

Manoj Kumar Vs. State (Nct) of Delhi

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SooperKanoon Citation : sooperkanoon.com/977534

Court : Delhi

Decided On : Jul-08-2013

Judge : Reva Khetrapal

Appellant : Manoj Kumar

Respondent : State (Nct) of Delhi

Advocate for Pet/Ap. : Mr. Vivek Sood, Ms. Ritu Gauba

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + (1) CRL.A. 217/2010 MANOJ KUMAR Through: Appellant Mr. Vivek Sood, Advocate. versus STATE (NCT) OF DELHI Through: + (2) Respondent Ms. Ritu Gauba, APP. CRL.A. 297/2010 ARVIND YADAV Through: Appellant Mr. Vivek Sood, Advocate. versus STATE Through: + (3) Respondent Ms. Ritu Gauba, APP. CRL.A. 525/2010 RANJIT Appellant Through: None. versus STATE (NCT) OF DELHI Through: % Respondent Ms. Ritu Gauba, APP. Date of Decision : July 08, 2013 CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE SUNITA GUPTA JUDGMENT : REVA KHETRAPAL, J.

1. Challenge in the present appeals is to the judgment dated 22.8.2009 convicting the Appellants for the offence punishable under Section 302 read with Section 34 IPC and the order dated 31.8.2009 sentencing them to undergo rigorous imprisonment for life and to pay a fine of ` 2,000/- each, in default of payment of

fine to further undergo simple imprisonment for a period of one year.

2. The prosecutions case is that in the night intervening 16.11.2005 and 17.11.2005, at about 11.00 p.m. at the Pushta Road, Thokhar No.12, near the site office of K.R. Anand Engineers and Contractors where work of road-widening was going on, the Appellants, namely, Manoj, Arvind and Ranjit, who were working as labourers at the site attacked Ali Baksh @ Pappu, driver of truck not HR38-8404, with dandas. One Tehsildar who was posted as a security guard at the construction site raised an alarm, whereupon the Appellants ran away from the site leaving Ali Baksh @ Pappu in an injured condition. The injured was taken to Walia Nursing Home from where he was referred to the LNJP Hospital where he succumbed to the injuries sustained by him.

3. The criminal law machinery was set in motion on receipt of DD No.9A by PW14 Sub Inspector Ram Bhool at about 8.15 a.m. On receipt of the said DD, SI Ram Bhool along with PW13 Constable Akhilesh Kumar went to LNJP Hospital where he met the eye witness Tehsildar (PW8) and recorded his statement (Ex.PW8/A), made endorsement on the same vide Ex.PW14/A and sent the rukka for registration of FIR through Constable Akhilesh (PW13) to P.S. Shakar Pur. At the police station, the duty officer HCW Panwati (PW12) recorded FIR No.990/05 under Sections 302/34 IPC (Ex.PW12/A) and sent copy of the FIR to the senior officer through Constable Chander Prakash (PW15). The investigation of the case after recording of the FIR was carried out by Inspector K.C. Negi (PW17) who reached at the spot at Pushta Road where SI Ram Bhool (PW14) was also present and prepared site plan at the instance of PW8 Tehsildar. From the spot, PW17 (I.O.) lifted blood stained soil, earth control, some concrete and two other stones and one brick, which were taken into possession vide seizure memos Ex.PW8/B and PW8/C after sealing the same in separate pulandas. At the spot, PW17 (I.O) received secret information pursuant to which he alongwith the Tehsildar reached near Shiv Mandir at Pushta Road. All the three accused persons were apprehended from the said place at the instance of PW8 Tehsildar. Their arrest memos Ex.PW14/B, PW14/C and PW14/D and their personal search memos Ex.PW14/E, PW14/F and PW14/G were prepared. All the three accused persons were interrogated and their disclosure statements recorded as

Ex.PW14/H, PW14/J and PW14/K. At the instance of accused Ranjit, one saria was recovered from his jhuggi and the same was taken into possession vide seizure memo Ex.PW14/L. CRL. A. 217/2010, CRL. A. 297/2010 and CRL. A. 525/2010 Manoj and Arvind got recovered dandas from their respective jhuggis and the same were taken into possession vide memos Ex.PW14/M and Ex.PW14/N. Case property was deposited in the malkhana and the statements of prosecution witnesses recorded. On completion of investigation, the accused were chargesheeted, tried and indicted of the offence punishable under Section 302 read with Section 34 of the IPC.

4. It is urged by the Appellants counsel Mr. Vivek Sood that viewed from any angle the impugned judgment is not sustainable in law. He submitted that the accused persons have been convicted on the sole testimony of PW8 Tehsildar and that the testimony of PW8 Tehsildar is neither credible nor corroborated by the testimonies of the remaining independent witnesses, namely, PW1 Joginder Singh, PW2 Pradeep Sharma, PW3 Ramesh Kumar, PW6 Sri Kumar and PW7 Ram Babu. The versions of each one of the aforesaid prosecution witnesses with regard to the incident contains material contradictions and discrepancies. The prosecution has also failed to establish any motive for the offence allegedly committed by the accused persons. It was urged that it was not even the case of prosecution that there was any enmity between the Appellants and the deceased person. The deceased was working as a driver whereas the accused persons were working as labourers at the site in question. On the admission of the deceased at Walia Nursing Home where the deceased was first got admitted by one Kallu, alleged history given was of fall from height in the admission card. The same was reiterated by the relatives who brought the deceased to the LNJP hospital. Further, even PW5 Dr. Chander Shekhar, who had examined the patient, admitted in the course of his cross-examination that the injuries as mentioned in OPD card (Ex.PW5/A) could be caused by fall. Therefore, the story as projected by the prosecution cannot be relied upon that it is the accused persons who had killed the deceased. The fact that there was a long gap of 15 hours between the incident and the reporting of the FIR and during those 15 hours nobody had complained that the accused persons had beaten the deceased also undermined the case of the prosecution. It was next urged that the alleged recovery of the saria and the

two dandas at the instance of the accused persons is also of no avail to the prosecution as no public witness was joined in the recovery proceedings or even at the time of the arrest of the accused persons. Though the accused persons are stated to have been arrested at the instance of PW8 Tehsildar, even PW8 was not made a witness to the recovery. Alternatively, it is urged by learned counsel that without prejudice to his contention that the prosecution has failed to bring home the guilt of the accused even if the trial courts findings on the facts are sustained, the conviction under Section 302 IPC in the present case was not justified. It was urged that the evidence on record, including the testimony of PW19 Dr. Deepak Sharma, who proved on record the postmortem report, revealed that even though there were nine injuries on the person of the deceased, the cause of death was haemorrhage and shock consequent upon the solitary injury inflicted on the chest, which quite obviously could not have been inflicted by all the Appellants. Counsel urged that for all the aforesaid reasons even assuming the prosecution story is believed by this Court, the Court ought to take recourse to the exceptions carved out in Section 300 and hold the Appellants guilty for the offence punishable under Section 304, Part I IPC.

5. Per contra, learned APP argued that the appeal was without merit and deserved outright rejection. It was submitted that the testimony of the eye-witness PW8 to the effect that he had seen the accused persons present in the Court coming with dandas and giving beatings to Ali Baksh @ Pappu cannot be disbelieved, more so for the reason that the said witness was a natural witness being a security guard posted at the site by the company concerned. He also bore no enmity to the accused persons and, therefore, had no motive for falsely implicating them. The further submission of the learned APP is that the testimony of PW8 was substantiated by the testimony of PW1 Joginder Singh, who though hostile to the prosecution on certain aspects of the case nevertheless clearly stated that he had seen the three accused persons coming to the site with dandas in their hands and Ali Baksh @ Pappu was standing with them. Subsequently, on Tehsildar (PW8) raising an alarm and calling him, he reached the spot where he saw that Ali Baksh @ Pappu was lying in an injured condition. He, however, categorically denied that he had witnessed the accused persons catching hold of Ali Baksh and giving beatings to him with dandas and stones. Apart from the testimony of PW8 and

PW1, learned APP submitted that there are on record the testimonies of PW2 Pradeep Sharma, PW3 Ramesh Kumar, PW6 Sri Kumar and PW7 Ram Babu to substantiate the version of the prosecution. FINDINGS 6 It is a settled proposition of law that even in the case of a hostile witness, that part of his testimony which substantiates the case of the prosecution can be extricated from his remaining deposition and utilized for the purpose of convicting the accused. We, therefore, see no difficulty in accepting the testimony of PW1 Joginder Singh to the extent it supports the case of the prosecution. We find that the testimony of PW2 Pradeep Sharma also supports the case of the prosecution to the extent that he deposed that when he visited the site in his capacity as site in-charge on the morning of 17.11.2005, he came to know that a quarrel had taken place between the accused persons and Ali Baksh @ Pappu in which the accused persons who were known to him and were working as labour at the site had beaten Ali Baksh @ Pappu with dandas and stones. PW3 Ramesh Kumar testified that he was working as a driver of a tanker belonging to the contractors working at the site and on the fateful night when at about 11.00 p.m. he came back to the site after taking dinner he heard a noise of the guard Tehsildar (PW8) and saw Ali Baksh @ Pappu, driver of truck not HR38-8404 lying unconscious in an injured condition. Tehsildar told him that the accused persons had come with dandas and beaten the driver Ali Baksh @ Pappu. He along with 3-4 boys removed Ali Baksh to Walia Nursing Home and thereafter to LNJP hospital. PW6 Sri Kumar working as a helper on the truck of the concerned company deposed on similar lines and stated that on the intervening night at about 11.00 p.m./12.00 a.m. he came to know from the guard that a quarrel had taken place between Ali Baksh who was working as a driver and the accused persons, in the course of which Ali Baksh sustained injuries. He along with two or three other persons had removed Ali Baksh to Walia Nursing Home and thereafter to LNJP hospital. PW7 Ram Babu also testified that he was working as a helper on the truck which was being driven by the deceased. The driver of the said truck Ali Baksh @ Pappu was given beatings at about 11.00 p.m. about 5 or 6 months back by the accused persons. When he reached the spot, he saw Ali Baksh lying unconscious and the accused persons were running away from the spot.

7. PW8 Tehsildar as well as PW1 Joginder Singh, PW2 Pradeep Sharma, PW3 Ramesh Kumar, PW6 Sri Kumar and PW7 Ram Babu though subjected to extensive cross-examination, their testimonies emerged unscathed after cross-examination. There does not appear to us to be any ostensible reason for all these persons, who were coworkers at the same site at which the accused persons were deployed, to have deposed against the accused persons. There is not even a suggestion given to any of these witnesses that they were on inimical terms with the accused persons. This being so and the deceased having died a homicidal death as is established by the medical evidence on record, we see no reason to interfere with the findings of the learned trial court with regard to the accused persons having inflicted the injuries mentioned in the postmortem report of the deceased. PW3 has explained the circumstances in which he gave false information to both the medical institutes under the fear that the treatment of the deceased may not be started. The deceased was taken to LNJP hospital at about 12.20 a.m. in the night intervening 16/17.11.2005. The MLC was prepared at 5.10 a.m. on 17.11.2005 after the death of the patient and when the relatives present there informed the doctors about alleged history of the case. The delay in lodging FIR is also not, in our opinion, sufficient to discard the testimonies of PW8 as well as PW1, PW2, PW3, PW6 and PW7. The oral testimony of these witnesses has been fully corroborated with the recovery of the blood stained weapons of offence. The chemical examiner has also corroborated the fact that on examination of the dandas, iron rod and other material sent for chemical analysis, human blood was found to be present on all the eight exhibits, including control earth, gauze piece, concrete, brick stones etc. There is thus overwhelming evidence on record to prove that the accused persons have not been falsely implicated for the homicidal death of Ali Baksh. Even if the recoveries are taken to be doubtful, the deposition of the eye-witnesses are sufficient to incriminate the accused.

8. Adverting to the alternative submission of learned counsel for the Appellants, we find from the postmortem report (Ex.PW19/A) that the cause of death was opined to be haemorrhage and shock consequent upon blunt force impact to the chest via injury No.1. It was further opined that all injuries were ante-mortem, recent in duration. Injury No.1 is sufficient to cause death in ordinary course of nature. The following injuries were found: Injury No.1 Contusion 8.0 cmsx 4.0 cms

present over lower front of right side of chest and upper front of abdomen.

2. Stitched wound 5.0 cms present ovr left side of forehead 1.0 cms above the left eyebrow.

3. Stitched wound 2.0 cms over back of left side of head.

4. Abrasion, reddeish, 2.2 cms x 1.3 cms over top of left shoulder.

5. Lacerated wound 2.0 cms x 1.2 cms x bone deep present over middle front of right leg.

6. Abrasion, reddish, 3.2 cms x 2.0 cms present over front of left knee.

7. Lacerated wound 2.0 cms x 1.2 cms x bone deep present over middle front of left leg.

8. Abrasion, reddish, 1.0 cms x 0.5 cms, present over back of left elbow.

9. Lacerated wound 1.0 cms x 0.5 cms x muscle deep present over middle back of left forearm.

9. Learned counsel contended that the only inference which can be drawn from the aforesaid injuries is that the deceased was indiscriminately beaten. The crucial question which arises for our consideration is whether on the facts proved and the medical evidence on record pointing to the existence of a single fatal blow on the chest of the deceased, the alternative submission made on behalf of the Appellants merits our consideration. Learned counsel for the Appellants has pressed into service the decisions of the Supreme Court rendered in *Kalegura Padma Rao and Anr. vs. State of Andhra Pradesh* represented by the Public Prosecutor, (2007) 12 SCC 48. *Kandaswamy vs. State of Tamil Nadu*, (2008) 11 SCC 97. *Rakesh Singha vs. State of H.P.*, (1996) 9 SCC 8. and *Sunder Lal vs. State of Rajasthan*, (2007) 10 SCC 371. He submitted that in all these cases the injuries inflicted by the accused were far graver in nature as compared to the injuries inflicted by the accused in the present case. Notwithstanding, the Supreme Court altered the conviction from one under Section 302 IPC to Section 304, Part I IPC.

10. Before advert to the aforesaid judgments relied upon by learned counsel for the Appellants, we may advert to the decision of the Supreme Court in *State of A.P. v. Rayavarapu Punnayya and Another*, (1976) 4 SCC 382, wherein the distinction between murder and culpable homicide not amounting to murder has been phrased in a very succinct manner as follows:

12. In the scheme of the Penal Code, culpable homicide is genus and murder its specie. 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 this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, culpable homicide of the first degree. This is the greatest 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 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.

13. The academic distinction between murder and culpable homicide not amounting to murder has vexed the courts for more than a century. 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 minutae 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.

14. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mensrea 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. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300. Section 299 Section 300 A person commits Subject to certain culpable homicide if the exceptions culpable act by which the death is homicide is murder if the caused is done act by which the death is caused is done INTENTION (a) With the intention of (1) With the intention of causing death; or causing death; or (b) With the intention of (2) With the intention of causing such bodily causing such bodily injury as is likely to injury as the offender cause death; or knows to be likely to cause the death of the person to whom the harm is caused; or (3) 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 KNOWLEDGE (c) With the knowledge (4) With the knowledge that the act is likely to that the act is cause death so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

15. 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.

16. 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 the 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 probable 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.

17. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant v. State of Kerala* [AIR 1966 SC 187: 1966 Supp SCR 23:]

1966. Cri LJ 1509.] is an apt illustration of this point.

18. In *Virsa Singh v. State of Punjab* [AIR 1958 SC 46:]

1958. SCR 149.:

1958. Cri LJ 818.] Vivian Bose, J.

speaking for this Court, explained the meaning and scope of clause (3), thus (at p. 1500): 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. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry 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 was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

19. Thus according to the rule laid down in Virsa Singh case of even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

20. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder

contained in Section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304, of the Penal Code.

22. The above are only broad guidelines and not castiron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

11. The guidelines laid down in the above decision were followed in a number of subsequent decisions of the Supreme Court, including those rendered in Abdul Waheed Khan @ Waheed and Ors. vs. State of Andhra Pradesh, (2002) 7 SCC 175. Augustine Saldanha vs. State of Karnataka, 2003 (10) SCC 472. Thangaiya vs. State of Tamil Nadu, 2005 (9) SCC 650. Sunder Lal vs. State of Rajasthan, 2007 (10) SCC 371. Kandaswamy vs. State rep. by the Inspector of Police (SLP (Crl.) No.5134/2006 disposed of on 17.7.2008), Daya Nand vs. State of Haryana, (2008) 15 SCC 717. Adu Ram vs. Mukna and Ors., (2005) 10 SCC 597. Mahindra Mulji Kerai Patel vs. State of Gujarat, (2008) 14 SCC 69. and Jalaram vs. State of Rajasthan, (2005) 13 SCC 347.

12. In the case of Kalegura Padma Rao and Anr. vs. State of Andhra Pradesh (supra), the assault had its genesis in a quarrel which had taken place between the deceased and the accused persons on the preceding evening. On the following morning, 16 accused persons armed with iron rods and axes attacked the victim by entering his house and bolting the door from inside. The beatings were indiscriminately administered. The victim ran out of the house. The accused chased and beat him indiscriminately till finally he fell down near the gram panchayat office. Though taken to a hospital, he succumbed to the injuries sustained by him. On the touchstone of the principles set out in its earlier

decisions rendered in State of A.P. v. Rayavarapu Punneya and Abdul Waheed Khan @ Waheed and Ors. vs. State of Andhra Pradesh (supra), the conviction of the Appellants was altered from Section 302 read with Section 149 to Section 304, Part I read with Section 149.

13. In the case of Kandaswamy vs. State of Tamil Nadu (supra) where the accused was alleged to have indiscriminately cut the deceased with an Aruval (sharp sickle like weapon) resulting in his instantaneous death, the conviction under Section 302 was altered to one under Section 304, Part I IPC in the background of the legal principles enunciated by the Supreme Court in its earlier decisions.

14. The next decision relied upon by the Appellants counsel is Rakesh Singha vs. State of H.P. (supra), wherein the Appellants who were a group of students armed with hockey sticks, iron rods, etc. indiscriminately attacked the victims who had gathered there in connection with a marriage ceremony turning the marriage to one of mourning, the Supreme Court held that the High Court had justifiably convicted the Appellants under Section 304, Part II read with Section 149 IPC.

15. In Sunder Lal vs. State of Rajasthan (supra) where one of the accused was alleged to have inflicted a blow on the head of the deceased with a gandasi with the intention to kill him and also inflicted injuries on his hand while the co-accused inflicted injuries on his leg with lathi in the night at about 2.00 a.m. while he was sleeping, considering the fact that the occurrence took place in the night in almost dark conditions with feeble light and attack was made indiscriminately, the Supreme Court held that the appropriate conviction would be under Section 304, Part I IPC.

16. In the light of the aforesaid decisions and keeping in mind the fact of existence of a single fatal blow on the chest of the deceased and the further fact that there was darkness when the occurrence took place, we are of the view that the conviction of the Appellants for the offence punishable under Section 302 IPC is required to be modified and the Appellants are liable to be convicted for an offence punishable under Section 304, Part I IPC. We say so for the reason that where an occurrence takes place in the darkness or in feeble light there is a strong

possibility of the blow being intended to be directed on some other part of the body of the victim, accidentally striking the victim on a vital part of the body. These factors have weighed with the Supreme Court in all the decisions noted by us hereinabove including the decisions reported as Thangaiya vs. State of Tamil Nadu and Sunder Lal vs. State of Rajasthan (supra). The deceased in the instant case had received only one injury sufficient to cause death in the ordinary of nature being one danda blow in the region of his chest. The remaining blows were indiscriminate blows administered by the accused persons without any mens rea and without premeditation. The incident took place on a sudden quarrel between the deceased who was a driver and the accused persons who were labourers at the same site. Having regard to these facts, we modify the conviction of the Appellants from the offence punishable under Section 302 IPC to the one under Section 304 Part I IPC. The Appellants have already undergone about 7 years imprisonment. We are of the opinion that the ends of justice would be met if they are sentenced to undergo 8 years rigorous imprisonment. The Appellants shall be entitled to the benefit of remission as well as the period already undergone by them in accordance with law.

17. CRL.A. 217/2010, CRL.A. 297/2010 and CRL.A. 525/2010 stand disposed of accordingly. REVA KHETRAPAL JUDGE SUNITA GUPTA JUDGE July 08, 2013
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