

A.F.R.

Reserved

Neutral Citation No. - 2025:AHC:86224-DB

Court No.- 44

Case :- CRIMINAL APPEAL No. - 2135 Of 1983

Appellant :- Rajjan

Counsel for Appellant :- G. P. Dixit

Respondent :- State of U.P.

Counsel for Respondent :- D.G.A

Hon'ble Siddhartha Varma,J.

Hon'ble Syed Qamar Hasan Rizvi,J.

(Per: Syed Qamar Hasan Rizvi,J.)

1. This criminal appeal has been preferred on behalf of the accused namely Rajjan against the judgment and order of conviction and of sentence dated 06.09.1983 passed by learned Additional Sessions Judge IV, Court No.1, Etawah, in Sessions Trial No. 341/1981 (State of U.P. versus Rajjan), arising out of Case Crime No.75/1978 Police Station-Dibiyapur, District Etawah, whereby the appellant was convicted for offence punishable under Section 302/149 of Indian Penal Code and was sentenced to undergo imprisonment for life, 323/149 of Indian Penal Code for causing simple hurt and was also convicted for offence punishable under Section 147 Indian Penal Code .

2. The accused was challaned by the police of Dibiyapur police station for committing the offence punishable under

sections 302/149, 323/149 & 147 of IPC. The case was committed to the Sessions Court for trial.

3. The allegation against the accused is that Rajjan along with Babu Ram, Vedprakash, Balveer and 7/8 other companions formed an unlawful assembly at Brahmadev fair in village Jamauli, Police Station Dibiyapur, District Etawah on 23.4.78, with their common object to murder Murli Prasad and to injure other persons namely Ramprakash, Horilal, Kanhaiyalal and Rampratap. In furtherance of their common object, they caused several injuries by Lathi on Murli Prasad, as a result of which he died. They also caused injuries to Ramprakash, Rampratap, Horilal, Kanhaiyalal with Lathi. Thus, case under the various provisions of Indian Penal Code was registered against the accused/appellant-Rajjan. Thereafter, charges were framed for committing punishable offence under Sections 302/149, 323/149 & 147 of the Indian Penal Code.

4. The co-accused Balbir, Ved Prakash and Babu Ram were separately tried, convicted and punished vide the judgment and order passed by the learned Sessions Judge, dated 08.06.1981, against which they filed separate appeal having Criminal Appeal No.1346 of 1981.

5. The present appellant namely Rajjan was tried for the same offence in a separate sessions trial being Sessions Trial No. 341 of 1981 that resulted into conviction vide the impugned judgment and order dated 06.09.1983 giving rise

to the present appeal.

6. The prosecution's case was initiated by one Ummed Prasad, resident of village Deo Rai Ka Purwa, police station; Dibiyapur, District- Etawah, who was the informant of the incident. Smt. Jal Devi and Maan Singh, are niece and nephew, respectively, of the informant. Smt. Jal Devi was married to Ved Prakash who deserted her and was not maintaining her. On the day of incident, i.e, 23.4.1978 Smt. Jal Devi alongwith her brother Man Singh had gone to see a fair held in village Jhamauli at about 2.00 P.M. When they reached near a mango orchard, they found Ved Prakash, Balbir, Babu Ram and 8/9 other persons present there. All of them were armed with lathis and short staffs, and they surrounded them. They, in fact, caught hold of the hand of Smt. Jal Devi and tried to drag her. Finding them in peril both of them shouted. Resultantly, Ram Prakash, Hori Lal, Ram Pratap, Kahaiya Lal, Murli Prasad and the informant (Ummed Prasad) who too had gone there to see the fair reached to the scene of occurrence. When they tried to intervene, they were also assaulted by Ved Prakash and others. Murli Prasad became unconscious due to the injuries sustained by him. However, when the accused persons tried to flee away from the spot the villagers caught hold of Babu Ram on the spot. However, his other accomplices succeeded in escaping their arrest. Thereafter, Murli Prasad was sent to the police station on a bullock cart while the informant- Ummed Prasad, Ram Prakash, Hori Lal, Kanhaiya Lal and

Ram Pratap alongwith apprehended accused Babu Ram followed him on foot to the Police Station Dibiyapur where Ummed Prasad got a report scribed with the assistance of one Hari Babu and thereafter lodged the same at the police station at 6.05 P.M. on 23.04.1978. The police station was at a distance of 6 miles from the place of incident. The injured persons were sent to Hospital by the police for their medical examination.

7. The investigation was conducted by Sub-Inspector R.K.Yadav, who, after completing all the necessary formalities, submitted charge sheet against all the accused persons.

8. After taking into consideration the case of the prosecution as well as the defence and on the strength of evidence available on record, the trial convicted the accused persons. Thereafter the instant Appeal was filed.

9. We have heard the submissions of Sri Ramesh Kumar, learned counsel for the appellant and Sri Rahul Asthana, learned Additional Government Advocate appearing on behalf of the State-respondent and perused the material on record as well as the impugned judgment and order.

10. As per the record available before us, the prosecution, to prove its case, produced the followings nine (9) witnesses:-

P.W.-1 Ummed Prashad

P.W.-2 Ram Prakash

P.W.-3 Ram Pratap

P.W.-4 Abdul Rashid (Retired S.I.)

P.W.-5 Thakur Das

P.W.-6 Ghanshyam Singh

P.W.-7 Layak Singh

P.W.-8 R. K. Yadav (S.I.)

P.W.-9 Ranwant Singh

The two defence witnesses produced were D.W.-1, S.H. Jafari (Assit. Jailor) and D.W.-2, Tulsi Ram.

11. The prosecution examined nine witnesses in all to prove its case ,out of them Ummed Prasad (P.W.1), Ram Prakash (P.W.2) & Ram Pratap (P.W.3) were the witnesses of the factum of incident while all others were formal witnesses.

12. Learned counsel for the appellant submitted that the appellant was innocent and that the learned trial Court had wrongly convicted the appellant without properly appreciating the evidence available on record. He further submitted that the appellant had not caused any fatal injury to the deceased and also to other persons. There is nothing on record to show that the deceased died due to the injury caused by the appellant.

13. It is further submitted on behalf of the appellant that there are material contradictions and omissions in the statements of the prosecution witnesses but the learned trial Court had erred in law by ignoring the same and in convicting the appellant.

14. It has been argued on behalf of the appellant that as per the Medical report, the doctor had opined that as many as 16 injuries were caused to the persons on the side of the prosecution and except one injury on the top of the head of Murli Prasad, which resulted in his death, all were simple in nature. None of the accused had specifically been assigned the role of causing the injury on the head of the deceased Murli Prasad which proved to be fatal to his life. Further, that if the case of the prosecution is seen in its right perspective, the same would not travel beyond the offence as is contained in Section 304(Part-II) of Indian Penal Code.

15. It has been emphatically submitted on behalf of the appellant that the learned trial Court had failed to appreciate the prosecution evidence correctly and had therefore erred in convicting the appellant. As such the appellant is entitled for acquittal.

16. Per contra, the learned Additional Government Advocate has submitted that the deceased died due to the injuries caused by the appellant and the learned trial Court has very rightly convicted the appellant by sentencing him appropriately. He prayed for dismissal of the present appeal.

17. We have considered rival contentions of the parties and perused the record.

18. Prosecution witness P.W.-1, Ummed Prasad who is an eye-witness of the incident has supported the prosecution version in his examination-in-chief. He has further stated

that he had gone to Etawah Jail for identification of the person and took part in the test identification parade and had identified the appellant. In his cross-examination, he stood firm with regard to the manner in which the incident had taken place.

19. P.W.-2 Ram Prakash has been examined by the prosecution, as an eye-witness who has supported the prosecution version in his examination-in-chief and has further stated that he had also identified the present appellant- Rajjan while he was in Jail. In his cross-examination, he had stated that it was incorrect to say that appellant- Rajjan used to visit the house of Moti Lal in his village. He further stated that he had never seen appellant- Rajjan in his village.

20. P.W.-3 Ram Pratap was also examined by the prosecution as an eye-witness. He too stood firm and has supported the prosecution case stating the manner in which the incident had taken place. In his cross-examination, he stated that he had never seen the appellant- Rajjan in his village and had denied the suggestion that appellant- Rajjan used to accompany Balveer in the village. He had also denied the suggestion regarding his previous acquaintance with the appellant. On re-examination, he had stated that he had gone to Jail to identify accused-appellant and had rightly identified him.

21. P.W.-4 Abdul Rashid was the Investigating Officer, who

was assigned the investigation on 06.11.1978 and has submitted the charge-sheet against the appellant- Rajjan.

22. P.W.-5 Thakur Das is the Head Constable who was posted as Head Moharir on 23.04.1978 and has proven the chik report as Exhibit Ka-4.

23. P.W.-6 Constable Ghanshyam Singh was assigned the job of taking appellant- Rajjan in veil from Jail. He has further stated that when the appellant was in his custody, he did not give any opportunity to anyone to see the face of the appellant.

24. P.W.-7 Constable Layak Singh was on security duty from 6:00 a.m. to 9:00 a.m. and has stated that appellant was in veil and no one was given opportunity to see him.

25. P.W.-8 R.K. Yadav, the Investigating Officer has investigated the case and has stated that he arrested the appellant-Rajjan Lal on 07.05.1978 from his house, then took him in veil and was kept him veil till the test identification. He further stated that on the statement of accused- Babu Ram and name of present appellant-Rajjan and of nine other accused persons came into light.

26. P.W.-9 is Head Constable Ranwant Singh who has stated that on 07.05.1978, Sub-Inspector R.K. Yadav, produced appellant- Rajjan in veil at police station at 06:45 a.m. and was taken away from police station to Jail at 09:15 a.m. on the same day. During the appellant's custody at police station, no one was allowed to see his face.

27. The trial court thereafter recorded the statement of accused-appellant under Section 313 Cr.P.C. wherein he denied the allegations as levelled against him by the prosecution witnesses. He has also stated that when he was arrested, his face was uncovered and thereafter he was taken from the Jail with uncovered face.

28. The defence has produced D.W.-1 S.H. Jafri, Assistant Jailor, who produced the register containing the entry for seven accused persons who were kept with covered face and for the present appellant, the word 'cover' was not entered in that register.

29. D.W.-2 Tulsi Ram stated that Jagannath and Shri Ram are his real brothers. He also stated that appellant- Rajjan is son of Shri Ram.

30. In the light of the evidence available on record and the arguments advanced by learned counsel for the parties, this Court has to delve upon the question as to whether the findings recorded by the learned trial Court regarding conviction under Section 302 of the Indian Penal Code are in consonance with the parameter prescribed under law or not?

31. Now we proceed to examine the injuries in respect of the conviction under section 302/149 and 323/149 I.P.C. As per prosecution version Murli Prasad, Ram Prakash, Ram Pratap, Kanhaiya Lal, Hori Lal & Babu Ram sustained injuries in this incident. They were examined as follows :-

Examination of Murli Prasad

Dr. H.C.Yadav medically examined Murli Prasad at 6.30 P.M. on 23.04.1978 and found 3 swellings, one lacerated wound besides injury no.1 which was regarding unconsciousness of the patient. Injuries no.1 and 5 were kept under observation while other injuries were found to be simple in nature. Subsequently Murli Prasad died in the Hospital on 26.04.1978 at 7.00 P.M. Jang Bahadur Rai, Sub Inspector, Police Station Swaroop Nagar, Kanpur, prepared inquest report of deceased Murli Prasad at 11.00 P.M. on 26.04.1978 and sent the dead body to mortuary for postmortem examination where autopsy was conducted by Dr. R.M. Saxena, A.C.M.O.(Medical) Kanpur at 6.00 P.M. on 19.04.1978. He found only one contusion on the top of head. The genuineness of this document has been admitted.

Examination of Ram Prakash

Three lacerated wounds and one abrasion was found on the person of Ram Prakash and in the opinion of the doctor, all the injuries were simple in nature.

Examination of Hori Lal

One lacerated wound, muscle deep was found on the person of Hori Lal which according to doctor was simple in nature.

Examination of Kanhaiya Lal

Two injuries on the person of Kanhaiya Lal. One is lacerated wound deep and the other is swelling on the forearm. In the opinion of the doctor, both the injuries are simple in nature.

Examination of Ram Pratap

Four injuries on the person of Ram Pratap in the nature of a single lacerated wound, two reddish contusions and one swelling. In the opinion of the doctor, all the injuries are simple in nature.

32. It is germane to point out here that in the instant case, the weapon assigned to the appellants is **lathi** , which, by no stretch of imagination, can be said to be a lethal weapon used in the incident, on the basis of which, we will now determine as to whether there was any intention on the part of the accused-appellants to cause death of the deceased or just to assault him with an intention to cause bodily injury.

33. The Hon'ble Supreme Court in its recent decision in **Criminal Appeal No. 2043 of 2023 (Anbazhagan Vs. The State Represented by the Inspector of Police)** ,the Hon'ble Apex court has very lucidly explained distinction between the terms '**intention**' and '**knowledge**'.

34. The word "intent" is derived from the word archery or aim. The "act" attempted to must be with "intention" of killing a man.

35. Intention, which is a state of mind, can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res gestae, by acts or events previous or subsequent to the incident or occurrence, on admission. Intention of a person cannot be proved by direct

evidence but is to be deduced from the facts and circumstances of a case.

36. In the case of **Basdev Vs. State of Pepsu**, **MANU/SC/0027/1956 : AIR 1956 16 SC 488**, at Page 490, the following observations have been made by Chadracharya Aiyar J. :-

"6. ... Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this had led to a certain amount of confusion."

(Emphasis supplied)

37. Bearing in mind the test suggested in the aforesaid decision and also bearing in mind that our legislature has used two different terminologies 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be proper to hold that 'intent' and 'knowledge' cannot be equated with each other. They connote 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.

38. In another case reported in **MANU/SC/8419/2006 : 2006:INSC:520 : 2006 (11) SCC 444, Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of A.P**, the Hon'ble Supreme Court has laid down various relevant circumstances, from which the intention could be gathered. Some relevant considerations are the following :-

(i) The 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 the 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, (vi) whether the incident occurred by chance or whether there was any premeditation, (vii) whether there was any prior enmity or whether the deceased was a stranger, (viii) whether there was a grave or sudden provocation and if so, the cause for such provocation, (ix) whether it was heat of passion, (x) whether a person inflicting the injury has taken undue advantage or has acted in a cruel manner, (xi) whether the accused persons has dealt a single blow or several blows.

39. Thus, while defining the offence of culpable homicide and murder, the framers of the IPC laid down that the requisite intention or knowledge must be imputed to the accused when he committed the act which caused the death in order to hold him guilty for the offence of culpable

homicide or murder as the case may be. The framers of the IPC designedly used the two words 'intention' and 'knowledge', and it must be taken that the framers intended to draw a distinction between these two expressions. The knowledge of the consequences which may result in the doing of an act is not the same thing as the intention that such consequences should ensue. Except in cases where mens rea is not required in order to prove that a person had certain knowledge, he "must have been aware that certain specified harmful consequences would or could follow." (Russell on Crime, Twelfth Edition, Volume 1 at Page 40).

40. The phraseology of Sections 299 and 300 of the IPC leaves no manner of doubt that under these Sections when it is said that a particular act in order to be punishable be done with such intention, the requisite intention must be proved by the prosecution. It must be proved that the accused aimed or desired that his act should lead to such and such consequences. For example, when under Section 299 it is said "whoever causes death by doing an act with the intention of causing death" it must be proved that the accused by doing the act, intended to bring about the particular consequence, that is, causing of death. Similarly, when it is said that "whoever causes death by doing an act with the intention of causing such bodily injury as is likely to cause death" it must be proved that the accused had the aim of causing such bodily injury as was likely to cause death.

41. Thus, in order that the requirements of law with regard to intention may be satisfied for holding an offence of culpable homicide proved, it is necessary that any of the two specific intentions must be proved. But, even when such intention is not proved, the offence will be culpable homicide if the doer of the act causes the death with the knowledge that he is likely by his such act to cause death, that is, with the knowledge that the result of his doing his act may be such as may result in death.

42. The very significant question which has engaged our attention in this case is, whether on the facts and in the circumstances of the case we should maintain the conviction of the appellant herein for the offence under Section 302 or we should further alter it to Section 304 (Part II) of the Indian Penal Code?

43. Sections 299 and 300 of the IPC deal with the definition of 'culpable homicide' and 'murder', respectively. In terms of Section 299, 'culpable homicide' is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it emphasises on the expression 'intention' while the latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental

attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted-above, it would be 'culpable homicide'. Section 300 of the IPC, however, deals with 'murder', although there is no clear definition of 'murder' in Section 300 of the IPC. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'. (see Rampal Singh vs. State of U.P., MANU/SC/0589/2012 : 2012:INSC:302 : (2012) 8 SCC 289).

44. The Hon'ble Supreme Court further in its decision in Criminal Appeal No. 2043 of 2023 (supra) has thus held that the distinction between culpable homicide (Section 299 of IPC) and the murder (Section 300 of IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four

clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

45. When the injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

46. Now, we recapitulate the facts and circumstances of the instant case on the fateful day of the incident, the appellant Rajjan alongwith other co-accused caused several injuries by 'Lathi' on Murli Prasad, as a result of which Murli Prasad died, the deceased suffered a fatal blow on his head resulting in his death, though, there was no intention to cause his death. In the present case, admittedly the weapon of offence is lathi, which is a common item carried by the villagers in this country linked to his identity.

47. Thus, from the aforesaid circumstances, we are of the considered opinion that none of the clauses of Section 300 of IPC are attracted as intention of the appellants to cause death or such bodily injury, which they knew would cause the death of other person or sufficient in the ordinary course of nature to cause death, is not proved.

48. Now, the next question would be as to whether the appellants would be guilty in Part-I or Part-II of Section 304 of IPC. The statutory provisions under section 304 is as under :-

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.

49. Section 304 is in two parts. If analysed, the section provides for two kinds of punishment to two different situations. (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here important ingredients is the "intention"; (2) if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a lathi danda on vital part of the

body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation, case will fall in part II of Section 304 IPC as in the present case.

50. To alter a conviction from Section 302 IPC (murder) to Section 304 Part II IPC (culpable homicide not amounting to murder), the analysis are as follows :-

(1.) Prosecution and Defence Evidence

PWs 1, 2, and 3 (Ummed Prasad, Ram Prakash, Ram Pratap): Established presence of Rajjan at the scene, his participation in the assault, but no specific statement that he caused the head injury to Murli Prasad. Other PWs (formal witnesses) proved general facts of arrest, identification, and post-mortem reports. D.W.1 (Jailor) and D.W.2 (villager) suggested procedural irregularities in identification and prior acquaintance, but these do not materially affect the guilt. However, they do reinforce doubt about identification clarity, useful when assessing the extent of Rajjan's specific role.

(2.) Medical and Forensic Evidence: The post-mortem report revealed that deceased Murli Prasad suffered only one fatal injury: a contusion on the top of the head, while other injuries were either swellings or lacerations and were classified as simple by the examining doctor. The nature of this injury suggests absence of a premeditated plan or intention to kill, particularly in the context of a group assault

where individual roles were not clearly defined.

(3.) Group Nature of Assault and Provocation: The incident occurred at a fair (Brahmadev mela) where a personal family dispute escalated. The accused, including Rajjan, allegedly attempted to drag Smt. Jal Devi, leading to a sudden escalation and intervention by relatives and villagers. The suddenness of the event, absence of premeditation, and use of lathis—not deadly weapons per se—indicate lack of intent to commit murder, but knowledge that death may result from such an act.

51. Having gone through the evidence available on record, the deceased had suffered a head injury which endangered his life. The deceased expired on 26.04.1978 after three days of the incident. The Post Mortem report shows one contusion on the top of the head as ante-mortem injury and in the opinion of the doctor, cause of death hemorrhage as a result of head injury. Having regard to the totality of the facts and circumstances of the case, it can safely be concluded that no specific role was attributed to the appellant-Ranjjan for causing that fatal blow which culminated into death of the Murli Prasad.

52. In the instant case, the existence of injury is proved. Now the question is whether circumstances warranted a conclusion that the appellant intended to cause such an injury which has actually been caused or whether he had the requisite knowledge that he will cause such an injury which

may ultimately cause the death of the injured. When an accused is using 'lathi', he must be presumed to be aware of the force he is about to use or has used and therefore, can be attributed with the necessary 'knowledge' of the consequence of his act. Whether accused had necessary intention or knowledge would have to be seen. The basic criteria that may be applied for deducing the requisite intention or knowledge, is whether he was aware of the consequences which shall follow or were likely to follow as a direct consequence of his act. Where such an awareness of the direct consequences or the higher degree of probability cannot be attributed to the accused, the offence may not fall under section even 302 of I.P.C. In our firm opinion, in such cases the offence would be covered under section 304 (Part II) of Indian Penal Code.

53. It appears that at the most it can be said that the act of the appellant in hitting the deceased was done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. The case of the appellant would, therefore, fall under under Section 304 (Part II) of Indian Penal Code, the act must be done with knowledge that it is likely to cause death, but without intention to cause death. The facts indicate that the intention to kill is not proven beyond reasonable doubt, though knowledge can be inferred from the use of lathi to the head. Hence, this case more appropriately falls within the ambit of Section 304 Part II.

54. In **Jugut Ram vs. State of Chhattisgarh (2020) 9 SCC 520 (Paras 6 to 10)**, Hon'ble Supreme Court held that "**a lathi** is a common item carried by a villager in this country linked to his identity" which is capable of being used as a weapon of assault but it does not make it a weapon of assault simplicitor and, therefore, assault on the head with a lathi is always a question of fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. In the light of the aforementioned law laid down in the case of **Gurmukh Singh vs. State of Haryana, (2009) 15 SCC 635** and **Muhammad Shakeel vs. State of A.P., (2007) 3 SCC 119**, the Hon'ble Supreme Court altered the conviction of the accused from **Section 302 to Section 304 (Part II) IPC** holding as under:

"6. A lathi is a common item carried by a villager in this country, linked to his identity. The fact that it is also capable of being used as a weapon of assault, does not make it a weapon of assault simpliciter. In a case like the present, of an assault on the head with a lathi, it is always a question fact in each case whether there was intention to cause death or only knowledge that death was likely to occur. The circumstances, manner of assault, nature and number of injuries will all have to be considered cumulatively to decipher the intention or knowledge as the case may be. We do not consider it necessary to dilate on the first principles laid down in this regard in Virsa Singh vs. The State of Punjab, 1958 SCR 1495, which stand well established. Suffice it to notice from precedents that in Joseph

vs. State of Kerala, (1995) SCC (Cri.) 165, the appellant dealt two blows on the head of the deceased. The deceased died two days later. The post mortem report found lacerated injury on the head and internal examination revealed fracture to the occipital bone extended up to the temporal bone. The High Court convicted the appellant under Section 302 IPC holding that the injury caused by the lathi was sufficient to cause death of the deceased. This Court observed as follows:

“3. The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a trivial incident and in those circumstances the accused dealt two blows on the head with a lathi, therefore, it cannot be stated that he intended to cause the injury which is sufficient (sic). At the most it can be said that by inflicting such injuries he had knowledge that he was likely to cause the death. In which case the offence committed by him would be culpable homicide not amounting to murder. We accordingly set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict the appellant under Section 304 Part II IPC and sentence him to five years’ RI.”

7. In Chamru Budhwa vs. State of Madhya Pradesh, AIR 1954 SC 652, the appellant dealt a blow on the head of the deceased with a lathi and which proved fatal. The injury was medically opined sufficient in the ordinary course to cause death. Conviction under Section 302, IPC followed. This court observed as follows:

“5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Indian Penal Code. When the fatal injury was inflicted by the appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Indian Penal Code.

“6. We accordingly allow the appeal to this extent that the conviction of the appellant under Section 302 of the Indian Penal Code and the sentence of transportation for life awarded to him will be set aside, but the appellant will be convicted of having committed the offence under Section 304 Part II of the Indian Penal Code and will be sentenced to seven years’ rigorous imprisonment.”

8. In Gurmukh Singh vs. State of Haryana, (2009) 15 SCC 635, the deceased died three days later after an assault on the head with a lathi opined to be sufficient in the ordinary course of nature to cause death. Holding that the assault was made on the spur of the moment without premeditation the conviction was altered from one under Section 302 to Section 304 Part II and a sentence of seven years was handed. Similarly in Mohd. Shakeel vs. State of A.P.,

(2007) 3 SCC 119, the appellant had caused only one injury and had suffered injury himself also. Altering the conviction from under Section 302IPC to 304 Part II, the appellant was sentenced to the period undergone since 1999.

9. We do not consider that Laltu Ghosh (supra) and S. Rayappa (supra), with regard to credibility of related witnesses, have any relevance to the issue in questiond being decided by us.

10. We accordingly alter the conviction of the appellant from Section 302 IPC to Section 304 Part II, IPC. The appellant is in custody since 2004. He has already undergone the maximum period of sentence prescribed under the same. The appellant is, therefore, directed to be set at liberty forthwith unless wanted in any other case.

11.The appeal is allowed.”

55. On substratum of the aforesaid analysis in entirety, we are of the view that the appellant is not liable to be convicted under Section 302 read with Section 149 of Indian Penal Code, rather the appellant could be convicted under Section 304 (Part II) read with Section 149 of Indian Penal Code. As such, the impugned judgment and order passed by learned trial court qua the conviction of the appellant under Section 302 read with Section 149 and Section 323 read with Section 149 of Indian Penal Code, is hereby modified and acordinlgy, the appellant is convicted under Section 304 (Part II) and Section 323 read with Section 149 of Indian Penal Code.

56. Now, addressing the issue of sentencing under Section

304 (Part II) of the Indian Penal Code, read with Section 149 of the Indian Penal Code, since the accused-appellant remained in custody during the trial as well as post-conviction and taking into account the period of incarceration already undergone by him, we deem it appropriate to impose a sentence equivalent to the period already undergone by the accused-appellant.

57. Thus the appeal stands **partly allowed** in the above mentioned terms. The appellant is on bail. He needs not surrender. The bail bonds stand discharged.

58. A copy of this order be sent to the learned trial Court concerned for information.

59. Certified copy, as per rules.

Order Date :- 19.05.2025

Abhishek Gupta

(Syed Qamar Hasan Rizvi,J.) (Siddhartha Varma,J.)