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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 465/2015

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Judgment reserved on: 24th May, 2016

Judgment delivered on: 30th May, 2016

BASIULLAH

..... Appellant

Through : Ms. Rakhi Dubey, Advocate (DHCLSC)

Versus

STATE

..... Respondent

Through : Ms. Anita Abraham, APP for State
with SI Brij Mohan, PS – Welcome.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S SISTANI, J.

1. The present appeal has been preferred by the appellant under Section 374 (2) of the Code of Criminal Procedure and is directed against the judgment dated 19.12.2014 and order on sentence dated 24.12.2014 passed by the Additional Sessions Judge, New Delhi in Sessions Case No. 11/10, by virtue of which the appellant has been convicted under Section 302 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 50,000/- for the offence punishable under Section 302 of the Indian Penal Code.
2. The brief facts of the case, as noted by the learned Trial Court are as under:

“The accused has been sent up for trial on the allegations that on 15.09.2009 at about 07.30 p.m.,

accused Basiullah went to the parental house of deceased Salma Begum i.e. H. No. E49/L264, Gali No. 28, Janta Colony, Welcome and asked about Salma. When Salma came downstairs, accused took out a chhuri which he was carrying with him and indiscriminately stabbed Salma Begum. At that time, Shabiya Begum (PW1) was also present there and on hearing the cries of Salma Begum and Shabiya Begum, neighbours namely Fahim (PW10) and Shammi (PW8) reached to their rescue. PW10 Fahim saw Salma Begum lying on the floor and accused Basiullah stabbing Salma Begum. When accused Basiullah tried to flee, Faheem Ahmad and Shammi overpowered him and snatched chhuri Ex.P1 from him. Salma Begum was transported to GTB Hospital by her brother Chand Babu (PW4). Somebody informed the police and the information was recorded at PS Welcome vide DD No. 22A (Ex.PW3/A). On receiving the information, police reached at the spot and accused Basiullah, alongwith knife Ex.P1, was handed over to the police by PW10 Faheem and PW8 Shammi. On 23.09.2009, Salma Begum expired and on 24.09.2009, post mortem on the body of deceased Salma Begum was conducted by PW11 Dr. Meghali Kelkar who submitted the post mortem report, Ex.PW11/A. PW11 Dr. Meghali opined that Salma Begum died due to septicemic shock as a result of antemortem injuries produced by a sharp edged weapon and injury no. 1, as detailed in post mortem report Ex.PW11/A, was found to be sufficient in ordinary course of nature to cause death of Salma Begum. During investigation, it was revealed that accused Basiullah was married to deceased Salma Begum. After the marriage, the accused demanded dowry in the form of money from deceased Salma Begum and to have his demands fulfilled, regularly harassed her and beat her. Due to harassment, Salma Begum left the house of the accused and came to her parental house. After the completion of investigation, the accused was chargesheeted for offences u/s 498A/ 302 IPC.”

3. In order to bring home the guilt of the appellant the prosecution examined 22 witnesses in all. The statement of the appellant was also recorded under Section 313 of the Code of Criminal Procedure wherein he pleaded his innocence by denying all the incriminating circumstances and claimed to be falsely implicated.
4. Ms. Rakhi Dubey, learned counsel appearing on behalf of the appellant during the course of arguments concedes that she does not challenge the judgment of conviction on merits but only challenges the order on sentence while doing so counsel submitted that on the basis of allegations no case under Section 302 of the Indian Penal Code was made out and the case was covered under Section 304 Part I of the Indian Penal Code.
5. Learned counsel for the appellant argued that the unfortunate incident transpired without premeditation in a sudden fight and in the heat of the moment upon a sudden quarrel that erupted between the appellant and the deceased. The counsel further argued that it is highly improbable for the appellant to carry a knife of a length 30.5 cm, which is proved vide Ex. PW-3/D on his person. The counsel urged that the appellant lacked any preparation for the crime and picked the knife Ex. P-1 on the spot from the household articles kept nearby upon a sudden fight with the deceased, in a fit of rage.
6. The counsel for the appellant drew the attention of this court to Exception 4 of Section 300 of the Indian Penal Code and argued that it was squarely covered under the exception of Section 300 which reads as under:

"300. Murder-

Exception 1. - xxxx xxxx xxxx xxxx

Exception 2. - xxxx xxxx xxxx xxxx

Exception 3. - xxxx xxxx xxxx xxxx

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault."

7. To substantiate her arguments, learned counsel for the appellant has relied upon **Ankush Shivaji Gaikwad vs. State of Maharashtra** reported in **(2013) 6 SCC 770**, wherein the Hon'ble Supreme Court in Para 13 observed as under:

"13. In Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217, this Court held that if on a sudden quarrel a person in the heat of the moment picks up a weapon which is handy and causes injuries out of which only one proves fatal, he would be entitled to the benefit of the Exception provided he has not acted cruelly. This Court held that the number of wounds caused during the occurrence in such a situation was not the decisive factor. What was important was that the occurrence had taken place on account of a sudden and unpremeditated fight and the offender must have acted in a fit of anger. Dealing with the provision of Exception 4 to Section 300 this Court observed:

“7.... To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

8. Per contra, Ms. Anita Abraham, learned Additional Public Prosecutor appearing on behalf the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The testimonies on record proves the guilt of the appellant and the Trial Court has rightly convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and hence the findings warrant no interference, accordingly the appeal is liable to be dismissed.
9. We have heard learned counsel for the parties and considered their rival submissions and also carefully examined the testimonies of witnesses and other documents placed on record.
10. Before we deal with the rival submissions of counsel for the parties, we deem it appropriate to refer to the testimonies of some of the material witnesses in detail. The case of the prosecution rests upon

the testimonies of PW-1 Shabiya Begum, PW-10 Faheem Ahmed (neighbour of the deceased) who had witnessed the incident. The prosecution has further examined PW-4 Chand Babu (brother of the deceased) and PW-8 Shammi (neighbour of the deceased). What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance beyond reasonable doubt.

11. PW1 Shabiya Begum is a natural witness who witnessed the complete incident of crime and deposed before the court as under:

“The marriage of deceased Salma daughter of my sister Nafeesa was solemnized with accused Basiullah present in the court. After marriage accused Basiullah started living in rented house at Mangol Puri, Delhi. After marriage the behavior of Basiullah towards Salma was not good and he used to beat Salma. Accused Basiullah was not doing any job and he used to demand money from Salma to bring the same from her parents. Accused Basiullah demanded cash amount of Rs. 2000/- after about two months of his marriage and father of Salma Sarifuddin my brother in law (behnoi) had given cash amount of Rs. 2000/- to accused Basiullah after arranging the same from somewhere. Thereafter accused Basiullah again started demanding cash amount from Salma and he told Salma that if she would not fulfill his demand he would sell the domestic articles (stridhan articles).

In the year of 2009, month and date I do not remember but it were days of Ramzan, accused came to the house of Sarifuddin at about 7.30 pm. Since I along with my family have been residing on the ground floor, he asked me about Sarifuddin and I told him that Sarifuddin was not present in the house at that time and would come till 9.00 pm. Accused called Salma from the first floor through a child son of Chand (Chand is brother of

deceased). When Salma came down stairs from first floor, accused started abusing her and gave a kick (leg) blow to Salma due to which she fell down. On this accused took out CHHURRI and gave Chhurri blows on the person of Salma while she was lying on the ground. When I tried to save Salma, accused tried to attack on me with that chhurri. At that time I was holding my six months son in my lap. When accused also tried to attack me I raised alarm and called mohalla people. Mohalla people came there on hearing my noise and accused also attacked on those people with that chhurri which he was holding at that time. Two mohalla people received chhurri injuries on their person. The accused was overpowered by the mohalla people. Salma was lying in the pool of blood on the ground as there was heavy bleedings from her injuries.”

12. PW10 Faheem Ahmed (neighbour of the deceased) in his testimony deposed as under:

“On 15.9.2009, in between 7.30 and 8 p.m., I was present inside my house. I heard noise of cries of Salma Begum. The house of Salma Begum is adjacent to my house. I came out of my house. I saw that Basiullah, husband of Salma Begum, assaulting Salma Begum with a knife. Salma Begum was lying on the floor. Other persons of the locality also gathered there. Sabia Begum who is khala of Salma was also present there. Accused Basiullah, present before the court, was trying to flee from the spot after assaulting Salma. I alongwith my neighbour Shammi over powered Basiullah with knife. Shammi snatched the knife from the hands of Basiullah. I had sustained minor injury in my right thigh. Shammi had also sustained minor injury on his hand. Brother of Salma Begum namely Chand and Smt. Sabia removed Salma Begum to hospital.”

13. PW8 Shammi (neighbour of the deceased) in his testimony deposed as under:

“I heard cries of Sabiya. I immediately responded to her voice and reached the house of Salma. Sabiya is khala of Salma. I saw Basiullah, present before the court. He was having a knife in his hand. As soon as Basiullah came out of the house I with the help of Faheem overpowered him. I snatched the knife from the hands of Basiullah. I also sustained minor injury on my hand during this overpowering but I had not got treated myself for my injury.”

14. PW4 Chand Babu, brother of the deceased, deposed as under:

“About 15 days prior to Ramzan, 2009, accused had mercilessly beaten my sister and he set fire to my sister Salma and then he himself ran away to Shahjahan Pur where the accused was having permanent residence. My sister had sustained burn injuries and we got her medically treated. On 15.9.2009, accused had come to my house. At that time I was on the third floor and my khala (mausi) was on the ground floor of the house. My daughter aged about 7-8 years had come to my house saying that a quarrel had taken place. I had come down on the ground floor and I had seen my sister had sustained several knife blows. The accused had been apprehended by public persons and he was also found to be in possession of a knife.

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It is correct that on receipt of information I came downstairs and I saw a knife in the hand of the accused.”

15. It would also be relevant to refer to the testimony of PW-11, Dr. Meghali Kelkar, Senior Demonstrator, Department of Forensic Medicine, GTB Hospital, Delhi. The injuries described by PW-11 on the body of the deceased read as under:

- i) *Stitched incised stab wound measuring 4 x 0.2 x 12 cm vertically placed over right lower chest.*
- ii) *Stitched incised wound measuring 8 x 0.2 cm x 2.5 cm present obliquely on anteromedial aspect of right arm with upper end 14 cm below shoulder tip.*
- iii) *Stitched incised wound measuring 5.9 x 0.2 cm x 5 cm present vertically on lateral aspect of right arm.*
- iv) *Incised wound measuring 5.3 x 0.2 cm x 0.4 cm present on lateral aspect of right arm horizontally.*
- v) *Incised wound measuring 5.5 x 0.2 cm x 0.2 cm present horizontally on left cubital fossa 26 cm below left shoulder top.*
- vi) *Incised wound measuring 3 x 0.1 cm x 0.2 cm present obliquely on hypothhenar aspect of left hand palm.*
- vii) *Stitched incised stab wound measuring 2.2 x 0.2 cm x 8.5 cm vertically placed on right temporal region.*
- viii) *Stitched incised wound measuring 8.5 x 0.2 x 0.4 cm vertically placed on right parieto - temporal region.*

17. PW-11 further gave his opinion that the cause of death was septicaemic shock which resulted due to antemortem injuries produced by sharp edged weapon. Further, Injury no. 1 is sufficient to cause death in the ordinary course of nature. PW-11 also examined the weapon (knife) recovered from the possession of the accused and was of the opinion that injury No. 1, 2, 3, 4, 5, 6 and 8 can be caused by the given weapon or this type of weapon.

18. As the learned counsel for the appellant has limited his arguments to assail the order on sentence, the question which arises before us is whether the conviction of the appellant under Section 302 of the Indian Penal Code is sustainable or whether the case of the appellant falls within the purview of Section 304 of the Indian Penal Code as submitted by the counsel for the appellant.
19. The next question for consideration is whether the evidence brought on record by the prosecution, establishes against the appellant a case of “*murder*” or in the alternative a case of “*culpable homicide not amounting to murder*”?

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-

Secondly-

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-

Thirdly-

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-

Fourthly-

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 4.- *Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

20. The aforesaid Section provides five such exceptions wherein the culpable homicide would not amount to murder. Under ***Exception 4***, death of a person would not be considered murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender has taken undue advantage or acted in a cruel or unusual manner. The ***Explanation*** provided makes it clear that it is immaterial as to which party offers provocation or commits the first assault.
21. It is contended by the learned counsel for the appellant that there was no intention on the part of the appellant to cause death of the deceased and, hence, attracts the provision of Section 304 Part I of the Indian Penal Code which deals with culpable homicide not amounting to murder. It is contended that the quarrel took place on the spur of the moment and the prosecution has failed to prove any prior enmity between them. The counsel further contended that the unfortunate incident took place in the heat of the moment without the appellant having taken undue advantage or acting in a cruel or unusual manner and therefore, intention to cause death cannot be attributed to the appellant. Hence, the act of the appellant will not fall under Section 302 of the Indian Penal Code but under Section 304 Part I. In light of these contentions, it is necessary to look into the ingredients of the relevant provision. Section 304 of the Indian Penal Code 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.

22. In ***Sukhbir Singh v. State of Haryana*** reported in (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 as under:

“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.”

(Emphasis Supplied)

23. In ***Sandhya Jadhav v. State of Maharashtra*** reported in **2006 Cri LJ 2111**, the Hon’ble Supreme Court came to the conclusion that the Courts are bound to consider a large number of factors for arriving at an opinion as to whether the fight was sudden or not and/or whether the deceased has taken undue advantage of the situation in the following words:

“9. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation.....

.... The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning.

A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed, to be sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage."

24. In the case decided by this Court in ***Crl. A. No. 134/2009*** titled as ***Jagtar Singh @ Jagga @ Ganja vs. State of Delhi***, there were two injuries on the neck and two in the chest, of the deceased, caused by a sharp edged weapon. There were other minor injuries and abrasions; in all there were nine injuries. According to the doctor who conducted the post mortem of the deceased, the shock caused as a result of the injuries to the neck and chest was sufficient to cause death in the ordinary course of nature. The surrounding circumstances in the case pointed to some previous quarrel between the deceased and the appellant; the latter was agitated and confronted the deceased in the first part of the incident; on the day of occurrence. It was held by this Court that though the appellant inflicted several blows some of which were fatal, it is clear that he did not set out with a pre-mediated intention to kill the deceased. The facts clearly established an offence under Section 304 Part I of the Indian Penal Code in which intention was to cause such bodily injuries as would have resulted in death in the ordinary course of nature.

25. 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 that the present case would fall within the ambit of Section 304 Part I of the Indian Penal Code.
26. The unfortunate incident seems to have erupted at the spur of the moment. PW4 Chand Babu in his testimony deposed that the appellant had beaten the deceased and he brought his sister back to his house. Later, the appellant had come to his house and taken the deceased with him. No evidence had been put forth by the prosecution to prove the beating of the deceased by the appellant, in absence of any evidence thereof, this version of the prosecution cannot be trusted. From the testimony of PW4 it can be inferred that the appellant wanted the deceased to live with him. However, from the testimony of PW4 Chand Babu, it seems that the deceased was not interested to go with the appellant. PW4 deposed in his cross examination, *“My sister had gone back once with the accused unwillingly.”* It is in evidence that on the day of the incident, the deceased was at her father’s house and when she came downstairs, her denial to go back with the appellant became a reason for the sudden quarrel and the appellant assaulted the deceased.
27. It is the case of the prosecution that the appellant stabbed the deceased through knife Ex. P-1. It has further emerged from the testimony of PW1 Shabiya Begum that the appellant took out churri and stabbed the deceased. However, PW1 did not state any detail of the fact that from where the churri was taken out. It is highly improbable for the appellant to carry a knife of length 30.5 cm on his person. It cannot be

accepted that the appellant was armed with a knife when he reached at the deceased's house. Thus, there is every possibility of the appellant picking knife in a fit of rage from the household articles kept nearby. Also, there is no evidence on record to support any preparation or planning done by the appellant to kill the deceased.

28. So far as the injuries sustained by the deceased are concerned, it would be relevant to peruse the testimony of doctor who conducted post mortem. PW11 Dr. Meghali Kelkar in his testimony deposed that injury No. 1 i.e. ***“Stitched incised stab wound measuring 4 x 0.2 cm x 12 vertically placed over right lower chest, 3 cm from midline and 19 cm below right clavicle”*** was sufficient to cause death in the ordinary course of nature. Though, the appellant inflicted several blows on the deceased but as per the medical opinion injury No. 1 is proved to be fatal. The law on this aspect is well settled.
29. In the case of ***Arun Raj vs. Union of India and Ors.*** reported in ***(2010) 6 SCC 457***, the Hon'ble Supreme Court held as under:

“.... the appellant's learned Counsel contended that the fact that there was one single blow struck, proves that there was no intention to cause death. In support of the plea, reliance is placed on the decisions of this Court in the case of Bhera v. State of Rajasthan: (2000) 10 SCC 225, Kunhayippu v. State of Kerala: (2000) 10 SCC 307, Masumsha Hasansha Musalman v. State of Maharashtra (2000) 3 SCC 557, Guljar Hussain v. State of U.P. 1993 Supp (1) SCC 554, K. Ramakrishnan Unnithan v. State of Kerala (1999) 3 SCC 309, Pappu v. State of M.P. (2006) 7 SCC 391, Muthu v. State by Inspector of Police, Tamil Nadu (2007) 12 Scale 795. A brief perusal of all these cases would reveal that in all these cases there was a sudden and instantaneous altercation which led to the accused inflicting a single blow to the

deceased with a sharp weapon. Hence, there has been conviction under Section 304 Part II as delivering a single blow with a sharp weapon in a sudden fight would not point towards intention to cause death.”

30. The similar issue of single stab injury to the deceased was dealt by the Hon’ble Supreme Court in ***Sudhakar vs. State of Maharashtra*** reported in **(2012) 9 SCC 725**, wherein the accused inflicted single blow which unfortunately caused severe damage to the vital organs resulted in the death of the deceased. The Apex Court while converting the offence from Section 302 to Section 304 held as under:

“9. Going by the narration of the facts disclosed, there was nothing to suggest that there was any premeditation in the mind of the Appellant to cause the death of the deceased. Taking into account the statement of P.W. 1 that the deceased was under the influence of liquor and that whenever he was under the influence of liquor he used to throw the household articles and create a ruckus in the house was a factor which created a heat of passion in the Appellant who as a father was not in a position to tolerate the behaviour of his son whose misbehaviour under the influence of liquor was the torment. Therefore, unmindful of the consequences, though not in a cruel manner the Appellant inflicted a single blow which unfortunately caused severe damage to the vital organs resulting into the death of the deceased. In such circumstances, as rightly contended by Learned Counsel for the Appellant, we are convinced that the offence alleged and as found proved against the Appellant can be brought under the First Part of Section 304 of Indian Penal Code. Accordingly, while affirming the conviction of the Appellant, we are only altering the same as falling under Section 304 Part I of Indian Penal Code in place of Section 302 of Indian Penal Code.”

31. Applying the law laid down by the Hon'ble Supreme Court in the case of *Sudhakar* (supra), we are of the considered view that the evidence adduced by the prosecution falls short of bringing the case within the ambit of Section 302 of the Indian Penal Code and the offence committed by the appellant is covered by Section 304 Part I of the Indian Penal Code. The prosecution failed to prove the intention of the appellant to cause the death. It, thus, stands proved that the unfortunate incident took place on account of sudden quarrel between the deceased and the appellant; there was no pre-mediation; no animus and motive to kill the deceased. Therefore, having regard to the totality of the evidence on record, we have no hesitation in coming to the conclusion that the present case does not fall within the ambit of Section 302 of the Indian Penal Code. The aforesaid facts when analyzed in conjunction with the attending circumstances enwombing the present incident, strongly dispels the possibility that the appellant harboured an intention to kill the deceased.
32. Keeping in view, we are of the opinion that the conviction of the appellant should be altered from Section 302 to one under Section 304 Part I of the Indian Penal Code thereof. We are being informed by the learned counsel for the appellant that the appellant has continuously been in jail for about 6 years and 5 months. In view of the statement made by learned Counsel for the appellant, we are of the opinion that the ends of justice would be met if we modify the sentence awarded to the appellant and sentenced to undergo rigorous imprisonment for a period of eight years. The fine imposed upon the appellant Basiullah is unaltered. As noticed, the Trial Court had

not mentioned any sentence in default of payment of fine. Thereby, an additional sentence of 6 months in default of payment of fine is imposed on the appellant.

33. The appeal is partly allowed and orders of conviction and sentence are modified in the above terms.
34. Trial Court Record be returned.
35. Copy of this decision be sent to the Superintendent- Central Jail, Tihar for updating the jail record.

MAY 30, 2016
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G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J