

\$~R-17 & 18

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.A. 298/2015

Judgment reserved on: 17th February, 2016
Judgment pronounced on: 23rd March, 2016

VIKAS @ LALA

...Appellant

Through : Ms. Saahila Lamba, Advocate

Versus

THE STATE (GOVT OF NCT), DELHI

...Respondent

Through : Ms. Aashaa Tiwari, APP for the State with
W/Inspector Furqan Khan, ATO, Police
Station Patel Nagar

+ CRL.A. 939/2015

THE STATE (GOVT OF NCT), DELHI

.....Appellant

Through : Ms. Aashaa Tiwari, APP for the State with
W/Inspector Furqan Khan, ATO, Police
Station Patel Nagar

Versus

SMT KRISHNA DEVI & ORS.

...Respondents

Through: Mr. Siddharth Yadav, Advocate for
respondent Nos. 1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Since the present appeals arise out of a common judgment, the same have been heard together and are being disposed of by a common judgment.

2. Present appeals arise out of a judgment dated 24.11.2014 and order on sentence dated 26.11.2014 passed by the Additional Sessions Judge in Sessions Case No. 54/10, by virtue of which the appellant Vikas @ Lala has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 20,000/- and in default of the payment of fine to further undergo simple imprisonment for two months. The Trial court acquitted the other three accused persons for the offences under Sections 302/323/34 of the Indian Penal Code.

3. The brief facts of the case are as under:

“On 21.10.2009 at about 10 pm, Sh. Rakesh Gupta, and his son Sunny @ Sanjay Gupta left their house to see Ganesh, another vegetable seller. When both of them reached in front of H. NO. T-313/16, Baljeet Nagar they saw Lala @ Vikas (accused) coming from the side of Lal Mandir towards his house. While so coming, he intentionally hit Sh. Rakesh Gupta, the latter objected to it. Lala @ Vikas accused then slapped Sh. Rakesh Gupta. At that time, Smt. Krishna came out of the house and grappled with Sh. Rakesh Gupta. When Sunny stepped ahead to save his father, Smt. Krishna (accused) and her two sons co-accused Rajesh and Naresh @ Tatu started grappling with Rakesh Gupta. In the meanwhile, Smt. Krishna went to her house and returned with a thick danda and started beating Sh. Rakesh Gupta.

Sunny tried to snatch the danda away, but Rajesh (accused) took over danda from his mother and started beating Sunny. In the meanwhile Naresh @ Tatu, Vikas @ Lala and Smt. Krishna accused started pushing and dragging Sh. Rakesh Gupta towards H. No. T-313/14, Baljeet Nagar. Sunny tried to save his father. He saw Naresh @ Tatu, Rajesh and Smt. Krishna had caught hold of his father and Vikas @ Lala dealt a chura blow in

the chest of his father. As a result, Sh. Rakesh Gupta fell in front of T-313/14, Baljeet Nagar in injured condition.

Sunny rushed to his house to inform his mother but accused persons chased him. From near from their house, accused persons hurled glass bottle at Sunny. He reached his house and told his mother and sister Kuneeta about the occurrence. All three then reached the spot and found Rakesh Gupta lying there in injured condition. Someone informed police by dialing no. 100 that Rakesh Gupta was removed from the spot to Janki Dass hospital in a rickshaw who declared him brought dead."

4. After completion of the investigation, charge sheet for the offence under Sections 302/323/34 of the Indian Penal Code was filed. All the accused entered the plea of not guilty and claimed trial. The prosecution relied on the testimonies of 20 witnesses, besides the exhibits produced during the trial. The trial court, after considering the same, convicted appellant Vikas @ Lala for an offence under Section 302 of the Indian Penal Code and acquitted the accused Smt. Krishna Devi, Naresh @ Tatu and Rajesh for the reason that the prosecution failed to connect them with the crime. The statement under Section 313 of the Code of Criminal Procedure was recorded wherein the accused persons denied all the incriminating circumstances appearing in evidence against them and claimed to be falsely implicated.

Arguments raised by the counsel for the Appellant Vikas @ Lala in Crl. A. 298/2015

5. Ms. Saahila Lamba, learned counsel appearing on behalf of the appellant submits that the impugned judgment is based on conjectures and surmises and the trial Court has erred in reaching a conclusion of guilt against the appellant Vikas @ Lala.

6. Ms. Lamba vehemently argued that the testimony on record is so interwoven that if it fails in convicting the other accused persons, the same testimony could not be used in convicting the appellant Vikas @ Lala. Counsel further submits that there are material inconsistencies and improvements in the testimonies of the material witnesses which renders the entire case of the prosecution unreliable.
7. The counsel for the appellant submits that the case of the prosecution is contradictory which does not inspire confidence and the conviction cannot be sustained on the basis of a false and concocted story.
8. It is further contended by the counsel for the appellant that there was no premeditation and the alleged incident happened in the heat of passion upon a sudden quarrel. The counsel further contended that the alleged incident happened in a spur of moment and since there was no intention to kill the deceased and there being a single blow on the chest of the deceased, the offence is not made out under Section 302 of the Indian Penal Code but it falls under Section 304 Part II of the Indian Penal Code.

Arguments raised by learned Counsel for the State in Crl. A. No. 939/2015

9. With respect to the appeal filed by the State against the order of acquittal with regard to accused Smt. Krishna, Rajesh and Naresh @ Tatu, Ms. Tiwari, learned counsel for the State submits that the entire evidence led by the prosecution has not been appreciated by the trial court in the correct perspective and the Trial Court has erred in overlooking the testimonies of the material witnesses and the impugned judgment dated 24.11.2014 acquitting the three accused

Smt. Krishna, Rajesh and Naresh @ Tatu/respondents is perverse. The counsel further submits that there are no major contradictions and improvements in the deposition of the witnesses warranting acquittal of respondents herein and such improvements cannot be treated as an attempt to falsely implicate the respondents. Counsel for the State submits that the minor contradictions in the testimonies, if any, are not material in nature so as to rule out its evidentiary value completely. To substantiate her arguments, learned counsel for the State has placed reliance upon *Ashok Kumar Vs. State of Haryana* reported in (2010) 12 SCC 350, *Shivlal & Ors. Vs. State of Chhatisgarh* reported in (2011) 9 SCC 561, *Kuria & Anr Vs. State of Rajasthan* reported in 2012 XI AD SC 376 and *Leela ram Vs. State of Haryana* reported in (1999) 9 SCC 525.

10. Learned counsel for the State contends that the trial court convicted the appellant Vikas @ Lala on the basis of the same set of testimonies on which the other accused persons were acquitted. The counsel for the State further submits that the trial court has erred in acquitting the respondents by assuming that there is a tendency to falsely implicate other members of the family by the victim. It is further contended that the trial court has committed a grave error in law in passing the impugned judgment, which according to her is based on erroneous understanding of law.

Arguments raised by learned counsel for the respondents Smt. Krishna, Rajesh and Naresh @ Tatu in Crl. A. 939/2015

11. Supporting the impugned judgment, learned counsel for the respondents Smt. Krishna, Rajesh and Naresh @ Tatu submitted that

the instant case does not warrant any interference by this Court. It is also contended that the witnesses have made substantial improvements in their testimonies before the Court and there are material contradictions in their statements which belies the case of the prosecution.

12. The counsel further submitted that the substantial part of the prosecution story has been disbelieved by the trial court. In an appeal against the order of acquittal, this Court should be slow in disturbing the order of acquittal with respect to the respondents herein. Counsel submitted that the evidence on record clearly establishes the innocence of the respondents and hence, the appeal deserves to be dismissed.
13. We have heard the learned counsel for both the parties and considered their rival submissions and perused the impugned judgment as well as the material available on record.
14. Undoubtedly the instant case of the prosecution rests on the testimony of the sole eye-witness PW20 Sunny @ Sanjay Gupta (complainant). It would be necessary to examine his testimony in the light of the well settled principle that the statement of the sole eye-witness may be relied upon provided that it does not leave any doubt in the mind of the court and the same is corroborated by other evidence produced by the prosecution in relation to the commission of crime.
15. In his complaint Ex.PW10/A, PW20 Sh. Sunny @ Sanjay Gupta (son of the deceased) stated that he used to sell vegetables along with his father and all the male accused persons used to come to his gali in drunken condition and speak filthy language and also used to whistle on seeing his sister (PW18); that on the fateful day at about 10:00 p.m.

when he along with his father was going to see one Ganesh and reached house No. T-313/16, Baljeet Nagar, appellant Vikas @ Lala was coming from the opposite direction and intentionally struck his father on which his father asked him to walk properly; that appellant Vikas @ Lala slapped his father and in between accused Krishna followed by accused Rajesh and Naresh @ Tatu came out of their house and started fighting with his father; that accused Krishna took out one Danda from her house and started beating his father; that he tried to save his father on which accused Rajesh took the Danda from accused Krishna Devi and started beating him; that accused Naresh @ Tatu, Vikas @ Lala and Krishna dragged his father towards H. No. 313/14, Baljeet Nagar; that Naresh @ Tatu, Rajesh and Krishna Devi caught hold of his father and appellant Vikas @ Lala stabbed his father on his chest; that he ran towards his house and accused persons chased him and threw glass bottles on him; that he returned to the spot along with his mother and sister and saw his father in an injured condition and removed him to Janki Dass Hospital, Pandav Nagar on a rickshaw cart where the doctor declared him "Brought Dead".

16. The complainant stepped into the witness box as PW20 Sh. Sunny @ Sanjay Gupta and deposed as under:-

"On 21.10.2009, at about 10.00 p.m., I was present at my house i.e. T-315/4A, Baljit Nagar, near Balmiki Mandir, Delhi. My father Sh. Rakesh Gupta was also present at the house. After taking dinner, I and my father left the house to see Ganesh, who used to help in our business i.e. sale of tomatoes on rehri. We were going towards Lal Mandir within the area of Baljit Nagar. When I and my father reached the street where H.

No.313/18, i.e. of the accused persons is situated. We saw Vikas @ Lala accused coming from the opposite side. Vikas @ Lala hit my father with his shoulder. My father asked Lala to walk carefully. Thereupon, Vikas @ Lala slapped my father. Then, Smt. Krishna Devi, accused came out of the house and slapped my father. Then Rajesh accused came out of the house. He was armed with a danda. Rajesh hit my father and me with the danda. Then Naresh @ Tatoo accused came out of the house and started beating me and my father. Smt. Krishna then pushed me as a result whereof I fell down. She, her son Tatoo @ Naresh and Rajesh accused then pulled my father and dragged him upto H.No.T-313/16. Smt. Krishna Devi, accused then caught hold of my father by his neck from behind whereas Rajesh caught right hand of my father and Tatoo @ Naresh, accused caught the left hand of my father. Lala accused then attacked my father from the front side with a knife on his chest. I got perplexed and started running towards my house. At that time, all accused hurled glass bottles at me from behind, while I was running towards my house. On reaching my house, I told my mother and sister Kunita that the accused persons had killed my father. Thereafter, I, my mother and my sister rushed to the spot.

On reaching my house, I told my mother and sister Kunita that the accused persons had killed my father. Thereafter, I, my mother and my sister rushed to the spot. We saw Smt. Krishna Devi accused pushing her sons, co-accused, inside her house. On seeing my mother, Smt. Krishna Devi remarked that they had put an end to the daily trouble. We then saw that my father was lying unconscious. My mother then proclaimed that she would get the accused persons arrested in case something happened to my father. We then saw all the accused persons running away from their house. Rajesh and Lala @ Vikas were seen running towards Lal Mandir, whereas Krishna Devi and Tatoo @ Naresh

were seen running towards Balmiki Mandir."

17. PW4 Smt. Tara Gupta (wife of the deceased) deposed as under:

"After about 05 minutes my son Sanjay came running to the house and told me that Naresh, Vikas, Rajesh and Krishna has stabbed my husband Rakesh with Churri in the gali in which their house is situated. On hearing this, I rushed out to the spot and my son Sanjay and daughter Kunita also came along with me. When I reached in the gali, I saw Krishna and her three sons Naresh, Vikas and Rajesh were standing outside their house. "

18. PW18 Kunita (daughter of the deceased) deposed on the same lines as that of PW4.

19. Before deciding these appeals it would be appropriate to analyze the settled position of law through catena of cases that will guide us in disposing the present appeals.

20. In ***Prithipal Singh etc. Vs. State of Punjab and Anr. etc.*** reported in ***(2012) 1 SCC 10***, the Hon'ble Apex Court held as under:

"This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a

solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

21. In ***Waman v. State of Maharashtra : (2011) 7 SCC 295***, the Hon'ble Apex Court observed as under:

"35. It is clear that not all the contradictions have to be thrown out from consideration but only those which go to the root of the matter are to be avoided or ignored. In the case on hand, as observed earlier, merely on the basis of minor contradictions about the use and nature of weapons and injuries, their statements cannot be ignored in toto."

22. In ***State of Uttar Pradesh v. Krishna Master : (2010) 12 SCC 324***, the Hon'ble Apex Court held that :

"15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole."

16. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of the evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless the reasons are weighty and formidable, it would not be proper for the appellate court to reject the evidence on the ground of variations or infirmities in the matter of trivial details. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or

conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.”

23. In ***Dinesh Kumar v. State of Rajasthan*** reported in (2008) 8 SCC 270, the Hon'ble Apex Court has held as under:

“12. In law, testimony of an injured witness is given importance. When the eye witnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same. Conviction can be made on the basis of such evidence.”

24. In ***Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan*** reported in (2013) 5 SCC 722, wherein the Hon'ble Supreme Court in para 38 held as under :

"38. xxxxxxxx It is a settled legal proposition that, while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the case of the prosecution, must not prompt the Court to reject the evidence thus provided, in its entirety. The irrelevant details which do not in any way corrode the credibility of a witness, cannot be labeled as omissions or contradictions. Therefore, the courts must be cautious and very particular, in their exercise of appreciating evidence. The approach to be adopted is, if the evidence of a witness is read in its entirety, and the

same appears to have in it, a ring of truth, then it may become necessary for the Court to scrutinize the evidence more particularly, keeping in mind the deficiencies, drawbacks and infirmities pointed out in the said evidence as a whole, and evaluate them separately, to determine whether the same are completely against the nature of the evidence provided by the witnesses, and whether the validity of such evidence is shaken by virtue of such evaluation, rendering it unworthy of belief. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility". It is in fact, the entirety of the situation which must be taken into consideration. While appreciating the evidence, the Court must not attach undue importance to minor discrepancies, rather must consider the broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereotype investigation. After exercising such care and caution, and sifting through the evidence to separate truth from untruth, embellishments and improvements, the Court must determine whether the residuary evidence is sufficient to convict the accused.

25. Keeping in view the above settled law, we are of the view that the improvements/contradictions as pointed out by learned counsel for the accused persons, are minor contradictions and does not render the evidence of PW20 Sh. Sunny @ Sanjay Gupta unbelievable.
26. PW7 Dr. B. N. Mishra conducted the post mortem of the deceased on 07.07.2009 and deposed in his testimony as under:

"On external examination of the body following injuries were found:

1. One incised stab wound on the chest at the level

of mid sternal line at 3rd and 4th inter-costal space with having size of 2.8 cm x 1.8 cm x deep to chest cavity with representing spindle in shape and regular margins. The injury located 8.5 cm from right nipple and 13.5 cm from left nipple with adjacent to sternum and passively oozing of blood from the wound. The track of wound directed obliquely left wards and backwards.

2. One incised wound of size of 1.5 cm x 0.5 cm x 0.5 cm present on the left lower eyelid with sharp regular margins.

On internal examination, the chest wall on right side pierced as mentioned in external injury No. 1. On section of thoracic cavity the middle lobe of right lung found lacerated of size 2.5 cm x 1.5 cm x 1 cm with collection of liquid and clotted blood of approximately 1500 ml present in right thoracic cavity.

All injuries were ante mortem in nature and of same in duration of alleged history.

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After examination of the weapon of offence I opined that the injuries No. 1 & 2 mentioned in the post mortem report Ex. PW-7/B were consistent to be inflicted by the knife produced.”

27. Perusal of the post mortem report reveals that the cause of death was haemorrhagic shock subsequent to laceration of lung caused by stab wound by sharp pointed weapon like knife. The stab was sufficient to cause death in the ordinary course of nature and manner of death was homicidal.
28. The next question for consideration is whether the evidence brought on record by the prosecution establishes the guilt against the appellant

Vikas @ Lala a case of “**murder**” or in the alternative a case of “**culpable homicide not amounting to murder**”?

29. Both the said offences involve killing of a person. “**Murder**” is an aggravated form of “**culpable homicide**”. Section 299 of the Indian Penal Code defines the offence of culpable homicide and Section 300 deals with murder. Section 299 explains “**culpable homicide**” and sets out the circumstances when culpable homicide amounts to murder and when it does not amount to murder. As per Section 300, existence of one of the four conditions, enumerated therein, which basically reflect four mental attitudes, turns “culpable homicide” into “murder”, while the three exceptions therein again reduce the offence of “murder” to “culpable homicide not amounting to murder”. The distinction between “murder” and “culpable homicide not amounting to murder” is very thin and in fact has always been a vexed question. Therefore, the question posed has to be examined carefully in the light of the broad principles laid down in the judicial pronouncements.
30. In *Jagtar Singh v. State of Punjab* reported in **1983 (2) SCC 342**, in a trivial quarrel the appellant wielded a weapon like a knife and landed a blow on the chest of the deceased. The Hon’ble Supreme Court observed that the quarrel had taken place on the spur of the moment. There was exchange of abuses. At that time, the appellant gave a blow with a knife which landed on the chest of the deceased and therefore, it was permissible to draw an inference that the appellant could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death but since there was no premeditation, no intention could be imputed to him to cause death. The Apex Court,

therefore, convicted the appellant under Section 304 Part II of the Indian Penal Code instead of Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for five years.

31. In ***Hem Raj v. The State (Delhi Administration)*** reported in **1990 (Supp.) SCC 291**, the appellant and the deceased had suddenly grappled with each other and the entire occurrence was over within a minute. During the course of the sudden quarrel, the appellant dealt a single stab which unfortunately landed on the chest of the deceased resulting in his death. The Hon'ble Supreme Court observed that as the totality of the established facts and circumstances show that the occurrence had happened most unexpectedly, in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury to the deceased, he could not be imputed with the intention to cause death of the deceased, though knowledge that he was likely to cause an injury which is likely to cause death could be imputed to him. The Apex Court, therefore, set aside the conviction under Section 302 of the Indian Penal Code and convicted the appellant under Section 304 Part II of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.
32. In ***Sukhbir Singh v. State of Haryana: (2002) 1 SCR 1152***, wherein two fatal blows were inflicted by the appellant therein by a bhala on the upper right portion of chest of the deceased, the Hon'ble Apex Court opined:

“19. The High Court has also found that the occurrence had taken place upon a sudden quarrel but as the appellant was found to have acted in a cruel and unusual manner, he was not given, the benefit of such exception.

*For holding him to have acted in a cruel and unusual manner, the High Court relied upon the number of injuries and their location on the body of the deceased. In the absence of the existence of common object, the appellant cannot be held responsible for the other injuries caused to the person of the deceased. He is proved to have inflicted two blows on the person of the deceased which were sufficient in the ordinary course of nature to cause his death. **The infliction of the injuries and their nature proves the intention of the appellant but causing of such two injuries cannot be termed to be either in a cruel or unusual manner. All fatal injuries resulting in death cannot be termed as cruel or unusual for the purposes of not availing the benefit of Exception 4 of Section 300 IPC. After the injuries were inflicted and the injured had fallen down, the appellant is not shown to have inflicted any other injury upon his person when he was in a helpless position. It is proved that in the heat of passion upon a sudden quarrel followed by a fight, the accused who was armed with bhala caused injuries at random and thus did not act in a cruel or unusual manner.***

33. However, upon anxious consideration of the matter we are persuaded to accept the alternative limb of submission advanced by the learned counsel for the appellant Vikas that the present case would fall within the ambit of Section 304 Part II of the Indian Penal Code.
34. It is contended by the learned counsel for the appellant Vikas @ Lala that even if the testimony of PW20 is believed to be true, the case falls within the exception of Section 300 of the Indian Penal Code as it is the case of a single blow by the appellant Vikas @ Lala and the incident happened at the spur of the moment because of a minor dispute. There was no enmity between the appellant and the deceased.

He had no motive whatsoever to cause his death. It was not a pre-meditated act with a view to cause death of the deceased. The appellant acted in the heat of passion during a sudden quarrel without having taken any undue advantage or acted in a cruel or unusual manner.

35. While deciding the present appeals the aforestated principles culled out by the Apex Court are to be kept in view. In the aforesaid factual matrix, it is clear that there was no pre-meditation and no malice to kill the deceased can be attributed to the appellant. The meeting was a chance meeting when the deceased and his son walked down the lane in which the house of the appellant was located. The altercation was sudden. The appellant could not have thought to meet the deceased at around 10 pm in the night. Therefore, intention to kill the deceased cannot be proved. In the backdrop of these mitigating factors, the appellant Vikas cannot be convicted for having committed the murder of the deceased.
36. Resultantly, we partly allow the Criminal Appeal 298 of 2015 preferred by the appellant Vikas @ Lala to the extent that instead of Section 302 of the Indian Penal Code the appellant Vikas @ Lala shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. The fine imposed upon the appellant Vikas @ Lala and the default sentence awarded to him shall remain unaltered. Accordingly, the order of conviction and sentence are modified in the above terms.
37. So far as the Criminal Appeal 939 of 2015 preferred by the State is

concerned, the evidence on record is not sufficient to clearly establish the specific role of the respondents in commission of the alleged crime. There was nothing to prove that the respondents participated in the alleged crime. Furthermore, the medical evidence does not bear out the story that the respondents had attacked the deceased or his son PW20. Having considered the evidence on record in depth, we are of the considered opinion that the substratum of the prosecution story has not been proved. To hold them guilty for the stabbing of the deceased with the aid of Section 34 would not be proper and there is nothing perverse about the trial court's order so far as their acquittal is concerned. Accordingly, the appeal filed by the State is dismissed.

38. Trial court Record be returned.
39. Copy of this decision be sent to the Superintendent- Central Jail, Tihar for updating the jail record.

SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

MARCH 23, 2016

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