

A.F.R.

Neutral Citation No. - 2024:AHC:180489

Court No. - 82

Case :- CRIMINAL APPEAL No. - 1238 of 2023

Appellant :- Rakesh Kumar

Respondent :- State of U.P.

Counsel for Appellant :- Rahul Saxena, Ram Bahadur Singh

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Heard Sri Rahul Saxena, learned counsel for the appellant, Sri Ashok Kumar Singh, learned AGA for the State and perused the record.

2. The instant criminal appeal has been preferred by the appellant- **Rakesh Kumar** against the judgement and order dated 02.12.2022 along with further order dated 03.12.2022 recording the conviction of the accused-appellant under Sections 304 Part-I, 504, 506 IPC and further sentencing him for ten years rigorous imprisonment with fine of Rs.20,000/- along with default stipulation under Section 304 (I) IPC, one year rigorous imprisonment with fine of Rs.3,000/- along with default sentence under Section 504 IPC and two years rigorous imprisonment with fine of Rs.5000/- along with default sentence under Section 506 IPC.

3. The prosecution story as culled out from the First Information Report is that the informant and accused side both were having some previous land dispute and when on 06.04.2016 at 07:45 a.m. in a fracas between both the

sides Jeevan Lal the father-in-law of the brother of the informant Phool Singh tried to mitigate but the accused Rakesh made an assault over the head of Jeevan Lal with spade. Pramod Kumar and Anil Kumar also inflicted the injuries to Jeevan Lal. Earlier N.C.R. was lodged in the matter on oral dictation of the informant but subsequently on the basis of medical reports the aforesaid N.C.R. No.40 of 2016 was converted into Case Crime No.309 of 2016, under Sections 323, 504, 506, 324, 325 IPC.

4. Investigation started and after completing the formalities of investigation, charge sheet against the accused persons, namely, Rakesh Kumar, Pramod Kumar and Anil Kumar under Sections 308, 323, 324, 504, 506 IPC was submitted to the court. Subsequently on account of death of injured Jeevan Lal a supplementary charge sheet under Sections 323, 324, 504, 506, 304 IPC was submitted against all the accused persons before the Court.

5. Charge under Sections 323/34, 324/34, 302/34, 504, 506 IPC were framed against the accused persons. They denied all the charges and claimed for trial.

6. To bring home the charges, the prosecution relied upon the oral evidence and P.W.-1 Phool Singh, the informant P.W.-2 Ramesh Chandra, P.W.3 Mahipal Singh, eye witness P.W.-4 Dr. Mahavir Singh, P.W.-5 Dr. Pawan Kapahi, P.W.-6 Dr. Jagdish Prasad, radiologist P.W.-7 S.I. Ajay Singh, the Investigating Officer, P.W.-8 S.I. Omvir Singh witness of inquest, P.W.-9 S.I. Pradeep Kumar, the

scribe, P.W.-10 S.I. Surendra Kumar, the second Investigating Officer and P.W.-11 Constable Rameshwar Dayal, G.D. writer were examined and to corroborate the oral evidence the prosecution further relied upon the documentary evidence as post-mortem report Ex.Ka-1, medicolegal examination report Ex.Ka-2, supplementary report Ex.Ka-3, X-ray report Ex.Ka-4, site plan with index Ex.Ka-5, charge sheet Ex.Ka-6, panchayatnama Ex.Ka-7, police form no.13 Ex.Ka-8, photo nash Ex.Ka-9, sample of seal Ex.Ka-10, letter R.I. and letter C.M.O. Ex.Ka.-11 & Ex.Ka.-12, N.C.R. Ex.Ka.-13, second charge sheet Ex.Ka.-14 and x-ray plate material Ex.-1.

7. After closure of the prosecution evidence, the incriminating evidence and circumstances were put to the accused persons in their statement under Section 313 Cr.P.C. wherein they claimed the prosecution evidence to be false and fabricated and pleaded their innocence.

8. D.W.-1 K.C. Mishra, pharmacist, D.W.-2 Dr. Pawan Kapahi and D.W.-3 Head Constable Prempal Singh were examined as defence witnesses and copy of medical reports and N.C.R. Ex.Kha.-1 to Ex.Kha.-4 were proved in evidence.

9. P.W.-1 Phool Singh is the informant of the case. He depose in his examination-in-chief that on 06.04.2016 at about 07:45 A.M. Jeevan Lal the father-in-law of his brother was trying to passify the accused persons, who were having a land dispute with the informant side and in the meantime, accused Rakesh made an assault upon

the head of Jeevan Lal with his axe from behind him and accused persons Pramod Kumar and Anil Kumar also started beating him and when the witnesses came over there the accused persons fled away. The injured was medically examined on 17.09.2016 but succumbed to his injuries.

10. P.W.-2 Ramesh Chandra is claimed to be the eye witness of the incident. In his examination-in-chief, he supports the deposition made by P.W.-1 in his examination-in-chief and affirms the fact that due to the assault made by Rakesh with axe Jeevan Lal got head injury and at the same time other accused persons Anil and Pramod Kumar also assaulted him. Jeevan Lal sustained injuries and was sent to District Hospital and during prolonged treatment on 17.09.2016 he died of the said injuries.

11. P.W.-3 Mahipal Singh is also the eye witness of the case and he has deposed ocular evidence regarding the incident. He corroborates the testimony of P.W.-1 & P.W.-2 in his examination-in-chief and assigns specific role of assault upon the head of Jeevan Lal with axe to accused Rakesh Kumar and states that Pramod and Anil also participated into the commission of crime. He further states that Jeevan Lal had been on bed during his treatment and subsequently he died of the injuries sustained in the incident.

12. P.W.-4 Dr. Mahabir Singh has performed the post-mortem of the dead body of the deceased Jeevan Lal on

17.09.2016. He also states that the death of the deceased was caused due to coma as a result of old ante-mortem head injury and according to him the death of the deceased took place about one day ago. The post-mortem has been proved by him as Ex.Ka.-1. He states that during post-mortem following ante-mortem injuries were found upon the body of the deceased Jeevan Lal.

“(i) An old stitched marked present on the (L) frontal aspect of the skull size 5 cm X 1 cm- 5 stitched marked present transversely 6 cm above the (L) eye below of (L) side of frontal boni.

(ii) Bed sore mark present over the lumbosacral joint size 5 cm X 4 cm just below the lumbosacral joint.

(iii) PM staining present over the dependent part of the body.”

13. P.W.-5 Dr. Pawan Kapahi was the first medical examiner who medically examined the injured Jeevan Lal on 06.04.2016 at C.H.C. Amariya He deposes that on the basis of chitthi majroobi he had medically examined Jeevan Lal on 06.04.2016 who was brought by constable Sant Ram and found following injuries:-

“(i) incised wound 6 cm x 1.25 cm bone deep over left side of forehead about 5 cm above left eyebrow advised x-ray head.

(ii) Complaining of pain over left hand and left back.”

14. The injured was medically examined on 06.04.2016 and in the x-ray of head Ex.Ka.-4 fracture in skull bone was seen and in the supplementary report Ex.Ka-3 it was

reported that head injury (skull bone) was found only the injury is grievous in nature.

15. The injured was referred for X-ray the injury was likely to be caused by some sharp edged weapon. This witness also proves the medical report as Ex.Ka.-2 and supplementary medical report as Ex.Ka.-3. He further states that the head injury was skull wound fracture, it was grievous in nature and might be dangerous for life. He further states that the injury upon the head of the injured was likely to be caused by some sharp edged weapon like axe on 06.04.2016 at 07:45 A.M..

16. P.W.-6 Dr. Jagdish Prasad is the radiologist who performed the x-ray of injured and he deposes that in the x-ray of injured Jeevan Lal it was found that skull wound was fractured and he prepared the x-ray report on the basis of x-ray film. He further proves the x-ray report Ex.Ka.-4 and x-ray plate as material Ex.-1 and Ex.-2.

17. P.W.-7 S.I. Ajay Singh is the first Investigating Officer of the case who has proved the proceedings of investigation in his testimony and recorded the statement of witnesses of the case. He also prepared site plan of the place of occurrence and submitted charge sheet which he proves as Ex.ka.-5 and Ex.Ka.-6 respectively.

18. P.W.-8 S.I. Ombir Singh is the witness of inquest. He proves inquest proceedings in his evidence and states that all the proceedings took place at the house of deceased Jeevan Lal. He further proves the inquest report

as Ex.Ka.-7 and police part no.13 photo nash, sample seal, report R.I. and report to C.M.O. as Ex.Ka.8 to Ex.Ka.-12 respectively. The dead body of the deceased was sent for post-mortem by this witness.

19. P.W.-9 S.I. Pradeep Kumar the scribe of N.C.R. who states in his deposition that on the oral dictation of informant he had lodged N.C.R. No.40 of 2016 dated 06.04.2016 at about 08:45 AM while working as under trainee S.I. in police Station Amariya. He further proves N.C.R. as Ex.Ka.-13.

20. P.W.-10 S.I. Surendra Kumar is the second Investigating Officer of the case. He deposes that earlier S.I. Ajay Singh had submitted charge sheet in this matter on 29.05.2016. Subsequently on 10.10.2016 investigation was handed over to him and he proceeded to record the statement of witnesses and thorough investigation submitted charge sheet Ex.Ka.-14 to the court.

21. Lastly, P.W.-11 Constable Rameshwar Dayal was examined by the prosecution who proves the G.D. Rapat No.10 dated 06.04.2016 at about 08:45 AM in the handwriting of S.I. Pradeep Kumar as secondary witness and proves it as Ex.Ka.-14.

22. The prosecution case as well as the evidence on record have been assailed by the learned counsel for the appellant on various grounds. It has been vehemently submitted that the evidence rendered by the prosecution is not clinching and consistent to make it reliable. It is

further submitted that the occurrence as per prosecution case took place on 06.04.2016 whereas the death of the deceased occurred on 17.09.2016 about more than five months of the incident. It is further submitted that the charge sheet was earlier submitted under Sections 308, 323, 324, 504, 506 IPC and subsequently after death of the deceased, it was converted under Section 304 IPC by a supplementary charge sheet. It is further submitted that the prosecution has tried to conceal the origin and inception of the occurrence. The accused persons also sustained injuries in the incident but the prosecution nowhere explained the injuries of the accused-appellant and the learned trial Judge completely ignored this aspect and he, in an arbitrary manner totally discarded the defence evidence adduced in the form of oral evidence of D.W.-1, D.W.-2 & D.W.-3, who respectively proved the injury reports for the injuries sustained by the accused side and the N.C.R. lodged by the accused persons. It is further submitted that the place of occurrence is not definite and the prosecution evidence is not cogent in this aspect. It is further submitted that the medical evidence does not corroborate the prosecution version. F.I.R. has been lodged belatedly without any proper explanation for the same and due to an old dispute between the parties, the appellant has been falsely roped in this matter.

23. On the other hand learned AGA vehemently opposed the contentions made by the learned counsel for the appellant. It is submitted that the present case is based on eye witness account. There is no possibility of false

implication of the appellant. The F.I.R. of this case is prompt and medical evidence corroborates the prosecution version. The death of the deceased has been occurred although late but due to the injuries sustained by him in the occurrence. It is further submitted that the specific role of accused Rakesh has been assigned to make a blow upon the head of the deceased by use of spade.

24. This Court analysed the prosecution oral evidence available on record and the documentary evidence as well produced in support of oral evidence. P.W.-1 Phool Singh narrating the incident states that when the altercation between both the sides was going on, Jeevan Lal tried to mediate and meanwhile accused Rakesh made a blow of spade upon the head of deceased from behind and other co-accused persons Pramod and Anil also started beating him. They were hurling abuses and threatened the injured and informant for dire consequences. The report of this case was lodged in the police station on his dictation. The head injury was proved fatal for Jeevan Lal and ultimately on 17.09.2016 he expired. In the cross examination, he states that the accused Pramod and Anil assaulted the deceased by fisting and kicking and not by lathi for about five minutes and he himself was an eye witness of the incident. He further states that Jeevan Lal was hospitalized for about 10-12 days and then he was discharged by the doctor. Later on he was taken to the hospital of Dr. S.K. Agrawal and after treatment he was brought to his house and later on Jeevan Lal went away

to his village Mursek where he had been under treatment and subsequently died.

25. The relevant factor to be ascertained in the instant appeal is that whether death of the deceased was caused due to the injury sustained by him in the alleged occurrence and the effect there of continued for about more than five months.

26. P.W.-5 who medically examined injured Jeevan Lal on 06.04.2016 states in his evidence that the injury in the form of skull bone fracture was of grievous nature and might be dangerous for life. It was inflicted by some sharp edged weapon. In the cross examination, he has categorically stated that the injury cannot be sustained by falling, it was inflicted when the deceased was standing.

27. P.W.-6 the radiologist also proves x-ray report Ex.Ka;-4 and x-ray plate as material Ex.-1 and makes a positive statement that fracture was found in the x-ray and in his opinion, it might be caused by use of some blunt object.

28. The Court also took into account the evidence of P.W.-1 the informant who in his examination-in-chief states that the injured had been under treatment for his head injury which was not cured and ultimately he died on 17.09.2016 due to the said injury.

29. In his cross examination P.W.-1 states that the deceased Jeevan Lal sustained only one injury in the left

side of his head. Further, he states that the deceased had been under treatment for 10-12 days and then he was discharged by the doctor. Subsequently, he was taken from the District Hospital to Dr. S.K. Agrawal and had been under treatment at his residence. Further, he states that after being discharged from District Hospital Jeevan Lal went to his village where he had been under treatment. P.W.-2 gives ocular version of the incident and as per his statement he tried to rescue the deceased at the time of the occurrence. He was hospitalized and he himself had visited him in the hospital for 3-4 times. He had been lying upon the cot due to his injuries and subsequently he collapsed. He also states that after sustaining the injury, Jeevan Lal was not conscious and he never spoke a single word till death.

30. P.W.-3 Mahipal, who intervened during the fracas between both the parties also states that when accused Rakesh inflicted injury upon the head of Jeevan Lal with the aid of spade, he fell down and a cloth was tied over his head. Jeevan Lal has been bedridden and died of his injuries. He had seen one head injury to Jeevan Lal.

31. P.W.-8 S.I. Ombir Singh, who conducted the inquest proceedings states in his cross examination that none of the panchas opined that deceased died of his old injury.

32. P.W.-7 the first Investigating Officer of the case, who has performed the proceedings of investigation and Section 308 IPC was added by him to the matter on the basis of supplementary medical report of injured Jeevan

Lal. However he makes no statement that on any point of time he tried to record the statement of Jeevan Lal, till he remained alive.

33. P.W.-10 S.I. Surendra Kumar, the second Investigating Officer states that none of the witnesses disclosed before him that the deceased was assaulted by the accused persons rather they opined that the death of the deceased was caused due to the old head injury but how the said injury was sustained by him could not be disclosed by any witness.

34. In the post-mortem report Ex.Ka.-1 dated 17.09.2016 it is mentioned that the deceased sustained three injuries and an old stitched mark was present on his left frontal aspect of the skull and cause of death in the post-mortem was found coma as a result of old ante-mortem head injury. The said report reveals that bed sore was developed to the deceased which reveals the fact that the deceased had been bedridden for a long period of time which cause bed sore to him.

35. It is very significant to add that after discharge from the hospital the deceased constantly remained in his village. The prosecution evidence is silent on the point as to how the deceased was getting treatment when he was bedridden and staying in his village. It is significant to note that P.W.-1 in his evidence admits that the patient was discharged from the hospital which implies that he was in a good condition and out of the danger. The aforesaid evidence further indicates that for a period of

about five months, injured Jeevan Lal was lying on bed in his village without any proper treatment. In these circumstances, it was quite probable that he might be developed some infection in his head injury.

36. P.W.-2 in his cross examination states that Jeevan Lal after receiving the injury never spoke till death. There is no cogent evidence on record to support his statement. It is significant to note that during the period of about five months, Jeevan Lal was never interrogated by the Investigating Officer and no statement made by Jeevan Lal under Section 161 Cr.P.C. is available on record. The Investigating Officer definitely was in a position to record his statement during a long span of time but to the utter surprise to this court, the Investigating Officers P.W.7 and P.W.-10 never bothered to record his statement.

37. In view of the aforesaid evidence and circumstances of this case, although it appears that the injury was caused to the deceased Jeevan Lal not with an intention to cause his death otherwise there might be some more blows of spade but the assailant definitely had the knowledge that the blow of spade from the back side upon the head of the deceased was likely to cause his death and this conclusion takes this case away from the purview of Section 304(I) IPC and the case in hand falls within the purview of Section 304(II) IPC.

38. The prosecution case is well supported by the medical evidence. The witnesses of fact P.W.-1, P.W.-2 and P.W.-3 corroborate the prosecution version in

material terms. They are the eye witnesses of the case and they are native of the same village where the occurrence took place. Their presence over the place of occurrence is natural. They are not inimical to the accused side and their ocular version consists of no such statement which might be adverse to the prosecution. The presence of P.W.-2 and P.W.-3 on the spot has been corroborated by P.W.-1. Three witnesses have given ocular evidence to the fact that spade was used by accused Rakesh to make a blow upon the head of Jeevan Lal during the occurrence. The deceased Jeevan Lal is the father-in-law of Suresh, who happens to be the brother of P.W.-1 Phool Singh. Since the occurrence happened near the house of P.W.-1, his presence at the time of occurrence was very probable.

39. P.W.-1 further states that Pramod and Anil had given kicking and fisting blow to Jeeval Lal and they did not use of Lathi, Danda in his deposition. The aforesaid two accused persons have been acquitted from all the charges levelled against them by giving benefit of doubt to them by the learned trial court.

40. This Court has got an opportunity to peruse and scrutinize the evidence rendered by the defence side, both oral and documentary.

41. D.W.-1 K.C. Mishra, Chief Pharmacist in his evidence produced the bedhead ticket relating to deceased Jeevan Lal wherein it has been mentioned that deceased was admitted to the district hospital on 06.04.2016 at

01:40 PM and was subsequently discharged on 19.04.2016 at 11:00 AM. The bedhead tickets have been proved by him as Ex.Kha-1 and Ex.Kha-2. He also states that usually the patient is discharged from the hospital after being cured.

42. D.W.-2 Dr. Pawan Kapahi had treated injured- Rakesh Kumar who was brought by the constable Sant Ram in injured condition. Further D.W.-2 states that he found one incised wound 5 cm x 0.7 cm bone deep 7 cm above from left eyebrow over the forehead and besides it the patient was complaining of pain in his left hand and left side of wrist. The injury report has been proved by him as Ex.Kha-3 and in the cross examination D.W.-2 explains that the injury although simple, could not be manipulated. The medical examination of injured- Rakesh Kumar was conducted by him on 06.04.2016 at 09:50 AM.

43. D.W.-3 Head Constable Prem Pal Singh is the scribe of N.C.R. No.41 of 2016, under Sections 323, 504, 506 IPC on oral dictation of informant Smt. Shankuntala Devi against Vikash S/o Bhupesh, Sher Singh S/o Nanhe Lal, Prem Shanker and Suresh S/o Nanhe Lal. On the basis of the original register, he has proved the copy of N.C.R. as Ex.Kha-4.

44. Learned counsel for the appellant submits that the injury report pertaining to injured- Rakesh Kumar reveals that he had received injuries almost at the same time when the injured Jeevan Lal received serious blow. He further submits that there is a cross case of the present

matter and the prosecution has tried to conceal the origin and real facts relating to the occurrence.

45. P.W.-1 in his cross examination states that accused Rakesh Kumar had received no injury and he has no knowledge about his medical examination. Further, he admits that one case under Section 354 IPC is pending against him lodged by the wife of Pramod Kumar. He has been cross examined on the point of place of occurrence but whatsoever he has sketched finds supports from the site plan as Ex.Ka-5.

46. In the same fashion, P.W.-2 the deceased Jeevan Lal continued to be ridden on bed and he died of the injuries sustained by him. This witness states nothing about the injuries sustained by accused Rakesh Kumar. P.W.-3 while responding to the defence case denies to see any injury to accused/injured- Rakesh Kumar.

47. P.W.-7 the Investigating Officer explains that no weapon or spade was recovered by him from the place of occurrence. He further states that the medical report in respect of accused Rakesh was not annexed by him with the case diary because no such medical paper was given to him. In the same manner P.W.-10 the second Investigating Officer also states that he had seen no injury to accused Rakesh Kumar at the time of his arrest.

48. It is trite law that the evidence rendered by the defence side has the same legal value as prosecution evidence enjoys. From the perusal of the aforesaid

evidence, it appears that at the date and time of occurrence as claimed by the prosecution, the accused Rakesh Kumar also sustained injuries and N.C.R. was also lodged against the informant side in this regard. His injuries were examined by D.W.-2 who prepared the injury report as Ex.Kha-3.

49. A legal question was raised by the learned counsel for the appellant as to what was the reason for the prosecution to conceal the real facts about the incident. Further, it was a bounden duty of the prosecution to explain the injuries sustained by the accused Rakesh Kumar but an attempt was made to conceal it.

50. This issue takes this Court to be guided by the established legal principles governing the duty of the prosecution to explain the injuries on the person of the accused, who claims to receive it in the same incident wherein he is facing the trial.

51. Further, the aforesaid discussion leads this Court to draw a conclusion that the deceased Jeevan Lal received serious blow of spade during the occurrence by the hand of accused appellant-Rakesh and after medical aid for some time ultimately he died of the injuries sustained by him in the occurrence. The evidence of witnesses of fact as well as medical evidence and evidence rendered by the Investigating Officers of the case fully prove the prosecution case.

52. So far as the non-explanation of the injuries on the body of the accused-appellant-Rakesh Kumar is concerned, it is true that prosecution is under duty to explain the injuries sustained by the accused in the same transaction but the injuries to Rakesh Kumar as deposed by D.W.-2 Dr. Pawan Kapahi were simple in nature and now the question arises as to whether the prosecution is under compulsion to explain each and every minor injury caused to the accused. It is quite possible that in order to rescue the injured/deceased, the informant side might have used some force against the assailants thereby causing some minor injuries to one of them. In the similar circumstances, the Hon'ble Apex Court in the case of *Nand Lal and others Vs. State of Chhattisgarh (2023) 10 SCC 470* held that 'injuries on the person of accused are not material when the injuries sustained by him are minor and superficial or, where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of omission on the part of the prosecution to explain the injuries.' It is relevant to remind that despite concealing some facts the genesis and origin of the incident has not been concealed by the prosecution in this case. All the witnesses state in the same tone that as soon as Jeevan Lal, the deceased tried to mitigate in the quarrel and intervened in the dispute but meanwhile accused Rakesh Kumar made a serious blow upon his head with a spade causing serious injury to him.

53. Hence, the evidence adduced by the prosecution is sufficient to record the conviction of the present accused appellant but the court has to take one caution as well. The conviction of the accused-appellant has been recorded under Section 304-I IPC. It has been vehemently argued by the learned counsel for the appellant that since the appellant had no intention to do away with the deceased and his attack with the spade upon the deceased happened in the spur of moment without any pre-meditation and in this sequence a request has been made by the learned counsel for the appellant to alter the conviction of the appellant from the Section 304-I IPC to Section 304-II IPC.

54. The evidence on record is explicit to show that the blow of spade was made by the appellant upon the head of the deceased not with the intention of causing his death or of causing such bodily injury which is likely to cause death. It reveals from the evidence that the act done by the appellant may be taken as an act done with the knowledge that it is likely to cause death or to cause such bodily injury as is likely to cause death but without any intention to cause death.

55. The provisions of Section 304 IPC are reproduced as herein-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.”

56. No doubt the evidence on record clearly shows that the appellant at no point of time had any intention to do away with Jeevan Lal. Although he might have a knowledge of such a result of his act. A reference may be made of the case of ***Anbazhagan Vs. The state represented by the Inspector of Police 2023 INSC 632*** (date of judgement July 20, 2023) wherein the Hon’ble Apex Court in almost similar matter held that it would be proper to hold that ‘intent’ and ‘knowledge’ cannot be equated with each other. They cannot be different things. Sometimes, if the consequence is so apparent, it may happen that from the knowledge, intent may be presumed. But it will not mean that ‘intent’ and ‘knowledge’ are the same. Knowledge will be only one of the circumstances to be taken into consideration while determining or inferring the requisite intent.

57. It cannot be lost sight of that after sustaining the injury, the deceased remained alive for so many days and at the cost of repetition it is also to be impressed upon that no second blow was made by the appellant upon the

person of the deceased which negates any intent or intention on the part of the appellant to kill the deceased, yes of course he might have the knowledge of the consequence of his act.

58. Hence, in the entire facts and circumstances of this case, the nature of the weapon used the circumstances in which only one blow was inflicted, the previous disputes between the parties, the death of the deceased occurring long time after the occurrence, the act done by the appellant in the spur of moment and in the totality of other circumstances, this Court is of the opinion that the appellant could be attributed the knowledge that he was likely to cause the injury on the head of the deceased which was likely to cause his death. Accordingly, the appellant is shown to commit an offence under Section 304 Part-II IPC and he must be convicted for the same. With the aforesaid observations, in the case of **Anbazhagan (supra)** the Hon'ble Apex Court converted the conviction and sentence recorded against the appellant accused under Section 304-I IPC to Section 304-II IPC.

59. In **Anbazhagan (supra)** case, the Hon'ble Supreme Court illustrated some cases and held that:-

“In Chamru, Son of Budhwa v. State of Madhya Pradesh, AIR 1954 SC 652, in somewhat similar circumstances, where there was exchange of abuses between the two parties both of whom were armed with lathis, they came to blows and in the course of the fight that ensued, the accused struck a lathi blow on the head of the deceased which caused a fracture of the skull

resulting in the death. In view of the fact that the accused had given only one blow in the heat of the moment, it was held that all that can be said was that he had given the blow with the knowledge that it was likely to cause death and, therefore, the offence fell under Section 304, Part II of the IPC. In Willie (William) Slaney v. The State of Madhya Pradesh, AIR 1956 SC 116, there was, as here, a sudden quarrel leading to an exchange of abuses and in the heat of the moment a solitary blow with a hockey-stick had been given on the head. The Court held that the offence amounted to culpable homicide not amounting to murder punishable under Section 304, Part II.”

60. Recently in *Khokan Alias Khokhan Vishwas Vs. State of Chhattisgarh, (2021) 2 Supreme Court Cases 364*, the Hon’ble Supreme Court in almost similar circumstances modified the sentence under Section 302 IPC for life imprisonment for the offence under Section 304 Part-I IPC sentencing the convict to the period already undergone by him which was 14.5 years in that case.

61. In view of that this Court is also of the view that the conviction of the present appellant under Section 304-I IPC may be converted to an offence under Part-II of Section 304 IPC, particularly keeping in mind the fact that the first part of Section 304 IPC would apply when there is guilty intention whereas present is a case of guilty knowledge.

62. Resultantly, the appeal is partly **allowed**. The conviction of the appellant recorded by the learned trial court under Section 304-I IPC is converted to Section 304

Part-II IPC and further he is sentenced to rigorous imprisonment for a period of five years in place of 10 years rigorous imprisonment recorded by the learned trial court and in the same fashion the fine of Rs.20,000/- as imposed by the learned trial court is also modified to Rs.10,000/- with default sentence of three months. The impugned judgement shall be intact in respect of the conviction and sentence recorded for the offence under Sections 504, 506 IPC by the learned trial court. All the sentences shall run concurrently. The sentence already undergone by the appellant shall be adjusted. The accused-appellant is on bail. His bail bonds are cancelled and sureties are discharged.

63. The court concerned is directed to take the appellant into custody and send him to jail to serve out the remaining sentence, if any.

64. Let a copy of this judgement and order be sent to the learned trial court concerned along with trial court record for necessary compliance.

Order Date :- 13.11.2024

Sanjeet