

IN THE HIGH COURT OF TRIPURA
AGARTALA

Crl.A.No.20 of 2010

Sri Bijoy Krishna Acharjee,
son of late Haradhan Acharjee,
resident of Vill. Gurkhabasti (Nutanpalli),
P.S. West Agartala, District West Tripura

..... Appellant

– Vs –

The State of Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. R. Datta, Advocate

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : 26.11.2014

Date of judgment & order : 11.03.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

(Talapatra J.)

This is an appeal by the accused who has been convicted under Section 302 of the IPC by the judgment and order dated 04.05.2009 delivered in S.T.No.89/2008 by the Sessions Judge, West Tripura, Agartala and sentenced to suffer rigorous

imprisonment for life and to pay fine of ₹5,000, in default to suffer further imprisonment for six months.

2. The prosecution against the appellant has its genesis in the written ejahar dated 01.04.2008 filed by one Narayan Acharjee (PW.1), disclosing that his elder sister Putul Acharjee married the appellant and after marriage she was subjected to cruelty by means of physical assault as well. On 31.03.2008 at about 11.00 night, his sister as well as his nieces, namely Pratima Acharjee and Purnalaxmi Acharjee were assaulted by the appellant. Thereafter, the appellant set fire on his sister's person by pouring kerosene. The neighbours had taken her immediately to the GBP Hospital as she suffered burn injuries. After some time of her taking to the hospital, she was declared dead. Having received the said information, the informant first visited the hospital at about 5.30 in the morning and lodged the FIR at about 10.15 in the night. Agartala Women P.S. Case No.44/2008 under Section 498A/302 of the IPC was thus registered and taken up for investigation. After the investigation was complete the police filed the final police report, chargesheeting the appellant and in due course the case was committed to the Sessions Judge for trial. The trial judge framed the charge under Section 302 of the IPC, to which the appellant pleaded innocence and claimed to be tried.

3. To substantiate the charge, prosecution adduced 11 witnesses including the informant (PW.1), informant's niece, Smt.

Pratima Acharjee (PW.2), the doctor who conducted the post mortem, Dr. Ranjit Kr. Das (PW.9), the Investigating Officer, namely Milan Dey (PW.10) and more importantly, the witnesses from the neighbourhood. The prosecution has also introduced nine documentary evidence including the inquest report and the post mortem report (Exbts. 7 and 5 respectively).

4. On recording the prosecution evidence, the petitioner was examined under Section 313 of the Cr.P.C. on 13.03.2009. The appellant denied the incriminating materials. In response to the question No.23, the appellant prayed for examining his daughter, namely Smt. Sukla Acharjee and one Smt. Niva Rani Chakraborty and for issuing summons on them.

5. It is to be noted here that, when those two witnesses, at the instance of the appellant appeared in the trial, the appellant declined to examine them on the ground that they would be of no help for the accused. After appreciating the fact and the circumstances proved by way of evidence, the trial court convicted the appellant, as stated.

6. Mr. R. Datta, learned counsel appearing for the appellant, has submitted that out of quarrel and on sudden excitement the appellant set fire on his wife, namely Putul Acharjee. Thus it is covered by Exception 4 of Section 300 of the IPC, which provides that 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. Apart that, Mr. Datta, learned counsel appearing for the appellant, has submitted that the statement of PW.2, as made in the trial cannot be entirely believed as the said witness has improved her version so materially different from what she had stated in her statement recorded under Section 164(5) of the Cr.P.C. Further, it has been argued that even in the First Information Report as lodged after substantial delay, PW.1 did not disclose how he got the information that the appellant set his sister ablaze. In all probability, PW.2 was tutored later on and, as such, the oral testimonies of PWs. 1 and 2 cannot be believed on careful marshalling of their versions. In this regard, Mr. Datta, learned counsel, has relied on a decision of the apex court in **Arulvelu & Anr. Vs. State & Anr.**, reported in **2010 CRI.L.J. 433**, where the apex court has enunciated the law on importance of disclosure of material and vital facts, as under :

“The High Court observed that the FIR cannot be an encyclopedia to contain all the details or history of the case. This approach of the High Court does not seem to be correct. The FIR should at least mention a broad story of prosecution and not mentioning of material and vital facts may affect the credibility of the FIR.”

[Emphasis supplied]

7. Mr. Datta, learned counsel appearing for the appellant, has further referred a decision of the apex court in **Zafar Vs.**

State of U.P., reported in **AIR 2003 SC 931**, where the apex court has considered the consequence of the omission in the FIR by not stating that the child told the informant that the accused had killed his father. The apex court in **Zafar Vs. State of U.P.**, has held as under :

9. However, we find on a perusal of the evidence on record that the trial court as well as the High Court failed to focus their attention to certain crucial aspects which have undoubted bearing on the reliability of the evidence of the child witness-P.W.2. The first and foremost aspect which deserves attention is about the version of P.W.2 as regards the actual scene of offence. According to the prosecution case, the deceased was shot at in front of the house of one Sidhu and he fell down in front of the meat shop of P.W.3 after walking for a little distance. In the site plan (K-9) the place of occurrence is marked as 'A', as spoken to by P.W.7, the I.O. That spot is just in front of the house of Sidhu. The distance between the place of shooting, i.e. Sidhu's house and the meat shop of P.W.3 is about 5 to 6 'paces' according to P.W.7. P.W.7 stated more than once that the spot of shooting was pointed out to him by P.W.2. P.W.7 further stated that P.W.2 informed him that his father after having been hit by the bullet walked some distance and fell down near the meat shop. The fact that the site plan was drawn up after P.W.2 pointed out the place of occurrence was stated by the I.O. (P.W.7), even in chief examination. The version of P.W.2, the child witness is materially different. According to him, the incident took place at the meat shop itself. This is what P.W.2 categorically stated: "The meat shop is at Baxipur. It is the shop of Achhan (P.W.3). I and my father reached the meat shop. Before my father could purchase meat, the accused Budhu came there and fired a shot. After receiving the bullet injury, my father fell before the shop of Achhan." This statement in chief examination was further reinforced and clarified in the following words :-

"At the meat shop my father asked Achhan to weigh meat. At that time, beside my father other customers were also present in the

shop. Achhan was weighing meat for the customers who were standing ahead of my father. There were many customers present at the shop of Achhan for buying meat. While my father was standing there were many persons standing before and after him for buying meat. I was standing ahead of my father. My father was fired at the place where he was standing. It is true that he fell flat."

10. Thus the witness was categorical about the spot of occurrence being at the meat shop itself. He further stated in the questions put to him by the Court that the bullet hit his father on his back. To a question as to what his father was doing when he was shot at, the witness stated that his father was buying meat. As already noted, according to P.W.7, the earliest version of P.W.2 was that the accused shot him at a spot close to the meat shop but before he reached the shop. P.W.7 drew the site plan as pointed out by P.W.2. If what is stated by P.W.7 is correct, we have two different versions from P.W.2 as regards the scene of offence. In any case, the evidence of P.W.2 does not fit into the prosecution case about the place of occurrence. In the face of this discrepancy on a very importance aspect, a reasonable doubt arises as to the reliability of the evidence of this child witness.

11. Another circumstances which deserves notice is that as per the version of P.W.2, the police came to him four or five days after the occurrence and enquired him about the details of murder and had also taken him to the place of murder. P.W.7, the I.O., has a different story to tell. According to him, after sending the dead body for post-mortem, he recorded the statements of witnesses, Achhan (P.W.3) and Aizaz Hussain (P.W.2) and got the blood stained kurta removed from the body of P.W.2 and collected samples of blood stained soil etc. and thereafter inspected the place of occurrence on being pointed out by P.W.2 and prepared the site plan accordingly. That means P.W.7 claims to have examined P.W.2 on the day of incident itself. But this version is belied by the categorical statement of P.W.2 that the police came to him only after four or five days and made enquiries about the murder. P.W.7 admitted that he did not record the dates when he took the

statement of each witnesses in the case diary- which is very strange. Amongst the statements found in the first running pages of the case diary, the statement of P.W.2 does not figure at all, as seen from the cross-examination of P.W.7. All this supports P.W.2's version that he was contacted and examined by police only after four or five days. The question then arises as to why there was such an inordinate delay in examining him. No explanation was forthcoming from the investigating officer in this regard. However, the learned counsel for the respondent-State has endeavoured to give a plausible explanation for this. According to him, the I.O. would not have felt it necessary to adduce the evidence of the child witness on account of the fact that there was another eye witness, namely, P.W.3, who was examined on the same day and who unfortunately became hostile later on. This explanation remains in the area of surmise. The best person to throw light on this aspect is P.W.7 but he did not say a word about it. Moreover, P.W.7 came forward apparently with an untrue version that he examined P.W. 2 on the day of the incident itself and drew up the site plan as the per the information given by him. The fact that P.W.2 was examined and taken to the spot only four or five days after the incident while making it appear on record that he was examined on the same day of the incident casts another doubt on the prosecution case. If P.W.2 was in the know of things, why should the police postpone the event of examining him for so many days? Were they trying to project P.W.2 as eye-witness, having failed in their attempts to get direct evidence of others? These are the imponderables in this case. On account of this, a doubt has to be necessarily entertained as to whether P.W.2 claimed to be an eye-witness on the day of the incident itself and he in fact witnesses the occurrence.

12. One more point of doubt which makes the version of P.W.2 vulnerable to criticism is this: P.W.2 stated that the police personnel were already there at the spot by the time his grand-father (PW1) reached and that the policeman brought a cot and placed the dead body on it. However, this version is inconsistent with that P.W.1 as well as the I.O. According to them, the police reached the scene of offence only after the complaint was lodged by P.W.1. P.W.6 found the dead body lying

flat on the ground. All this gives rise to a doubt as to when exactly P.W.2 was at the scene of offence.

13. Lastly, it is urged by the leaned counsel for the appellant that although in the FIR, P.W.2's presence was mentioned by the informant, he did not mention in the FIR that P.W.2 told him that the accused killed his father. In the cross-examination, P.W.1 stated that he forgot to mention this fact. One way of looking at it is that having regard to the tenor of the FIR in which he made a general statement that many persons tried to catch the accused, the omission to mention what he had been told by P.W. 2 need not be viewed seriously. Though, by itself, it may not be a significant omission, but, coupled with other doubtful features emerging from the evidence of P.W.2 and the I.O., this aspect cannot be brushed aside.

14. In view of the doubtful features and other infirmities in the prosecution evidence as discussed above, we are of the view that it is not safe to rely on the evidence of P.W.2 whose evidence needs to be scrutinized with due care and caution. It is, however, unnecessary to probe into the other question whether the ocular evidence is inconsistent with the medical evidence. Though it is a case of concurrent finding by both the Courts resting on the appreciation of evidence, we are of the view that the trial court and the High Court overlooked certain important aspects in the practical application of the rule of prudence and caution which the High Court itself proceeded to apply in appreciating the evidence of child witness. The High Court failed to take note of certain telling factors emerging from the evidence on record. There was no critical appraisal of the evidence of P.W.2 except focusing attention on two alleged contradictions of no significance and repelling the arguments based on them. Even if the finding that medical evidence does not go counter to the prosecution case is allowed to remain, there are other fatal infirmities in the evidence relied upon by the prosecution which were not adverted to by the High Court. In these circumstances, we are of the view that it is a fit case for interference under Article 136. Accordingly, we hold that the accused is entitled to benefit of doubt and his conviction ought to be set aside. We, therefore, allow the

appeal and direct the authorities concerned to release the accused from the prison forthwith.

[Emphasis added]

8. From the other side, Mr. A. Ghosh, learned Public Prosecutor, has categorically submitted that the submissions made by Mr. R. Datta, learned counsel appearing for the appellant is apparently self-destructive. He has emphatically referred that the culpable act would come under culpable homicide amounting to murder, not under culpable homicide not amounting to murder under exception provided under Section 300 of the IPC. Mr. Ghosh, learned Public Prosecutor, has further submitted that, if the evidence is appreciated in totality, the finding of conviction as returned by the trial court would appear not suffering from any sort of infirmity.

9. Apart that, it would appear that the trial court has correctly inferred presumption adverse to the appellant under section 114, Illustration-G of the Indian Evidence Act inasmuch as at his instance one of his daughters was sought to be examined, but when that daughter who was present at the time of occurrence appeared before the court, the appellant declined to examine his daughter, Sukla Acharjee. The other objection that the FIR did not disclose how the informant got the information, would not hold of any substance from reading of the FIR that the informant got the information about the occurrence from the two

daughters of the appellant, who were also beaten up by him. As regards the improvement, that will not affect the trustworthiness of PW.2. As such, he has urged this court not to interfere with the finding of conviction.

10. For purpose of appreciating the rival contentions as emerged, this court considers it appropriate to glance through the evidence.

11. PW.1, Sri Narayan Acharjee, who lodged the written ejahar, has stated that his elder sister Putul Acharjee, the deceased, was married to the appellant, Bijoy Krishna Acharjee. They were residing at a place called Gurkhabasti, Agartala. In the wed-lock, the appellant and his sister had four daughters and Pratima Acharjee (PW.2) is the eldest one. One night, at about 11.00 pm, Pratima came to their house alongwith two other persons and told his mother Usha Rani Acharjee (PW.4) that the appellant set fire on her mother Putul Acharjee. She had also informed that her mother was taken to the GBP hospital for treatment by the appellant in an Auto Rickshaw. PW.1 immediately rushed to the GBP hospital and saw his sister in a critically burnt condition. Though the hospital immediately provided all sorts of treatment, but his sister succumbed to the injuries. He lodged the written ejahar at Agartala Women Police Station (Exbt.1). He has further stated that the distance between his house and the appellant is about 4-5 kilometers. He used to

visit the house of his sister and saw that the appellant often quarrelled with his sister. On the following day of the occurrence, when he visited the house of the appellant, the Investigating Officer seized one drum of kerosene from that house in his presence and others. He signed on the seizure list (Exbt.2). In the trial, he identified the seized material (Exbt.M.O.1). But, in the cross-examination, he has stated nothing of material importance.

12. PW.2, Pratima Acharjee is the only witness who claimed to have witnessed the occurrence. She was 15 years of age when she was examined in the trial and as such her capacity and duty to speak the truth or competence to testify was examined by the trial Judge and later on she was examined on oath having been satisfied that she was mature enough. She was intellectually grown. She, on identifying the appellant as her father, has stated that she had three other younger sisters, namely Sukla Acharjee, Purna Laxmi Acharjee and Papri Acharjee. She has categorically stated that :

“On 31.03.2008 at night at about 9.30 pm, my father came to our house at Gurkha Basti and assaulted me as I was biting my nails. My mother Putul prevented my father not to assault me and at that time my mother was assaulted by my father with a wooden stick. My father also gave a blow on my back with the blunt wide of a chopper. Thereafter my father poured kerosene oil on the person of my mother. My father also poured kerosene oil on my person. Thereafter, my father accused Bijoy set fire on the person of my mother by a match box.”

She has further stated that, her mother started crying loudly when she was burning. PW.2 has stated to have poured water on the person of her mother in order to save her. She raised alarm seeking help and then the neighbours rushed to their house. They had also poured water on the person of her mother. Her father also showed his injuries to the neighbours. She has stated that she cannot say as to how her father had sustained burn injuries. But, she has further stated that, "*My father, accused Bijoy did not make any attempt to save my mother after setting fire on her person.*" On arrival of the neighbours, her father took her mother to the GBP hospital by an Auto Rickshaw. She has corroborated that at about 11.00 pm, she went to the house of her grand-mother and informed about the occurrence. She has also stated that before the incident, the appellant used to assault her mother regularly as they have no brother. She identified the seized materials i.e. a kerosene drum (Exbt.M.O.1) and one match-box(Exbt.M.O.2), which were seized by the police officer. From her cross-examination, nothing could be elicited. She has stated in the examination-in-chief that her father used to assault her mother as they had no brother, but when her attention was drawn to her previous statement recorded under Section 161 of the Cr.P.C., no such statement she could find out. She has also admitted that she did not state to the Magistrate that her father used to assault her mother regularly as they have no brother. What she has stated to the Investigating Officer is that her father

gave blow on her back with the blunt side of a chopper, was not found in her previous statement. She has admitted that on the night of occurrence she did not visit the GBP hospital. But, she has admitted that her father was also admitted in the GBP hospital for treatment. She has vehemently denied that the incident was an accident.

13. PW.3, Nibaran Singha is a witness from the neighbourhood. He has stated that on 31.03.2008 at about 10.00 pm, while he was returning to his house from their club, at that time he saw that fire was burning in the courtyard of the house of the appellant. When he went inside the house of the appellant, he saw fire was burning on the person of Putul Acharjee. The elder daughter of the appellant, namely Pratima @ Mani (PW.2) told him that her father set fire on the person of her mother after pouring kerosene oil. He saw that Putul Acharjee crawling on the ground of the courtyard and crying for help. On hearing such cry, other persons from the neighbourhood also gathered in the said house. He has stated that the appellant was crying by saying that he also sustained burn injuries on his hand. Thereafter, the appellant took his wife to the GBP hospital by an Auto Rickshaw. But, on the following morning, PW.3 came to know that Putul Acharjee (the deceased) died. PW.3 has also confirmed that the appellant used to quarrel with his wife. From the cross-

examination, nothing has been elicited to dent the prosecution case.

14. PW.4, Usha Acharjee is the mother of the deceased. She has corroborated what PW.2 had narrated to her about the occurrence.

15. PW.5, Smt. Khela Saha is another witness from the neighbourhood. She has stated as under :

"Almost regularly the accused used to assault his wife and on several occasions I saw that the accused was assaulting his wife. On so many occasions I requested the accused not to assault his wife and no to quarrel with her, but in vain.

About eight months back, one day, at night at about 10.30 p.m. I heard alarm raised by Putul and hearing that alarm I along with my husband and other neighbours went to the house of the accused. We saw that fire was burning on the person of Putul and Putul was moving in their court yard. My husband Babul put off that fire by pouring water on the person of Putul. Pratima who is the eldest daughter of Putul also poured water on the person of her mother. Pratima told us that her father set fire on the person of her mother after pouring kerosene oil on her mother. My son Suman Saha and our neighbour Prasanta Chakraborty brought one auto rickshaw for shifting Putul in hospital and thereafter the accused took his wife towards G.B. Hospital by that Auto Rickshaw. On the following morning we came to know from the brother of Putul that Putul succumbed to burn injuries in that hospital."

In the cross-examination, she did not fumble for a moment and stand on what she had stated in the examination in chief.

16. PW.6, Rabindra Chakraborty is also another witness from the neighbourhood. He has also stated similarly as stated by PW.5. He has stated that PW.2 told him that his father poured kerosene oil on the person of her mother. He was also one of the witnesses of seizure of the material objects (Exbts. M.O.1 and M.O.2) and has identified his signature on the seizure list (Exbt.2). In the cross-examination, no dent could be made by the defence.

17. PW.7, Smt. Sima Biswas is the recording police officer who registered the case on receipt of the written ejahar from PW.1 (Exbt.1). She has identified the FIR form and her signature.

18. PW.8, Anup Sarkar is a photographer who took some photographs of the deceased (Exbt.4 series).

19. PW.9, Dr. Ranjit Kr. Das, who has prepared the post mortem report having reference to the Agartala Women P.S. Case No.13/2008, under Section 174 of the Cr.P.C.

20. PW.10, Sri Milan Dey is the scribe who has stated that he had written the ejahar as per dictation of PW.1. He has identified his signature on Exbt.1, the written ejahar.

21. PW.11, Smt. Manidipa Das, the Investigating Officer of the case, has stated that the inquest report was prepared by one Saraswati Gope, Assistant Sub-Inspector of the Agartala Women Police Station. She has identified the handwriting and signature of said Saraswati Gope in the surathal report (Exbt.7). She has

briefly narrated how she conducted the investigation and collected the reports and when a strong *prima facie* case appeared, she had submitted the chargesheet under Sections 498A/302 of the IPC, however, she has stated that the charge was framed under Section 302 of the IPC.

22. What has surfaced from re-appreciation of the evidence is that for having no tangible reason the appellant used to quarrel with his wife and their relation thus turned stained. However, what has undoubtedly surfaced is that on that night, as PW.2 was biting her nails the appellant got infuriated and started assaulting PW.2. When Putul, the deceased came to prevent the appellant, he assaulted her and out of rage he poured kerosene oil on her person and also on the person of PW.2. The appellant set her, Putul (the deceased) ablaze.

23. On appreciation of the records of evidence and the submissions made by the learned counsel for the parties, it appears that the following questions are to be appreciated by this court :

- (i) Whether the culpable homicide is amounting to murder? and
- (ii) whether the version of PW.2 can be relied on or not, for purpose of returning the finding of conviction?

24. Mr. Dutta, learned counsel appearing for the appellant, has submitted that there is no definite reflection in the First Information Report that PW.1 came to know how the occurrence took place from PW.2 but she (PW.2) was later on tutored to ensure punishment of the appellant. This court is unable to accept that contention, inasmuch as PW.2 has not only stated in the court, but immediately after the occurrence when PWs. 3, 5 and 6 appeared in the place of occurrence, PW.2 had stated that the appellant poured kerosene oil on the person of her mother and set her ablaze. With such statement, the testimony of PW.2 therefore cannot be discarded wholly. However, her statement that her father used to assault her mother regularly as they have no brother or that the appellant used to assault her mother regularly may be omissions, but it cannot be stated that those are such omissions to be treated as contradiction, inasmuch as PW.2 is consistent in her statement before the Investigating Officer, the statement recorded under Section 164(5) of the Cr.P.C. (Exbt.3) and her testimony in the trial. This court does not find any basis for disbelieving PW.2 at all and as such, her testimony is trustworthy.

25. The other question is whether culpable homicide as committed by the appellant does amount to murder or not. This question can also be answered, inasmuch as, PW.2 has categorically stated that as she was biting her nails, her father got

infuriated and started assaulting her and when her mother came to prevent her father from assaulting her, he assaulted her mother also and thereafter poured kerosene on the person of her mother. There cannot be any amount doubt that out of rage the appellant poured kerosene on the person of her mother, Putul Acharjee and set her ablaze. Such uncontrolled rage had driven the appellant to commit the culpable homicide. But, later on, it appears that, the appellant also tried to extinguish the fire and took his wife to the hospital without fleeing away from the place of occurrence. This conduct reflects a frame of mind and that cannot be lost sight of. The 4th Exception to Section 300 of the IPC provides that 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. It has been explained that, it is immaterial in such cases which party offers the provocation or commits the first assault. "Culpable homicide" is the genus and the "murder" is its species. If the culpable act can be brought under Exception 4, as provided in Section 300 IPC, that will not be treated as the murder. The ingredients of Exception 4 are (a) without premeditation in a sudden fight, (b) in the heat of passion upon sudden quarrel, (c) the offender has not taken undue advantage and (d) the offender has not acted in a cruel or unusual manner. All such ingredients must be found for accepting the culpable homicide not amounting to murder. In this regard, a

reference may be made to the decision of the apex court in **Rajender Singh & Ors. Vs. State of Bihar**, reported in **(2000) 4 SCC 298**.

26. It is to be emphasised that mere fact that it was a sudden fight and there was no premeditation, would not be enough so as to attract Exception 4 as provided in Section 300 of the IPC. The further requirement of the said Exception that the offender did not take undue advantage or acted in a cruel or unusual manner should also be satisfied.

27. Even though in this case it has been established that the act was committed without premeditation or even in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage, but he has acted apparently in a cruel or unusual manner. This aspect requires further scrutiny, inasmuch as the conduct of the appellant after the occurrence shows that what he had done was done out of rage without knowing its consequences and, as such, it cannot be stated that the appellant acted in a cruel and unusual manner, even though his act was dangerous. This phrase refers to the mode of execution. Here, the appellant out of sudden rage poured kerosene oil and set her wife ablaze. It cannot be bracketed within the phrase 'in a cruel and unusual manner'. As such, this court is of the considered opinion that the culpable act is liable to be accepted under the Exception 4 of Section 300 of the IPC. Thus,

the conviction under Section 300 of the IPC is liable to be interfered with and accordingly the conviction under Section 302 of the IPC is set aside. But, from the materials as surfaced from the records of evidence, the charge under Section 304, part II of the IPC has been well proved. Since the offence under Section 304 is cognate to the offence punishable under Section 302 and minor in comparison to the offence punishable under Section 302 of the IPC, the appellant can be convicted under Section 304, part II of the IPC for committing the culpable homicide not amounting to murder.

28. Thus, the appellant is convicted under Section 304, part II of the IPC, as from the record it cannot be inferred that the appellant had any intention of causing death. Accordingly, the appellant is sentenced to suffer rigorous imprisonment for 8(eight) years with fine of ₹5,000 (rupees five thousand), in default of payment of fine, he shall suffer further rigorous imprisonment for 3(three) months.

29. In the result, the appeal stands partly allowed.

Send down the LCRs forthwith.

JUDGE

JUDGE

ROY