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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A.25/2004

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Judgment reserved on: 18th February, 2016

Judgment pronounced on :29th February, 2016

HARENDER SINGH

..... Appellant

Through: Mr. M.L. Yadav and Mr. Medhanshu
Tripathi with Mr. Harish Sharma,
Advocates

versus

STATE OF DELHI

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The present appeal has been filed under Section 374 of Code of Criminal Procedure against the judgment dated 27.11.2003 and order on sentence dated 28.11.2003 passed by Additional Sessions Judge in Session's Case No. 67/2001, by virtue of which the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo Imprisonment for life and to pay a fine of Rs. 10,000/- for the offence punishable under Section 302 of the Indian Penal Code and in default of the payment of fine to further undergo Rigorous Imprisonment for a period of one year.
2. The brief facts of the case as noticed by the learned trial court are as under:

"1. Adumbrated in brief, the prosecution case is this. Aurbindo college took house no. B-269, S.T.C. Colony, within the bounds of police station Malviya Nagar, for housing its students, who were admitted to the college on sports basis. The deceased, Ajay Kumar, PWs, Dharmender, Rajesh,

Manish, Akhtar and Mukesh used to reside there. On 30.04.2001, Ajay and accused Harinder picked up a quarrel over the use of bathroom. Accused Harinder and his co accused are the members of boxing team. Rajesh and Manish intervened and got the matter settled. However, the accused was not satisfied with the abovesaid settlement/compromise and he extended a threat that he would not spare the deceased.

2. On 8.5.2001, at about 6 p.m. Dharmender and Rajesh were getting the electricity of their college repaired. Their attention got attracted by commotion, which cropped up, from outside. At the same time the exams, which were going on in college came to an end. Dharmender and Rajesh came out and found that in front of main entrance of the college building at the crossing, accused Harinder, Amit Bisht and Satinder, who were accompanied by six seven boys, belonging to the boxing team of the college, were giving beatings to Ajay, a member of the hockey team. Harinder and his co accused were armed with knife, lathis and pistol. Harinder was exhorting his companions that Ajay was the same boy, who had insulted him over the bathroom on 20.4.2001, and should not be left alive. Thereafter, all of them pounced upon Ajay. Harinder plunged a knife into Ajay's body. In the meantime other members of the hockey team namely Dinesh, Mukesh and Akhtar also arrived there. Dharmender, Mukesh, Dinesh and Akhtar tried to save Ajay from the clutches of the accused. The accused party attacked them. Consequently, Dinesh, Mukesh, Akhtar and Dharmender received injuries. Dharmender was taken by Mahinder Singh, Director Physical to Geetanjali hospital, and Ajay who was in injured condition due to knife inflicted by Harinder, was also taken to Geetanjali hospital. Ajay succumbed to the injuries and was declared brought dead by the doctors.

6. My ld predecessor, framed the charges against accused. On 30.3.2002 charge against accused Satinder Singh Bisht and Harinder Singh were framed for the offences punishable u/s 147/148/302 r/w Section 149 IPC, 307 IPC r/w Section 149 IPC, 308 IPC r/w Section 149 IPC and Section 323 IPC r/w Section 149 IPC. ”

3. To bring home the guilt against the appellant, prosecution examined 24 witnesses in all. The statement of the appellant was recorded under Section 313 of Code of Criminal Procedure wherein he denied

all the allegations and alleged false implication and claimed to be tried. The appellant did not lead any defence evidence before the learned trial court.

4. Mr. M.L. Yadav, learned counsel for the appellant submits that the appellant has been convicted by the trial court without there being any evidence against him; that he has been convicted only on the basis of conjectures and surmises, and without there being any material to support the conviction.
5. It is also contended by Mr. M.L. Yadav that the witnesses have not supported the case of the prosecution and there are material contradictions in the testimonies of the witnesses of the prosecution. It has further been contended by the counsel for the appellant that the case of the prosecution is based on the testimony of PW5 Dharmender who categorically stated that none of the accused including the appellant was present at the time of the alleged incident which casts a serious doubt over the story of the prosecution. It is further contended that the prosecution has not been able to establish the motive for the crime having been committed.
6. Elaborating his arguments further counsel for the appellant submits that the weapon of offence used in the commission of the alleged incident has not been recovered which makes the case of the prosecution more doubtful.
7. Another ground sought to be urged by counsel for the appellant is that the trial court has failed to appreciate the evidence in the correct perspective as the prosecution adduced same evidence against other co-accused, namely, Satinder Singh and Anil Bhatt and benefit of doubt was extended to them, however, the same evidence was taken to be of conclusive proof against the appellant herein.

8. Lastly, Mr.Yadav and Mr.Tripathi, urged that even if allegations against the appellant is believed to be true, the case falls under Section 304 Part II of the Indian Penal Code and not under Section 302 of the Indian Penal Code. The incident took place at the spur of the moment and thus the appellant should be convicted under Section 304 Part-II of the Indian Penal Code on the period already undergone.
9. In support of his submissions, reliance is placed by learned counsel for the appellant on the case of ***Mavila Thamban Nambiar v. State of Kerala***, reported in *AIR 1997 SC 687*, wherein the Hon'ble Supreme Court held as under:

"Mr. Lalit then, seriously challenged the conviction of the appellant under Section 302 of the Indian penal Code. He urged that the appellant had neither intention nor knowledge that such an injury would result into the death of Madhavan. He, therefore, urged that the appellant at the most could be convicted for any other minor offence. Mr. George, appearing for the State of Kerala urged that the appellant was rightly convicted under Section 302 of the Indian Penal Code and no interference was called for. After giving our careful thought to the nature of offence, we are of the considered view that the offence of the appellant would more appropriately fall under Section 304 part II of the Indian Penal Code. The appellant had given one blow with a pair of scissors on the vital part of the body of Madhavan and, therefore, it would be reasonable to infer that he (appellant) had knowledge that any injury with the pair of scissors on the vital part of would cause death though he may not have intended to commit the murder. We accordingly alter the conviction of the appellant from 302 IPC to one under Section 304 part II of the IPC"

10. Per contra, Ms. Aashaa Tiwari, learned APP for the State submits that the prosecution has been able to establish its case beyond any shadow of doubt. Counsel further submits that the testimony of the material witnesses PW 4 Rajesh, PW 11 Mukesh coupled with the testimony of PW 10 Dr. Dalip Mukheja who proved the MLC of the

deceased Ajay and the testimony of PW 15 Dr. Shalini Girdhar who proved the post-mortem report establishes beyond reasonable doubt that it was the appellant who committed the murder of the deceased Ajay.

11. Counsel further submits that the testimony of the injured witnesses and eye witnesses PW4 Rajesh, PW 5 Dharmender, PW 11 Mukesh and PW 12 Akhtar coupled with the statement of PW 2 Dr. Viplav and PW 10 Dr. Dalip Mukheja who proved the MLC of PW 5 and PW 11 respectively strongly support the case of prosecution. Elaborating her arguments further, counsel for the State submits that all the witnesses have attributed specific role to the appellant and their testimonies are consistent and supported by the medical evidence.
12. Learned APP for the State also contends that the prosecution has been able to establish the motive of the appellant which is corroborated by the testimony of PW 4 Rajesh that on 30.04.2001 there was exchange of words between appellant and deceased which led to a scuffle over the use of bathroom in the college. It is also submitted that the appellant had a personal grudge against the deceased which resulted in the alleged incident.
13. Lastly, learned counsel for the State submits that the evidence produced on record clearly establishes the guilt of the appellant and the learned trial court has rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, hence the impugned judgement does not call for any interference.
14. We have heard counsel for the parties, who have taken us through the evidence in the matter. We have also given our thoughtful consideration to the submissions, which have been made before us.

15. Before we deal with the rival submissions of counsel for the parties, we deem it appropriate to refer to the testimonies of some of the material witnesses in detail. The case of the prosecution rests on the testimonies of PW 4 Rajesh, PW 11 Mukesh and PW 12 Akhtar Ali who are natural eyewitnesses to the incident.
16. PW 4 Rajesh in his testimony deposed that on 30.04.2001 there was an altercation between Ajay (deceased) and appellant Harinder on the use of bathroom. He and PW 7 Manish were in the sports room and on hearing the altercation they went outside and separated the appellant and deceased as they were grappling. Appellant who was separated by us went from there saying "*Dekh lenge kiya hai*". PW 4 further deposed that on 08.05.2001 at around 6.00 pm he and PW 5 Dharmender heard noises coming from the gate of the college. After reaching there they saw that appellant was quarrelling with deceased and two other boys namely Satinder and Anil Bhatt. PW-4 further testified that there were 7-8 other boys, but he did not know their names. He categorically stated that appellant had stabbed deceased Ajay. He had, upon seeing the incident, told the teacher who came to spot, but by that time Ajay had been removed to the hospital. Although this witness was cross-examined by the learned APP, he denied the suggestion that there was a *danda* in the hand of Anil Bhatt and pistol in the hand of another boy and he was confronted with the portion A to A of Ex.PW4/A and he also testified with regard to exhorting by Harender, but we may notice that in his cross-examination, he has stated that he, in fact, did not see Harender stabbing Ajay. PW-5 has also testified with regard to the factum of quarrel, who turned hostile as far as identifying the persons is concerned. It is further deposed by PW 4 that he had witnessed the incident of stabbing.

17. PW 11 Mukesh deposed that on 08.05.2001 he and PW 12 Akhtar Ali heard noises of quarrel coming from the gate of the college. It is further deposed by PW 11 that on reaching there he saw appellant along with his companions beating the deceased. He saw that appellant was holding a knife in his right hand and his companions were holding danda in their hands. PW 11 stated that he tried to intervene in the quarrel but was hit from behind by someone and left the spot immediately.
18. PW 12 Akhtar Ali deposed that on 08.05.2001 after taking his last examination he and PW 11 Mukesh saw that Dinesh PW 6 and Manish PW 7 were quarrelling at the gate of the college building with other boys. He and Mukesh went there and tried to separate them but while he was trying to separate he was hit from behind on his head and became unconscious.
19. As far as medical evidence is concerned, Dr. Arun Kumar Agnihotri conducted the post mortem of the deceased. The post mortem report Ex. PW 15/A was proved by PW 15 Dr. Shalini Girdhar. The relevant portion of it is as under:

“Internal Examination / Ante mortem Injuries:

1. Stab wound of size 2 X 8 cm horizontally placed over anterior auxiliary line (left side of chest) which was 5.5 cm from left nipple. 11.4 cm from the midline and 11.9 cm from left heel. It was showing acute angle towards medial end and wedge shaped with contused margin latterly. It has gone deep piercing subcutaneous tissue, muscles at 6th intercostals space surrounding haematoma plural cavity, lung (left) and finally gone into right ventricle of heart through interventricular sephim.

2. Stab wound of size 1.5 X 8 X 5 cm over lateral aspect of (left) buttock obliquely placed with acute angle

medically upward and wedge shaped latterly downward. It was 9 cm from left heel. It was muscle deep.

Opinion:

The cause of death in this case is hemorrhagic shock due to stab injury no.1 caused by sharpened edged weapon which is sufficient to cause death in ordinary course of nature. All injuries are ante mortem in nature caused by sharp edged weapon."

20. Before dealing with the submissions made by the counsel for the parties, it would be relevant to discuss the evidentiary value of testimony of injured witnesses.
21. In the case of ***Jarnail Singh v. State of Punjab***, (2009) 9 SCC 719 the Apex Court relying on its earlier judgments reiterated that special evidentiary status should be accorded to an injured witness. Relevant part of the judgment is reproduced as under:

*"28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In ***Shivalingappa Kallayanappa v. State of Karnataka***, 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.*

*29. In ***State of U.P. v. Kishan Chand***, (2004) 7 SCC 629, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In*

case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon. Thus, we are of the considered opinion that evidence of Darshan Singh (PW4) has rightly been relied upon by the courts below."

22. A similar view was taken by the Hon'ble Supreme Court in the case of ***Abdul Sayeed v. State of Madhya Pradesh***, (2010) 10 SCC 259, whereby the Apex Court discussed the evidentiary value of the testimony of an injured witness in the following words:

"26. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".

28. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

23. In light of the aforesaid dictum, we are of the view that the testimony of an injured witness is a highly corroborative piece of evidence. Unless highly compelling circumstances are established by the accused which casts a reasonable doubt over the statement of the injured witness, such statement can be safely relied upon by the Courts to convict the accused persons. In the present case, no such

compelling circumstances to discredit the statement of PW4, PW 11 and PW 12 Akhtar Ali have been established by the appellant.

24. The counsel for the appellant has argued that the present case is squarely covered under Exception 4 of Section 300 of the Indian Penal Code, which reads as under:

"300. Murder-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

It was further 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.

25. As far as the submission of counsel for the appellant that the case under Section 302 of the Indian Penal Code would not be made out against the appellant, it is necessary to understand what constitutes Culpable homicide and Murder. It will be useful to refer to the decision rendered by the Apex Court in the case of *Chacko @ Aniyan Kunju and Ors. v. State of Kerala*, reported at (2004) 12 SCC 269, wherein it was held as under:

“All "murder" is "culpable homicide" but not vice versa. Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type.

10. The academic of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304. Distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

1. Clause (b) of Section 299 corresponds with Clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under Clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of Clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause.

2. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under Clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given

knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In Clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding Clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between Clause (b) of Section 299 and Clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in Clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature."

26. In another case of ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh***, (2006) 11 SCC 444, the Hon'ble Supreme Court enumerated some of the circumstances relevant to find out whether there was any intention to cause death on the part of the accused. The Court observed as under:

"...Therefore, 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 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 premeditation. 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...”*

27. Further, in the case of ***State of Rajasthan v. Dhool Singh***, (2004) 12 SCC 546, the Hon’ble Supreme Court has observed that in order to determine whether there was intention to kill or not is to be determined while keeping in mind whether the injury was caused on vital body part and the nature of the weapon used. The number of injuries inflicted shall be irrelevant. The relevant part of the judgment is reproduced as under:

“13. In regard to the finding of the High Court that the prosecution has not even established that the respondent herein had acted with an intention of causing death of the deceased we must note that the same is based on the fact that

the respondent had dealt a single blow which according to the High Court took the act of the respondent totally outside the scope of Exception I to Section 300 IPC. Here again we cannot agree with the finding of the High Court. The number of injuries is irrelevant. It is not always the determining factor in ascertaining the intention. It is the nature of injury, the part of body where it is caused, the weapon used in causing such injury which are the indicators of the fact whether the respondent caused the death of the deceased with an intention of causing death or not. In the instant case it is true that the respondent had dealt one single blow with a sword which is a sharp-edged weapon measuring about 3 ft. in length on a vital part of body namely the neck. This act of the respondent though solitary in number had severed sternocleidomastoid muscle, external jugular vein, internal jugular vein and common carotid artery completely leading to almost instantaneous death. Any reasonable person with any stretch of imagination can come to the conclusion that such injury on such a vital part of the body with a sharp-edged weapon would cause death. Such an injury in our opinion not only exhibits the intention of the attacker in causing the death of the victim but also the knowledge of the attacker as to the likely consequence of such attack which could be none other than causing the death of the victim. The reasoning of the High Court as to the intention and knowledge of the respondent in attacking and causing death of the victim, therefore, is wholly erroneous and cannot be sustained.”

28. Similar view was taken by the Hon’ble Supreme Court in ***Arun Raj v. Union of India & Ors.***, JT 2010 (5) SC 1, wherein the Court observed as under:

“9. We now turn to second point urged on behalf of the appellant. It is contended by learned counsel that there was no intention on the part of the appellant to cause the death of the deceased and, hence, Section 304 Part II of the IPC which deals with culpable homicide not amounting to murder, will be attracted. Alternatively, it is contended that the appellant dealt one single blow on the deceased, and hence, intention to cause death cannot be attributed to the appellant and, hence, the act of the appellant will not fall under Section 302 of IPC but under Section 304 Part II.....

10) Essentially the ingredients for bringing an act under Part II of the Section are:-

(i) act is done with the knowledge that it is likely to cause death,

(ii) there is no intention to cause death, or to cause such bodily injury as is likely to cause death.

11) In the present case, there has been no sudden altercation which ensued between the appellant and the deceased in the present case. The deceased called the appellant 'gandu' following which there was a heated exchange of words between the two, the day before the murder. The next day, however, the appellant concealed a kitchen knife in his lungi and went towards the cot of the deceased and struck the deceased a blow on the right side of the chest, while the deceased was sleeping. The fact that the appellant waited till the next day, went on to procure a deadly weapon like a kitchen knife and then proceeded to strike a blow on the chest of the appellant when he was sleeping, points unerringly towards due deliberation on the part of the appellant to avenge his humiliation at the hands of the appellant. The nature of weapon used and the part of the body where the blow was struck, which was a vital part of the body helps in proving beyond reasonable doubt, the intention of the appellant to cause the death of the deceased. Once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows....."

29. In the case of **Rahimbux v. State of MP**, reported at AIR 2008 SC 3111, the Hon'ble Supreme Court observed that the intention which is predominantly present in the mind of the accused can be inferred from the murderous blow on the vital part of the deceased. Relevant para of the case has been reproduced below:

" the intention of the accused is apparent, he intended to inflict serious injury to Aslam Khan but unfortunately on his failure he made the deceased a victim. Therefore, from this his intention is apparent. Nobody, chases person with sword for any benevolent purpose. It is unfortunate, instead of causing the death of Aslam Khan the accused caused the death of his brother. It is nothing but change of malice from one brother to another brother. From these facts we are of opinion that it is not a case in which the benefit of Section 304 I, I.P.C. or Section 304 II, I.P.C. can be given to the accused.

..... It is the intention which was predominantly present in his mind when the accused chased Aslam Khan and therefore, this intention he satisfied by inflicting the murderous blow on the deceased on his vital part of body. Therefore, under these circumstances, we are of opinion that the conviction of the appellant under Section 302, I.P.C. is well founded and there is no ground to interfere in this appeal."

30. We have bestowed our best of consideration to the facts of the present case. There are no two opinions that the present injury was inflicted on the deceased by the appellant as supported by the testimony of injured witnesses PW 11 and PW 12 which is further corroborated by the medical evidence. So far as voluntarily causing injury to the deceased by the accused is concerned, the same has been fully substantiated by the relevant evidence. In fact, the only question is whether offence under Section 302 of the Indian Penal Code is made out or Section 304 Part I or 304 Part II of the Indian Penal Code is made out.
31. In the case of ***Chacko @ Aniyam Kunju and Ors.***(supra), the Apex Court held that for the purpose of awarding a punishment having regard to the gravity of the offence the IPC recognises three degrees of culpable homicide, (i) culpable homicide of the first degree – gravest form of culpable homicide as defined in Section 300 as murder; (ii) culpable homicide of the second degree – this is punishable under the first part of Section 304; and (iii) culpable homicide of the third degree – this is the lowest form.
32. It has been submitted before us that the appellant at the time of the incident was a college student. Relying on the evidence, it has been urged that the two groups belonging to the boxing team and hockey team of a college were involved in other brawl. It is the case of the

prosecution that the Trial Court has rightly reached a finding of guilt and convicted the appellant and sentenced him to life imprisonment for the offence under Section 302 IPC. According to the prosecution, as per the testimony of PW-4, Rajesh, on 30.04.2001, there was exchange of words between appellant and deceased which led to a scuffle over the use of bathroom in the college. Resultantly, the appellant had decided to murder the deceased. It has also been urged that there was pre-meditation based on a prior enmity. While it is the case of the appellant that the incident of 30.04.2001 which was over a minor incident has unnecessarily been linked to the incident of 08.05.2001. It has been contended that there was no pre-meditation and there was no element of criminality. One fatal injury was inflicted. The appellant did not act in a cruel and unusual manner.

33. In the case of ***Pulicherla Nagaraju @ Nagaraja Reddy***(supra), the Apex Court took into account that many petty or insignificant incidents, plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word even an objectionable glance, may lead to altercation and group clashes culminating into deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention or no pre-meditation and may not be any criminality.
34. Keeping above factors in mind and for the purposes of deciding whether a case under Section 302 IPC is made out or a case under Section 304 Part I or Part II IPC is made out, we deem it appropriate to again reflect on some of the testimonies. While PW-4, Rajesh has testified with regard to the altercation on 30.04.2001. For the purposes of deciding this issue, from the evidence of PW-4, we may notice that after 30.04.2001, this is second incident of 08.05.2001. The witness Rajesh has testified that he had taken the examination

which was not taken by the appellant. On hearing a noise from outside the room near the main gate entries, he reached there and found appellant and other members of the boxing team and some outside boys along with him. And thereafter, he has described the quarrel as also the fact that appellant had stabbed a member of the hockey team. Although during cross-examination, he had testified that he did not see any knife in the hand of the appellant nor did he see appellant inflicting knife blows with his own eyes to deceased Ajay. But, we are of the view that this witness has shifted his stand from the stand taken by him in his examination-in-chief. The testimony of this witness is corroborated by testimony of PW-11, Mukesh as also by PW-12 Akhtar.

35. Another important witness is PW-18, Mahender Singh, Reader, Physical Education. He testified that on the fateful day he was working as a Deputy Superintendent Examination from 3:00 p.m. to 6:00 p.m. After the examination was over, he had heard noise about a quarrel and he found hockey team members were being beaten by boxers. He separated them. Boxers went out and he kept hockey players inside the building and told them to stay in. He again started counting the copies and heard noise and heard that one person has been stabbed. He had also named the appellant as one of the persons, who he had separated. He had not seen the incident. But, evidence of this witness gains importance for the reason that the actual incident of stabbing was the second incident of quarrel on 08.05.2001 between members of the boxing team and the hockey team. It has come in evidence that the deceased had also not taken part in the examination. Thus, in our view, in the present case it cannot be said that the appellant had come to the college with a motive and with pre-meditation to commit murder of the deceased.

In case such was the motive and if the intent was to murder him, he would not have done so at the place where presence of deceased was certain but the evidence shows that it was a quarrel between two groups which started on the fateful day itself. The deceased was part of the hockey team and as testified by PW-18, Mahender Singh, the deceased would have been brought inside being a member of the hockey team as testified by him. The hot blood of these college youngsters of the hockey team and the boxing team reveal the intent was to show force and superiority by one against the other and the incident of 30.04.2001 cannot be used as a motive as the boys belong to the same college and would have come across each other on every single day after 30.04.2001 and 08.05.2001 was not a special date or occasion for the offence to have been committed. To the contrary, as per the testimony of PW-18, there was a quarrel. On hearing noises, he went down, he separated the two groups, brought members of the hockey team inside the building, but a second fight erupted where on the spur of the moment, the appellant inflicted one fatal blow with a knife on the deceased in the fight of two groups.

36. As per the testimonies of PW-4, 11 and 12, besides the appellant and the deceased, there were other boys and it was a case of free for all and the knife blow could have been inflicted on anyone. In this case, it cannot be said that the blow was actually aimed at the fatal part of the body as it was a free for all had the intent been to murder and thus, it sans the element of intent to murder and in the heat of passion the injury was inflicted. The appellant did not take any undue advantage nor acted in a cruel or unusual manner.
37. In the case of *Sukhbir Singh v. State of Haryana* reported in (2002) 3 SCC 327, the Appellant caused two *bhala* blows on the vital part of the body of the deceased that was sufficient in the ordinary course of

nature to cause death. The High Court held that the Appellant had acted in a cruel and unusual manner. Reversing the view taken by the High Court the Hon'ble Supreme Court held that all fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of Exception 4 of Section 300 Indian Penal Code. In cases where after the injured had fallen down, the Appellant did not inflict any further injury when he was in a helpless position, it may indicate that he had not acted in a cruel or unusual manner. The Court observed as under:

"19. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 Indian Penal Code. After the injuries were inflicted and the injured had fallen down, the Appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with Bhala caused injuries at random and thus did not act in a cruel or unusual manner.

(emphasis supplied)

38. In the case of ***V. Subramani v. State of Tamil Nadu***, reported at (2005) 10 SCC 358, there was some dispute over grazing of buffaloes. Thereafter, there was altercation between the accused and the deceased. The accused dealt a single blow with a wooden yoke on the deceased. Altering the conviction from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code, the Hon'ble Supreme Court clarified that it cannot be laid down as a rule of universal application that whenever death occurs on account of a single blow, Section 302 of the Indian Penal Code is ruled out. *The fact situation has to be considered in each case. Thus, the part of the body on which the blow was dealt, the nature of the injury and the type of the weapon used will not always be determinative as to whether an accused is guilty of murder or culpable homicide not*

amounting to murder. The events which precede the incident will also have a bearing on the issue whether the act by which death was caused was done with an intention of causing death or knowledge that it is likely to cause death but without intention to cause death. It is the totality of circumstances which will decide the nature of the offence.

39. In the case of **Golla Yelugu Govindu v. State of Andhra Pradesh**, reported at (2008) 16 SCC 769, at about 2:00 A.M. when the deceased was in the house there was exchange of hot words and quarrel between the accused and the deceased. This happened in the presence of the children. Suddenly the accused hacked the deceased in the neck with a sickle and the deceased fell down and the accused once again hacked on the neck and left ear of the deceased causing severe bleeding injuries. It resulted in the death of the lady. The appellant therein submitted that Section 302 of the Indian Penal Code has no application to the assault made during the course of a sudden quarrel and Exception 4 of Section 300, of the Indian Penal Code applied. The Hon'ble Supreme Court discussing the law in detail converted the conviction to Section 304 Part I of the Indian Penal Code.
40. In the case decided by this Court in Crl.A.No.134/2009 titled as *Jagtar Singh @ Jagga @ Ganja v. State of Delhi*, there were two injuries on the neck and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of the deceased, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the appellant; the latter was agitated and confronted the deceased in the

first part of the incident; on the day of occurrence. It was held by this Court that though the appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence under Section 304 Part I of the Indian Penal Code in which intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

41. Our view is further fortified by the judgment of the Hon'ble Supreme Court in ***Sudhakar v. State of Maharashtra***, reported in 2013 (1) JCC 266 wherein it was held as under:

“Therefore, unmindful of the consequences, though not in a cruel manner the Appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by Learned Counsel for the Appellant, we are convinced that the offence alleged and as found proved against the Appellant can be brought under the First Part of Section 304 of Indian Penal Code. Accordingly, while affirming the conviction of the Appellant, we are only altering the same as falling under Section 304 Part I of Indian Penal Code in place of Section 302 of Indian Penal Code.”

42. Considering the facts and the circumstances of the case, the background of the matter pertaining to two groups of college students being hockey team and boxing team, two incidents of the same date within a very short span of time, number of injuries on vital part, conduct of the appellant before and after the incident, and the sudden altercation and exchange of hot words, the occurrence took place without premeditation in the heat of passion upon a sudden quarrel, we are of the considered view that it is a case of culpable homicide not amounting to murder within the ambit of Exception 4 of Section 300 of the Indian Penal Code.

43. In the result, we allow this appeal but only to the extent that instead of Section 302 of the Indian Penal Code, the Appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part I of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years. The fine imposed upon the Appellant and the default sentence awarded to him shall remain unaltered.
44. The appeal is disposed of in the above terms in modification of the order passed by the Court below. The appellant is entitled to have the benefit of deduction of the period already undergone.
45. With the above modification, the appeal is allowed in part.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

February 29th, 2016
gr/pst