

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Criminal Appeal 584/2012**

% **Date of Decision: November 5, 2012**

SUBHASH Appellant
Through Mr. A.J. Bhambhani with
Ms. Nisha Bhambhani, Ms. Bhavita Modi &
Ms. Lakshita Sethi, Advocates.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S. P. GARG

SANJIV KHANNA, J. (ORAL)

The appellant, Subhash, by the impugned judgment dated 15th November, 2011 has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for the murder of Nirmala; under Sections 452 and 324 IPC for committing house trespass and simple injuries to Sarita, Nita and Aache Lal. By the order of sentence dated 15th November, 2011, he has been sentenced to life imprisonment for the offence of murder and further sentenced to pay a fine of Rs.50,000/-, in default thereof to undergo simple imprisonment for a period of two years. For the offence under Section 324 IPC, he has been sentenced to rigorous imprisonment for a period of three years. For the offence under Section 452, he has been sentenced to undergo rigorous imprisonment of seven years and to pay a fine of Rs.10,000/- and in default thereof to undergo simple imprisonment for a period of six months.

2. The prosecution's case largely rests and is predicated upon the statements of the two sisters of the deceased (Nirmala), namely Urmila

and Asha, who had appeared before the trial court as PW-1 and PW-2, respectively.

3. Urmila (PW-1) has stated that on 6th February, 2005 she, her five sisters, and one brother had gone to sleep in the same room at about 10 P.M. At about 3 – 3.30 A.M., she was woken up by the cries of her sister Nirmala, who had been sleeping with their sister Sarita on a separate cot. On waking up, PW-1 saw that the electric bulb had been switched ‘on’ and that the door of their room was open. She saw the appellant (Subhash), who was described as their maternal uncle, standing beside the said cot holding a jug in his hand. She then saw him throwing the contents of the jug on Nirmala, after which he threw the jug on the floor and ran out through the back door of the room, bolting the door from outside. She averred that despite her effort to stop the appellant, he managed to run away. Nirmala and her other sisters, Sarita and Nita, suffered burn injuries caused by the contents of the jug. Her father, who was sleeping in the adjoining room, came into the said room on hearing their cries. He poured water on her sisters, and called the police, who reached their house within five minutes. PW-1 also stated that earlier that day, i.e. on 6th February, 2005, at about 11 A.M., she had seen her sister Nirmala quarrelling with Subhash on the roof of their house. Nirmala was scolding the appellant, and the appellant was threatening her, saying that “he would see to her” if she would not agree to his terms. When PW-1 questioned Nirmala about the exchange, she replied that she was scolding the appellant because he had misbehaved with her. She further stated that on the said night Nirmala was first taken to Sanjay Gandhi Hospital, and thereafter shifted to JPN Hospital, where she succumbed to her burn injuries.

4. Asha (PW-2) made a similar statement, that on 6th February, 2005, she had gone to sleep with her five sisters and one brother. Her sisters

Nirmala and Sarita were sleeping on a separate cot. At about 3.30 A.M. she woke up when she heard Nirmala crying out. She saw the appellant standing by the side of the cot on which Nirmala was sleeping, and saw that he was holding a jug in his hand. She saw him throwing the jug on the floor of the room, and run out of the other door, after bolting it from the outside. Nirmala was completely burnt and her two sisters, namely Sarita and Nita, also received burn injuries. After the police arrived, the injured girls were taken to the hospital. She stated that Nirmala was first taken to Sanjay Gandhi Hospital and then shifted to another hospital. PW-2 averred that at about 11 A.M. on the 6th of February, 2005, the deceased (Nirmala) had gone to the roof of their house and was seen quarreling with the appellant. The appellant was threatening Nirmala and saying that “he would see to her”. The examination-in-chief of Asha (PW-2) was recorded on 15th August, 2005 and her cross-examination was deferred. On 19th March, 2007, the counsel for the appellant did not appear to cross-examine the said witness, and the cross-examination was therefore not carried out, despite the opportunity being granted. Thereafter another opportunity to cross-examine PW-2 was granted, which was then carried out on 15th July, 2010.

5. Learned counsel for the appellant has submitted that there are contradictions in the statements of PW-1 and PW-2. He has drawn our attention to the statement of PW-2 in the cross-examination, where she has stated that she woke up prior to her sister Urmila, who woke up after she had raised the alarm. It was submitted that therefore PW-1 had not actually seen the appellant allegedly pouring the acid on Nirmala. It was also pointed out that PW-2 had stated in her cross examination, carried out on 15th July 2010, that the glass jug was kept on the bed when she and others were going to sleep. Considerable emphasis was also placed on the contention that the name of the appellant was not

disclosed by Nirmala in her statement (Ex. PW-20/A) which was recorded by A.S.I. Hansraj (PW-20) at about 10.45 A.M. on 7th February, 2005, which was the basis of the FIR No. 6/A, P.S. Sultanpuri, (Ex.PW-6/A) recorded at 11.10 A.M. It was submitted that none of the witnesses had either implicated the appellant or stated anything about his involvement in the initial statements that they had made to the police. Neither PW-1, nor PW-2, nor their father Aache Lal (who had appeared as PW-5) had implicated the appellant in their initial statements, and this creates a grave doubt regarding the appellant's involvement.

6. We have considered the said contentions but do not find any merit in the same. We find the statements of PW-1 and PW-2, the sisters of the deceased-Nirmala, to be credible, truthful and trustworthy. Both witnesses have stated that they were sleeping in the same room as their other sisters and one brother. They have also stated that Nirmala was sleeping with Sarita on a separate cot. At about 3.30 A.M., they heard Nirmala's cries. The appellant was seen standing by the side of the cot, holding a jug in his hand, the contents of which he then threw on Nirmala. He then ran away through the outer door after bolting it from outside. Nirmala received burn injuries, and Sarita and Nita also received minor burn injuries. We do not agree with, or accept, the contention that as PW-2 Asha had woken up first, thus she would have been the only person to have seen the appellant. PW-1 and PW-2 were sleeping in the same room. It is clear from their statements that Nirmala suddenly woke up crying. When PW1 and PW2 woke up because of this, they saw appellant Subhash standing next to Nirmala with a jug in his hand. He threw the jug down onto the floor, and ran away through the outer door, after bolting the door from outside. It is also apparent that after hearing Nirmala's cries, PW-5 (Aache Lal), who was the father of the deceased, came into the said room. Nirmala was crying in pain, as

some chemical substance had fallen onto her body. She had sustained burn injuries. Her father poured water on her, and some drops fell on PW-5's feet, causing a burning sensation, and thus he had also suffered minor injuries.

7. The police investigation reveals that they had recovered the broken jug and some broken glass pieces from the spot. The broken jug and the broken pieces of glass were marked as Ex. P-4 (Colly.). PW-20, A.S.I. Hansraj in his statement had stated that he had collected and taken into custody one printed shawl of cream colour, two pillows, one mattress, one bed sheet and one quilt which were in a partially burnt condition, from the spot. The jug and pieces of the broken jug which were lying on the floor of the said room, were also taken into custody and seized. The FSL report (Ex. PX) records that a mineral acid (sulfuric acid) was found on Ex. 3 i.e. the broken glass pieces. The said mineral acid was also found on the blankets, bed sheet, pillows, and the brown coloured shawl.

8. Photographs which were taken by the crime team from the spot, marked as Ex. PW12/1 – 12, show burn marks on the cot, floor and the bedding, including the blanket. The broken glass jug is also visible. The said photographs were taken by PW-12, Const. Dalbir Singh who was posted as a photographer of the mobile crime team, North-west District. He has stated that he had taken the photographs marked Ex. PW12/A to 10.

9. We have examined the statement of Nirmala (deceased) vide Ex. PW20/A, which formed the basis of recording of the FIR. In the said statement, the appellant has not been named. We notice that the appellant was probably not named or implicated by PW-1, PW-2 and PW-5 and other family members up until 3 – 3.30 PM on 7th February, 2005. The reason for the same has been given by PW-5. The same being

that the appellant was residing in the same house, and was working with PW5. He also belonged to the same village as PW-5's in-laws. He was treated and regarded as the maternal uncle of the deceased. PW-5 has stated that his children used to call the appellant "Mama". He had provided a room to the appellant in his own house on the terrace, and as he was a relative, he did not charge the appellant any rent. In his cross-examination, PW-5 had stated that the appellant was from the village of his in-laws, and that many other persons from his in-laws' village had worked with him in the past. The deceased Nirmala was aged about 21 years, as was noticed and recorded in the MLC (Ex. PW9/A). She was a young girl of marriageable age. In such circumstances, the reluctance on the part of PW-1, PW-2 and PW-5 and other family members to implicate the appellant is understandable. The family's desire to keep the entire incident within the confines of the immediate family is apparent as they were concerned with maintaining the family honour. We may also notice that both PW-1 and PW-2 had stated that the appellant had tried to develop a relationship and friendship with the deceased, which was not acceptable to PW1, PW2 and the family of the deceased, including the deceased herself. Thus the family was reluctant to name the appellant as the perpetrator of the crime, because of stigma, family honour/pride and the adverse effect it may have on the marriage prospects of the deceased. It was only subsequently, when they realized that the injuries suffered by Nirmala were dangerous and that she might not survive, that they implicated and named the appellant. On 7th February, 2005, at about 3.30 P.M. the deceased made another statement (Ex. PW-20/B) to PW-20, in which she had clearly named the appellant as the perpetrator, i.e. the person who had poured acid on her. In the said statement Nirmala clarified that although she had not seen the

appellant pouring the acid on her, but when she woke up because of pain she saw the appellant standing next to her with a jug in his hand.

10. Learned counsel for the appellant submits that the statement vide Ex. PW20/B should not, and cannot, be regarded as a dying declaration. He has also relied upon the testimony of PW-5 in which he has stated that Nirmala was badly injured and on 6th & 7th February, 2005, could not make a statement. Even if we disregard the statement vide Ex. PW20/B, and do not treat it as a dying declaration, what is apparent is that by 3/3.30 PM on 7th February, 2005 the family members of the deceased Nirmala had opened up and had the courage to state the truth. They have clearly implicated and blamed the appellant for having thrown acid on Nirmala and for causing the burn injuries to Sarita and Nita. By this time, the statements of PW-1 and PW-2 under Section 161, Cr.P.C. had been recorded on 7th February, 2005 as per the police records.

11. PW-1 and PW-2 in their cross-examination have highlighted and pointed out that the appellant was residing in the same house, and had access to the room where Nirmala, PW-1, PW-2 and their other sisters and one brother were sleeping. They have also stated that the appellant was aware of the location of room and had run out of the back door of the house. The aforesaid position is corroborated from the scale site plan (Ex.PW-8/A), and rough sketch plan (Ex.PW-1/DA). We may notice that one lock with a key is visible in the photograph marked (Ex. PW-12/A). The presence of the lock and key corroborates the statement of PW-2 that the appellant had opened the lock on the back door and had run from that door. There is no reason and cause of the said witnesses to depose and make averment against the appellant. The appellant's involvement is established beyond doubt. This aspect and the statement of the appellant under Section 313 Cr.P.C. has been examined below.

12. Learned counsel for the appellant has submitted that the police had not taken the finger prints on the glass jug or other material including the lock. This, in our view, is irrelevant in view of the categorical statements of PW-1 and PW-2 which are reliable and trustworthy. The jug and the glass pieces were collected from the spot and seized, and thereafter were sent for the forensic examination. The CFSL report confirms the presence of acid on the glass pieces. This fully corroborates the statement of PW-1 and PW-2.

13. The appellant was arrested on 13th February, 2005 vide arrest memo Ex. PW-19/A. Learned counsel for the appellant had drawn our attention to the statement made by PW-1 on 6th November, 2006 that she had seen the appellant in her house when she had come back from the hospital. Earlier, in the cross-examination on date 16th September 2005, she had stated that she returned to the house at 7.00 PM on 7th February, 2005. It was accordingly submitted that the appellant was seen roaming in the house on 7th February, 2005 till 7.00 P.M.

14. We have considered the said contention but do not find the same worthy of acceptance and merit. In the cross-examination, PW-1 has stated that they had first gone to Sanjay Gandhi Hospital and from there they shifted the deceased to JPN Hospital and that her statement was recorded in the hospital within 10 minutes, but the name of the hospital was not mentioned. The exact statement made by her in the cross-examination is as under:-

“On 7th February, 2005, I returned to my house at 7 P.M. approximately.”

This does not mean that PW1 had seen the appellant in the house at 7 P.M. Returning to the house has a different connotation and does not necessarily mean that she did not come back to the house at all once her sister was taken to the hospital after the incident at 3.30-4 A.M. on 7th

February, 2005. “Returning to the house” means coming back to the house to spend the night. We also notice that PW-1 was further cross-examined on 6th November, 2006 and it is during this cross-examination that she had stated that when they returned home from the hospital the appellant was present in the house. She voluntarily stated that thereafter the appellant left the house.

15. The appellant in his statement under Section 313 Cr.P.C. had stated that he was innocent and had been falsely implicated. Achey Lal’s brother-in-law had taken a loan of Rs. 15,000/- from him, and had not returned it despite his demands. Achey Lal had undertaken to repay the same amount, but he did not fulfill the promise. Appellant has stated that he had been falsely implicated in the case because of the said reason, also that he had not worked with Achey Lal, nor had he resided in his house. The appellant had produced Anil as DW-1 in support of his case. DW-1, however, in his cross-examination admitted that the loan had not been taken in his presence. He was also unable to state or identify the number of storeys in Achey Lal’s house. When further cross-examined, he stated that there were many rooms behind one room, but he was unable to state the number of rooms. He also stated that he did not notice the construction on the upper floors. The statement of DW-1 is clearly unreliable and cannot be accepted. Nirmala had suffered extensive acid burns. The said factum is not made belief or fake. The family members PW1, PW2 and PW5 have implicated and stated that the appellant had caused the said acid burns. PW1 and PW2 were sleeping in the same room. It is not possible to accept that they would falsely implicate the appellant because of the alleged transaction of loan, which as noticed is not established.

16. Learned counsel for the appellant submitted that there is no cause or connection between the alleged incident of throwing the acid, and the

death of Nirmala. It was pointed out that the date of alleged occurrence was 7th February, 2005 and the date of death of Nirmala was 1st March, 2005. It was highlighted that there was a gap of about 20 days between the date of occurrence and the death. Our attention was also drawn to the order of sentence, wherein it has been recorded that death may have taken place because of failure of or improper medical treatment or negligence. He further submitted that the case would fall under Section 304 – Part-I and in this regard had relied upon the judgment of this Court in *Udai Singh vs. State* 2008(155) DLT 275. Our attention is drawn to the post mortem report where the cause of death is described as septicemia.

17. We have considered the said contention but unable to agree with the counsel for the appellant. Post mortem report has been proved by Dr. Rohit (PW-10) who had conducted the same. On external examination he found that the body was infected with dermo – epidermal burns which were present all over the body except lower front of abdomen, genital region, upper front of right thigh, lower front of right thigh, front of both legs and back of both lower limbs, including soles. The burnt area showed peeling of skin at places exposing greenish yellow base with pus. Burnt area was 62% of the total body surface. On internal examination both lungs were congested and edematous and showed oozing of pus. Other organs were congested. In his opinion, death was caused due to septicemia consequent upon infected dermo epidermal burns. The burns were ante-mortem and could be caused by chemicals. His report (Ex. PW-10/A) states the same. It is, therefore, clear from his report that septicemia was consequent upon infected dermo-epidermal burns. It was not caused by any other infection, or other reason.

18. Dr. Manoj (PW-9) has proved the MLC of Nirmala (Ex. PW9/A) which had been prepared and recorded by one Dr. Geetanjali, who had left the services. As per the said MLC, the patient Nirmala had at the time of admission 40 to 50 per cent superficial burns. Modi's Medical Jurisprudence and Toxicology, 23rd edition at page 641, on the question of burn injuries caused by corrosive chemical substance, has observed:-

“Injuries caused by friction, lightning, electricity, ultra violet of infra-red light rays, X-rays and corrosive chemical substances are all classified as burns for medico-legal purposes.

Burn injuries are normally classified into three degrees. The first being reddening and blistering of skin only; second being charring and destruction of full thickness of skin; third being charring of tissues beneath skin, e.g. fat, muscles and bone. (Para 5) If burn is of a distinctive shape, a corresponding hot object may be identified being applied to the skin and thus abrasions will have distinctive patterns. (para 7) In the case of death by burn injuries, 60 per cent cases are of septicemia and 34 per cent cases are of broncopneumonia. (para 7) [Arvind Singh v State of Bihar [2001] 6 SCC 407]”

19. Glanville Williams in “Text book on Criminal Law” has referred to concept of “but for causation” and observed as under:-

“The question of causation involves both a problem of causation sine qua non and a problem of imputability. ...For a factor to be a but-for cause [common English equivalent of the term sine qua non], it must be possible to say that but for the occurrence of the antecedent fact, the event would not have happened.”

20. Similarly, Fletcher, in Rethinking Criminal Law, has stated:-

“The prevailing theory of causation in the criminal law, both in Germany and the United States, is the expansive test: an event X causes an event Y if, but for X, Y would not have occurred. This test, conventionally known as the sine qua non or but “but for” test, treats all necessary conditions for a particular harm as “casual”.

21. We need not dwell further on the said aspect in view of the explanation 2 to Section 299 IPC which for the sake of convenience is reproduced below:-

299. Who ever 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.

XXXXXXXXXX

Explanation 2

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.”

22. Referring to the Section in Hari Singh Gaur’s Penal Law of India, 11th Edition, at page 2347, it has been elucidated :

“Any act is said to cause death within the meaning of Sec .299 when the death results either from the act itself or from some consequences necessarily or naturally flowing from that act, and reasonably contemplated as its result. Where without the intervention of any considerable change of circumstances death is connected with the act of violence by chain of causes and effects, the death must be regarded as a proximate and not too remote consequence of the act of violence.

The rule applicable in such cases is thus laid down in *Reg. v. Fyror*, “These authorities seem to lay down the rule to this effect, that if a man who has received a serious blow or hurt does not alter his ways on that account, but continues to go through the ordinary course of life which he has been accustomed to pursue, that shall not exonerate the giver of the blow from his liability if such conduct has been the effect of causing death.”

It is further observed:

“So again, for the same reason, though it is not so obvious, Explanation 2 lays down that no man can be heard to say that he did not cause the death because it might have been prevented by resorting to proper remedies and skillful treatment.

The cause must not only be the *causa sine qua non*, but it must also be reasonably proximate.

In *Doraisamy Servai, In re*, according to the doctor's evidence the death was due to septicemia and pyaemia resulting from the multiple injuries. None if the injuries could each by itself have caused the death of Panichami. But cumulatively the injuries should prove necessarily fatal in the case of a normal man. The deceased appears to have had a physique above the normal, he was well built. So in his case the injuries need not have been necessarily fatal. But they were sufficient in the ordinary course of nature to cause death. *Held* that the chain of causation was direct. That the deceased man, on spite of his physique which is said to have been exceptionally robust, died as a direct result of the injuries inflicted upon him by the appellant; and that the appellant intended his death is evident from the facts."

23. In *Sudershan Kumar vs. State of Delhi* (1975) 3 SCC 831, a 19 year old woman died due to septicemia that developed after an acid attack which had caused 35% burns. It was held that the fact that the deceased lingered for 12 days after the attack was irrelevant. The conviction under Section 302 IPC was upheld having regard to Explanation 2 to Section 299. The fact that the deceased had developed symptoms of malaena and respiratory failure which also contributed to the death did not affect the verdict that the injury caused by the acid burns was the direct cause of her death.

24. In the present case, we are fully satisfied that the connection between the act of the appellant in throwing the acid on Nirmala and her death is established. The death of Nirmala would not have occurred but for act of the appellant throwing acid on her and causing substantial burn injuries. The causal connection is established and proved.

25. However, we agree with the counsel for the appellant that he cannot be punished for the burn injuries of Achey Lal (PW-5). As per

PW-5's own statement, he had poured water on Nirmala and in that process certain acid and water fell on his skin. The burn injuries on PW5 were not caused by any act of the appellant. Conviction for having caused burn injuries to PW5 is therefore set aside. The appellant, however, is responsible for causing injuries to Sarita and Nita. We may note that Sarita was produced for examination as PW-4. At the time of examination in chief she was about 8 years of age. The Additional Sessions Judge had put some questions to verify whether the said witness was able to understand the questions and able to give rational answers. PW-4 had stated that she was sleeping with Nirmala. Her other sisters, including Urmila and Asha, were sleeping on a separate bed in the same room. She stated that she saw one person throw some substance on her and ran away, on which she felt a burning sensation in her right hand. Her sister Nirmala was totally burnt and they started crying, while her sisters started shouting. Her father took Nirmala in his lap and threw water on her, and then called the police. PW-20 ASI Hansraj stated that Nita could not be examined as she was mentally challenged and could not give rational answers to any questions. This explains why Nita was not produced as a witness.

26. We do not agree that the present case does not fall under Section 302 IPC but falls under Section 304 Part II. It may be appropriate here to refer to the decision of the Supreme Court in ***State of Madhya Pradesh vs. Ram Prasad***, AIR 1968 SC 881, wherein it has been held as under:-

“8. The question then arises, what was the offence which Ram Prasad can be said to have committed? The offence of causing injury by burning is a broad spectrum which runs from Section 324 causing simple injury by burning through Section 326, namely, causing grievous injury by burning to the two major offences, namely, culpable homicide not amounting to murder and even murder itself. The Sessions

Judge chose the lowest end of the spectrum which is surprising enough, because the burns were so extensive that they were certainly grievous by all account. The High Court placed the offence a little higher, namely, culpable homicide not amounting to murder. We think that the matter goes a little further than this. As death has been caused the question has to be considered in the light of homicide to determine whether the action of Ram Prasad falls within culpable homicide not amounting to murder or the higher offence of murder itself. Here we see that death has actually been caused by the criminal act in other words, there has been homicide and since it is not accidental or suicidal death, responsibility for the homicide, in the absence of any exceptions or extenuating circumstances, must be borne by the person who caused it. The High Court has apparently stopped short by holding that this was a case of culpable homicide not amounting to murder. The question is whether the offence falls in any of the clauses of Section 300 of the Indian Penal Code. In this connection it is difficult to say that Ram Prasad intended causing the death of MstRajji although it might well be the truth. That he set fire to her clothes after pouring kerosene oil is a patent fact and therefore the matter has to be viewed not only with regard to the *firstly* of Section 300, but all the other clauses also. We do not wish to consider the second and the third clauses, because the question then would arise what was the extent of the injury which Ram Prasad intended to cause or knew would be caused to MstRajji. That would be a matter of speculation. In our opinion, this matter can be disposed of with reference to clause *fourthly* of Section 300. That clause reads as follows:

“... culpable homicide is murder ... 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 or causing death or such injury as aforesaid”.

It is obvious that there was no excuse for Ram Prasad to have taken the risk of causing the death or such bodily injury as was likely to cause death. The question therefore arises whether Ram Prasad knew that his act was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, so as to bring the matter within the clause. Although clause *fourthly* is usually invoked in those cases where

there is no intention to cause the death of any particular person (as the illustration shows) the clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death. In the present case, Ram Prasad poured kerosene upon the clothes of MstRajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within fourthly of Section 300 of the Indian Penal Code. In other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of MstRajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder”

27. In Udai Singh (supra), it was observed that the medical opinion regarding nature of injuries and the period after which the death of the victim takes place are relevant factors for deciding whether the offence was under Section 302 or 304(1)/(II) IPC. In Udai Singh’s case (surpa), the medical opinion was absent/silent whether the burn injuries sustained by the deceased were sufficient to cause death in ordinary course of nature. The death had taken place two months after the occurrence and cause of death as opined by the autopsy surgeon, was shock and secondary infection due to burn injuries. Accordingly the appellant was convicted under Section 304 Part II IPC and sentenced to 10 years rigorous imprisonment. The facts of the present case as noticed in paragraphs 17 to 24 above are distinguishable.

28. Learned trial court in the order of sentence has imposed fine of Rs.50,000/- and in default thereof the appellant has to undergo simple imprisonment for a period of two years. We modify the order of payment of fine and reduce it from Rs.50,000/- to Rs.10,000/- and in default of payment of fine, the appellant will undergo simple imprisonment of six months. The other sentences are maintained.

29. In view of the aforesaid position we uphold the conviction of the appellant under Sections 302 and 452 IPC. We also uphold the appellant's conviction under Section 324 in respect of the simple injuries of Sarita and Nita, and Order of sentence for rigorous imprisonment of three years. We modify the order of payment of compensation/fine to the extent indicated above. The appellant will be entitled to benefit under Section 428 Cr.P.C. The appeal is disposed of.

(SANJIV KHANNA)
JUDGE

(S. P. GARG)
JUDGE

November 5, 2012
kkb