enter the same also in the account of A. 1 Then P.W. 3 informed the same to his brother the deceased, who told him to collect not only the money payable on that day, but also the earlier dues. When P.W. 3 accordingly demanded the money from the accused, A. 1 found fault with him for demanding the cash and abused him and came in front of the shop of the deceased. Then A. 1 to A. 4 beat the

deceased. A. 5 also came there. He also beat him. A. 2 to A. 5 caught hold of the deceased. At that time, A. 1 picked up M.O. 4 knife from his waist and stabbed him on the right flank. When the deceased raised a hue and cry that he was stabbed, the accused ran away from the scene place and stood at the bunk of P.W. 10. Thereupon, the injured was taken in a rickshaw by P.Ws. 1 and 2 to the Government Hospital. At that time, A. 5 took a soda bottle from the shop of P.W. 10 and threw the same at the stall of the deceased. At about 11 p.m., P.W. 4, the medical officer attached to the Government Rajaji Hospital, Madurai, examined Kidhar Mohammed, who was alleged to have been stabbed by a person with a knife at about 10.00 p.m. at Kila Masi Street near telephone exchange and P.W. 4 found on him the following injury : 'An incised wound about 4 c.m. in length in the right loin with muscle exposed.' According to him the patient was conscious, and he obeyed the commands. He ordered for the X-ray of the abdomen and chest and the patient was admitted in the accident ward. Ex. P. 3 is the extract of the accident register. He was of further opinion that the injury could have been caused by stabbing with a knife and that the injured would have been conscious for about two hours after receipt of the injury and could have been in a fit position to talk P.W. 5 is a Civil Assistant Surgeon attached to the Government Rajaji Hospital Madurai. He examined Kidhar Mohammed at about 11.10 p.m. on 25-5-1985, at the accident ward and the conducted operation on him. According to him, prior to the operation, the injured was fully conscious. Ex. P. 4 is the case-sheet.

3. P.W. 14 is the Sub-Inspector of B. 1 police-station, Madurai. At about 10.30 p.m., while he, along with a constable, was on night beats, he came to know that a person, who was running a parotta stall on the platform near automatic telephone exchange, was stabbed and they went to the scene place. On learning that the injured was taken to the Government Hospital, they went to the Government Hospital at about 11.30 p.m. and got the intimation Ex. P. 21. Thereupon, they went to the accident ward, where the injured was admitted and recorded his statement Ex. P. 22 at about 12.15 a.m. He also seized M.Os. 1 to 3 in the presence of P.Ws. 1 and 2 under mahazar Ex. P. 1. Thereupon he returned to the police-station at about 12.45 a.m. and he registered a case on the basis of Ex. P. 22 in Crime No. 604 of 1985 under sections 341 and 307 of the Indian Penal Code and prepared the first information report Ex. P 23. He took up investigation and

reached the scene place at about 1.30 a.m. He examined P.W. 11 and others and prepared the observation mahazar Ex. P. 3 and rough sketch Ex. P. 24 in their presence. At about 2 a.m. he seized M.Os. 5 to 8 under mahazar Ex. P. 14, attested by P.W. 11 and another. At about 2.15 a.m. he again came to the Government Hospital. Since the injured was in the surgical room, he examined P.Ws. 1 to 3 and others. P.W. 9 is the Special Judicial First Class Magistrate, Madurai. It is his evidence that at about 4.40 a.m. on 26-5-1985 he received a requisition Ex. P. 9 from the hospital to record the dying declaration of Kidhar Mohammed and he reached the hospital at 4.50 a.m. and saw the injured Kidhar Mohammed, who was in the unconscious state. He did not record any statement from him. Again at about 3.45 p.m. he received a requisition Ex. P. 10 from the Sub-Inspector to record the dying declaration and accordingly he went to the Government Rajaji Hospital at 3.55 p.m. and at that time the injured was conscious and was in a fit state of mind to give a statement and accordingly after disclosing his identity, P.W. 9 questioned the injured as to whether he was willing to give a statement and when the injured answered in the affirmative, he recorded his dying declaration Ex. P. 11 Ex. P. 12 is the certificate issued by the medical officer as to the unconscious state of the injured when P.W. 9 first went to the hospital to record his statement. P.W. 14 also recorded the 161 statement of the injured at about 12.30 p.m. on 26-5-1985 and that is marked as Ex. P. 25. He arrested the second accused on 27-5-1985 at about 6 a.m. at Yaraikkal stone bridge. Thereupon, he sent the second-accused for judicial remand. He examined P.W. 10 and others at the scene place. On the same day, A. 1 surrendered himself before the Judicial Second Class Magistrate, Thirumangalam. At about 4 p.m. on 27-5-1985, the injured Kidhar Mohamed died in the Government Hospital and intimation to that affect Ex. P. 6 was received by P.W. 14 and on the basis of the same, he altered the offence into one under section 302 of the Indian Penal Code and prepared express report Ex. P. 26 and copies thereof and sent them to the Inspector of Police as well as to Court. He also informed the Inspector over phone about the registering of the case. P.W. 15 was the Inspector of Police of Madurai Central Circle. At about 6 p.m. on 27-5-1985, he received the message of registering a case through phone from P.W. 14. He went to the police-station and got a copy of the express report and took up investigation. He inspected the scene

place. Since it was night time, he could not conduct the inquest. On 28-5-1985, between 7 a.m. and 9.15 a.m. he held inquest on the dead body and during inquest he examined P.Ws. 1 to 3 and others and the inquest report is Ex. P. 27. Then he entrusted the dead body of the deceased to a constable with a requisition Ex. P. 7 to the medical officer to conduct autopsy. P.W. 8 is the Assistant Professor in Forensic Medicine in the Madurai Medical College, Madurai. In pursuance of the requisition. Ex. P. 7 from P.W. 15, he conducted autopsy over the dead body of Kidhar Mohamed on 28-5-1985 at about 10 a.m. and he found on the body of the deceased the following external injuries :

'An oblique sutured stab injury on the 7th intercostal space on the posterior axillary line right side 4 cm x 0.5 cm entering the thoracic cavity. Wound margins are regular and both ends pointed.'

On dissection, he noticed the following injuries :

'The wound passing through the sutured intercostal muscles 4 cm x .5 cm x through and through penetrating the right side diaphragm 5 cm x 25 cm x through and through found sutured and penetrating the liver right lobe from pectro superior surface to the middle of the inferior surface 5 cm x 2 cm x 5.5 cm exit wound 3 cm x 1 cm and a tear in the peritoneum above the right kidney with full of retroperitoneal blood clots of 250 grams. A linear tear measuring 2 cm in length. The liver injury would to be sutured with a automatic catgut and covered with felgoam. The direction of the wound passes obliquely posterior anteriorly above down wards and towards midline.

(2) Sutured 'L' shaped thoraco abdominal incised surgical wound right side of the abdomen and thorax underlying structures are all found to be sutured.

(3) Two sutured incised surgical wounds for drainage purpose each measuring 3 cm x 5 cm x entering the cavity one on the right side lower part of the thorax and one on the lower abdomen right.'

He was of the opinion that the deceased would appear to have died of shock and haemorrhage due to injury No. 1 and other corresponding internal injuries, namely,

injury to the diaphragm, liver and peritoneum sustained by him. Ex. P. 8 is the post-mortem certificate issued by him. He was of the further opinion that injury No. 1 and the corresponding internal injury could have been caused by M.O. 4 and that the injury is sufficient in the ordinary course of nature to cause death. PW 15 continued further investigation. He seized the account book Ex. P. 2 from PW 3. He arrested A. 4 and A. 5 at about 8 p.m. on the same day and sent them to the police station. He also arranged for the arrest of the other accused. Next day, he sent them for judicial remand. On 30-5-1985, he examined the Sub-Inspector. On 31-5-1985, he examined PW 4, the medical officer, PWs 7 and 8 and others. On that day, he came to know that the third accused had surrendered himself before the Court. On 5-6-1985, he gave requisition for police custody of A. 1 and filed the affidavit of undertaking. On 6-6-1985, at about 12 noon, he got the custody of A. 1. Then, he examined A. 1 in the presence of PW 12 and others and he voluntarily gave a statement and the admissible portion of which is marked as Ex. P. 15. At about 2.30 p.m. the first accused took the police party to Obula Pattithurai and from a nearby bush there, he took up the knife M.O. 4. PW 15 seized M.O. 4 under mahazar Ex. P. 16 attested by PW 12 and another. On 7-6-1985, he examined PW 8 with reference to M.O. 1 knife and on 11-6-1985, he examined PWs. 5 and 6. Then he gave a requisition Ex. P. 17 on 17-6-1985 to send the seized articles for chemical analysis. PW 13 is a Head Clerk attached to the Judicial Second Class Magistrate No. 1, Madurai and he deposed that in pursuance of the requisition Ex. P. 17, M.Os. 1 to 4 and 6 were sent for chemical analysis. Ex. P-19 and P. 20 are the reports of the chemical analyst serologist respectively. PW 15 was transferred. His successor filed a charge-sheet on 3-8-1986 against all the accused. When the accused were examined with regard to the incriminating circumstances appearing against them in evidence, they totally denied the case of the prosecution. No witness was examined on their behalf. The learned trial Judge, after taking into consideration the entire evidence, both oral and documentary, and for the reasons assigned in the judgment, came to the conclusion that the prosecution has not proved the charge against A. 1 under S. 148 of the Indian Penal Code and charge No. 2 against A. 2 to A. 5 under S. 147 and charge No. 5 against A. 5 under S. 336 of the Indian Penal Code and acquitted them of the said charges. As regards A. 1 the trial Court found him guilty

under S. 302 and sentenced him to imprisonment for life. As regards charge No. 4 against A. 2 to A. 5, they were found not guilty under S. 302 read with S. 149 of the Indian Penal Code. A. 2 and A. 3 alone found guilty under S. 341 of the Indian Penal Code and they were sentenced to pay a fine of Rs. 75/- each, in default, to undergo simple imprisonment for two weeks. Aggrieved the same, the first accused alone has preferred this appeal.

4. Learned counsel for the appellant Mr. A. A. Selvam took us through the recorded evidence and made his submissions. Though the learned counsel for the appellant, at the beginning argued on merits and submitted that reliance cannot be placed on the interested testimony of PWs. 1 to 3, who are related to the deceased and who are employed in the shop of the deceased and further in view of the medical testimony of PW 4, who has stated that the deceased has told him that he was stabbed by a person and not stated that he was stabbed by a known person, this appellant-accused should also have the benefit of doubt as was extended to the other accused. But, finding that he cannot succeed, he further argued that even accepting the entire case of the prosecution to be true, this is a case where the occurrence admittedly took place during sudden quarrel and unpremeditated and as such the first accused, during the course of the quarrel, where the deceased also beat the accused, picked up a knife, which he was having in his waist, and dealt one blow and as such the offence should fall only under S. 304(1) and not under S. 302 of the Indian Penal Code. Now the point arises for consideration is as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt and if so what is the nature of the offence committed by the appellant-accused. So far as the actual occurrence is concerned, we got the direct evidence of PWs 1 to 3, which is corroborated by PW 10 and also the medical testimony adduced through PW 4 and the doctor PW 8, who conducted the autopsy as well as the dying declaration given by the deceased to the police as well as the Magistrate. It is the consistent evidence of PWs 1 to 3 that it was this accused, along with the other accused, used to visit the stall of the deceased which was located in the platform of East Mada Street near the automatic telephone exchange, and they used to give cash if they had and if not it would be entered in accounts. On the day of occurrence, this accused along with the other accused, came and took eatables and they have to pay a sum of

Rs. 9.50. When PW 3, who is the employee in the shop and who is the brother of the deceased, demanded the cash, the first accused asked him to enter the same in his accounts and when PW 3 informed the same to the deceased, the deceased insisted that the amount should be collected along with the earlier dues of Rs. 7.50 from the accused. PW 3 informed the same to the deceased and on that there was quarrel between the accused and the deceased and during the quarrel, the accused abused the deceased and the deceased also in turn abused the accused and there was mutual clash and each beat the other with hands and during the course of the said quarrel, it is stated that this accused picked up the knife M.O. 4 from his waist and stabbed the deceased at the right flank and thereafter the accused did not pursue further. Thereafter, the accused went near the shop of PW 10, which is located at the opposite side and thereafter it is stated that A. 5 took a soda bottle and threw it at the shop of the deceased. It is their further evidence that subsequently PWs 1 and 2 took the deceased in a rickshaw, which was brought by PW 1, to the hospital, where PW 4 examined him and he told to PW 4 that he was stabbed by a person with knife and he sustained the injury at about 10.30 p.m. on the same day. This was by about 11.00 p.m. Subsequently, he was examined by PW 14, the Sub-Inspector of Police, and he gave the complaint Ex. P. 22, which is the first information report in this case, wherein also he had categorically stated that it was only this first accused who stabbed him. At about 12.30 p.m. the 161 statement was also recorded wherein also he was categorically stated that it is only this accused, who has stabbed him, which statement is marked as Ex. P. 25. Though the Magistrate, in pursuance of the requisition, came to the hospital in the early morning, finding that the deceased was not in a good state of mind to give dying declaration, he returned by making entries in Ex. P. 12 and subsequently, PW 14 gave another requisition, after recording the 162 statement at about 3.45 p.m., and PW 9, the Judicial Second Class Magistrate, went to the hospital and recorded the dying declaration, which is marked as Ex. P. 11. In all these dying declarations, the deceased has categorically stated that it was only this accused-appellant, who stabbed him with a knife, which he was having in his waist. The mere fact that PWs 1 to 3 are related to the deceased and they are employed in the shop of the deceased is not sufficient to reject their evidence as their presence at the scene

place is most natural and probable and they are the competent witnesses to speak about the occurrence, especially when the occurrence took place in the night and that too by about 10.30 p.m. Further their evidence also is corroborated by the other witnesses. Nothing tangible has been brought forth in the cross-examination of these witnesses to discredit the overt act attributed to the accused. Their evidence is also probalised by the evidence of PW 10, who is the owner of the opposite shop and who has stated about the presence of this accused at the scene of occurrence. Though he has not stated about the actual stabbing, he has stated that the deceased shouted that he was stabbed and at that time, he noticed these accused in the shop of the deceased. It has to be noted that, when once the dying declaration is found to be reliable and trustworthy, that itself is sufficient for convicting an accused, but in the instant case, we have got three dying declarations. In all these three dying declarations, the deceased has stated that it is only this accused, who caused the fatal injury on him. Their evidence is amply corroborated by the medical testimony of PWs 4, 5 and 8. PW 4 is the doctor attached to the Government Rajaji Hospital, who admitted the deceased in the hospital and who saw him at the first instance and it is his evidence that he examined the deceased by about 11 p.m. on the same night and the deceased told him that he was stabbed by a person with knife at 10.30 p.m. and he noted the injury, namely, incised wound about 4 cm. in length in the right loin with muscle exposed. He was of the opinion that the said injury could have been caused by stabbing with a knife and Ex. P. 3, the extract of the accident register, also corroborated his evidence. Similarly, PW 5, who operated the deceased, had categorically stated that he had done the operation by about 12.30 p.m. and he made the entry in the case sheet, which clearly shows the nature of the injury sustained by the deceased and which is proved to be fatal, in spite of the operation done by PW 5. PW 6 is the doctor, who was present at the time of the recording of the dying declaration by the Magistrate and he issued the certificate to the effect that the deceased was fully conscious. PW 8 the doctor, who conducted the autopsy, noticed one external injury and three internal injuries, as described in the post-mortem certificate Ex. P.8 and he categorically stated the external injury No. 1 and the corresponding internal injury could have been caused by a weapon like M.O. 1 and the deceased would have died due to shock and haemorrhage due

to injury No. 1 and the corresponding injuries and the injury is sufficient in the ordinary course of nature to cause the death. Learned counsel for the appellant argued that the evidence of PW 4 that the deceased told him that he was stabbed by a person, but the deceased did not tell him that he was stabbed by a known person. From this, it can be inferred that he was not aware of the assailant. We do not find any merit in the said contention. Even in the cross-examination, PW 4 categorically stated that if the person injured told him that the assailant is not known, he would have noted as 'unknown person', but in the instant case, it has been noted as person, since the name of the person was not known, but could be identified. He had also stated that he was able to identify the person in this case. Learned trial Judge, relying on the decision of the Supreme Court reported in *Pattipati Venkaiah v. State of Andhra Pradesh*, 1986 MLJ (Cri) 23 : : 1985 CriLJ2012 , wherein it was observed that,

'medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second. The medical officer was not in a position to determine with absolute exactitude and precision, the actual time of causing the injuries and the time of death.'

The Supreme Court further observed as follows (at page 2014 of Cri LJ) :

'A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person. His primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.'

That decision is not at all helpful as in that case, the doctor relied on the version of the persons, who brought the injured and he noted the same and in the circumstances their Lordships of the Supreme Court observed that it is not the business of the doctor to examine the informant with regard to the particulars of assailants and then investigate the case, but his duty is only to report to the

concerned police. But, it is nowhere stated that the doctor is not expected to note the time of the attack, manner of attack or about the other particulars. The doctor is not expected to record the name of the person. But, there is no harm if the doctor is reporting whether the injured sustained injury by a known or unknown person. We were informed, to that effect a circular has been issued to the medical officers by his Court and has been uniformly followed by the medical officers. Such a practice will help both the prosecution and the accused and that can be followed. Though in this case, the said ratio laid down by the Supreme Court in Pattipati Venkaiah v. State of Andhra Pradesh, : 1985 CriLJ2012 and the circular issued by this Court are not very relevant, yet we wish to make it clear that it is advisable that in all cases, it is better for the medical officers, while mentioning about the assailant, note whether he is a known person or unknown person, but they are not expected to note the name of the person. In this case, the medical evidence amply corroborates the testimony of the eye-witnesses and particularly with regard to the causing of the vital injury to the deceased by this appellant, who is the first accused. The trial Judge did not accept the case of the prosecution with regard to the recovery of the weapon M.O. 4 in pursuance of Ex. P. 15 statement, which was obtained after this appellant was taken into police custody, long after his surrender before the Court and hence that piece of evidence cannot be used against the accused. Even eschewing that evidence, we have got ample material on the side of the prosecution to hold that it was only this accused, who caused this fatal injury and on account of the same the deceased died in the hospital two days later. Thus, the prosecution has proved the guilt of the accused beyond all reasonable doubt.

5. Now the question arises for consideration is what is the nature of the offence committed by the accused-appellant. Even according to the case of the prosecution, the accused used to visit the stall of the deceased to take eatable and used to pay money whenever they had and if they did not have, they used to enter the same in the accounts, as is evident from Ex. P. 2 accounts. Likewise, as usual, the accused went to the stall of the deceased and they also took eatables on the day of occurrence and they had to pay a sum of Rs. 9.50. On that day, the deceased insisted that the amount should be paid along with the earlier dues of Rs. 7.50. Thereupon, the accused got wild and they abused him and there was

exchange of abuses and exchange of blows and during the course of the said quarrel, it is stated that this accused picked up the knife from his waist and stabbed the deceased once on the right flank and he did not pursue further. Thereupon, the accused ran to the nearby shop and stood there. Unfortunately, the said injury proved to be fatal and Kidhar Mohamed died two days later, due to that injury. In the circumstances, we find every force in the contention of the learned counsel for the appellant that it is a case of sudden quarrel and during the course of the quarrel, which is unpremeditated, the accused, who was also beaten with hand by the deceased, picked up M.O. 4 knife from his waist and gave one blow and as such by no stretch of imagination it can be said that the accused had any deliberate intention to murder the deceased. But certainly it would attract Exception 4 to S. 300 of the Indian Penal Code and the offence could fall only under S. 304-I and not under S. 302 of the Indian Penal Code. In this connection, it is worthwhile to quote the decision of the Supreme Court in Surinder Kumar v. Union Territory, Chandigarh, : 1989 CriLJ883 , wherein the Apex Court held as follows :

'To invoke Exception 4 to S. 300 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 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. Thus where in case of quarrel between the deceased and the accused regarding possession of premises, it was reasonable to infer from the facts that the deceased must have intervened on the side of his brother and in the course of the scuffle he received injuries, one of which proved fatal, the accused would be entitled to the benefit of the Exception 4 to S. 300. Merely because three injuries were caused to the deceased during the scuffle it could not be said that he

had acted in a cruel and unusual manner. Under such circumstances the accused could be convicted under section 304, Part I.'

To the same effect, it has been held by the Supreme Court in a subsequent decision in V. Sreedharan v. State of Kerala, : 1992 CriLJ701 , in the following manner (para 4) :

'We are of the view that the single dagger blow given by the appellant to Peethambaran was as a result of provocation which he got in the heat of passion upon a sudden quarrel and he is guilty of culpable homicide not amounting to murder. We, therefore, acquit the appellant of the offence under S. 302 of the Indian Penal Code and instead convict him under S. 304, Part I of the Indian Penal Code.'

We find every force in the argument of the learned counsel for the appellant. Learned Additional Public Prosecutor also did not dispute this submission made by the learned counsel for the appellant. On a careful consideration of the entire materials on record we have no hesitation in holding that the offence committed by the appellant, who is the first accused, would fall only under S. 304, Part I of the Indian Penal Code and not under S. 302 of the Indian Penal Code.

6. In the result, the conviction and sentence awarded to the appellant-first-accused under S. 302 of the Indian Penal Code are set aside. Instead, he is convicted under S. 304, Part I and sentenced to undergo rigorous imprisonment for seven years. With the above modification in conviction and sentence, this criminal appeal is dismissed.

7. Appeal dismissed.

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