

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

Judgment delivered on: April 04, 2014

**+ CRL.A. 1441/2011**

ALLAUDDIN

....Appellant

Through: Ms. Anita Abraham, Advocate

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sunil Sharma, APP for the  
State

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

### **JUDGMENT**

#### **KAILASH GAMBHIR, J**

1. Challenge in the present criminal appeal is to the impugned judgment dated 01.06.2011 and order on sentence dated 04.06.2011 whereby the Appellant–Allaudin was convicted for committing an offence punishable under Section 302 of Indian Penal Code, 1860 (*hereinafter referred to as “IPC”*) and sentenced to undergo life imprisonment along with the payment of fine of Rs.1,000/- and in default thereof to undergo simple imprisonment for a period of one month.

2. In brief the case of the prosecution is as under:-

On 10.04.2010, DD No. 58A was lodged regarding a person getting stabbed at Murga mandi at PS Kalyan Puri. PW-3, HC Rajesh Kumar reached at the spot. He met Ct. Javed (PW9) and Ct. Sudesh (PW4), beat constables of that area. Accused Allaudin was in their custody. They told him that injured Mohd. Vakil was sent to hospital through PCR. Leaving the accused Allaudin in the custody of PW-4, PW-3 went to LBS hospital. PW-3 then collected the MLC of Mohd. Vakil. Doctor handed over two pulandas containing clothes of the injured to him. Since injured was declared not fit for statement, PW-3 recorded statement of PW-4, prepared rukka and through PW-4, got the FIR registered. He later returned at the spot. Inspector Sudhir Sharma (PW-18) also reached at the spot and further investigation was conducted by him. IO, PW-18 arrested the accused. During the interrogation the accused made a disclosure statement and led the IO PW-18 to Murga

Mandi. He got recovered the weapon of offence i.e. the knife, from the dry drain adjoining the boundary wall of Murga Mandi. IO seized the same in one pulanda. IO prepared a site plan and got the scene of crime photographed. Injured Mohd. Vakil died in the hospital. IO further collected the death summary and did inquest proceedings. After the post-mortem, he handed over the dead body to the relatives of the deceased . Charge u/s 302 was framed against the accused to which he pleaded not guilty and claimed trial.

3. To prove its case, prosecution in all examined eighteen witnesses. The statement of the accused was recorded under Section 313 of Cr.P.C., wherein he pleaded innocence and false implication. He stated that he used to drive Tata ACE of Lalit Mohan and at the time of the incident, after parking his vehicle in Murga Mandi, when he was just standing there, police caught him and took him to the Police Station, Kalyan Puri. He stated that he neither got any knife recovered nor did he make any disclosure statement to the police. He also stated that the police had

arrested 2-3 other persons along with him, but as the family members of those persons came to the police station, they were released. Since no one came at his rescue, he was falsely implicated in the present case. He also stated that he was beaten by the police. He, however, did not lead any evidence in his defence.

4. Addressing arguments on behalf of the appellant, Ms. Anita Abraham, Advocate, submitted that the impugned judgment and order on sentence passed by the learned Trial Court are erroneous both on law and facts. Counsel further argued that the testimony of the alleged eye witness PW-1 is totally unbelievable because of inherent inconsistencies in his deposition before the court. Pointing out the inconsistencies, counsel submitted that PW-1 in his examination-in-chief stated that he saw that when Mohd. Vakil was putting the phone back on the box in the STD booth, accused Allauddin stabbed Mohd. Vakil, three times on his neck, once on his back and once in his abdomen but in his cross-examination he stated that he did not see the accused stabbing Mohd. Vakil. Counsel further submitted that in the first statement i.e. *rukka* nothing has been mentioned about the presence of PW-1 at the scene of crime. Further PW-1 was not able to state as to who all constituted the police party that

was present at the time of recovery of the knife. Counsel further pointed out that PW-1 in his cross-examination stated that Beat Constable Sudesh and Constable Javed were not present at the time of recovery of the said knife and this statement given by this witness runs contrary to the version of the prosecution. Counsel also pointed out that the accused again stated that he accompanied police party in the recovery of knife and that they were three in number. The counsel for the appellant further submitted that such inconsistencies on the part of PW-1 clearly show that the entire testimony of PW-1 is based on concoction in order to falsely implicate the appellant and the same deserves outright rejection.

5. Counsel also argued that even the presence of beat constables PW-4 and PW-9 at the spot at the time of the incident is extremely doubtful. The contention raised by the counsel for the appellant was that if PW-4 and PW-9 were present at the spot then why in the MLC name of HC, Prakash was given in the column 'brought by'.

6. Counsel pointed out that there are inconsistencies regarding the place and time of arrest of the appellant. Counsel pointed out that PW-3 HC Rajesh Kumar stated that the arrest memo of the appellant was prepared by IO while sitting in the canteen between 5-6 a.m., whereas

PW-4 Constable Sudesh stated that the arrest memo was prepared by the IO between 11.00 to 11.30 p.m. and much contrary to the same PW-9 Constable Javed stated that the arrest memo was prepared by IO between 2.00 to 2.30 a.m.

7. Counsel also argued that the prosecution has even failed to prove the exact spot of the incident as neither any blood nor any earth control was lifted from the spot and even the site plan does not show any blood lying on the spot. Counsel also pointed out that PW-18 in his deposition stated that there was no blood lying on the spot while PW-9 in his cross-examination stated that he noticed blood at the place of incident. Counsel for the appellant further raised a contention that if there was a blood spread over the spot then why the prosecution failed to lift blood and earth control from the spot and the non-lifting of the same establishes the fact that the alleged crime had not taken place near the STD Booth.

8. Counsel also submitted that no eyewitness saw the appellant running with the knife, yet the learned Trial Court assumed as if the appellant was holding knife in his hand after carrying out the murder of the deceased. Referring to the examination in chief of PW-9, counsel pointed out that he categorically stated that the assailant was apprehended

outside the main gate and at that time he was not holding the knife in his hand and during his cross-examination he stated that while chasing the accused, he did not see any knife in the hands of accused. Further with regard to the testimony of PW-1, counsel submitted that he was a suspect witness as his testimony was inconsistent when compared with the testimonies of PW-4 as well as PW-9. The counsel for the appellant further pointed out that PW-4 was not even made a witness to any of the documents, such as arrest memo or recovery memo and thus, no credibility can be attached to his evidence.

9. Counsel also pointed out the inconsistencies in the prosecution case with regard to the time and place of recovery of the knife which can be outlined as under:-

- i. PW-1 in his examination-in-chief deposed that the knife was recovered from a place near the wall of the main gate at 1.30 a.m.
- ii. Whereas, PW-3, HC Rajesh Kumar, being one of the witnesses to the seizure cum-point-out-memo, during his examination-in-chief stated that the accused did nishandehi to the wall across the road in front of Murga Mandi, where he had thrown the weapon of offence i.e. knife. In his cross-examination

he stated that the knife was recovered after 6.00 a.m. and also that the knife was lying between the wall and footpath opposite to the main gate of Murga Mandi. Again stated that the knife was recovered from a dry drain and stated that the distance between the main gate and the spot from where the knife was recovered was about 50 feet, thereby casting a doubt as to how the knife landed across the road, when allegedly the appellant was apprehended from the front of the main gate of Murga Mandi.

iii. PW-4 during his cross-examination stated that the knife was recovered from a place near the wall in front of the main gate of Murga Mandi, across the road at around 12 midnight.

iv. Further PW-9 also being a witness to seizure cum-point-out-memo during his examination-in-chief stated that the knife was recovered outside the Murga Mandi and adjoining the wall in front of the gate of Murga Mandi. However, in his cross-examination he stated that, the knife was recovered from a dry drain.

v. PW-18 Inspector Sudhir Sharma, the Investigating Officer stated that the appellant got recovered the knife from a dry drain

adjoining the boundary wall of Murga Mandi. He further stated that the knife was recovered in the early morning.

vi. That the site plan drawn, showed that the knife was recovered on the footpath across the road of the main gate of Murga Mandi.

10. Counsel further argued that PW-4 Constable Sudesh was declared hostile and even otherwise, this witness did not testify any fact except that he has seen the appellant being apprehended by PW-9. Impinging the credibility of PW-4, counsel made the following submissions:

i. In his cross-examination, PW4 testifies that for the first time he saw the accused from a distance of about 50-100 meters running towards the main gate of Mandi.

ii. Further PW4 stated that he does not remember what clothes or shoes the appellant was wearing .

iii. Further, PW-4 stated that in fact the IO, Inspector Sudhir and HC Rajesh came to the spot at 9.00- 9.15 p.m. whereas as per the

prosecution IO came with Ct. Javed after the FIR was registered at around 1.30 to 2.00 a.m.

11. Counsel for the appellant also highlighted the inconsistencies in the testimony of PW9 Constable Javed and the same are outlined as under:

i. In the examination-in-chief, PW9 stated that on hearing various noises he reached canteen No.6 with Ct. Sudesh and saw the assailant stabbing the STD booth owner on his back, behind abdomen. He further stated that when the assailant saw the two beat constables, he ran towards the main gate, holding the knife in his hand. However, in his cross-examination he stated that after hearing commotion he rushed towards the spot but before that he saw a man running towards the main gate being chased by public shouting “pakro-2” and therefore, he also started chasing that man. Hence he himself contradicts his statement that he saw the appellant stabbing the deceased and running with a knife. Therefore, the inconsistencies in the version of this witness raise a suspicion.

ii. Apart from this, PW9 during his examination-in-chief stated that public persons apprehended the appellant when they saw him

raising an alarm. However, in his cross-examination he stated that he crossed all the public persons and apprehended the accused. The counsel for the appellant also pointed out the statement of PW4, Sudesh who in his cross-examination stated that he has not seen Ct. Javed apprehending the accused and he saw the accused with Ct. Javed, when Ct. Javed brought him at the spot, and this contradiction also throws doubt on the fact, whether PW9 and PW4 came much later at the spot.

12. Counsel for the appellant also submitted that the prosecution has failed to explain as to who made a call to the PCR to report that Mohd. Vakil has been stabbed. Counsel also submitted that the prosecution failed to prove whether the knife which was recovered during the disclosure statement of the appellant was the same knife with which the offence was committed as neither any opinion of the doctor was sought on the said knife nor any explanation was given by the prosecution as to what the appellant was doing with a knife in the STD Booth.

13. Counsel also argued that the pullandas were sent to the FSL after a lapse of more than five months from the date of the alleged incident and no explanation came forth from the prosecution for such delay. Counsel

also pointed out that as per the report of the serological analysis there was no reaction to indicate the blood group of the blood stains found on the knife.

14. Counsel also argued that there was neither any motive nor intention on the part of the appellant to commit the said crime. Counsel also argued that there was only one injury on the upper back of the deceased and even if the case of the prosecution succeeds in totality, in the absence of any motive or intention, no case under Section 302 IPC can be made out against the appellant and at best the appellant could be convicted for an offence punishable under Section 304 IPC. Counsel further submitted that the appellant is a poor man with a family comprising of his wife, two daughters between the age of 5 and 3 years and he being the sole bread earner of the family deserves leniency.

15. Based on the above submissions, counsel for the appellant argued that there is no evidence either direct or circumstantial to implicate the appellant in the commission of the said offence. Counsel thus pleaded for the acquittal of the accused. In support of her arguments, counsel for the appellant placed reliance on following judgments:

**1. State v. Mohd. Akhtar & Ors., 131 (2006) DLT 234 DB.**

**2. Sakharam vs. State of Madhya Pradesh AIR 1992 SC 758**

**3. Yogeshwar @ Babloo vs. State 2012 (2) JCC 864**

16. Per contra, Mr. Sunil Sharma, learned APP for the State, strongly refuted the said submissions raised by the counsel for the appellant. Learned APP strongly contented that there were three eyewitnesses to the incident and each one has corroborated the statement of other in regard to the conduct of the accused after he had committed the crime. Learned APP pointed out that it has come on record that PW1 Babu Lal saw the accused Allauddin with a knife in his hand, running towards the main gate of the Mandi being chased by public and later he saw the accused being apprehended by PW9, Constable Mohd. Javed. Similarly PW4, Constable Sudesh saw accused running and was being chased by public persons. He also saw the deceased in an injured condition lying smeared with blood. He remained near the injured person till he saw Constable Mohd. Javed coming with the accused after he was apprehended. Counsel also argued that Constable Mohd. Javed PW9 also saw the accused running towards the main gate followed by some 20-25 people shouting “pakro- pakro” and he finally apprehended the accused outside the main gate of Murga Mandi. Counsel thus submitted that all the three witnesses

had seen the similar chain of circumstances having taken place at the scene of the crime.

17. Learned APP also argued that the accused and the victim were familiar with each other and this has come in the testimony of PW-10, Iqbal. The contention raised by the learned APP was that even though PW10 turned hostile yet as per his statement, he saw victim and the accused having tea a number of times can be accepted as a true statement.

18. Learned APP also argued that the weapon of offence was recovered from a dry drain adjacent to the footpath outside the main gate of Murga Mandi by the investigating officer, PW-18 in the presence of Constable Rajesh and Constable Javed and the said weapon was grubbed with human blood. Learned APP also pointed out that baniyan, shirt, pant and blood stained gauze cloth piece of the deceased , all contained blood of group 'O' which is the blood group of the deceased. Learned APP also argued that out of the injuries which were caused to the victim as per the post mortem report proved on record as Ex. PW16/A, injury No.1 was opined as fatal and sufficient to cause death in the ordinary course of nature.

19. Based on the above submissions, learned APP argued that the prosecution has successfully proved its case against the appellant with the help of cogent and clinching evidence, therefore, the learned Trial Court has rightly convicted the appellant for committing an offence under Section 302 IPC and the same does not warrant any interference by this Court in the exercise of its appellate powers.

20. We have heard learned Counsel for the parties at considerable length and given our anxious consideration to the arguments advanced by them. We have also perused the trial court record.

21. The first contention raised by the counsel for the appellant was that the testimony of PW-1 is full of inconsistencies and therefore, the same cannot be relied upon. As per the prosecution, the present case is based on the testimony of two eye witnesses being PW-1 Babu Lal and PW-9 Constable Javed. It is a settled legal position, that if the testimony of an eye witness is found wholly reliable, the conviction can be based solely on his testimony. In the matter of *Alil Mollah and Another vs. State of West Bengal reported in AIR1996SC3471*, the Hon'ble Apex Court held as under:

*"It is now well established that conviction can be based on the testimony of a single eye witness provided the court finds from the*

*scrutiny of his evidence that he is a wholly reliable witness. Where, however, the court is of the opinion that the single eye witness is only partly reliable, prudence requires that corroboration of his testimony in material particulars should be sought before recording conviction."*

22. It is also well established question of law that minor contradictions or inconsistencies in the statement of an eye witness, cannot be a ground to discard his entire evidence. In the matter ***Rammi @ Rameshwar etc. vs. State of Madhya Pradesh, AIR 1999 SC 3544*** the Hon'ble Supreme Court held as under:

12. "When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny".

23. In the matter of ***Bhimappa Chandappa Hosamani and Ors vs. State of Karnataka reported in (2006)11SCC323***, the Hon'ble Supreme Court held that before relying on the testimony of such a witness, it's the duty of the court to test the credibility of the witness. The relevant paragraph of the judgment is reiterated as under:

*“On the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.”*

24. In the present matter, it would be proper to closely scrutinize the evidence of PW-1 as well as PW-9 along with the other evidence on record to assess whether the evidence of PW-1 and PW-9 is of such impeccable quality that a conviction for the offence of murder can safely rest on their testimonies. In the present matter, PW-1 during his examination in chief stated that he saw the accused stabbing the deceased thrice on his neck, once in his back and once in his abdomen. This statement of the witness proves that he was not just the witness to the occurrence but also to the manner in which the accused had committed the said offence. Therefore, if this witness is found truthful and reliable, then the court can convict the accused solely based on his testimony; without seeking any corroboration from other evidence. However, in the present case, PW-1 took a complete divergent stand in his cross examination and stated that he has not seen the accused stabbing the

deceased rather he only saw the accused running with a knife in his hand. The learned trial court has taken this contradiction only as a minor negation; however this view of the learned trial court can be sustained. This contradiction clearly shows that PW-1 was not a witness to the actual occurrence and was merely a witness to the evidence of conduct of the accused i.e. running away with a knife in his hand. Further, we are surprised to find that the Public Prosecutor made no effort to declare this witness hostile and to re-examine him, despite the fact that the hostility of this witness was writ large. The testimony of this witness that he did not see the accused stabbing the deceased also finds support from his own deposition in stating that at the time of the incident, he was present at the main gate of Murga Mandi and main gate was around 120 meters away from the STD Booth and STD Booth was not clearly visible from the main gate.

25. It is also noteworthy that the other eye-witness i.e. PW-9 Constable Javed, also turned hostile during his cross examination in the court as in his examination in chief he deposed, that he has seen the assailant stabbing the deceased on his back, however in his cross examination he stated that he was at a distance of around 50 meters from the main gate

when he heard the commotion. He also deferred that the canteen was not visible even from the main gate and that when he reached the spot, he just saw a man running towards the main gate and being chased by public. Thus, he denied that he saw the accused stabbing the deceased and turned hostile, therefore, his testimony also cannot be treated as a testimony of an eye witness.

26. The hostility of these two prime witnesses has also shaken the entire foundation on which the learned Trial court based the conviction of the accused, as the case is no more based on the testimony of these eye witnesses rather now the order of conviction would have to be tested in the light of circumstantial evidence.

27. The law with regard to circumstantial evidence has been laid down in a catena of Judgments by the Hon'ble Supreme Court as well as various high courts. It is a well known principle that circumstantial evidence are secondary evidence. Circumstantial evidence might not directly prove any offence, but to draw guilt of an accused, an entire chain of circumstances has to fall in place. In the matter of *Sharad Birdhichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*, the Hon'ble Apex Court after referring its various earlier decisions,

formulated the following conditions to be fulfilled before a case against an accused can be said to be fully established based on circumstantial evidence:-

*"a. the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in **Shivaji Sahabrao Bobade v. State of Maharashtra** where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

*b. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

*c. the circumstances should be of a conclusive nature and tendency,*

*d. they should exclude every possible hypothesis except the one to be proved, and*

*e. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

28. In light of the legal proposition stated above, let us turn to the case in hand. The contention raised by the counsel for the appellant was that *rukka* statement contains no mention of the presence of PW-1 at the

scene of incident. This contention of the counsel for the appellant is devoid of any merit. Rukka is merely a document prepared at the spot of incident for the registration of F.I.R.. It is a well settled legal proposition that FIR is not a substantive piece of evidence, rather it is merely a document to put the criminal machinery in motion. It is not essential that in the FIR itself the name of all the witnesses should invariably be mentioned rather the important requirement is that the information recorded should disclose the commission of cognizable offence. Thus mere non recording of the name of PW-1 in the rukka statement will not prove fatal to the case of prosecution especially in the light of the fact that the statement of PW-1 under Section 161 Cr.P.C was duly recorded by the police during the course of investigation.

29. The contention raised by the counsel for the appellant that PW-1 in his cross-examination stated that beat constable Sudesh and constable Javed were not there at that time, does not carry much force. PW-I has turned hostile on most of the material facts, thus much credibility cannot be attached to his statement unless it finds corroboration from other independent evidence. The presence of constable Sudesh and constable Javed was confirmed by PW-2, PW-3, PW-4 as well as PW-18 in their

respective statements before the court. In such circumstances although PW-1 negates this fact, however since this fact got confirmed by the testimony of four other witnesses, the presence of these beat constables cannot be doubted.

30. Considering the next contention raised by the counsel for the appellant that if PW-4 and PW-9 were present at the spot, if that was the case then why in the MLC name of HC Prakash was given in the column “brought by”. As per the statement of PW-3, the victim was sent to the hospital through PCR, and afterwards PW-3 and PW-9 went to the Hospital together. Thus, the victim was taken to the hospital by a police official in the PCR and not by PW-3 or PW-9. Apparently the name of the police official who took the victim to the hospital has not come on record and his name was HC Prakash, as was shown in the column “brought by” in the MLC. More so, this fact would not have much effect on the case of prosecution as it has no relevance with regard to the accused having committed the said offence or not.

31. Coming to the next contention raised by the counsel for the appellant regarding the inconsistencies in the statement of witnesses regarding the place and the time of arrest of the appellant. This argument

of the counsel for the appellant cannot be given much weightage. As per the case of prosecution, it is admitted through the testimony of four witnesses being PW-1, PW-4, PW-9 and PW-10 that the accused was apprehended right from the spot near gate of Murga Mandi by Constable Javed. Thus, the factum of arrest is not disputed. In such circumstances merely because there are contradictions found in the statement of all these witnesses with respect to the time of arrest, the fact that the accused was apprehended immediately from the place of incident cannot be disputed.

32. It is a well settled proposition of law that minor discrepancies, contradictions or irrelevant details which do not in any way corrode the credibility of a witness, should not be used to jettison his evidence in its entirety. It would be useful here to refer the judgment in the case of *State of Rajasthan Vs. Om Prakash*, reported in AIR 2007 SC 2257, in which it has been held by the Hon'ble Supreme Court that the irrelevant details which do not in any way corrode the credibility of a witness should be overlooked. On the same lines, the Apex Court in the case of *Rohtash Kumar Vs. State of Haryana*, reported in 2013CriLJ3183, also observed as under:

*"It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters*

*which do not affect the core of the case of the prosecution, must not prompt the Court to reject the evidence in its entirety. Therefore, unless irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The Court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the Court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the Court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole."*

33. The next contention raised by the counsel for the appellant was that the prosecution has even failed to prove the exact spot of the incident as neither any blood nor any earth control was lifted from the spot and even the site plan does not show any blood lying on the spot. Counsel also pointed out that PW-18 in his deposition stated that there was no blood lying on the spot while PW-9 in his cross-examination stated that he noticed blood on the spot where the incident had taken place. The contention raised by the counsel for the appellant was that if there was blood spread over the spot then why the prosecution failed to lift blood or

earth control from the spot and the non-lifting of the same indicates the fact that the alleged crime has not taken place near the STD Booth. The non collection of the earth control as well as the blood from the spot proves the failure on the part of police officials to conduct efficient investigation. It is a well settled legal proposition that the accused cannot avail benefits of a defective investigation. The Hon'ble Apex Court in the case of *Allarakha K. Mansuri vs. State of Gujarat*, reported in *AIR 2002 SC 1051*, while dealing with a case of defective and faulty investigation, and duty of the Court in such kind of cases held as under:

*"even if the investigation is defective and faulty the accused person cannot be acquitted solely on account of defective and faulty investigation. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general."*

34. In another case of *Ram Bali vs. State of Uttar Pradesh* reported in *AIR 2004 SC 2329*, the Apex Court took a view that acquitting an accused person solely because of faulty or defective investigation would amount to playing into the hands of Investigating Officer. The relevant paragraph of the said judgment is reproduced as under:-

*"In the case of a defective investigation the Court has to be*

*circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."*

35. Moreover, in the present case the spot of incident was stated to be around the STD booth by all the witnesses present on the spot viz. PW-1, PW-4, PW-9, and PW-10, unanimously without any contradiction. Thus, we do not find any force in the contention of the counsel for the appellant that the prosecution has not been able to establish the spot of incident.

36. The next contention raised by the counsel for the appellant was that no eyewitness saw the appellant running with the knife, yet the learned Trial Court assumed as if the appellant was holding knife in his hand after murdering the deceased. In the present case, PW-1 in his statement before the court deposed that he saw the accused running with a knife, however when the accused got apprehended, he was not carrying the knife. To this extent he remains consistent both in his examination in chief as well as cross examination. In such circumstances, we agree with the view taken by the learned trial court and find the argument of the counsel for the appellant worth outright rejection.

37. Dealing with the next contention raised by the counsel for the appellant that there are inconsistencies in the prosecution case with regard

to the time and the place of recovery of the knife. In the present case, the accused after making the disclosure statement was accompanied by a police party consisting of Investigating officer, Constable Javed PW-9, Constable Rakesh PW-3, Constable Sudesh PW-4 as well as one Babu Lal PW-1 for the said recovery. The weapon was recovered at the instance of the accused from near a wall opposite to the wall of main gate of Murga Mandi. As regards the place of recovery, PW-1 in his examination-in-chief deposed that the knife was recovered from a place near the wall of the main gate. PW-3, HC Rajesh Kumar, being one of the witnesses to the seizure cum-point-out-memo, during his examination-in-chief stated that the accused did nishan dehi to the wall across the road in front of Murga Mandi, where he had thrown the weapon of offence i.e. the knife and also that the knife was lying between the wall and footpath opposite to the main gate of Murga Mandi. Again stated that the knife was recovered from a dry drain and stated that the distance between the main gate and the spot from where the knife was recovered was about 50 feet. PW-4 during his cross-examination stated that the knife was recovered from a place near the wall in front of the main gate of Murga Mandi, across the road. PW-9 also being a witness to seizure cum-point-

out-memo during his examination-in-chief stated that the knife was recovered outside the Murga Mandi and adjoining the wall in front of the gate of Murga Mandi. However, in his cross-examination he stated that, the knife was recovered from a dry drain. PW-18 Inspector Sudhir Sharma stated that the appellant got recovered the knife from a dry drain adjoining the boundary wall of Murga Mandi. That the site plan drawn, showed that the knife was recovered on the footpath across the road of the main gate of Murga Mandi. From the conjoint reading of the testimony of all these witnesses we find that it is sufficiently clear that the said knife was recovered from a place opposite to the wall of main gate of Murga Mandi. Thus we find no major contradiction in relation to place of recovery.

**38.** As regards the time of recovery, PW-1 in his examination-in-chief deposed that the knife was recovered at 1.30 a.m. PW-3, HC Rajesh Kumar in his cross-examination stated that the knife was recovered after 6.00 a.m. PW-4 during his cross-examination stated that the knife was recovered at around 12:00 a.m. PW-18 Inspector Sudhir Sharma stated that the knife got recovered in the early morning. Thus, there are contradictions in relation to the time of recovery of the knife, however, it

shall be noted that this is a minor contradiction and it is not sufficient enough, to reject the other part of the evidence which is well proved and forms the complete chain of circumstantial evidence to propagate the guilt of the accused.

39. To deal with the next contention raised by the counsel for the appellant that no explanation was given by the prosecution for sending pullandas to FSL after a lapse of more than 5 months from the date of the alleged incident and further no reaction to indicate the blood group of the blood stained knife could be detected as per the report of the serological expert. Undoubtedly, there was a delay in sending the samples to the FSL and preparation of the FSL report and it was this delay due to which no reaction was found on the blood found on the knife but the question here is whether the appellant can derive any benefit or advantage due to non-detection of the blood group on the knife on account of disintegration of the blood with the lapse of time.

40. to deal with this aspect of the matter, it would be pertinent to take note of certain judgments *State of Rajasthan Vs. Teja Ram and Ors., (1999) 3 SCC 507*, one of the circumstances which the Trial Court relied on as incriminating against the accused is the recovery of two

axes (kulhadis). On the strength of the statements of two of the accused persons, the said axes (kulhadis) were subjected to chemical examination and the result was that both the axes (kulhadis) were found stained with blood. However, when they were further subjected to test by the serologist, the blood on one axe was found to be of human origin while the blood stain on the other axe was found to be so disintegrated that its origin became undetectable. A Division Bench of the High Court of Rajasthan declined to act on the evidence relating to the recovery of axes for the reason that human blood could be detected only on one of them while the origin of the blood on the other was not established, there was room of entertaining doubt as to the real person whose blow with the axe would have caused the injury. The Supreme Court finding the reasoning of the High Court unsustainable, opined as under:-

*"25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to hematological changes and plasmatic coagulation that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of*

*this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused."*

41. In the case of ***Gura Singh vs. State of Rajasthan, (2001) 2 SCC 205***, the prosecution proved beyond doubt the recovery of the blood stained 'chadar' (sheet) belonging to the Appellant and kassi, the weapon of offence on the basis of the voluntary disclosure statement made by the accused, who was charged with the offence of patricide and had allegedly smashed the skull of the deceased with the kassi. Both the Trial Court as well as the High Court held that the prosecution had successfully established the making of the disclosure statements by the Appellant and the consequent recovery of the weapon of offence and 'chadar' at his instance. The serologist and chemical examiner found the 'chadar' (sheet) and other items to be stained with human blood. However, the origin of blood stains on the kassi and other items like the shoes of the accused could not be determined on account of disintegration with the lapse of time. The contention was sought to be raised on behalf of the Appellant that the prosecution had failed to connect the accused with the commission of crime and the judgments of

the Supreme Court in *Prabhu Babaji Navle Vs. State of Bombay*, AIR 1956 SC 51 and *Raghav Prapanna Tripathi Vs. State of U.P.*, AIR 1963 SC 74 were pressed into service. Rejecting the aforesaid contention, the Supreme Court held that the effect of the failure of the serologist to detect the origin of blood due to disintegration in the light of the aforesaid cases was considered by this court in Teja Ram's case (supra) and in view of the authoritative pronouncement of this court in the said case, there was no substance in the submission of the learned counsel for the Appellant that in the absence of the report regarding the origin of the blood, the Trial Court could not have convicted the accused.

42. In *Ramnaresh & Ors. Vs. State of Chhattisgarh*, (2012) 4 SCC 257, which was a case u/s. 302/499/376(2)(g) r/w Section 34 IPC, the plea was taken that the FSL report does not connect the accused with the commission of crime as the FSL report did not give the grouping of the blood/semen. Repelling the contention, it was held by Hon'ble the Supreme Court that FSL report was inconclusive but not negative which would not provide the accused with any material benefit.

43. In the instant case, as per the FSL report, blood was detected on the shirt, baniyan, pant and one blood stained gauze cloth piece of the deceased which was of group 'O' however, on the knife, the blood detected was of human origin but the blood group could not be congregated. In such circumstances, we do not find much force in the contention raised by the counsel for the appellant to discard the available evidence in its entirety which clearly inculcate the accused in the commission of the said offence.

44. The next contention raised by the counsel for the appellant was that the accused had no intention or motive to cause death of the accused. There can be no doubt that in a case of circumstantial evidence the motive assumes importance but at the same time, it is also fairly well settled law that failure to establish the motive for the crime does not throw overboard the entire prosecution case. In a case where the prosecution succeeds in proving its case with cogent and convincing evidence, the absence of establishing motive will not prove fatal to the case of the prosecution. We, therefore, cannot accept the argument of the Ld. Counsel for the appellant that because of the failure of the prosecution to prove motive on the part of the appellant, the appellant

could not have been held guilty for committing the said crime under Section 302 IPC. Normally, behind every criminal act, there is motive and it is imperative for an investigating agency to make all efforts in ascertaining the motive on the part of the accused but failure of the same in a case where the prosecution has otherwise proved its case beyond any shadow of the doubt based on cogent and convincing evidence, the accused cannot get the benefit of motive aspect not being proved by the prosecution. Motive can develop even at spur of moment and the motive on the part of the accused may not come to the knowledge of the family members and other known friends and relatives of the victim before hand and therefore, the theory of proving motive cannot be a rule of thumb where there are other circumstantial evidence to prove that it was an act done in spur of the moment. Sometimes the motive may not be known even to the victim of the crime and may be known only to the assassin in whose mind any evil thought occurs and he may react in that spur of a moment resultantly causing death of someone. In the light of this legal position, the failure on the part of the prosecution to prove motive on the part of the accused for the commission of the said crime will not prove fatal to its case in

the face of other chain of circumstances proved on record by the prosecution, most importantly that the accused was armed with a knife, one cannot be unaware of the injury that could be caused with its usage and also while harming a person with the same, at that point in time , one's intention to give a knife blow specifically on the upper back , deep into the lung resulting in the death of the victim cannot be given a blind eye, it inexorably bring home the guilt of the accused and makes him liable. Here, it would be worthwhile to reproduce the following paragraph from the recent judgment of the Apex Court in the case of ***Amitava Banerjee @ Amit @ Bappa Banerjee Vs. State of West Bengal***, reported in ***AIR 2011 SC 2913***, as under:

*"Motive for the commission of an offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty."*

45. Therefore, to analyse a human nature is difficult and human nature being what it is , in a few cases a mystery, it is difficult to fathom the real motivation behind the commission of crime and thus,

for the aforesaid reason we find no merit in the argument of the counsel for the appellant.

46. So far as the statement by the accused under 313 Cr.P.C that the police had arrested 2-3 other persons along with him, but as the family members of those persons came to the police station, they were released. Since no one came at his rescue, he was falsely implicated in the present case. It is pertinent to note that none such suggestion was put to the accused and neither the accused chose to lead any evidence in the said regard. Rather it is quite clear from the testimony of PW-1 Babu Lal that the accused was known to the deceased and he was not new to that area, and also shared cordial relations with them, as he used to come there quite often. Thus not much weightage could be attached to the voluntary statement made by the accused in the absence of any supportive evidence.

47. Learned counsel for the appellant has lastly but vehemently contended that at the most it was a case of culpable homicide not amounting to murder because the act committed was without pre-meditation. Further, the accused had neither taken undue advantage nor acted in a cruel and unusual manner. Therefore, he is covered by

exception 4 to section 300 IPC. In order to bring the offence under this exception IV of Section 300 IPC, four things shall be proved by the accused:

- I. *That the act was without premeditation.*
- II. *There was a sudden quarrel*
- III. *In the heat of passion upon a sudden quarrel there was a sudden fight.*
- IV. *Offender did not take undue advantage or acted in a cruel or unusual manner.*

48. In ***Pappu v. State of Madhya Pradesh*** reported in (2006) 7 SCC 391, the Hon'ble Apex Court almost exhaustively dealt with the parameters of Exception IV to Section 300 of the Code. The relevant para of the judgment is reproduced as under:

*"13...The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 Indian Penal Code is not defined in Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be*

*shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".*

*It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 Indian Penal Code is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors. "*

49. In a very recent judgment of the Apex Court, ***Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778***, the distinction between the offence punishable under Section 302 IPC and those punishable under Part I and II of Section 304 IPC has been eloquently discussed after giving a reference of many other significant decisions of the Hon'ble Apex Court decided earlier. Relevant Para of the said decision is reproduced as under:-

*"9. It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the Appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the Appellant having taken undue advantage or acting in a cruel or unusual manner. There is, in our opinion, considerable merit in that contention. We say so for three distinct reasons. Firstly, because even according to the prosecution version, there was no premeditation in the commission of the crime. There is not even a suggestion that the Appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. The prosecution case, as seen earlier, is that the deceased and his wife were guarding their Jaggery crop in their field at around 10 p.m. when their dog started barking at the Appellant and his two companions who were walking along a mud path by the side of the field nearby. It was the barking of the dog that provoked the Appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least*

*anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head. Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the Appellant and his companions took to their heels - a circumstance that shows that the Appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4. Thirdly, because during the exchange of hot words between the deceased and the Appellant all that was said by the Appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the Appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the Appellant to the benefit of Exception 4 to Section 300 of the Indian Penal Code."*

50. It will be also useful here to refer to the judgment of the Hon'ble Apex Court in the case of ***Pulicherla Nagaraju@Nagaraja Reddy v. State of Andhra Pradesh, (2006) 11 SCC 444***, wherein the Court has observed that:

*"18. ... the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of*

*culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.”*

51. In ***Sunder Lal v. State of Rajasthan, 2007 (6) SCALE 649***, the two accused armed with Gandasi and a lathi respectively had inflicted one blow on the head of the deceased with a Gandasi and a lathi respectively and several injuries on the hands and the legs with the Gandasi and the stick; the circumstances were that the intention to kill the deceased was found wanting and in the background of this fact, the Supreme Court took a view that the attack being at a spur of the moment and indiscriminate, constituted an offence of culpable homicide not amounting to murder punishable under Section 304 Part- I IPC.

52. In the light of the aforesaid legal position adverting to the facts of the case in hand, no evidence was adduced by the prosecution to prove

any motive on the part of the appellant to have had any pre- plan or any premeditation to murder the deceased. The intention and the motive on the part of the appellant are totally absent in the present case.

53. As per the deposition of PW1- Babu Lal, who was a security guard, he knew the appellant as well as the accused, and as per the deposition of PW-1, the appellant and the accused knew each other very well. Although, the testimony of PW1-Babu Lal where he deposed that on the issue of payment as call was made by the accused from the STD booth of the deceased, a quarrel took place between him and the deceased has not been proved, yet the circumstances of the case clearly suggest that some sudden quarrel had taken place between the accused and the deceased and in the heat of passion, the appellant had committed the murder of the deceased Mohd. Vakil. It is, therefore, quite evident that there was no motive on the part of the appellant to kill the deceased and the fight between the deceased and the appellant was sudden and at the spur of the moment in the heat of passion, the accused had inflicted the knife blows on the person of the deceased due to which the deceased had died. We also do not find that the appellant/ accused had taken any undue advantage or acted in cruel and unusual manner, in the absence of

any such evidence adduced by the prosecution to arrive at such conclusion. We are therefore, in agreement with the contention raised by the learned counsel for the appellant that the facts of the case are covered by Exception IV to Section 300 IPC and the offence committed by the accused was a culpable homicide and not amounting to murder.

54. The next question which arises for consideration is whether the case of the appellant would fall under Section 304 Part-I IPC or under Section 304 Part-II IPC. Section 304 of the IPC reads as under:

*"304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."*

55. Part-I applies where the accused causes bodily injury with the intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part-II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause

death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

56. In the matter of *Krishna Tiwary and Anr Vs. State of Bihar*, reported in **AIR 2001 SC 2410**, where the accused had inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, the Hon'ble Apex Court held that the case was covered by Exception 4 to Section 300 of the IPC and the accused was convicted under Section 304-I of the IPC. Relevant paragraph of the said judgment is reproduced as under:-

*"the accused had inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, his case was covered within Exception 4 to Section 300 of the IPC; he had been convicted under Section 304-I of the IPC. 21 Applying the test laid down in this case, there is no reason as to why the appellants should also not be accorded the benefit of Explanation 4 of Section 300 of the IPC. The conviction of the appellants for the offence of murder is accordingly modified for the offence of culpable homicide not amounting to murder. They are all accordingly convicted under Section 304-I of the IPC."*

57. In the facts of the present case two stab injuries were inflicted by the accused on the person of the deceased. As per the post mortem report, the following external injuries were found on the body of the deceased:

*"1. Stitched wound over (R) upper back, 6.5 cm long, 6 black stitches, obliquely placed, sharp edged, clear cut margins, both angles acute, 2 cm to (R) of midline, 16 cm below ope of neck----On dissection ---back muscles, cutting 5<sup>th</sup> rib posteriorly- (R) lung sharply cut over post surface of*

*upper lobe as 3 cm cut (total depth from skin 9 cm) and ending into the right lung.*

*2. Stitched wound 2-7 cm long over (L) upper back, sharp edges, clear cut margins, both angles acute, obliquely placed, 4 black stitches, 8 cm below nape of neck, 1.5 cm to the left of midline. On dissection – ending 4.2 cm deep into back muscle only—(L) lung pale and NAD. "*

58. As per the opinion doctor in the post mortem report, the cause of death of the deceased was due to haemorrhagic shock which was due to injury to (R) lung by a sharp edged weapon and injury No.1 was described as fatal and sufficient to cause death in the ordinary course of nature. With the said two stab injuries caused by the appellant, out of which injury No.1 was found sufficient to cause death of the deceased, we are of the view that the accused caused bodily injury with the intention to cause death of the deceased and therefore, Part-I of Section 304 IPC will be clearly applicable to the facts of the present case.

59. It is also well settled that that where the medical evidence shows that the injuries were sufficient in the ordinary course of nature to cause death , Section 304 part II will not apply (***Ref: Mohan V. State (1977) 4 SCC601***) . In the present case, the prosecution has been able to prove following evidences against the accused:

- i. The presence of the accused at the spot of incident at the time of alleged incident.*
- ii. The conduct of the accused by absconding immediately after the incident with a knife.*
- iii. The recovery of knife at the instance of accused.*

- iv. *The detection of human blood on the knife recovered during recovery statement.*
- v. *Failure of the accused to give any explanation regarding evidence put to him under section 313 Cr.P.C.*

60. Accordingly, the judgment and the order of the learned Additional Sessions Judge dated 01.6.2011 and 4.6.2011, respectively, convicting the appellant for the offence punishable under Section 302 IPC is modified to the extent that the appellant is convicted under Section 304 Part I IPC and accordingly the sentence of life imprisonment imposed upon him by the Ld. trial court is converted to the Sentence of imprisonment for a period of ten years.

61. A copy of this order be sent to jail superintendent for information and further compliance.

62. It is ordered accordingly.

**KAILASH GAMBHIR, J.**

**SUNITA GUPTA, J.**

**April 04, 2014/v**