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Surja Ram were taking fodder to their village in a cart and at that time alleged occurrence had taken place. Ram Kishan and his wife, Smt. Parmali accompanied by Krishan Chand and Shiv Kumar came to the disputed bara and stopped the complainant and the deceased from putting fodder in the said bara. On this, there was exchange of hot words. Smt. Parmali along with other accused namely, Krishan Chand and Shiv Kumar made the bundles of fodder to fall from the head of Surja Ram (since deceased) and caught hold of him, whereas appellant Ram Kishan pushed the deceased. Resultantly, Surja Ram fell down on the ground and became unconscious and he sustained injuries on his head. Complainant, Mam Raj along with other family members came to the rescue of Surja Ram and accused-appellants fled away from the spot. Injured was shifted to the hospital, where he was declared 'broad dead'. Medical ruqa (Ex.PD) was sent to the Police Station and the police recorded statement (Ex.PA) of complainant Mam Raj, on the basis of which formal FIR was recorded. During investigation on 14.05.2001 accused Ram Kishan and Smt. Parmali were arrested in this case.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of statement of the prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, learned trial Court held the appellants guilty and

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convicted and sentenced them as detailed in the opening paragraph of this judgment.

5. Aggrieved by passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal.

6. During the pendency of this appeal, appellant No.2, Smt. Parmali died on 27.07.2015 and vide order dated 02.05.2017 passed by this Court, the present appeal qua appellant Smt. Parmali wife of Ram Kishan abated under Section 394 Cr.P.C.

7. At the time of arguments, learned counsel for the appellants contended that Surja Ram (since deceased) was 75 years of age at that time. No weapon was used by either of the accused for causing any injury or causing death of Surja Ram. Even allegations are of giving push to Surja Ram. PW1 Dr. Mamta Goel in her cross-examination had admitted that injury caused to the deceased could be result of fall on hard surface.

8. Learned counsel for the appellants further contended that appellants, Shiv Kumar and Krishan Chand were not arrayed as accused at the initial stage, but they were summoned by the Court to face trial under Section 319 Cr.P.C. There was absolutely no intention or knowledge on the part of appellant, Ram Kishan or any other accused to commit the offence of murder or even causing any grievous injury. The circumstances and material available on file do not suggest so. Learned trial Judge has completely ignored these facts while recording the judgment of conviction because the basic ingredients of Section 304 Part-II are missing in this case.

9. Learned counsel for the appellants also contended that the main

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allegation to push Surja Ram is against appellant Ram Kishan only, who is about 85 years of age now and he has already faced the agony of protracted litigation of about 16 years. The present appeal be accepted and the appellants be acquitted of the charge.

10. Learned State counsel while arguing on these points, contended that the circumstances establish that appellant Ram Kishan and his family members had given push to Surja Ram by using criminal force and caused injury with the intention and knowledge to cause death, as they were aware of the fact that Surja Ram was an aged person and because of his old age, even such an injury could result into his death. Same thing happened in this case and learned trial Judge has rightly held the accused-appellant Ram Kishan guilty. Remaining three appellants were actively involved in commission of offence and but for their active participation, the alleged offence could not have been committed. Learned trial Judge has considered all these facts minutely while recording the judgment of conviction and order of sentence. The present appeal is without any merit and the same be dismissed.

11. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that certain facts are not disputed in this case that Suraj Bhan (since deceased) was an aged person of 75 years and no weapon was used for causing any injury to cause death of Suraj Bhan. On this point even, statement of PW-6, Mam Raj, complainant is not contrary, rather it has come in his statement that civil litigation was pending between the parties. Probably, the inimical

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relations between the parties were used as a weapon to settle the old rivalry between the parties and that is why, Ram Kishan and his family members have been implicated in this case. At any rate, it is not a case of intention of the appellants or in their knowledge to commit murder or therebeing any probability of causing death by the acts done by the appellants.

12. As the appellants have been tried for commission of offence for causing culpable homicide, it would be relevant to extract here the term “Culpable homicide” itself as defined under Section 299 of the Indian Penal Code. The same reads as under:-

“299. **Culpable homicide** - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

13. A perusal of the provisions of Section 299 IPC makes it ample clear that there are two basic ingredients so as to commit the offence of culpable homicide i.e., (i) the death of a person and (ii) the death should be caused with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely to cause death by such act.

14. If the above two basic ingredients are applied to the present set of facts, the reply is certainly in negative. A man of ordinary prudence cannot expect or visualize that giving of a push on the ground, may result into death of any person. If that may not be the case, the act done by the present appellants is not covered under act of 'culpable homicide'.

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15. Similar matter had gone before Hon`ble Jharkhand High Court in **Sakti Pado Gope And Ors. Vs. The State of Jharkhand, 2008(1) ECrC 256**, where death had taken place due to simple injuries caused to by brick batting and Hon`ble High Court observed that conviction of accused persons [in that case] does not sustain under Section 304 Part II and converted the same to the one under Section 323 IPC for inflicting minor and simple injuries to the deceased by giving push on the ground.

16. Even the allegation of giving push to Suraj Bhan (since deceased) is against accused-appellant, Ram Kishan only. It is rather contrary to the prosecution case that if two persons, namely, Krishan Chand and Shiv Kumar were catching hold of Suraj Bhan or Smt. Parmali was assisting, in that case, Suraj Bhan (since deceased) would not have fallen on the ground even. So, it cannot be held that appellants, Smt. Parmali, Krishan Chand and Shiv Kumar were actively involved in the commission of offence punishable under Section 304 Part II alongwith accused-appellant Ram Kishan to commit the offence and learned trial Judge has completely ignored these facts while recording judgment of conviction and order of sentence.

17. Now, the question arises – Whether the appellants have committed any offence and if so, what is the nature and gravity of the offence. On this point, statement of Dr. Mamta Goel [PW-1] is most relevant, who had conducted post mortem examination on the dead body of Surja Ram and submitted her report, the relevant portion of which is extracted below:-

“.. There was no external mark of injury seen anywhere on the

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body...”

Moreso, in her cross-examination, she has given her opinion that the “possibility of the person being injured in the manner mentioned in the post mortem report cannot be ruled out when the fall occurs on the brick pave street by a slight push keeping in view the age of the deceased and the medical disease also.”

18. The medical evidence by way of statement of Dr. Mamta Goel, [PW-1]; nature of injury and the manner of incident, as explained by the eye-witnesses clearly establish that the act of appellant, Ram Kishan is covered under Section 323 IPC whereas no offence is said to have been committed by remaining appellants, namely, Smt. Parmali, Krishan Chand and Shiv Kumar. At this stage, the Court cannot ignore the aspect that appellant, Ram Kishan is of the age of 70 years at the time of conclusion of trial before learned trial Judge on 23.2.2004 and now, he must be around 80 years of age. He has already faced the protracted litigation of more than 15 years.

19. Resultantly, the present appeal filed by appellant – Ram Kishan is accepted partly to the extent that offence committed by him is converted **from** under Section 304 Part II read with Section 34 IPC **to** Section 323 IPC and the sentence awarded to him is reduced to the period already undergone by him whereas, the appeal qua remaining appellants, namely, Krishan Chand and Shiv Kumar is allowed and they are acquitted of the charge. Needless to mention that Smt. Parmali wife of Ram Kishan, has died during the pendency of this appeal and appeal qua her already stood abated under

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Section 394 Cr. P.C., vide orders dated 2.5.2017 passed by this Court.

20. The appeal stands partly allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

May 26, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes