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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on 19th April, 2016

Judgment pronounced on 28th April, 2016

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CRL.A. 186/2015

JAGBIR SINGH

..... Appellant

Through

Mr.Vikas Pahwa, Senior Advocate with
Mr.M.L. Yadav and Ms.Astha Sharma,
Advs.

versus

STATE

..... Respondent

Through

Ms. Aashaa Tiwari, APP for the State.
Mr.N.S. Dalal, Adv. for the complainant.

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CRL.A. 214/2015 & CrI.M.(B).289/2016

RANBIR SINGH

..... Appellant

Through

Mr.Vikas Pahwa, Senior Advocate with
Mr.M.L. Yadav and Ms.Astha Sharma,
Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Ms. Aashaa Tiwari, APP for the State.
Mr.N.S. Dalal, Adv. for the complainant.

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CRL.A. 282/2015

JAGBIR SINGH & ANR

..... Appellants

Through

Mr. Satish Tamta with Ms. Nisha
Narayanan, Advocates

versus

THE STATE (NCT OF DELHI) & ORS

..... Respondents

Through

Ms. Aashaa Tiwari, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J

1. Crl.A.No.186/2015 has been filed by the appellant, Jagbir Singh; Crl.A.No.214/2015 has been filed by the appellant, Ranbir Singh; and Crl.A.No.282/2015 has been filed by the appellants, Jagbir Singh and Ranbir Singh.
2. All the three appeals have been directed against the judgment dated 19.12.2014 and order on sentence dated 23.12.2014 passed by learned Additional Sessions Judge-3, Dwarka Courts, Delhi in Session Case No.50/2012 in case FIR No.221/2014, registered under Sections 302/324/323/34 IPC at Police Station Najafgarh.
3. By the impugned judgment and order on sentence, the appellants in Crl.A.No.186/2015 and Crl.A.No.214/2015 i.e. Jagbir Singh and Ranbir Singh, were sentenced to undergo imprisonment for life for the offence punishable under Sections 302/34 IPC. They were also directed to pay fine of Rs.1.00 lakh, each, and in case of default of payment of fine, they were further directed to undergo Simple Imprisonment for one year, each.
4. For the offence punishable under Sections 324/34 IPC, the appellants, Jagbir Singh and Ranbir Singh, were sentenced to undergo Simple Imprisonment for one year, each, with fine of Rs.10,000/-, each, and in default of payment of fine, to undergo Simple Imprisonment for three months, each.
5. For the offence punishable under Sections 323/34 IPC, the appellants, Jagbir Singh and Ranbir Singh, were sentenced to undergo Simple Imprisonment for six months, each, with fine of Rs.1,000/-, each, and in default of payment of fine, to undergo Simple Imprisonment for one month, each. It was also directed that benefit of Sections 427/428 Cr.P.C. would be given to both the appellants.
6. In Crl.A.No.282/2015 filed by appellants, Jagbir Singh and Ranbir Singh,

vide impugned judgment dated 19.12.2014 respondents no.2 to 8 i.e. Krishan Kumar, Puran Mal, Ram Phal, Hoshiar Singh, Sanjay @ Nanha, Dilbagh Singh and Subhash were acquitted.

7. As per the case of the prosecution, pursuant to an information received on 17.4.2014 at 7.55 a.m. with regard to a scuffle at RZ-1, New Roshan Pura, Paprawat Road, Najafgarh, Delhi, DD No.10A was recorded. The said DD was marked to ASI Satbir Singh, who alongwith Ct.Abhay Singh reached at the spot, where Puran Mal and Krishan Kumar (two of the injured from complainant's side) were found. Upon enquiry from them, ASI Satbir Singh learnt that the injured, Daryao Singh, had been taken by Hoshiar Singh to RTRM Hospital. After leaving Ct.Abhay Singh at the spot, ASI Satbir Singh reached RTRM Hospital along with Puran Mal and Krishan Kumar, and got them admitted there. In the MLC No.379/04 with respect to Krishan Kumar, the injuries opined by the Doctor were 'simple sharp'. In the MLC No.380/04 pertaining to Puran Mal, the injuries were opined as simple blunt, besides smell of alcohol was also mentioned. In the MLC No.376/04 of Daryao Singh, the Doctor had mentioned 'brought dead'. IN the MLC No.379/04 of Ranbir Singh (appellant herein), the Doctor opined injuries as 'simple sharp'. In the MLC No.378/04 of Jagbir Singh (appellant herein), the injuries were opined as 'simple sharp and blunt'. ASI Satbir Singh informed the Duty Officer of Police Station Najafgarh with regard to the death of Daryao Singh. Statement of one of the injured persons, Krishan Kumar, being an eye-witness, was recorded as Exhibit PW-1/A. In his statement, Exhibit PW-1/A, he has testified that he had taken one shop out of the shops situated in the home of his uncle (tau i.e. elder brother of father) Daryao Singh and was running a business of electric appliances there. In the second shop, Daryao Singh was running grocery shop. In the other shop,

his father, Puran Mal, was running a grocery shop. In the third shop, diary business was being run by his 'tau' and family members. He has further testified that the road in front of their shop is called Paprawat Road. In front of their shop, on the other side, there is a house of one, Bhoop Singh, and his sons, who were running their shops from the said premises. Since last 8-9 years, Daryao Singh and sons of Bhoop Singh, namely, Ranbir Singh and Jabir Singh (appellants herein), both residents of RZ-1, New Roshanpura, Paprawat Road, Najafgarh, were not on talking terms as Ranbir Singh has criminal tendency and used to feel proud of his power. This witness has further deposed that whenever his uncle (tau) used to sit in the shop, Ranbir Singh used to taunt him and whenever a female member of the family of his uncle (tau) went outside, Ranbir Singh used to comment and on seeing them he used to urinate near the wall. On this issue, even in the past on various occasions, there were altercations between the parties, which resolved only after the intervention of the neighbours. But despite this, Ranbir Singh did not mend his ways. It has further been testified that on 17.4.2004, his father, Puran Mal, and uncle (tau) Daryao Singh had opened their shops at 6.30 a.m. and at 7.00 a.m. Ranbir Singh also opened his shop, and started abusing and taunting all three of them. For half an hour, they listened peacefully. Thereafter, Daryao Singh told Ranbir Singh that he is like his son and Ranbir Singh should not use such abusive language. Meanwhile, Ranbir Singh's other brother Jagbir Singh also came out. Ranbir Singh told Daryao Singh that this issue should be decided today itself. While saying that, both the brothers came out of their shop and went to the shop of Daryao Singh. They asked Daryao Singh to come out stating that they would teach him a lesson. When Daryao Singh came out, Jabir Singh caught hold of him and Ranbir Singh started beating him with fists and kicks. PW-1 has further

testified that when he (complainant-Krishan Kumar) and his father, Puran Mal, intervened, Jagbir Singh left Daryao Singh and hit on the head of the father of the complainant with a campa cola bottle. Ranbir Singh broke the campa cola bottle and hit the complainant with the same. While saying that he will kill Daryao Singh, Ranbir ran into his shop and came out with an ice-picker. He asked Jagbir Singh to catch hold of Daryao Singh, upon which Jagbir Singh caught hold of Daryao Singh from behind and Ranbir Singh stabbed Daryao Singh on his chest with ice picker and also beat him with fists and kicks due to which Daryao Singh fell down on the road. Daryao Singh suffered injuries on his head and other parts of the body. The complainant and his father tried to save Daryao Singh, as a result of which Ranbir Singh and Jagbir Singh fell down on the road and suffered injuries on their heads.

8. After completion of investigation, a charge sheet was filed against both, Ranbir Singh and Jagbir Singh. The Charge reads as under:

“CHARGE

I, D.S. Paweriya, Additional Sessions Judge, New Delhi, do hereby charge you (Jagbir Singh s/o Bhoop Singh (2) Ranbir Singh S/o Bhoop Singh as under:

That on 17.4.2004 at about 7.30 a.m. on Parawat Road near house no.RZ1 Prem Nagar you both in furtherance of common intention of you both committed murder of Daryao Singh and thereby committed an offence punishable u/s 302/34 IPC and within the cognizance of this court.

In the alternative on the abovesaid date, time and place you both in furtherance of common intention of you both caused hurt on the chest of Dario Singh with a sua (Icepick) with the knowledge and under the circumstances that Dario Singh would died of the injuries caused by you and Dario Singh died of the injuries so caused and thereby committed an offence of culpable homicide not

amounting to murder and punishable u/s IPC 304/34 IPC and within the cognizance of this court.

Secondly, on the abovesaid date time and place you both in common intention of you both voluntarily caused hurt with a broken bottle on the persons of Krishan Kumar and Puran Mal and thereby committed an offence punishable u/s 324/34 IPC and within the cognizance of this court.

And I hereby direct that you both be tried by this court for the aforesaid charge.

ASJ/23.10.2004

The charge is read over and explained to the accused persons who are questioned as under:

Q. Do you plead guilty?

A. I plead not guilty and claim trial.

A. I plead not guilty and claim trial.

RO & AC

ASJ/23.10.2004”

9. Twenty two witnesses were examined by the prosecution. Eleven witnesses were examined in defence.
10. Both, Mr.Vikas Pahwa, learned senior counsel appearing on behalf of the appellant Jagbir Singh, and Mr.Satish Tamta, learned counsel appearing on behalf of appellant Ranbir Singh, have, at the outset, submitted that both the appellants have been wrongly convicted under Section 302 IPC read with Section 34 IPC, and if at all a case is made out against both the appellants, it would be under Sections 304/34 IPC. It has also been contended that having regard to the testimonies of all the witnesses on record a case under Section 302/34 IPC is not made out against the appellants herein. It has further been contended that the appellants, the

deceased and the other injured persons, are the neighbours. The incident took place on the spur of the moment. In fact the deceased and his other family members were the aggressors. Evidence on record establishes that both, blood and stones, were also found outside the shop of the appellants as well. Although as per the evidence of the prosecution witnesses, they had only retaliated in self defence. Learned counsel have also contended that having regard to the nature of weapon; the facts that there was no premeditation and the appellants did not act in an anguish or cruel manner after the incident; and also taking into consideration the testimonies, which would show that it was a free for all fight and the injury was suffered in that situation, it cannot be said that it was aimed at the vital part of the body. It has also been highlighted before us that initially it is claimed that the appellants were abusing the deceased, thereafter there were kick and fist blows and then campa cola bottles were thrown around but none of the parties were armed with any weapon.

11. Learned counsel for the State has submitted that the prosecution has been able to establish its case beyond any shadow of doubt. It has also been contended that the testimonies of the injured eye-witnesses and the finding of the trial court is that the appellants were aggressors. Counsel has further contended that the appellant, Ranbir Singh, had exhilarated that *“Aaj isko khatam karke iski kahani khatam kar dete hain”*, which would show that both the appellants had all the intentions to murder the deceased. It has further been contended that the appellant, Ranbir Singh, had gone inside his shop to pick up an ice-picker, Jagbir Singh caught hold of the deceased and Ranbir Singh inflicted two fatal blows on the deceased, which caused the death of the deceased.
12. Mr. Dalal, learned counsel for the complainant, while adopting the arguments of counsel for the State submits that there is no infirmity in the

judgment of the Trial Court. The appellants were the aggressors as rightly held by the Trial Court and they had the intention to murder the deceased which is also evident from the fact that the blows were inflicted on the vital part of the body of the deceased which resulted in his death.

13. We have heard learned counsel for the parties, considered their rival submissions and also carefully examined the testimonies of the witnesses and other documents placed on record. Although, learned counsel for the appellants in Appeal Nos.186/2015 and 214/2015, at the outset, have stated that they do not assail the judgment on conviction but no case under Section 302 of the IPC is made out against them. They have assailed the order on sentence, however, to decide this issue the testimonies of some of the material witnesses are required to be analysed in detail.
14. PW-1, Krishan Kumar, has testified that on 17.4.2004 he was present at his shop situated at Paprawat Road, RZ-1, G-Block, Prem Nagar. He had opened his shop at about 6.30 a.m. His father, namely, Puran Mal also has a shop adjacent to his shop. His father had opened his shop almost at the same time when he opened his shop. His uncle, namely, Daryao Singh, who is the elder brother of his father, had also come to his shop. The shop of Daryao Singh was adjacent to their shop. At about 7.00 a.m., the appellant Ranbir Singh, who also runs a grocery shop opposite to their shops on the same road, came to his shop. Ranbir Singh (present in Court) started abusing his uncle, Daryao Singh. Even in the past, quarrel had taken place between Ranbir Singh and Daryao Singh. PW-1 has further deposed that Ranbir Singh continued to abuse his uncle, Daryao Singh, for quite some time but they restrained themselves. After sometime, Daryao Singh called Ranbir Singh, he told him not to abuse him and further he (Ranbir Singh) was like his son. In the meantime, appellant Jagbir Singh (present in the Court) also reached at the spot and dragged

his uncle, Daryao Singh, out of his shop. Thereafter both the appellants started beating Daryao Singh with kicks and fists, due to which Daryao Singh fell down. PW-1 has further testified that his father and he came to the rescue of Daryao Singh. Jagbir Singh picked up a bottle lying nearby and after breaking it, hit the same on the head of the father of PW-1. Ranbir Singh, after leaving Daryao Singh, came to PW-1 and assaulted PW-1 on his head and mouth with the broken bottle. Both the appellants thereafter went inside their shop. PW-1 lifted Daryao Singh and while PW-1 was bandaging his wounded hand Ranbir Singh came at the spot with an ice-pick on his hand and called his brother Jagbir Singh. Ranbir Singh asked Jagbir Singh to caught hold of Daryao Singh. He also stated that they would see Daryao Singh. Thereafter Jagbir Singh caught hold of Daryao Singh from behind and Ranbir Singh gave blows on the chest of Daryao Singh with an ice-pick. Father of PW-1 also came again to the spot. The father of PW-1 pushed both the appellants aside as a result of which, both of them fell down.

15. This witness has further testified that he did not notice any injury on the person of the appellants at that time. Thereafter PW-1 took his uncle, Daryao Singh, inside his house. By that time maternal uncle of PW-1, Hoshiyar Singh, had also arrived at the spot. Hoshiyar Singh removed Daryao Singh to some hospital.
16. PW-1 has further testified that the appellant Ranbir Singh is a man of bad character and he often used to taunt his family members including ladies. Sometimes Ranbir Singh used to urinate towards the wall after seeing ladies of the family of PW-1, which was the cause of altercations in the past. Earlier his uncle, Daryao Singh, had reported the matter to the Police but no action was taken against the appellants.
17. PW-1 has also testified that his father had called the Police through

telephone no.100 about the present case. Police recorded the statement of PW-1, which has been marked as Exhibit PW-1/A and which bears his signature at Point 'A'. This witness has further deposed that he and his father were got medically examined. At the time of the incident, PW-1 was wearing pants and a shirt, which had blood stains due to the incident. The father of PW-1 was wearing a kurta pajama, which had blood stains. Daryao Singh was wearing a kurta pajama at the time of incident. This witness has also testified that he could identify the clothes of his father, his uncle and himself. It has also been deposed that in the hospital his uncle, Daryao Singh, was declared dead.

18. PW-2, Sh.Puran Mal, has testified that he runs a grocery shop at Prem Nagar, Paprawat Road, bearing no.RZ-1. On 17.4.2004, he opened his shop at about 6.30 a.m. His elder brother, Daryao Singh, also used to run a shop on the same road. Daryao Singh had also come to his shop almost at the same time. His son, Krishan Kumar, was also present at his shop situated near his shop. Appellant, Ranbir Singh, (present in Court) also runs a shop just opposite their shop. Ranbir Singh came to his shop at about 7.00 a.m. After coming to his shops, Ranbir Singh roamed about in the area and abused his brother, Daryao Singh. Ranbir Singh continued to abuse Daryao Singh for quite some time. Thereafter Daryao Singh told Ranbir Singh not to abuse him saying that Ranbir Singh is like his son and it was not proper to abuse him. On this Ranbir Singh told Daryao Singh that he would see Daryao Singh. When Ranbir Singh was abusing Dario Singh, Jabir Singh also arrived at the spot. After this, both the appellants dragged Daryao Singh outside his shop and grappled with him. Both the appellants were also beating Daryao Singh. This witness has further deposed that his son, Krishan Kumar, intervened in order to save Daryao Singh. On this Ranbir Singh gave a blow on the mouth and hand of his

son, Krishan Kumar, with a broken bottle, due to which the finger of his son got cut. PW-2 also tried to save Daryao Singh and his son from the appellants. The appellant, Jagbir Singh, gave blows on his head and other parts of the body with a broken bottle. PW-2 pushed both the appellants aside. Both the appellants returned to their shop. While Krishan Kumar was dressing his wounded hand, Ranbir Singh brought an ice-picker from his shop and asked Jagbir Singh to caught hold of Daryao Singh. He also said that they would finish Daryao Singh then and there. Jagbir Singh caught hold of Daryao Singh by his waist whereas Ranbir Singh gave blows with ice-pick on his chest. In order to save his brother, Daryao Singh, from the appellants, PW-2 pushed back Ranbir Singh as a result of which Ranbir Singh fell down by his head. PW-2 asked his son, Krishan Kumar, to take Daryao Singh inside his house. Krishan Kumar took Daryao Singh inside the house. Appellant, Jagbir Singh, picked up a stone lying nearby and threw on PW-2 due to which he sustained injuries on his leg. PW-2 ran inside his house in order to take shelter and bolted the door of the house from inside. He called the Police. Police reached at the spot. Police took Jagbir and Ranbir along with them. But the Police did not take PW-2 and others. PW-2 made several calls to the Police, upon which SHO Satbir came along with a Constable. PW-2 along with his son, Krishan Kumar, was removed to the hospital. Hoshiyar Singh, brother-in-law of PW-2 removed Daryao Singh to a hospital by a cycle rickshaw. Later PW-2 learnt that Daryao Singh was removed to another hospital.

19. PW-2 has further testified that Ranbir Singh is a man of quarrelsome nature and he is also a bad character, who often used to abuse them for no fault on their part. PW-2 had lodged 3-4 complaints against Ranbir Singh for such a behaviour on his part but those matters were compounded once or twice. Despite this Ranbir Singh did not mend his ways. On 17.5.2003

PW-2 lodged another complaint against Ranbir Singh but the Police did not take any action on that complaint. Ranbir Singh often used to urinate by the side of the wall on seeing the ladies of the family of PW-2. PW-2 has also deposed that Daryao Singh expired in the hospital. On the day of occurrence, PW-2 was wearing a shirt and a pajama, which had got blood stains due to the injuries on his person. His clothes were seized by the Police and marked as Exhibit P4 and P5.

20. For the purposes of examining the nature of injuries suffered by the deceased and other injured persons including the appellants, we deem it appropriate to reproduce the evidence of PW-7 and PW-9.

“PW7: Dr Aronima Hajra, Casualty Medical Officer, RTR Hospital. On SA.

On 17th April 2004, I examined Krishan S/o Puram Mal, aged about 30 years and found following injuries on his person.

- 1. A laceration on the ring finger measuring 1.5 cm.*
- 2. Laceration measuring .5 cms each on both sides of upper lip.*
- 3. Superficial laceration on the tongue tip, measuring 0.5 cms. The injury were found to be simple in nature caused by sharp weapon. MLC prepared by me in this regard is Ex. PW7/A which is in my hand and bears my signature at point A on it.*

On the same day I also examined PUram Mal S/o Prem Raj aged about 50 years and found the following injuries on his person.

- 1. An abrasion measuring half cms on right perital eminence.*
- 2. A superficial laceration on ventral side of left fore finger. These injuries were also found to be simple in nature caused by blunt object. MLC prepared in this regard is Ex. PW7/B which is in my hand and bears my signature at point A on it.*

On the same day at about 8.50 a.m. I also examined Dario

Singh S/o Prem Raj aged about 60 years. The patient was brought dead in the hospital. On external examination I found a blood clot in nosels and ear canal. Also there was a laceration on the right side of sternum, measuring 0.2 cms. In the third inter coastal region of superficial nature. MLC prepared by me in this regard is Ex.PW7/C which is also in my hand and bears my signature at point A on it.

I had also prepared death certificate regarding the death of Dario Singh which is in my hand and bears my signature at point A on it. I have also prepared death report Ex. PW7/E regarding the death of Dario Singh.”

“PW9: Dr Pooja, Senior Resident, Department of Forensic Medicine, DDU Hospital, New Delhi. On SA.

On 18th April 2004, I conducted post-mortem examination on the dead body of Dario Singh. The postmortem examination commenced at 3 p.m. and concluded at 4.30 p.m. Postmortem staining was present on the back of the deceased except over pressure areas. Rigor mortis was also present all over the body.

EXTERNAL INJURIES

- 1. A penetrating wound of .4 cm x .4 cm X body cavity deep size was present in the fourth inter coastal space on left side of chest, 1 cm below the left nipple, circular in shape. Margins were clean.*
- 2. Penetraing wound of .4 cms X .4 cm X cavity deep size was present over right side of chest in third inter coastal space on anterior aspect, 2 cms. From mid sterna line and 8 cms away from right nipple, circular in shape and the margins were clean.*
- 3. An abrasion with contusion over anterior aspect of upper part of shin of left leg of 2.5 cms X 1 cm size, 2 cms from left knee joint.*
- 4. Abrasion with contusion over anterior aspect of shin of left leg of 1.5 cms X .5 cms size, 2.5 cms below injury number 3.*
- 5. Abrasion with contusion over anterior aspect of shin of left leg, 1 cm below injury number 4, of 1.5 cms X .7 cms size in*

measurement.

There were haemorrhage present in plural cavity on both side. There were penetrating injury present on lower lobe of left and right lungs. Right lung was adherent to chest wall. Nothing abnormal was detected on other organs of the body.

CAUSE OF DEATH

Cause of death in this case was haemorrhagic shock, as a result of injury number 1 and 2. All the injuries were antemortem in nature.

Injury number 1 and 2 were found to be sufficient to cause death in this case individually and collectively. Time since death was approximately 24 hours to 36 hours.”

21. DW-1, Jagbir Singh, has testified that he is a Software Engineer by profession. He has further testified that in the year 2004, he was residing at RZ-1, New Roshan Pura, Paprawat Road, Najafgarh, New Delhi. Opposite to their house, there were shops of Krishan Kumar, Puran Mal and Daryao Singh. The residential portion of the said persons is behind the shop of Krishan Kumar, Puran Mal and Daryao Singh. It has further been testified by DW-1 that outside their house, they have few shops. The corner shop was being managed by his brother, Ranbir Singh, under the name of Praveen General Store, which also has a STD Booth. They were residing in the abovesaid address from the year 1986. They were not on talking terms with the opposite party as they frequently used to create disturbance for them. Puran Mal, who is an alcoholic, used to urinate in front of the gate of their house while seeing the women of their family, which was the main cause of disturbance. Daryao Singh and Puran Mal are brothers and Krishan is the son of Puran Mal. Earlier some compromise had taken place between both the families but it was not in his knowledge.

22. DW-1 has further deposed that on 17.4.2004, when he was getting ready to go to his job, between 7.30 or 8.00 he heard some noise. He came out and saw some crowd gathered near the shop of his brother. His mother was also present there and she was shouting “*bachao-bachao*”. DW-1 witnessed that Krishan Kumar, Puran Mal, Daryao Singh, Ramphal, Hoshiyar Singh, Dilbagh Singh and Sanjay, who were present were armed with dandas and iron rod. DW-1 had seen his brother Ranbir Singh falling on the ground. He had also seen Krishan Kumar giving iron rod blows to his brother and the others assaulting his brother with danda. DW-1 ran to the rescue of his brother. Ramphal gave danda blow on the head of DW-1 and also attacked him with fist and hand blows, because of which DW-1 received injuries on his head, forehead, shoulders, back and stomach. Thereafter DW-1 after instructing his wife, who was at an advance stage of pregnancy, to keep herself away, intervened to save his brother. The wife of DW-1 made a call to the Police from the landline number 25019624. DW-1 also made a several calls to the Police through his mobile phone. When the Police reached the spot, all the assailants ran away. DW-1 has further testified that his brother was badly injured and had lost lot of blood, due to which he became unconscious. DW-1 had also lost lot of blood. DW-1 and his brother were admitted in the emergency where treatment was given to them. Thereafter SHO, Inspector Mohammad Iqbal, got DW-1 discharged from the hospital though the treatment was still continuing and some test, such as X-ray, etc., were advised by the Doctors. Thereafter he was taken to Police Station. On the way, DW-1 enquired from the Police as to why he was being taken to the Police Station. DW-1 was informed that since Daryao Singh had died in the quarrel (jhagra) which happened in the morning, he was being taken to enquiry. In the hospital, DW-1 had insisted that in his record, it should be

mentioned that he had received injuries and he had called the Police himself. But no such remark was made in the report. DW-1 has further testified that he was made to understand that Daryao Singh had died a natural death and some formalities were to be completed and, thus, he should sign the paper. Since DW-1 refused to sign the blank paper, he was threatened. DW-1 has also testified that since he was not in his full senses on account of the injuries received by him, he did what he was being asked to do and signed the blank papers. Next day, DW-1 was produced before the Magistrate and thereafter was sent to judicial custody. DW-1 has also testified that during the period he was on interim bail, he obtained copies of his MLC as well as the MLC of his brother through RTI. This witness has further deposed that he was in fact the victim in the case but the Police made him and his brother accused and filed the charge sheet by suppressing the record of the MLC and telephone calls made to the Police.

23. DW-2, Ranbir Singh, has testified that in the year 2004 he was living at RZ-1, New Roshan Pura, Paprawat Road, Nazafgarh, and the said house belonged to them. He was running a shop by the name of Praveen General Store, which also had a STD Booth. This witness has further testified that on 17.4.2004 at about 7.30 a.m. to 8.00 a.m., he opened his shop and was cleaning the same. There were one or two customers present there. Puran Mal (present in the Court) was hurling abuses at them. DW-2 asked Puran Mal as to why he was abusing them and told him not to do the same. He was joined by his brother, Daryao Singh, who used to reside in front of their house. Daryao Singh and Puran Mal were running grocery shops opposite to the shop of DW-2. DW-2 told both the persons that it does not look nice that elderly people abuse. Puran Mal was under the influence of liquor. DW-2 had warned him not to abuse

him. Thereafter both, Pooran Mal and Daryao Singh, left. After about ten minutes, Pooran Mal, Daryao Singh, Dilbagh, Krishan, Sanjay Subhash and Hoshiyar Singh (brother-in-law of Daryao Singh), etc., who were armed with weapons, danda, rod, lathi, etc., returned. DW-2 was inside his shop. The said persons entered the shop of DW-2 and Krishan hit on the head of DW-2 with Campa bottle and pulled DW-2 outside the shop. Puran Mal exhorted that DW-2 should be done away with. DW-2 was thrown on the ground and thereafter he was given beatings by the abovesaid persons with lathi, rod, etc. DW-2 sustained injuries on his head and other parts of the body.

24. DW-2 has further deposed that since his house was behind his shop, his mother came to serve him tea. Upon hearing the noise, the mother of DW-2 came to the rescue of DW-2 and also raised alarm. DW-2's brother, Jagbir Singh, also came to his rescue upon hearing the noise. The brother of DW-2 tried to intervene and rescue him. DW-2 lost consciousness by that time and he regained consciousness in the RTRM Hospital, J.P. Kalan. DW-2 remained in the hospital for about 4-5 days. The Police was present in the hospital. DW-2 asked them to record his statement but the same was not recorded. DW-2 has also asked the other Police officers, who had also visited the hospital, but they did not do so. DW-2 has requested the Doctor to get his statement recorded.
25. It has further been testified by DW-2 that he does not remember the exact date then, but he was discharged from the hospital and was taken to Police Station Najafgarh at around 11.00 a.m., where his signatures were obtained on certain blank papers. On the same day, in the afternoon, DW-2 was produced in Patiala House Court. DW-2 was told that he along with his brother had been arrested in connection with a case under Section 302 IPC. In the jail, the brother of DW-2 has informed DW-2 that how he

and his brother, Jagbir, had sustained injuries, and even in the jail DW-2 was under treatment for about a month. While DW-2 was in custody, he had signed on the complaint, which was got prepared by his family members, which complaint was pending in the Court of Metropolitan Magistrate where all the eight accused persons, namely, Hoshiyar Singh, Pooran Mal, Krishan, Subhash, Dilbagh, Sanjay, etc. had been summoned. It is testified that they had to file the said complaint, as Police did not register any case against the said persons.

26. DW-2 has also deposed that prior to the said incident, there had been other incidents, where Pooran Mal was urinating in front of their gate upon seeing the female members of their house coming out of the house, which led to altercation between the family of DW-2 and the opposite party. It has also been testified that a compromise was also arrived at between his father and Daryao Singh once before the Police.
27. DW-3, Dr.Aunima Hajra, Medical Officer, RTRM Hospital, Jafarpur, New Delhi, has testified as under:

“ON SA

On 17/4/04 I was posted at RTRM Hospital and I was working as medical officer. On that day one injured namely Jagbir S/o Sh. Bhoop Singh, Aged about 26 was brought by PCR Z93 with the alleged history of assault. I examined him and found the following injuries

- 1. Laceration in right temporal region one inch with clean cut margins.*
- 2. Laceration in occipito parietal junction in centre with irregular margins.*
- 3. Bruise at tip of left shoulder with tenderness and mild swellings.*

The injury was simple in nature caused by one sharp and other two caused by blunt weapon. My detailed report is EX.DW3/A which

bears my signature at point A.

On the same day I had also examined one another injured namely Ranbir s/o. Sh.Bhoop Singh aged about 30 brought by PCR Z93 with the alleged history of assault. On examination I found following injuries.

- 1. Laceration in right temporal region. (1) two and a half inch (2) one inch.*
- 2. Laceration in right frontal two inch.*
- 3. Laceration in left parietal two inches.*

The injuries were simple. The injured was complaining of dizziness and nausea and vomiting and kept under observation by SR Surgery by Dr. Hitender and X-ray skull found no bony injury was found.

The exhibits DW3/A and DW3/B had been taken out from the police file (court observations).”

28. DW-6, Smt.Seema, who is the wife of the appellant, Jagbir Singh, has testified that on 17.4.2004 at around 7.00 a.m. she was busy in her daily routine work in the house. Her husband was getting ready to leave for his job. She heard a noise coming from outside. Her husband went outside to see and she also followed him. This witness has further deposed that the outer portion of her house had shops and the last shop belonged to her *Jeth*, namely, Sh.Ranbir Singh. DW-6 saw that her *Jeth* was being attacked by Puran Mal, Krishan, Daryao Singh, Ramphal, Sanjay, Subhash and Hoshiar Singh. Her brother-in-law was lying on the ground in an injured condition. The husband of DW-6 went for his rescue. Ramphal gave a lathi blow on the head of husband of DW-6 from behind and other persons also joined him in giving kicks and fists blows. DW-6 has further testified that since she was in her advance stage of pregnancy she could not rescue her husband. DW-6 has also testified that her husband asked her to call the Police. She went inside the house and called

the Police at 100 number through her landline no.25019624. As soon as the PCR vehicle reached the spot, all the accused persons ran away from the spot leaving her husband and *Jeth* in an injured condition on the ground. She has also deposed that she could recognize Puran Mal and Ramphal, who were present in the Court. It has further been deposed by DW-6 that when her husband and *Jeth* were being removed to the Hospital she also accompanied them in the PCR vehicle. After a little while, when other relatives reached Hospital, DW-6 returned to her house as she was not feeling well. The mother-in-law of DW-6 had not accompanied her as she was old and also there was no one else in the house at that time.

29. DW-10, Smt.Satwanti, wife of Sh.Bhoop Singh, has testified that both the appellants are her sons. His son, Ranbir, was running a retail grocery shop. His son, Jagbir, was running a coaching centre. This witness has further testified that on 17.4.2004 her son, Ranbir, opened his shop at 7.30 a.m. as usual. When he was cleaning/sweeping his shop, she went along with him for tea. The shop was situated on the main Paprawat Road. The shop of Daryao Singh and Puran Mal is located on the other side of the road, just opposite to the shop of Ranbir. At that time, both Daryao Singh and Puran Mal, were present at their shop and they started abusing Ranbir. Ranbir told DW-10 that these two have been abusing him since morning. At that very moment, both Daryao Singh and Puran Mal declared that they would not spare Ranbir and would kill him that day. All the three, Daryao Singh, Puran Mal and Kishan, the son of Puran Mal came to Ranbir's shop. Kishan lifted an empty campa bottle and hit Ranbir on his head with the same. Thereafter three sons of Daryao Singh, namely, Ramphal, Sanjay and Dilbagh reached the spot. Ramphal was having a wooden rod (lathi) in his hand. Dilbagh was having an iron saria

in his hands and Sanjay was having an iron pipe in his hands. Meanwhile, another son of Puran, namely, Subhash, also reached the spot and he was carrying a thick wooden rod in his hands. Puran's brother-in-law, namely, Hoshier also reached the spot and he was having a wooden rod (lathi) on his hands. Hoshier hit Ranbir with the lathi on his head. All of them brought Ranbir out of the shop and beat him in front of the shop as a result of which he started bleeding. Public persons had gathered at the spot. DW-10 shouted for help. The son of DW-10, Jagbir, came out of the house and Hoshier hit him with a lathi on his hands. On hearing the cries of Jagbir, his wife, Seema, who was in a family way, came to the spot. Jagbir called the Police on telephone no.100 from his mobile phone. Seema went inside the house and also called on telephone no.100 from the landline phone. PCR reached the spot and took both, Jagbir and Ranbir, to RTR Hospital, Zafarpur. All the aforesaid assailants fled from the spot on seeing the PCR. The date, time, broad location and the presence of the injured and the deceased is not in dispute.

30. We have analysed the testimonies of material witnesses in detail in paras hereinabove
31. We have also examined the MLCs of appellants, Jagbir Singh and Ranbir Singh. The injuries on Jagbir Singh as per the MLC read as under:

- “1. Laceration in right temporal region one inch with clean cut margins.*
- 2. Laceration in occipito parietal junction in centre with irregular margins.*
- 3. Bruise at tip of left shoulder with tenderness and mild swellings.”*

32. Injuries on Ranbir Singh as per MLC read as under:

- “1. Laceration in right temporal region. (1) two and a half*

- inch (2) one inch.*
2. *Laceration in right frontal two inch.*
3. *Laceration in left parietal two inches.”*

33. As far as the injuries on PW-1, Krishan Kumar, are concerned, his MLC reads as under:

- “1. A laceration on the right finger measuring 1.5 cm.*
- 2. Laceration measuring .5 cms each on both sides of upper lip.*
- 3. Superficial laceration on the tongue tip, measuring 0.5 cms. The injury were found to be simple in nature caused by sharp weapon. MLC prepared by me in this regard is Ex. PW7/A which is in my hand and bears my signature at point A on it.”*

34. The MLC of Puran Mal, reads as under:

- “1. An abrasion measuring half cms on right perital eminence.*
- 2. A superficial laceration on ventral side of left fore finger. These injuries were also found to be simple in nature caused by blunt object. MLC prepared in this regard is Ex. PW7/B which is in my hand and bears my signature at point A on it.”*

35. The MLCs of both the groups would show that irrespective of the fact that as to who were the aggressors injuries were suffered by both the parties.

36. Witnesses of the prosecution have testified that campa bottles were broken and used to inflict injuries on PW-1 and PW-2 whereas the cross-examination of PW-2 suggests as under:

“It is wrong to suggest that 8 person from our side including myself committed house trespass at the shop of Ranbir dragged outside and gave him beating. It is wrong to suggest that due to this

commotion there was a traffic jam or that many persons had collected there. It is wrong to suggest that Jabir came outside to save his brother. Or that we caused injuries on his person. It is wrong to suggest that we all ran from the spot. It is wrong to suggest that we all had fled from the spot when PCR van arrived at the spot. Accused Ranbir took out bottles from his shop at the time of assault. Some bottles must have fallen outside our shop. Photo Mark D which is now Ex. PW2/D1 is of our shop. The stones and blood spots shown in photo Ex. PW2/D1 are close to our shop. It is wrong to suggest that these are in the middle of the road. It is correct that blood and stones have been shown in Ex. PW1/D1 just outside shop of accd. Voluntarily the blood might have fallen there when accused went there. Blood was coming from the person of accd as they had also received injuries. It is correct that Kharanja in Ex. PW2/D2 is outside shop of accused. It is correct that some pieces of glasses and bloods spots are seen along with stone pieces. The broken bottles in Ex. PW2/D3 are outside shop of the acc which they broke themselves.”

37. The purpose of extracting part of the cross-examination of PW-2 would only show that what started as a verbal duel with abuses was escalated to fists and blows and flinging of bottles from both directions. The injuries were sustained by both the parties and finally the appellant, Ranbir, picked up an eye-picker and stabbed Daryao Singh, which hit him on his chest.
38. The testimonies of the witnesses, including the defence witnesses, would show that in the early hours of the morning the neighbours converted the neighbourhood into a mini battle ground with abuses, fists and blows, and in this entire melee one person lost his life.
39. At this stage, we deem it appropriate to revisit the law with regard to Sections 300 and 304 of the IPC.
40. In the case of ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh***, reported at (2006) 11 SCC 444, it was held 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...***

Similarly in *Ghapoo Yadav and Ors. v. State of M.P. (2003) 3 SCC 528* and *Sukbhir Singh v. State of Haryana (2002) 3 SCC 327*, it was observed that :

...After the injuries were inflicted the injured has fallen down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The

assaults were made at random. Even the previous altercations were verbal and not physical. It is not the case of the prosecution that the accused Appellants had come prepared and armed for attacking the deceased....

41. Section 304 consists of two parts, the first deals with second degree of culpable homicide and the second deals with third degree culpable homicide as has been noted above. The distinction between 304 Part I and Part II has been drawn by the Supreme Court in the case of ***Alister Anthony Pereira v. State of Maharashtra***, reported at (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.... ”

42. In another case of ***Jai Prakash v. State (Delhi Administration)***, reported at 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...”

43. In the case of **Kandaswamy v. State of Tamil Nadu**, reported at (2008) 11 SCC 97 where the accused was alleged to have indiscriminately cut the deceased with an Aruval (sharp sickle like weapon) resulting in his instantaneous death, the conviction under Section 302 was altered to one under Section 304, Part I of the Indian Penal Code, in the background of the legal principles enunciated by the Supreme Court in its earlier decisions.
44. Present case is to be decided on the touchstone of the law laid down by the Supreme Court in the case of **Pulicherla Nagaraju @ Nagaraja Reddy** (supra) wherein the Supreme Court has highlighted by way of illustrations eleven amongst other circumstances from which it can be gathered whether the intention was to cause death or not. The said circumstances read as under:

“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.”

45. It must be kept in mind that in this case the weapon was neither a knife nor a pistol but an ice-picker, which was not carried to the spot of the incident in advance. It may also be noticed that two blows were inflicted, which hit the vital part on the body of the deceased during the free for all. As per the evidence, it is clear that the scene was free for all. Both sides were indiscriminately using bottles and fist blows. The quarrel was initially only verbal, there was no premeditation and the incident was on heat of passion. No undue advantage was taken, neither the appellants acted in a cruel or unusual manner.
46. In the absence of any positive proof that the appellants caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, the offence falls within the purview of part I of Section 304 of the Indian Penal Code. Hence, the possibility that in the sudden heat of passion/arguments between the deceased and the appellants, it led to a sudden fight between them which ultimately led to the death of the deceased cannot be ruled out in entirety.
47. Thus, in our view, a case under Section 304, Part-I, IPC is made out against appellants in CrI.A.No.186/2015 and CrI.A.No.214/2015. While the judgment on conviction is upheld, the order on sentence is modified to the extent that the appellants, Jagbir Singh and Ranbir Singh, shall undergo Rigorous Imprisonment for eight years for the offence punishable under Section 304, Part-I, IPC.
48. Accordingly, CrI.A.No.186/2015 and CrI.A.No.214/2015 stand disposed of.
49. As far as CrI.A.No.282/2015 filed by the appellants, Jagbir Singh and

Ranbir Singh jointly, learned counsel for the appellants, submits that he has instructions not to press the appeal.

50. Accordingly, CrI.A.No.282/2015 stands dismissed as not pressed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 28th, 2016

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