

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

RESERVED ON : 10th SEPTEMBER, 2012

DECIDED ON : 27th SEPTEMBER, 2012

+ Crl.A.672/2009

MD.ABRAR @ JOOHI

....Appellant

**Through : Mr.Tarun Chandiok with Ms.Ariti
Mahendru, Advocate.**

versus

STATE (GOVT. OF NCT OF DELHI)

....Respondent

Through : Mr.Sanjay Lao, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant Mohd.Abrar @ Joohi impugns the judgment and sentence in Sessions Case No.228/2006 by which he was convicted for committing the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life with fine of ₹5,000/-. The case of the prosecution in brief is as under :

2. Anil Kumar used to live on the ground floor and run business (of leather shoes and footwear) with 8-9 employees/workers on the first and second floors of the house No.N-563, Mangol Puri, Delhi. On 22.10.2004, it was 'Dusshehra'. It was customary for the workers to

worship tools. Vinod (since deceased) and Pritam used to stay in the factory. Narender, Naeem and Mohd.Abrar @ Joohi went there to worship tools at about 02.00 P.M. After the '*pooja*' was over, all the workers sought PW-1 Anil Kumar's permission to consume liquor. When they were taking drinks, an altercation took place between Vinod and Mohd.Abrar over making large peg for Vinod. At about 04.30 P.M., when Anil Kumar went upstairs, he asked Pritam to resolve the matter. The co-workers intervened and pacified them. At about 06.00 P.M., PW-1 (Anil Kumar) went to check the workshop as usual but did not find anyone present on the first floor. When he went to the second floor, he saw Vinod lying injured near his place of work. He immediately informed the police.

3. Daily Diary (DD) entry No.42-B (Ex.PW-5/C) was recorded at 06.00 P.M. at PS Mangol Puri on getting intimation about an 'accident' in house No.536 Mangol Puri. The investigation was assigned to SI Uday Veer Singh, who reached the spot. Insp.K.G.Tyagi, SHO, PS Mangol Puri followed him. He recorded Anil Kumar's statement about the incident and sent the rukka (Ex.PW-18/A) for lodging First Information Report under Section 302 IPC. He prepared site plan at the instance of the informant Anil Kumar. Crime Team visited the spot and photographed it. The

Investigating Officer lifted the exhibits including blood sample, blood stained earth, earth control, blood stained dhary, bed sheet vide seizure memos Ex.PW-13/A to Ex.PW-13/T. The body was sent for post-mortem examination after conducting inquest proceedings on 23.10.2004. Dr.Ashish Jain conducted post-mortem examination of the body. It emerged that Abrar @ Joohi had stabbed deceased Vinod with '*Rapi*' after all the co-workers had left the spot. Since Abrar @ Joohi was indicted by the witnesses, the police set out to apprehend him. The accused was not found at his house. On 24.10.2004, the appellant was arrested from his rented house E2, Prem Nagar-III near Shivam Middle Public School. Pursuant to the disclosure statement, he recovered blood stained clothes which he had worn on the date of incident from the said room. Thereafter, he led the police to the premises bearing number N-563, Mangol Puri and recovered '*Rapi*' from the toilet on the first floor. During the course of investigation, the Investigating Officer recorded statements of witnesses conversant with the facts and sent the exhibits to Forensic Science Laboratory for examination. After completion of the investigation, a charge-sheet was submitted against the appellant for committing the offence mentioned previously. The accused was duly charged and brought to trial.

4. After appreciating the evidence and considering the rival contentions of the parties, the Trial Court convicted the appellant for the offence under Section 302 IPC. Aggrieved by the said orders, the appellant has preferred the appeal.

5. Counsel for the appellant assailing the findings of the Trial Court urged that it did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-1 (Anil Kumar), PW-6 (Narender) and PW-8 (Naeem) without ensuring their reliability and truthfulness. It was pointed out that the evidence adduced by the prosecution was not sufficient to find the guilt for the offence he had been charged with. It was contended that various incriminating circumstances relied on by the Court are not sufficient to draw an inference of guilt of the appellant and the chain of circumstances was not cogently and firmly established and these circumstances have no definite tendency to unerringly point towards the guilt of the appellant. It was also contended that in a case of circumstantial evidence, the chain of circumstances should be so complete that there is no escape from the conclusion that in all probability the crime was committed by the accused and none else. The Trial Court ignored major discrepancies and contradictions emerging in the testimonies of the prosecution witnesses.

PW-1 (Anil Kumar) was responsible for Vinod's murder as he did not like objectionable relations/affairs of his daughter with him (deceased). The accused did not visit the spot that day and had gone to a mosque to offer '*namaz*' and was present there till 02.30 P.M. There was no custom to worship tools on day of 'Dussehra'. The prosecution did not explain when and under what circumstances Pritam left the spot. PW-1 (Anil Kumar) had seen him in the company of the deceased soon before death in the room. The possibility of someone else to be the author of the crime cannot be ruled out. The prosecution failed to establish impelling motive of the appellant to murder Vinod on a minor tiff/altercation over trivial matter of making large peg for the deceased. The accused did not abscond and was kept in illegal detention. The witnesses gave inconsistent version regarding the arrest and recoveries at his instance. No independent public witness was associated at any stage of the investigation. It was further argued that even if the prosecution case is taken at its face value, Section 302 IPC was not attracted. The incident took place suddenly without premeditation and the accused in a fit of rage stabbed the deceased.

6. Learned APP while supporting the judgment in its entirety urged that it did not call for any interference. The prosecution established by cogent evidence that the appellant (Mohd.Abrar), the deceased

(Vinod), Narender (PW-6), Pritam and Naeem (PW-8) had consumed liquor after worshipping tools on 'Dusshehra'. When they were enjoying liquor, an altercation took place between the appellant and the deceased over making a large peg for Vinod. The matter was pacified. Soon thereafter, Naeem and Narender left the spot. After some time, Pritam also went to his sister's residence. There was none else except the appellant with the deceased soon before his death. The deceased was seen alive in the company of the appellant at about 05.00 P.M. The post-mortem report fixes the time of death of the deceased at 05.00 P.M. The circumstance of abscondance points an accusing finger against the accused as other workers joined the investigation on the day of incident itself. No adverse inference can be drawn for Pritam's non-appearance as he expired during the Trial. However, his statement under Section 161 Cr.P.C. is relevant to show his innocence. Learned APP urged that repeated forceful blows were inflicted by the accused on the vital organ i.e. neck of the deceased and it caused his instant death. It is a case of culpable homicide amounting to murder.

7. We have considered the submissions of both the parties and have examined the Trial Court record. At the outset, it may be mentioned here that the case of the prosecution hinges upon circumstantial evidence

only. No one witnessed the assailant inflicting injuries to the deceased. It is also relevant to note that homicidal death of deceased Vinod is not under challenge. PW-9 (Dr.Ashish Jain) in post-mortem report examination (Ex.PW-9/A) noticed two external injuries on the neck of the deceased. In his opinion, the cause of death was asphyxia as a result of cut throat injury. Injury No.2 was sufficient to cause death in the ordinary course of nature. The expert opinion about the cause of death remained unchallenged in the cross-examination. Thus, it is a case of homicide.

8. The crucial aspect to be determined is who is the author of the injuries caused to the deceased. PW-1 (Anil Kumar), owner of the factory premises categorically claimed that on 22.10.2004, the appellant, Naeem and Narender reached at the workshop. The victim Vinod and Pritam used to stay at the workshop. After performing '*pooja*', they sought permission to consume liquor for entertainment. When he went upstairs at about 04.30 P.M., he found that an altercation was going on among the workers for large peg being made for Vinod. Pritam intervened and pacified the matter. At about 05.45 P.M. or 06.00 P.M. when he went to check the workshop as usual, he noticed that Vinnod was lying injured on the second floor near his place of work. The police was informed by him. In the cross-examination, he elaborated that he had

employed ten workers in the factory. Naeem, Narender and Joohi reached together at about 02.00 P.M. that day. They sought permission to consume liquor after '*pooja*' was over at around 02.30 P.M. When he went to the first floor at about 04.00 P.M. or 04.30 P.M., he found all the five workers present at the first floor, raising hue and cry. He denied the suggestion that his daughter was having affairs with the deceased Vinod. He further denied that someone had killed Vinod at some other place and the appellant was falsely implicated with his connivance.

9. We find no substance in the suggestion put by the appellant to the witness about Vinod having an objectionable affair with his daughter. PW-6 (Narender) and PW-8 (Naeem), the co-workers refuted the said suggestions of the appellant. The appellant did not produce any evidence to substantiate his plea. The allegation was levelled without laying any foundation for it. The deceased (Vinod) and Pritam were staying on the second floor of the premises for the last three years and there was no complaint regarding the conduct and behaviour of the deceased. If PW-1 had any disliking for the deceased, he would not have permitted Vinod and his relative to stay in the premises. It is highly improbable that after getting the victim eliminated at some other place,

PW-1 (Anil Kumar) would bring the dead body to the house. This defence requires outright rejection.

10. PW-6 (Narender), a co-worker corroborated PW-1 (Anil Kumar) in entirety and deposed that after worshipping tools, with Anil Kumar's permission they had consumed liquor. When the appellant was preparing peg, exchange of hot words/ abuses took place between him and Vinod. They managed to pacify both of them. Thereafter, another peg was served to all. After consuming the said peg, he and Naeem left the spot leaving behind Pritam, Vinod and Joohi. In the cross-examination, he explained that he reached the factory at about 02.00 P.M. alone. Naeem and Abrar @ Joohi reached there together. He, Naeem and Joohi had gone to seek Anil's permission on the ground floor to consume liquor. Joohi was working with him for about one month prior to the incident. He and Naeem left the factory at about 05.00 P.M. He reiterated that there was a custom amongst the shoe labours to worship tools on the day of 'Dussehra' and not on 'Visvkarma day'. He denied the suggestion that appellant Joohi was not present at the spot. The version narrated by this independent, natural witness inspires implicit confidence. He was having no animosity with the appellant to make false deposition against him. He was not a witness to the stabbing incident. He was certain that when he

and Naeem left at about 05.00 P.M., only the appellant, the deceased and Pritam were there at the spot. No ulterior motive was assigned to him for making the deposition.

11. Another crucial witness is PW-8 (Naeem) who joined the investigation with the police on the day of occurrence itself. His deposition is in consonance with the statements of PW-1 (Anil Kumar) and PW-6 (Narender) on material facts i.e. they all the five workers after worshipping the tools consumed liquor on the first floor of the premises; there was exchange of hot words between the deceased and Joohi and they managed to pacify both of them; he and Narender left the spot at about 04.30 P.M. or 05.00 P.M. leaving behind Joohi, Pritam and Vinod at the spot. In the cross-examination, he fairly admitted that Vinod used to take liquor daily. He was working in the factory for last three or four years. The accused was in employment for the last six months or so. He further claimed that he himself did not perform '*pooja*' that day. He denied the suggestion that the appellant had not reached the spot that day. It is noticeable that no ill-will or animosity was alleged to force PW-8 (Naeem) to depose against the accused. His evidence cannot be brushed aside or viewed with suspicion.

12. After critical analysis of the testimonies of PW-1, PW-6 and PW-8, we find no major discrepancies in their version. They were not witnesses to the stabbing incident. They are categorical and certain that at about 05.00 P.M., after PW-6 and PW-8 left the spot, in the room, there were only three persons i.e. the appellant, the deceased Vinod and Pritam. In the absence of any glaring discrepancies in the cross-examination, we find no valid reasons to discard their statements. Vinod's murder took place soon thereafter. Pritam could have been the suspect. However, during investigation his involvement in the crime did not surface. He was cited a witness for the prosecution and his statement under Section 161 Cr.P.C. was recorded. Death prevented him to appear before the Court during trial. No adverse inference can be drawn against the prosecution for withholding material prosecution witness. There are several sound reasons, why involvement of Pritam in the crime has to be ruled out. Pritam joined the investigation on the day of incident and did not abscond. No incriminating material i.e. blood stained clothes, weapon of offence etc. was recovered at his instance. He was related to the deceased Vinod. They used to stay in the factory together for the last three years and there was no hostility between the two. PW-1 (Anil Kumar) had no grievance about their conduct and behaviour. Pritam's conduct and behaviour

immediately after the occurrence was there for PW-1 to see Police had interrogated him and his statement under Section 161 Cr.P.C. was recorded. It was crossed checked by the police team conducting the investigation. In the statement recorded under Section 161 Cr.P.C., he disclosed to the Investigating Officer that after Naeem and Narender left the spot, he went to his sister's house leaving both the appellant and the deceased in the room on the first floor. His statement under Section 161 Cr.P.C. was recorded same day. Besides this, when they were consuming liquor, the altercation took place only with the appellant. Pritam had intervened to pacify both the appellant and the deceased. Apparently, Pritam had no motive to inflict injuries to the deceased. The appellant did not put any suggestion to any witness that Pritam was responsible for the injuries to the deceased. In the statement recorded under Section 313 Cr.P.C., the appellant did not suspect Pritam's involvement. He did not claim that he had left the spot leaving both Vinod and Pritam there. These circumstances absolutely rule out Pritam's complicity in the crime. If Pritam's involvement/complicity is eliminated, then only one circumstance, namely that the appellant was last seen along with the deceased would remain.

13. The observation of Supreme Court in ‘*Muhibur Rahman v. State of Assam*’ (2002) 6 SCC 715 are relevant on the circumstance of last seen :

“The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place.”

14. In the case of ‘*State of Goa v. Sanjay Thakran*’ (2007) 3 SCC 755 the Supreme Court noted general principles with reference to the principles of last seen together in *Bodhraj v. State of J&K* (2002) 8 SCC 45 as under:

“The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen

together, it would be hazardous to come to a conclusion of guilt in those cases.”

32. In Ramreddy Rajesh Khanna Reddy (2006) 10 SCC 172 this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

34. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

15. When PW-1 (Anil Kumar) went upstairs at about 06.00 P.M., the appellant had clandestinely disappeared. The burden was heavily upon the appellant to explain as to how and in what manner the victim sustained fatal injuries in a short span of time after Pritam's departure as he was last seen with the deceased in the close proximity of time and place. These facts were within his special knowledge. It is apparent that no third person was present in the house. In these circumstances, it was for the appellant to state and explain what had happened. Section 106 of the Evidence Act,

is applicable and states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It would be apposite to mention that Supreme Court in ‘*State of W.B. v. Mir Mohammad Omar*’ (2000) 8 SCC 382, held:

“37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

16. In ‘*Trimukh Maroti Kirkan v. State of Maharashtra*’ (2006) 10 SCC 681, Supreme Court held:

*“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely*

difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

17. Another incriminating circumstance relied on by the Trial Court to base its conviction is the circumstance of abscondance. The occurrence took place on 22.10.2004 at about 05.00 P.M. PW-1 (Anil Kumar) reported the incident to the police immediately and Daily Diary (DD) entry No.42-B (Ex.PW-5/C) was recorded at 06.00 P.M. Immediately, the police machinery came into motion and Insp.K.G.Tyagi

recorded statement of PW-1 (Anil Kumar) Ex.PW-1/A and sent the rukka (Ex.PW-18/A) promptly without delay at 08.45 P.M. Since the appellant was one of the suspects, the police set out to apprehend him but he was not found at his residence. He did not join the investigation and remained out of reach till his arrest on 24.10.2004. His room was found locked. The appellant did not explain what forced him to flee and avoid interrogation. Abscondance without any apparent explanation is an incriminating circumstance which goes against the appellant. The blood stained clothes (Ex.PW-18/J) were recovered consequent to the disclosure statement (Ex.PW-18/H) made by him. These were sent to Forensic Science Laboratory for examination. FSL results (Ex.PW-18/X1 and Ex.PW-18/X2) mentioned that the blood found on the T-shirt of the deceased was 'human' in origin and its group was 'O'. It was also the blood group of the deceased. Presence of deceased's blood group on the clothes recovered pursuant to the disclosure statement of the accused establishes his presence and participation in the crime at the spot. The accused did not offer any explanation how the blood appeared on his clothes even after two days of the incident. He did not claim that the blood group 'O' ascertained in the reports was his.

18. Recovery of the weapon of offence i.e. '*Rapi*' (Ex.P-5) is not a strong incriminating circumstance to establish the guilt of the accused as no blood group of the deceased was ascertained on it. The police had visited the spot on the day of incident itself. The police was expected to search the weapon of offence at the place of occurrence or nearby places. Had the '*Rapi*' been there in the toilet on the first floor, it must have been recovered then and there. However, there was no conflict between ocular and medical evidence.

19. Another circumstance relied upon by the prosecution is that the accused had motive to inflict the injuries as while enjoying drinks an altercation took place with the deceased. In circumstantial evidence, motive assumes greater importance. From the testimonies of PW-1, PW-6 and PW-8 it stands established that there were exchange of hot words between the accused and the deceased and intervention of the co-workers pacified them. The occurrence took place soon after the all co-workers left. It appears that it offered an opportunity to the appellant to settle the score.

20. The appellant did not give plausible explanation to the incriminating circumstances proved against him. In his statement recorded under Section 313 Cr.P.C., he did not explain where he remained present

after the incident and before his arrest. He did not plead that he had not visited the spot and had not participated in the consumption of liquor. He did not assign any motive to independent public witnesses for falsely deposing against him. He even did not allege that PW-1 (Anil Kumar) was instrumental in the elimination of victim because the victim had affairs with his daughter. He had no such personal knowledge. The accused did not adduce any evidence in defence to substantiate his pleas.

21. Considering all the facts and circumstances, we are of the view it was the appellant alone who was the author of the injuries to the victim. Minor contradictions, improvements and inconsistencies highlighted by the counsel for the appellant are not fatal to the prosecution case. Discrepancies pointed out by the counsel in the statements of the witnesses do not shake the basic version of the witnesses and thus cannot be given undue weightage and significance. The Trial Court has discussed all these submissions in the judgment and no interference is called for.

22. This takes us to the alternative plea taken by the counsel that even assuming the case to be true, the matter would still not fall within the definition of murder but would be culpable homicide not amounting to murder punishable under Section 304 part I or II IPC. We notice that there was no previous animosity between the appellant and the deceased. On the

day of incident, they all were present at their place of work to worship tools. They had performed the customary '*pooja*' and there was no annoyance. Only when they were enjoying drinks, minor tiff occurred between the accused and the deceased over making larger peg for the deceased. Even that matter was pacified and settled. Thereafter, PW-6 and PW-8 left. When Pritam went out, there was no animosity left between the two. We further note that there was no pre meditation to inflict injury to the deceased as the appellant was not armed with any weapon. Only a single fatal blow was inflicted on the neck of the deceased. Both the accused and the deceased were in an inebriated condition. The appellant had no criminal antecedents and was not involved in any such criminal activities. The weapon used in the occurrence was an ordinary '*Rapi*' (used for cutting clothes/leather) and was available at the spot. The consumption of liquor apparently impaired mental faculties and the appellant lost power of self-control. In the initial altercation, no physical harm was caused by the appellant to the deceased. The appellant did not take undue advantage and victim was given a solitary fatal stab blow in a sudden fight, in a fit of rage and under the influence of liquor. It ruled out his 'intention' to murder Vinod.

23. Culpable homicide is of two types: 1) Culpable Homicide amounting to murder (Section 300/302); 2) Culpable Homicide not amounting to murder (Section 299/304). Section 299 defines Culpable Homicide as an offence when an accused 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. The following are the essential ingredients of culpable homicide. 1) There must be a death of a person; 2) The death should have been caused by the act of another person; 3) The act causing death should have been done; a) with the intention of causing death; or with the intention of causing such bodily injury as is likely to cause death; or with knowledge that such act is likely to cause death.

24. Intention to cause a specified result or actor's purpose has to be gathered and inferred from the action of the person and the surrounding circumstances such as motive of the accused, utterances made, nature of attack, the time and place of attack, the nature and type of weapon used, the nature of injuries caused and so on. These and other factors are to be taken into consideration to determine whether the accused had requisite intention. Knowledge means consciousness. The offender is

reasonably expected to be aware of the consequences of his act even if he did not intend the death.

25. In the case of '*Golla Yelugu Govindu v.State of Andhra Pradesh*' (2008) 16 SCC 769, at about 2:00 A.M., when the deceased was in the house there was exchange of hot words and quarrel took place between the accused and the deceased. This happened in the presence of the children. Suddenly the accused hacked the deceased in the neck with a sickle and the deceased fell down and the accused once again hacked on the neck and the left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The Appellant there submitted that Section 302 IPC has no application to the assault made during the course of a sudden quarrel and Exception 4 of Section 300, IPC applied. The Supreme Court discussing the law in detail converted the conviction to Section 304 Part-I IPC.

26. In the case of '*Kalu Ram Vs. State of Rajasthan*' 2000 (10) SCC 324, the Supreme Court held that conduct of the accused cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that the victim might die. Para No.7 of the aforesaid judgment is as follows :-

“7. But then, what is the nature of the offence proved against him? It is an admitted case that the appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to light the matchstick. When she failed to do so he collected the matchbox and ignited one matchstick but when the flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all that the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from first degree murder to culpable homicide not amounting to murder”.

27. In the light of the above discussion, we are of the opinion that conviction of the accused is required to be altered from Section 302 IPC to Section 304 Part-I IPC. We have also heard the parties on the point of sentence. Considering the role played by the accused and the fact that he inflicted injuries with sharp weapon on the vital part of body, interest of justice would be served if he is sentenced to undergo rigorous imprisonment for ten years. Other sentences are left undisturbed.

28. The appeal is partly allowed and orders of conviction and sentence are modified in the above terms.

29. The appellant is directed to surrender and serve the remainder of his sentence. For this purpose, he shall appear before the Trial court on 1.10.2012. The Registry shall transmit the Trial Court records forthwith to ensure compliance with the judgment.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

SEPTEMBER 27, 2012

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