

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

**Reserved on: 25<sup>th</sup> September, 2013**  
% **Date of Decision: 11<sup>th</sup> October, 2013**

+ **CRIMINAL APPEAL No.1221/2012**

RAJU ..... Appellant  
Through: Mr.Avninder Singh, Advocate.

versus

STATE ..... Respondent  
Through: Mr.Sanjay Lao, APP for the State.

**CORAM:**  
**HON'BLE MR. JUSTICE P.K. BHASIN**  
**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

**VED PRAKASH VAISH, J:**

1. This appeal is directed against judgment dated 16<sup>th</sup> July, 2012 passed by the learned Additional Sessions Judge-03 (NE), Karkardooma Courts, Delhi whereby the appellant has been convicted for the offence punishable under Section 304 Part I of the Indian Penal Code (hereinafter referred to as 'IPC'). Vide order on sentence dated 17.07.2012, he has been sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.10,000/- and in default of payment of fine to further undergo six months rigorous imprisonment.

2. Briefly stated, the case of the prosecution is that on 29.02.2008 on receipt of DD No.11A at 10.52 a.m., ASI Rajeshwar along with Constable Brij Pal reached the spot near B-Block, Gali No.10, House of Kallu, Siri Ram Colony and observed that a lot of blood was lying on the floor. A piece of stone and a blood stained wooden *thapki* were also lying on the spot. On enquires, it was revealed that injured had already been removed to GTB Hospital. ASI Rajeshwar, after leaving Constable Brij Pal at the spot went to hospital and collected MLC of Javitri (deceased) who was declared 'brought dead' by the doctor at GTB Hospital. ASI Rajeshwar (IO) returned to the spot and recorded statement of Mahender Singh, an eye-witness. In his statement to the police, Mahender Singh, s/o Ram Chander Singh stated that he was going to the house of Bechhe Singh at Gali No.10, Siri Ram Colony, for collecting money as Bechhe Singh owed money to him. At about 10.30 a.m., when he was outside the house of Bechhe Singh, he saw that a lady was washing clothes in the house in front of the house of Bechhe Singh and her Jeth-Raju (appellant) was asking her to wash his clothes in a raised voice. The said lady replied 'kal dho dunge' (would wash his clothes tomorrow). The appellant-Raju got enraged and lifted a stone which was lying near and hit the lady on her head and at other places on her body, as a result of which, she fell on the floor and was

bleeding profusely from her head. Later on, the name of said lady was revealed as Javitri. He tried to apprehend the appellant but he pushed him and fled away from the spot. Somebody called at number 100. PCR van came at the spot and removed Javitri at the hospital. On the basis of rukka, FIR was got registered under Section 304 IPC. Inspector Ajmer Singh also reached at the spot. Crime team inspected the spot. Photographs were taken. The stone, wooden *thapki*, blood stained earth control, blood stained earth and blood sample were seized. Site plan was prepared. On 29.09.2008, the appellant was apprehended at about 10.30 p.m. His blood stained jeans pant and shirt were seized. Post mortem was got conducted on the body. Clothes of the deceased and scalp hair were also seized. After post mortem, the dead body was handed over to her father Ram Veer Singh. Scaled site plan was got prepared. On completion of investigation, charge-sheet was filed and the trial was conducted. The prosecution produced various witnesses and their statements were recorded, leading finally to the passing of the impugned judgment and order on sentence.

3. Learned counsel for the appellant contended that the judgment of learned trial Court is erroneous and is based on conjectures and surmises. The trial Court has failed to take into consideration that there are material contradictions in the testimonies of prosecution

witnesses Mahender Singh (PW-1), Ram Veer Singh (PW-4) and IO ASI Rajeshwar Singh (PW-18). Ram Veer Singh (PW-4) and Satya Wati (PW-5) are hearsay witnesses and their testimonies cannot be relied upon as they were not present on the spot when the incident had occurred. The blood stained clothes were alleged to have been recovered by Inspector Ajmer Singh (PW-16) from the appellant, however, there is nothing on record to suggest that the clothes were that of the appellant/accused and these clothes have been thrust upon him to strengthen the case of prosecution. The deceased was at the time of incident, washing clothes, however, no soap or detergent have been seized and no hand pump is shown in any of the photographs. Otherwise also, Dr. Sumit Tellewar (PW-17) has not given an observation with respect to the fact that soap was detected on the finger tip of the deceased.

4. It was further contended that the appellant has been falsely implicated at the instance of Mahender Singh (PW-1) who was a local leader and had an altercation with the appellant, a day prior to the incident and also on one occasion, appellant had slapped him. Puneet Kumar (PW-13) has stated that on the date of incident, the appellant-Raju and he had left for the work at about 9.00 a.m. His brother was

working with him. In such a case, the possibility of the appellant being the perpetrator of the crime is totally ruled out.

5. It was lastly contended that Mahender Singh (PW-1) has stated that the appellant had hit the deceased with a stone, however, as per post mortem report, nine injuries were found on the body of the deceased which are not explained by the prosecution. Without prejudice to his contentions, even if it is presumed that the death was caused by him, the case at best falls under Section 304 Part II IPC and not under Section 304 Part I IPC.

6. Per contra, learned APP contended that the contradictions as pointed out by the learned counsel for the appellant are not material so as to rule out completely their evidentiary value. Statement of Mahender Singh (PW-1) under Section 161 Cr.P.C., his statement before the Court and his cross-examination are not contradictory rather consistent throughout. In such a case, minor contradictions which are not material in nature are not sufficient to wipe away his statement completely and rule out its evidentiary value. The recovery of blood stained clothes from the appellant stands proved from the testimonies of Inspector Ajmer Singh (PW-16), HC Brij Pal (PW-11) and HC Pramod Kumar (PW-12) which are consistent and corroborated in material parts with each other.

7. Learned APP for the State further contended that a mere non-seizure of soap, detergent etc. cannot be considered a material defect at the best, a case of faulty investigation which does not dent the case of prosecution when it is otherwise well established from other counts. The statement of Puneet Kumar (PW-13) also does not help the appellant, as the presence of the appellant with the said witness at the time of incident or in being such a state as in all circumstances rule out the possibility of his not being the perpetrator of crime is not made out. The onus was on the appellant to clearly take the plea of defence of *alibi* and prove it, which he has failed to discharge. It was lastly contended that as per the post mortem report, the case of appellant, as per nature of injuries described therein and their sufficiency to cause death clearly brings the case of the appellant under Section 304 Part I IPC and not under Section 304 Part II IPC.

8. We have carefully considered the submissions made by learned counsel for the appellant and learned APP for the State and have carefully gone through the material available on record.

#### **I Sole eye-witness**

9. Mahender Singh (PW-1) who is the sole eye-witness to the incident has stated in his testimony that on 29.02.2008, he had gone to

Siri Ram Colony, Delhi to the house of Bechhe Singh, whose house is situated in front of the place of occurrence. He reached the house of Bechhe Singh at about 10/10.30 a.m. He heard some voice from the house situated in front of house of Bechhe Singh. He saw that appellant-Raju was beating to the wife of his younger brother with stone. He rushed there and tried to apprehend the appellant-Raju, but he pushed him and ran away from the spot. He came to know the name of the injured woman as Javitri. He informed the police at 100 number but the police did not reach there. He again called the police on 100 number, thereafter the police gypsy reached there and injured was removed to the hospital. His statement was recorded by the police which is Ex.PW1/A and bears his signature. The police lifted some blood from the spot vide seizure memo Ex.PW1/B, some blood stained earth was also lifted from the spot and taken into possession vide seizure memo Ex.PW1/C, earth control vide seizure memo Ex.PW1/D, stone by which the appellant inflicted injuries was also taken into possession vide seizure memo Ex.PW1/E and one wooden *thapki* was seized vide seizure memo Ex.PW1/F and all the memos bear his signature.

10. It is a well settled law that the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is

no impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of Indian Evidence Act, 1872, but if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

11. As regards the contradictions in the testimony of eye-witness Mahender Singh it was contended that Mahender Singh (PW-1) has stated in his testimony that he made a call to police at number 100 and when police did not reach there, he again called at 100 number. In his cross-examination, he had stated that he made a call to the police on 100 number and some other person had also made another call on 100 number, hence, there were two calls to 100 number. Also, it was further pointed out by learned counsel for the appellant that PW-1 has

testified that his statement was recorded by IO ASI Ajmer Singh IO though the statement of PW-1 was recorded by the first IO namely, ASI Rajeshwar Singh (PW-18) who stated in his testimony that he recorded the statement of eye-witness which is Ex.PW1/A and put his endorsement on the same. Further, PW-1 has stated that he was called by the police in the evening from his house and he remained there for 15-20 minutes at the time when the statement of father of the deceased was recorded though Ram Veer Singh (PW-4) has deposed that his statement was recorded by the police at the police station at about 12.30 p.m. These contradictions, in our opinion, are not material. It is no longer *res integra* that while appreciating the evidence, the Court has to take into consideration whether the contradictions, omissions, improvements, embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trivial matters without affecting the case of the prosecution, should not be made a ground for the Court to reject the evidence in its entirety. The Court, after going through the entire evidence must form an opinion about the credibility of the witnesses. Otherwise also, in all criminal cases, normal discrepancies are bound to occur in the depositions of the witnesses due to normal errors of observation, namely, error of memory due to

lapse of time or due to mental disposition such as shock and horror at the time of occurrence.

12. With regards the plea of false implication of the appellant at the instance of Mahender Singh (PW-1), who was the local leader, we observe that it is merely a blatant allegation against PW-1 and is not by itself sufficient to vitiate the veracity and authenticity of the statement of the said witness. The appellant has not produced any evidence or witness in support of his contention. On the contrary, when the question regarding this was put to PW-1 in his cross-examination, he has denied being the leader of the area and also denied of an altercation having taken place with the appellant one day prior to the incident in relation to one drain. He also denied the suggestion regarding the fact that the appellant had slapped him once. He affirmed that no incident of quarrel ever took place with the appellant.

## **II. Seizure of clothes from the appellant**

13. Inspector Ajmer Singh (PW-16) has stated in his testimony that he searched for the appellant and at the pointing out of secret informer, the appellant was apprehended from main market Khajuri. HC Pramod Kumar and Constable Brij Pal (PW-11) had also joined the arrest of appellant. The appellant was wearing pant and shirt which were blood

stained and the same were taken into possession vide seizure memo Ex.PW11/C. HC Pramod Kumar (PW-12) has deposed on the same lines that on the request of SI Ajmer Singh, he joined the investigation. They went to Siri Ram Colony, Main Road and at the pointing out of a secret informer, the appellant-Raju was apprehended by the IO. He was wearing pant shirt and it was having blood stains. The pant and shirt were taken into possession by the police after converting the same into a parcel with the seal of AS. In his cross-examination also, he reiterated that the appellant was wearing a blue colour jeans and angoori colour stripe shirt and also that he observed blood stains on the front portion of the pant and shirt. On the same lines, Constable Brij Pal (PW-11) has deposed that at the instance of a secret informer from B-C Block on the road, the appellant was apprehended and also that he had observed blood marks on pant/shirt worn by him. One blue coloured jeans pant and light greenish (halki angoori) lining shirt which appellant was wearing at the time of his apprehension were taken into possession and covered into a parcel sealed with a seal of AS was affixed and seized vide seizure vide Ex.PW11/C.

14. The purpose of putting the incriminating material to the accused under Section 313 Cr.P.C. is to afford an opportunity to explain the facts and circumstances and explaining these incriminating

circumstances. It is the duty of the accused to explain incriminating circumstances proved against him while making a statement under Section 313 Cr. P.C. Keeping silent or not furnishing any explanation of such circumstances is an additional link in the chain of circumstances to sustain charge against him. In the present case, the statement of PW-16, PW-12 and PW-11 consistently point out that the said blood stained clothes were recovered from the appellant on his apprehension. A question was even put to the appellant under Section 313 Cr. P.C. to the effect that he was wearing blood stained jeans pant Ex.PW11/1 and shirt Ex.PW11/2 at the time of his arrest and the same were taken into possession and seized vide seizure memo Ex.PW11/C to which he replied the same as incorrect. However, he never stated that these clothes did not belong to him, nor was any suggestion given by him to the witness that the said clothes were planted. Also, PW-11 has denied the suggestion in his cross-examination that the appellant has been falsely implicated in this case and also denied the suggestion that the deceased fell down from a height and had sustained injuries. Also, he denied that the blood which has been found on the clothes of the appellant was his own blood which has come out from the injuries caused to him by some persons with knife. The statement of PW-11, PW-12 and PW-16 regarding recovery of clothes cannot be

effaced simply for the reason of they being police officials. Once from their statement, it is made out consistently that the said clothes were recovered from the appellant, it was his duty to explain and deny the said allegations which he has failed to discharge.

### **III Non recovery of washing soap or washing powder**

15. Learned counsel for the appellant has relied upon the statement of Mahender Singh (PW-1) made to the police officer where he has stated that the deceased was washing clothes at the time of incident, however, according to the admission of PW-16, no soap or washing powder was recovered from the spot nor was there any photograph showing any water tap to contend that in such circumstances a doubt is created regarding the prosecution story. This, however, according to us, cannot be considered a material irregularity rather at best the case of defective investigation. The law with regard to defective investigation is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the

Court to examine the prosecution evidence *dehors* such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth.

16. The Supreme Court in **State of West Bengal vs. Mir Mohammad Omar and Ors.** (2000) 8 SCC 382 observed:-

“41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.”

17. The accused cannot take advantage out of faulty investigation where otherwise his guilt is made out from the statement of other circumstances and statement of the witnesses looked at as a whole. In the present case, although the washing powder and washing soap were not recovered nor any photographs showing hand pump were taken, the photograph placed on record Ex.PW8/A4 clearly show washing clothes kept in a tub. Only due to the fact that the detergent and soap were not seized, does not create a doubt in the prosecution story. The case of prosecution is fully supported by the statement of Mahender Singh (PW-1) who is the eye-witness to the entire incident.

#### **IV Plea of alibi**

18. Learned counsel for the appellant has relied upon the statement of PW-13, who has stated in his cross-examination that he and his brother Raju (appellant) had left for their work on the day of incident at about 9.00 a.m and also that his brother was working with him to contend that at the time of incident, the appellant was present with his brother and not at the scene of the incident.

19. The Supreme Court in **Jayantibhai Bhenkarbhai vs. State of Gujarat**, (2002) 8 SCC 165 has held that:

“19. The plea of alibi flows from Section 11 and is demonstrated by Illustration (a). *Sarkar on Evidence*

(15th Edn., p. 258) states the word “alibi” is of Latin origin and means “elsewhere”. It is a convenient term used for the defence taken by an accused that when the occurrence took place he was so far away from the place of occurrence that it is highly improbable that he would have participated in the crime. Alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts

in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court.”

20. This, as we observe from the observations made by the Supreme Court in the aforesaid judgment that it is a basic law of prosecution to prove that the accused was present at the scene of crime and had participated in the crime. The plea of accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. However, once the prosecution succeeds in discharging its burden, it is incumbent on the accused, who adopts the plea of *alibi*, to prove it with certainty so as to exclude the possibility of his presence at the place of occurrence. It is also settled that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the Court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened.

21. In the case at hand the statement of PW-1 clearly point out towards the presence of the appellant at the spot of incident and he being perpetrator of the crime. It is also worthwhile to mention here that also PW-13 has nowhere in his examination-in-chief on 20.05.2011 stated that his brother was present with him when the incident had occurred and it was only on 05.11.2011 that the said

witness had in his cross-examination stated that his brother and he himself had gone to work on the day of incident at about 9.00 a.m. and that his brother was working with him. A perusal of this statement too shows that PW-13 has not stated that the appellant was with him throughout or that he had no opportunity to part with him. He has only stated that they had left for work at 9.00 a.m. on that day and that they were working together. In such a case, it is not proved with certainty the presence of the appellant at the place of incident at the time of occurrence. On the other hand, from the statement of Mahender Singh (PW-1), the presence of appellant at the spot of incident is established.

22. Even if it is presumed that the appellant had left for work on that day, it is not proved that there was no occasion for him to not to return to his home where the incident took place nor has he proved that the situation so existed that his presence at the scene of crime can totally be ruled out. In the light of the judgment of Supreme Court in **Jayantibhai Bhenkarbhai** (*supra*), the onus was clearly on him which he has failed to discharge.

## **V     Post mortem and nature of injuries**

23. Much emphasis is laid by learned counsel for the appellant to contend that although according to the post mortem report, 9 injuries

were found on the body of the deceased whereas according to PW-1 the appellant took up the stone and hit the deceased on her head and in such a case the prosecution has failed to explain all the injuries caused to her on her person. In this respect, it would be pertinent to note that the said witness PW-1 has stated in his statement to the police under Section 161 Cr. P.C. that the appellant, on the date of incident, got enraged listening to the statement of the deceased that she would be washing his clothes the next day and lifted a stone which was lying near and hit the lady on her head and at other places on her body, as a result of which, she fell on the floor and was bleeding profusely from her head. In his first statement on 09.09.2008 before a trial Court, he again stated that he saw that the appellant-Raju beating the wife of his younger brother with stone. It was only in his further examination on 20.08.2008, he stated that the appellant got agitated and picked up a stone lying nearby and hit the lady on her head. This statement, however, cannot be read in an isolation from the previous statement made by the said witness on 09.09.2008 where he had revealed the factum of appellant beating the wife of his brother with a stone and also his statement made under Section 161 Cr. P.C. wherein he had stated that the appellant had hit the deceased with stone on a head and various parts of the body. Although, the prosecution is required to

prove the factum of injuries caused on the body of the deceased, however, it is not required to prove each and every injury so caused with absolute precision. In the case where the witness has deposed about the factum of injuries and the appellant beating the deceased, he was not required to explain each and every injury with utmost details.

24. Now coming to the plea of learned counsel for the appellant that at best, the case of the prosecution, even if made out would fall under Section 304 Part II and not under Section 304 Part I IPC, it may be mentioned that the intention is a question of fact which is to be gathered from the acts of the parties. The law looks as regards intention to the natural result of a man's act and not to the condition of his mind. So, when a normal man does an act, he should be credited with the intention of doing that which is inevitable consequence of his act. Further, the nature of intention has to be gathered from various circumstances, for instance, the kind of weapon used, the part of body hit, the amount of force employed and the circumstances attending upon death. The practical difference between two phrases, 'intention of causing such bodily injury as is likely to cause death' and 'a knowledge that he is likely by such act to cause death' is expressed in the punishment provided under Section 304 IPC. But, the phrase 'with the knowledge that he is likely by such act to cause death' includes all

cases of rash act by which death is caused, for rashness imports a knowledge of the likely result of an act which the actor does in spite of the risk. When no injury was inflicted on the vital organ of the deceased, the case falls under Part II of Section 304 IPC because the act was done with the knowledge that it was likely to cause death but without any intention to cause death or to cause injury as was likely to cause death.

25. In the instant case, according to the post mortem report Ex.PW17/A, the following injuries were observed:-

“(1) Lacerated wound measuring 4.2 cm x 0.5 cm x bone deep, present horizontally over the left side of vertex of skull, 0.2 cm from mid line and 10.5 cm above left ear.

(2) Lacerated wound having an abraded boarder measuring 3 cm x 0.5 cm x bone deep present on the left temple region of face extending upto the left outer canthus of the eye with fracture of underneath frontal and orbital bones.

(3) Reddish abrasion contusion measuring 5 cm x 9.5 cm present on the left side of face extending from left ear laterally to left forehead region and left side of face below left eye medially.

(4) Lacerated wounds with abraded boarder measuring 4 cm x 1.5 cm x bone deep present over right side of forehead 3 cm from mid line and 0.1 cm above right eyebrow.

(5) Reddish abrasion contusion measuring 6 cm x 5 cm present on the right side of face extending from 2.2 cm in

front of right ear laterally till 0.5 cm lateral to outer canthus of right eye medially.

(6) Reddish abrasion contusion measuring 2 cm x 2 cm on the bridge of nose with underneath fracture of nasal bones.

(7) Lacerated wounds measuring 1.5 cm x 0.5 cm x bone deep present on the root of nose with underneath fracture of frontal and nasal bones.

(8) Lacerated wounds with abraded boarder measuring 2.9 cm x 0.6 cm x bone deep present over left side of chin with laceration and bruising of underneath mucosa of lower lip with fracture of left ramus of mandible.

(9) Reddish abrasion contusion measuring 3.5 cm x 8.5 cm present on right side of face, 2.5 cm below injury No.5 and 1.5 cm above left ramus of mandible.”

26. A perusal of the post mortem report shows that the cause of death was opined as, “shock as a result of antemortem head injury produced by blunt force impact, injuries no.1, 2, 4 and 7 are antemortem in nature and sufficient to cause death individually and collectively”. The injuries so inflicted are 9 in number and that too directed on the vital part of the body i.e. the head, skull, face, eyes, nasal bones, ramus of mandible etc. of the deceased. These injuries in their nature show that the intention of the appellant was to actually cause them. Further, it is proved from the post mortem report in which injuries No.1, 2, 4 & 7 were opined individually and collectively

sufficient to cause death. In such a case, Section 304 Part II is ruled out and the case squarely falls under Section 304 Part I IPC.

27. It was then contended by learned counsel for the appellant that the sentence passed is more severe than what the offence merits. The appellant attacked the deceased a young woman aged 19 years, causing as many as 9 injuries. Though, the case of appellant is not covered under any of the exception to Section 300 IPC, but offence committed on trivial issue mitigates the offence and brings it under Section 304 Part I IPC, a further mitigation in the form of reduction of sentence is not called for.

28. In view of the aforesaid discussion, we do not find any merit in this appeal and the same is hereby dismissed. The judgment dated 16.07.2012 is affirmed and the order on sentence dated 17.07.2012 is maintained.

**(VED PRAKASH VAISH)**  
**JUDGE**

**(P.K. BHASIN)**  
**JUDGE**

**October 11, 2013**  
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