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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. A. 305/2000**

% *Judgment dated 29th April, 2016*

RAJESH KUMAR & ORS. Appellants

Through: Mr. Jaideep Malik, Advocate for appellant
No. 1.

Mr. Aditya Vikram, Advocate (Amicus
Curiae) with Mr. Harsh Prabhakar and Mr.
Annirudh Tanwar, Advocates for for
appellant No. 2.

Versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for State with SI
Deepak Kumar, P. S. Kotwali, Delhi.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

1. Present appeal has been filed under Section 374 of the Code of Criminal Procedure against the order of conviction dated 27.01.2000 and order on sentence dated 02.02.2000 passed by the Additional Sessions Judge in Sessions Case No. 118/1998, by virtue of which the appellants have been convicted and sentenced to undergo imprisonment for life and to pay Rs. 500/- each as fine and in default of payment of fine to further undergo simple imprisonment for one month for the offence punishable under Sections 302 read with 34 of the Indian Penal Code. The appellants have been further sentenced to undergo rigorous imprisonment for two years and to pay Rs. 500/- each as fine and in default of payment of fine to further undergo

simple imprisonment for one month for the offence punishable under Sections 324 read with 34 of the Indian Penal Code. Both the sentences were ordered to run concurrently.

2. In order to appreciate the rival contentions advanced by the parties and issues involved, it would be necessary to set out brief facts of the case which gave rise to the present criminal appeal. One Pradeep Sharma was running his milk shop at 2232, H. C. Sain Road and he had employed five persons Rajesh Kumar, Balram Singh, Sunil (hereinafter referred to as “the deceased”), Sabin Barua @ Gopi and Pankaj Gugai @ Mridul at his shop. All these employees used to stay at night inside the said shop. On 27.08.1997 all the employees stayed back when Pradeep Sharma closed his shop at night and during night, a quarrel took place among the appellants and the deceased over the bedding being spread as the deceased directed the appellants to spread bedding for him but they refused to carry out his wish and dictate. Thereafter, all went to sleep at their respective places. At about 02:00 or 02:30 a.m., the appellants got up and threw acid upon the deceased and on Pankaj and Sabin @ Gopi also when they intervened. All the three persons received injuries on their person. Someone informed the police on which police reached the spot and removed the injured to J.P.N. Hospital. Pradeep Sharma (owner of the shop) was also informed and he reached the hospital. DD No. 16A was recorded at the Police Station-Kotwali. On receipt of DD No. 16A, SI Dheeraj Narang reached the hospital and collected the MLC of all the three injured persons. The deceased was declared unfit for statement. SI Dheeraj Narang (Investigating Officer) recorded the statement of

Sabin @ Gopi and got the present case registered under Sections 307/324/34 of the Indian Penal Code. Thereafter, Investigating Officer reached the spot along with Pradeep Sharma and arrested both the accused persons i.e. Rajesh Kumar and Balram Singh. The Investigating Officer also seized one plastic can containing some sulphuric acid, one mug, and a bucket and prepared their seizure memos. The burnt clothes of the accused persons were also seized. At the spot, the information was received regarding the death of the deceased and therefore Section 302 of the Indian Penal Code was added. Both the accused persons were got medically examined. After completion of the investigation, chargesheet was filed in court. Charge under Section 302/307/34 of the Indian Penal Code was framed against both the accused persons.

3. To bring home the guilt of the accused persons and to prove its case the prosecution has examined 18 witnesses in all. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein they denied their involvement in the commission of offence and claimed to be innocent. The accused persons took up a plea that the deceased was incharge of the shop of Pradeep Sharma and at one point of time threatened Pradeep Sharma to suffer the consequences on which Pradeep Sharma became alert and to balance the control of deceased on his business, he employed other persons i.e. Sabin Barua (PW-9) and Pankaj Gugai (PW-10). They further stated that Pradeep Sharma in collusion with PW-9, PW-10 along with the police played a drama and had falsely implicated them. No evidence was adduced by the appellants in their defence.

4. Mr. Jaideep Malik, learned counsel appearing on behalf of the appellant no. 1 and Mr. Aditya Vikram, Amicus Curiae during the course of arguments conceded that the appellants would not challenge the appeal on merits but challenge the order on sentence.
5. Learned counsel for the appellants have argued that the unfortunate saga transpired in a fit of rage during a sudden quarrel that erupted between the appellants and the deceased and the present case squarely falls within the purview of Section 300 under Exception 1 of the Indian Penal Code punishable under Section 304 of the Indian Penal Code.
6. To substantiate their arguments learned counsel for the appellants has relied upon the case of *Akhtar Vs. State* reported in *AIR1964 All 262*, the relevant portion is as under:

“But, we think that the particular situation and past experiences of an accused in relation to the deceased may be taken into account in considering the extent to which the accused had been repelled towards the breaking point which is there even in constitutionally normal or average individuals. Secondly, we have to consider whether the accused acted normally or reasonably, according to the standards and norms applicable to his group, until he lost control over himself. If he himself acted improperly or unreasonably, so as to invite what is put forward as the provocation, he could not get the benefit of the doctrine. Thirdly, it has to be shown that the act causing death was committed after loss of self-control but before self-possession has had an opportunity to return. This can often be presumed from the existence of a grave provocation and the sudden and drastic character of the violent and hasty act immediately following the provocation, but facts and circumstances may sometimes exist which destroy the presumption and show that self-

possession was not actually lost so that the accused could not get the benefit of the doctrine.”

7. Learned counsel has further relied upon the case of Madras High Court in ***Rajesh Vs. State*** reported in **2012 SCC Online Mad 2231**.

The relevant para 32, 62 and 64 are as under:

“32. With regard to the death of the deceased it has been contended by the learned Counsel for the Accused that in the facts and circumstances, at the most the Accused would be guilty of culpable homicide not amounting to murder. However, the learned Additional Public prosecutor contended that it is nothing less of murder. So, as regards her death the nature of offence committed by the Accused has to be determined. Question is whether it would fall under Section 302, I.P.C. (murder) or the lesser offence of culpable homicide not amounting to murder under Section 304, I.P.C. We have carefully considered this aspect of the matter.

62. Thus, in the backdrop of the law relating to provocation, particularly sustained provocation, when we look at the facts of the present case it comes to light that as between the Accused and the deceased there was continued strained relationship. The reason being the illegal intimacy of wife of the Accused with her colleague Senthil. Besides that in order to safeguard the future of his children the Accused kept the children away from her and because of her persistent demand for her children, the Accused was apprehensive of losing the children also. On the occurrence day, prior to the commission of the offence, there was wordy altercation between the Accused and the deceased. At about that time, the Accused remarked about her behavior and in these circumstances, he had beaten her to death.

64. In the result, this Criminal Appeal is allowed in part. The conviction under Section 498-A, I.P.C. of the

Appellant is confirmed and the sentence imposed upon him for the said offence is maintained. The conviction under Section 302, I.P.C. and the life sentence imposed upon him are set aside. Instead, he is convicted under Section 304-I, I.P.C. He is sentenced to 7 years' Rigorous Imprisonment and the fine amount imposed on him is maintained."

8. On the converse, Ms. Aashaa Tiwari learned APP for the State submits that taking into consideration the medical evidence, evidence of the complainant and other witnesses, the view taken by the trial court is just and proper and the evidence adduced by the prosecution clearly establishes the guilt of the appellants and the trial court has rightly convicted the appellants for the offence punishable under Section 302 of the Indian Penal Code, hence the impugned judgment does not call for any interference by this Court.
9. Learned counsel submits that the learned trial Judge has not committed any error while imposing the sentence on the appellants. Learned counsel further submits that as per the postmortem report, the cause of death was a result of extensive corrosive burns which were ante-mortem and recent in nature and were sufficient to cause death in the ordinary course of nature.
10. It was contended by the counsel for the State that the deceased was of tender age and the weapon of offence i.e. acid was thrown on the vital part of the body with the intention to teach the deceased a lesson.
11. We have carefully examined the judgment, the testimonies of various witnesses and the documents placed on record.

12. Learned counsel for the appellants limited his arguments to the sentencing part only. Now, the sole question which remains in this appeal is with regard to the sentence which has been awarded.
13. At the outset, it is relevant to notice Section 300 of the Indian Penal Code which is as under:

Section 300: Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

2ndly

If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

3rdly

If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

4thly

If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception I- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First- That the provocations not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- That the provocations not given by anything done in the lawful exercise of the right of private defence.

Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

14. The aforesaid Section provides five exceptions wherein the culpable homicide would not amount to murder. Under ***Exception I***, an injury resulting into death of the person would not be considered as murder when the offender has lost his self-control due to the grave and sudden provocation. ***It is also important to mention at this stage that the provision itself makes it clear by the Explanation provided, what would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, is a question of fact.*** Provocation is an external stimulus which can result into loss of self-control. Such provocation and the resulting reaction need to be measured from the surrounding circumstances. Here the provocation must be such as will upset not merely a hasty, hot tempered and hypersensitive person but also a person with calm nature and ordinary sense. What is sought by the law by creating the exception is that to take into consideration situations wherein a person with normal behaviour reacting to the given incidence of provocation. Thus, the protection extended by the exception is to the normal person acting normally in the given situation.
15. In ***R v. Duffy*** reported in ***1949 (1) All ER 932***, the English Court of Appeal, put the common law defence of provocation as under:

“Provocation is some act, or series of acts, done by the dead man to the Accused, which would cause in any

reasonable person, and actually causes in the Accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind."

16. In ***K.M. Nanavati v. State of Maharashtra, 1962 (1) MLJ (Crl.) 531 (SC)***, the leading case on provocation, the Hon'ble Supreme Court read into the Exception the following propositions:

"1. The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society to which the accused belongs, and placed in the situation in which the accused was placed, would be so provoked as to lose his self-control.

2. In India, words gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code.

3. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

4. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

17. Proposition 2 and 4 in ***K.M. Nanavati v. State of Maharashtra, 1962 (1) MLJ (Crl.) 531 (SC) (supra)***, is relevant for our purpose. The Hon'ble Apex Court held that the words gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code. Also, the fatal blow should be clearly traced

to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation. Thus, considering the mental background of the appellants to avenge their humiliation may be taken into account in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

18. Thus the meaning of Provocation includes two things which the law attaches great importance to it. The *first* of them is, whether there was sufficient time for cooling, that is, for passing to cool and for reason to regain dominion over the mind. *Secondly* in considering whether provocation has or has not been made out, the courts must consider the retaliation in provocation - that is to say, whether the mode of resentment bears some proper and reasonable relationship to the sort of provocation that has been given.
19. It is contended by the learned Counsel for the appellants that there was no intention on the part of the appellants to cause death of the deceased and, hence, Section 304 Part II of the Indian Penal Code which deals with culpable homicide not amounting to murder, will be attracted. It is contended that even the appellants received burn injuries due to the acid thrown on the deceased, and hence, intention to cause death cannot be attributed to the appellants and, hence, the act of the appellants will not fall under Section 302 of the Indian Penal Code but under Section 304 Part II.
20. The question which arises before us is whether the conviction of the appellants under Section 302 of the Indian Penal Code is sustainable

or whether the case of the appellants is covered under Section 304 Part I or II of the Indian Penal Code?

21. In ***Rampal Singh v. State of U.P.*** reported in (2012) 8 SCC 289, the Hon'ble Supreme Court while altering the conviction from Section 302 of the Indian Penal Code to Section 304 Part-I of the Indian Penal Code observed as under:

“20. In order to hold whether an offence would fall under Section 302 or Section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder.

21. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences. An analysis of these two Sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really 'murder', but mitigated by the presence of circumstances recognized in the exceptions to

Section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular.

*25. Classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e., by applying the 'principle of exclusion'. This principle could be applied while taking recourse to a two-stage process of determination. **Firstly**, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then **secondly**, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.*

30. ...It is clear that the Appellant had not committed the crime with any pre-meditation. There was no intention on his part to kill. The entire incident happened within a very short span of time. It is true that there was knowledge on the part of the Appellant that if he used the

rifle and shot at the deceased, the possibility of the deceased being killed could not be ruled out. He was a person from the armed forces and was fully aware of consequences of use of fire arms. But this is not necessarily conclusive of the fact that there was intention on the part of the Appellant to kill his brother, the deceased. The intention probably was to merely cause bodily injury. However, the Court cannot overlook the fact that the Appellant had the knowledge that such injury could result in death of the deceased.”

22. In the present case, the following circumstances have emerged before us:

- a) that the deceased was incharge of the shop of Pradeep Sharma and at one point of time threatened Pradeep Sharma to suffer the consequences on which Pradeep Sharma became alert and to balance the control of deceased on his business, he employed other persons i.e. Sabin Barua (PW-9) and Pankaj Gugai (PW-10);
- b) that there was altercation which ensued between the appellants and the deceased at about 11.00 PM. At that time, the matter got pacified due to the intervention of PW9 Sabin and PW10 Pankaj;
- c) at around 2.00 or 2.30 AM, both the appellants threw acid upon the deceased while the deceased was sleeping and when PW9 Sabin and PW10 Pankaj tried to intervene, they also received severe burns on their body.

23. It is necessary to look into the relevant provision Section 304 of the Indian Penal Code which reads as under:

Section 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.

24. **Section 304** consists of two parts, the first dealing with second degree culpable homicide and the second dealing with third degree culpable homicide as has been noted above. The distinction between 304 Part I and Part II has been drawn by the Hon'ble Supreme Court in *Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648*, in the following words:

“....For punishment Under Section 304 Part I, the prosecution must prove: the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death...”

25. The distinction has also been drawn in the case of **Vijay Ramkrishan Gaikwas V. State of Maharashtra (2012) 11 SCC 592**, it was observed as under:

*“.... The occurrence thus has the features of an incident in which an injury is inflicted in a sudden fight without premeditation in the heat of passion upon a sudden quarrel within the contemplation of exception 4 to Section 300 of murder as defined in the said section. It is true that only one injury was caused to the deceased but the same is not conclusive by itself, for even a single injury can in a given case constitute murder, having regard to the weapon used and the part of the body chosen for inflicting the injury. The legal position in this regard is well settled by the decision of this Court in **Bavisetti Kameshwara Rao alias Babai v. State of Andhra Pradesh : 2008 (15) SCC 725:** (Para 13) It is seen that where in the murder case there only a single injury is, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II Indian Penal Code. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the Learned Counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.”*

26. The distinction having been drawn between the offences covered under Section 304 Part I and 304 Part II, the facts and circumstances of the present case are to be looked into. It is to be seen whether the action of the appellants was pre-determined and pre-meditated. The material on record shows that infact a quarrel had taken place between the appellants and the deceased. Although they were pacified by the intervention of PW9 Sabin and PW10 Pankaj. After about 3 hours the appellants picked up the bottle/can of acid and threw the same on the deceased. From the evidence, it has been established that the appellants were not cooled off within the gap of about three and a half hours and were in the same state of mind and wanted to take revenge of their humiliation. The altercation with the deceased was lingering in their mind and tormented them very much mentally. The appellants did not regain their cool and composure. It is very likely that this action on the part of the deceased provoked the appellants to such an extent that they chose to harm the deceased. Had the intention of the appellants was to cause death of the deceased they would have pre planned and procured a weapon like knife, revolver or any other deadly weapon. It is thus clear that though the appellants had no intention to kill the deceased they wanted to cause a bodily injury on his person and thus made use of the acid. Once these ingredients are not clear it is irrelevant to go into the motive behind the act.
27. To convict the appellants under Section 300 of the Indian Penal Code, it is necessary to prove first that there was a deliberate intention of causing bodily injury; and that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. From the

evidence on record, it is very clear that the act of the appellants was not planned and they merely intended to cause bodily injury which culminated into the death bringing the offence within the purview of Section 304 Part I of the Indian Penal Code. In our opinion, the argument deserves some merit that there was a sudden altercation which ensued in the heat of the moment and there was no deliberate planning as it is not a case where the appellant went to the market and procured the acid. In the present case, as stated above there was no due deliberation on the part of the appellants and they assaulted the deceased almost immediately after he misbehaved with them. Treating the time gap between the altercation and the incident which resulted in the death of the deceased to be negligible, we conclude that the appellants had not committed the crime with any pre-meditation. The entire incident happened within a very short span of time. All that the evidence proves is that after the said incident the appellants continued to suffer a prolonged spell of grave provocation. All these circumstances betray signs of grave and sudden provocation to have continued haunting them and disturbing their mental equilibrium or depriving their self control, which is an essential attribute of grave and sudden provocation to qualify as a mitigating factor under Exception 1 to Section 300 of the Indian Penal Code.

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

*“...Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable Under Section 302, are not converted into offences punishable Under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable Under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) **nature of the weapon used;** (ii) **whether the weapon was carried by the accused or was picked up from the spot;** (iii) **whether the blow is aimed at a vital part of the body;** (iv) **the amount of force employed in causing injury;** (v) **whether the act was in the course of sudden quarrel or sudden fight or free for all fight;** (vi) **whether the incident occurs by chance or whether there was any pre-meditation;** (vii) **whether there was any prior enmity or whether the deceased was a stranger;** (viii) **whether there was any grave and sudden provocation, and if so, the cause for such provocation;** (ix) **whether it was in the heat of passion;** (x) **whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;** (xi) **whether the accused dealt a single blow or several blows.** The above list of circumstances is, of*

course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention...”

29. In another case of **Jai Prakash v. State (Delhi Administration)**, **1991(2) SCC 32**: the Apex Court held as under:

*“...when a person commits an act, he is presumed to expect the natural consequences. But from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death, it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary from case to case. However, as pointed out in **Virsa Singh** case the weapon used, the degree of force released in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated, whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused...”*

30. For the foregoing reasons, we hold that the conviction of the appellants for the offence under Section 302 of the Indian Penal Code is modified and instead of offence punishable under Section 302 of the Indian Penal Code, the appellants are held guilty for the offence punishable under Section 304, Part-I of the Indian Penal Code and

ordered to undergo eight years of rigorous imprisonment. The period of sentence already undergone by the appellants be given set off to them. As per the nominal roll appellant no. 1 Rajesh has undergone a period of around 6 years and 6 months and appellant no.2 Balram has undergone a period of around 6 years and 10 months. The appellants shall surrender before the jail authorities within four weeks to serve the remaining period of sentence. Remaining part of the order on sentence shall remain unaltered.

31. Trial Court Record be returned.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

April 29, 2016
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