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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 12th September, 2017

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CRL. A. No.1644/2013

BUNTY

..... Appellant

Through: Ms. Saahila Lamba, Adv.

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, APP for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') filed against the judgment dated 08.08.2013 passed by the learned Trial Court in Sessions Case No.79/2012, arising out of FIR No.120/2012, Police Station Mahendra Park, whereby the Trial Court has convicted the appellant for the offences punishable under Sections 302 and 307 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). Challenge is also laid to the order on sentence dated 19.08.2013, by virtue of which the appellant has been sentenced to undergo rigorous imprisonment for life and a fine to the tune of Rs. 20,000/- for the offence punishable under Section 302 of IPC; in default of payment of the fine, to further undergo simple imprisonment for a period of one month. The appellant has been further sentenced to rigorous

imprisonment for a period of five years and a fine of Rs. 10,000/- for the offence punishable under Section 307 of IPC; in default of payment of the fine, to further undergo simple imprisonment for a period of 15 days. The Trial Court held that both the sentences would run consecutively, i.e. *firstly* the appellant has to undergo the sentence awarded under Section 307 of IPC and thereafter the appellant has to undergo the sentence awarded for the offence under Section 302 of IPC.

2. The case of the prosecution in a nutshell is that Satpal (hereinafter referred to as 'the deceased') was a shopkeeper at Azadpur Subzi Mandi. On 03.05.2012 at about 8:15-8:30 AM, when he was present at his *Fad* (shop) along with his brother Sanjay Kumar (PW12), four men came there and tried to snatch money from their customers and when the deceased objected to the same and tried to stop them, one of them took out an ice-pick/*sua* and gave a blow on the neck of the deceased by saying '*saale tu humein roknae wala kaun hai aaj teri kahani khatam kar dete hai*'. As a result of the blow, the deceased fell on the ground and the assailants ran from the spot towards the Railway Station. A large number of public persons who witnessed the incident chased the assailants upto some distance but were prevented as the assailants started throwing stones at them which resulted in the injuries to Lal Chand (PW15). The deceased was taken to the hospital by his younger brother Sanjay where he was declared brought dead. The police immediately came to the spot and from the CCTV Footage identified the assailants, out of whom; one of them was identified as Bunty (the appellant herein).

3. The FIR was registered on the basis of the statement of Sanjay Kumar. On 04.05.2012, the Investigating Officer along with SI Sanjeev and other police officials reached at Shalimar *jhuggies* where they saw the appellant coming from the Railway track area from where the appellant was apprehended by the Police. During interrogation, the appellant disclosed his involvement in this case and thereafter he was arrested. Pursuant to his disclosure statement, the appellant got recovered the weapon of offence i.e. ice-pick/*sua* from the boundary wall, at the right side of stairs of Adarsh Nagar Railway Station. On 16.5.2012, the Test Identification Parade of the appellant was conducted which was refused by him.
4. To bring home the guilt of the appellant, the prosecution examined as many as 26 witnesses in all. The statement of the appellant was recorded under Section 313 of Cr.P.C. whereby he denied all the incriminating evidence against him. The appellant pleaded innocence and claimed to be falsely implicated in the present case. The appellant stated that all the recoveries were imputed on him and nothing was recovered from his possession or at his instance. It was further stated by the appellant that he was a poor person and a rickshaw puller by profession. The appellant examined no witness in his defence.
5. Ms. Saahila Lamba, learned counsel for the appellant submits that the judgment of the Trial Court is based on surmises and conjectures. She submits that the Trial Court has failed to appreciate that the weapon of offence i.e. ice-pick/*sua* was planted by the police to falsely implicate the appellant as there was no blood grouping which could connect the weapon to the offence.

6. It was contended by the counsel for the appellant that the Trial Court had overlooked the evidence of PW12 Sanjay (brother of the deceased) who had categorically admitted in his cross-examination that he had not witnessed the infliction of *sua* blow to the deceased and had never gone to jail nor had been called to the police station or in any Court for the identification of the appellant and thus, the whole story was cooked up by the police.
7. Counsel further contends that the CCTV footage of the spot could not connect the appellant with the crime as the Trial Court had rightly observed in the impugned judgment that the spot was not covered and did not fall within the range of CCTV camera, thus, the shadow pictures taken from CCTV footage were not visual and cannot be trusted and the benefit of the same must go in favour of the appellant.
8. Learned counsel for the appellant also submits that the Trial Court failed to appreciate that the finger prints of the appellant were not found on the weapon of offence and the same was also not recovered from his possession. He was not apprehended by the public at the time of commission of offence, rather he was picked up from his house by the police. Even otherwise, the evidence of the injured witness (PW16 Madan Lal) did not state that he had seen the infliction of *sua* blow to the deceased by the appellant. He was never called to Jail nor to the police station or in any Court for identification of the appellant. Thus, merely on the basis of suspicion, it is highly unsafe to convict the appellant for the instant case.
9. It was submitted by Ms. Lamba that no public witness has deposed that the offence was committed with a *sua*. The Trial Court ignored that the appellant had admitted in his statement under Section 313 of

Cr.P.C. that he was arrested from his *Jhuggi* at Shalimar Bagh, Delhi, by the police and was falsely implicated in the present case as he could not pay the bribe to them. Counsel submits that on these grounds, the impugned judgment of conviction and the order on sentence passed by the Trial Court deserves to be set-aside.

10. Counsel also relies upon Section 31 of Cr.P.C. in support of her argument that the instant case is based upon a single transaction wherein it has been alleged that the appellant alongwith the other assailants attacked the deceased and also pelted stones on the public persons while they were fleeing from the place of occurrence. Thus, in the facts and circumstances of the present case, learned Trial Court was not justified in awarding consecutive sentences to the appellant. To substantiate this argument, learned counsel has relied upon the case of *O. M. Cherian @ Thankachan vs. State of Kerala* reported at *(2015) 2 SCC 501* whereby it was observed that in the cases based on a single transaction where it constitutes two or more offences, sentences imposed upon the accused are to run concurrently. It was also observed that imposing separate sentences under such circumstances was not justified.
11. An alternate argument has been raised by the learned counsel for the appellant that in any case, no case under Section 302 of IPC is made out, for the reason that the appellant did not carry with him any weapon of offence. The weapon being an ice-pick was picked up from a *rehri*. Even as per the case of the prosecution, the intention of the appellant was to rob the customers of the deceased. Additionally, it is contended that there was only one fatal blow which accidentally landed on the neck of the deceased and resulted in his death. The

appellant *per se* did not act in a cruel manner. Since the deceased had intervened when the appellant was attempting to rob his customers, the incident took place on the spur of the moment and thus, no offence under Section 302 of IPC would be made out. Lastly, Ms. Lamba submits that the appellant was in his early 20s at the time of the incident and it is thus prayed that a lenient view be taken against him.

12. *Per contra*, learned APP for the State, however, contends that the prosecution has been able to establish its case beyond any shadow of doubt. Reliance is placed on the testimonies of five eye-witnesses being PW12 and PW16 to 19. It is, thus, contended that having regard to the testimonies of the eye-witnesses, whose testimonies are truthful and reliable and are of sterling quality, there is no infirmity in the judgment passed by the Trial Court. It is also contended that the *sua* blow was inflicted on the vital part of the body of the deceased and thus, no benefit can accrue in favour of the appellant and he has been rightly convicted under Section 302 of IPC. Counsel also submits that having regard to the manner in which the blow has been inflicted, the Trial Court has rightly held that both the sentences would run consecutively. He relies on a decision of a Constitutional Bench of five Judges, reported as ***Muthuramalingam & Ors. v. State***, reported at **(2016) 8 SCC 313** (para 35), wherein it has been held that such a sentence can be passed while relying upon Section 31 of Cr.P.C.
13. In rejoinder, Ms. Lamba submits that although the power of sentencing lies with the Court itself however, the Trial Court has failed to give even a single reason for invoking Section 31 of Cr.P.C. and for that reason the order of sentence is devoid of any reason and thus bad in law.

14. We have heard the learned counsels for the parties, considered their rival submissions and given our thoughtful consideration to the matter. The prosecution has placed reliance on the testimonies of eye-witness account of Sanjay Kumar (PW12/ brother of the deceased), Madan Lal (PW16), Bharat Bhushan (PW17), Jagbir Singh (PW18) and Amarjeet (PW19), as all of them were working near the spot on the fateful day and had witnessed the incident.
15. PW12 Sanjay Kumar (younger brother of the deceased Satpal) testified in his examination-in-chief that he used to run a shop in the name of *Sisodia Bartan Bhandar* and the deceased Satpal was his elder brother who used to sell vegetables at *fad* No. 6, Azadpur Subzi Mandi and used to go for work at about 5:00 AM. It was deposed by PW12 that he used to open his shop at about 9:00 AM and used to go to meet his brother Satpal, at *fad* No. 6, at about 6:30-7:00 AM daily before opening his shop. On 03.05.2012 at about 8:15-8:30 AM, he was present at *fad* No. 6 along with his brother Satpal when four men came there and tried to snatch money from their customers to which his brother Satpal objected. On this, PW12 also tried to stop the aforesaid four assailants however; they said who were they to stop them. His brother Satpal and the customers grappled with the four assailants, whereupon one of the assailants took out a '*sua*' (ice pick/poker) and attacked his brother on his neck by saying that '*aaj teri kahani khatam kar dete hai*'. PW12 further deposed that his brother Satpal fell down on the ground and thereafter all the assailants ran away from there. Some public persons followed the assailants till the Railway Station area where the assailants threw stones upon those public persons chasing them. Thereafter, he took his brother to BJRM

Hospital in a car within a span of 30 minutes of the incident, where his brother was declared as brought dead by the doctors. At the time of the incident, Madan Lal (PW16) and Bharat Bhushan (PW17) were also present there. The police officials met him at the hospital and recorded his statement which was proved by him as Ex.PW12/A. PW12 identified the dead body of his brother vide Ex.PW12/B. The site plan was prepared at his instance. PW12 had correctly identified the appellant in Court as the boy who assaulted his brother Satpal by the '*sua*' and committed murder of his brother Satpal. PW12 had also identified the weapon of offence i.e. *sua* (ice pick/poker) which was Ex.P1.

16. In his cross-examination, PW12 stated that the deceased Satpal was residing with him in their joint family which comprised of 22 members. He further stated that they were four brothers and all were married. PW12 stated that on the day of incident, he had gone to the shop of his brother in his Santro Car bearing No. 6801 in which he took his brother Satpal in an injured condition to BJRM hospital. It was further stated by PW12 that no blood oozed out from the body of his brother Satpal. He did not inform the Investigating Officer in his statement that he had brought his brother Satpal to the BJRM hospital in his Santro Car and has voluntarily explained that he told the Investigating Officer that he had brought Satpal in an injured condition to BJRM hospital by his personal vehicle. PW12 stated that he was not known to the assailants before the incident nor he had seen the assailants including appellant Bunty. PW12 further stated that he was standing at a distance of five-seven feet from his brother Satpal when the incident took place and was giving vegetables to the

customers. He did not try to stop the assailants physically and has voluntarily explained that he told them not to snatch the money from the customers and such thing was not good. It was further stated by PW12 that the appellant Bunty ran away with 'sua' after causing injuries to his brother Satpal and the other assailants also ran away from there. The incident lasted for about five minutes and he took his brother to the hospital within two minutes of the incident. His Santro car was parked by him in front of *fad* No.6 on the opposite side of the road and he alone took his brother in an injured condition up to the car and thereafter took him to the hospital. He did not make any call to the police while he took his brother to the hospital nor he made any call to the police from the hospital. He is not aware as to who had informed the police. After 15 minutes of his reaching the hospital, the police reached there. There were no ice-slabs kept at the work place of his brother Satpal and the 'sua' was not used at *Fad* No.6. PW12 categorically admitted that Madan Lal (PW16) and Bharat Bhushan (PW17) were also working near the work place of his brother Satpal and they had family relations with them as they were known to them for the last number of years but were not their relatives. Besides PW16 and PW17, other public persons and shopkeepers were also present at the spot but he only knew the names of PW16 and PW17. On a specific Court Question, PW12 admitted that CCTV camera was installed at the market i.e. near the place of the incident and had admitted that he was not found visible in the still photographs of the CCTV footage placed on record by the Investigating Officer. PW12 voluntarily explained that it might be possible that he was left out since he was at a distance of five to seven feet behind his brother.

PW12 denied the suggestion that he was not present at the spot at the time of the incident and arrived at the spot much later or that he was deposing on the basis of hearsay and on account of his suspicion on the appellant.

17. PW17 Bharat Bhushan testified in his examination-in-chief that he was engaged in selling vegetables at D-Block of Azadpur, Subzi Mandi. On 03.05.2012 at about 8:30 AM, he was present in front of shop No. D-1343, where he came to know that three-four boys had pick pocketed the persons who came in the subzi mandi to purchase vegetables and public persons were giving beatings to those pick-pocketers. PW17 further deposed that out of those pick-pockets one brought a *sua*. The deceased Satpal and his brother Sanjay (PW12) asked them '*kya baat hai, yaha kya kar rahe ho*' on which the boy who was having *sua* in his hand inflicted injuries on the neck of the deceased with the said *sua*. With regard to the identity of the assailant, it was testified by PW17 that the boy who inflicted *sua* injury was wearing white shirt and was of dark complexion and of medium height. After inflicting *sua* injuries to the deceased, the boy who inflicted *sua* injury along with his other three associates started running from the spot towards Adarsh Nagar Railway station gate. PW17 further testified that he along with other public persons chased them but the said boy started pelting stones towards them to save themselves and due to pelting of stones one person sustained injuries on his head. The assailants could not be apprehended as they fled away after crossing the railway line. PW17 also deposed that he made a call to 100 number and police reached the spot. The deceased was taken to the hospital where PW17 came to know that the deceased had

expired due to the injuries sustained by him. Besides PW17, there were large number of public persons including Jagbir (PW18), Amarjeet (PW19), Sanjay (PW12/brother of the deceased) who were also present at the spot. The assailants were in the age group of 20-22 years. PW17 correctly identified the appellant in Court as the boy who had inflicted a *sua* blow to the neck of the deceased.

18. In his cross-examination, PW17 stated that at the time of the incident, he was present at his working place and at the time when *sua* blow was given to the deceased, he was at a distance of about 20-30 steps from the spot. PW17 stated that he could not state the exact time of the incident however, it was around 8:30 AM and has voluntarily explained that he made the call at 100 number at 8:40 AM. PW17 stated that he had witnessed the incident when the verbal exchange was going on between the deceased and the said boys. The brother of the deceased (Sanjay) was present at the spot at the time of the incident. Sanjay was about at a distance of about 2-3 steps away from the deceased when the deceased was given a *sua* blow. PW17 further stated that Sanjay had made attempts to apprehend those boys and had admitted that Sanjay did not receive any injury. On a specific Court Question the witness had admitted that the CCTVs had been installed at the spot. PW17 further stated that he knew Sanjay since the last thirteen years as he was his close friend and they had family relations with them. PW17 also stated that he reached the spot where the deceased had been given the ice pick blow within 5-7 seconds. As soon as he saw the incident, he became extremely perturbed. He did not check as to whether the deceased was alive at that time but out of nervousness, he immediately made a PCR call and volunteered to

explain that he made a call after about five minutes after other persons had checked the deceased. PW17 further stated that Sanjay was also standing there but he did not make the call. Police had recorded his statement at the spot but he did not sign any papers. He denied the suggestion that he was a planted witness or that he has identified the appellant at the instance of the Investigating Officer. PW17 also denied the suggestion that on account of his close relationship with the family of the deceased and his brother Sanjay he had falsely implicated the appellant.

19. PW18 Jagbir Singh deposed in his examination-in-chief that he was selling vegetables at *Fad* No. 7 & 8 in Azadpur Subzi Mandi D Block, in front of Adarsh Nagar, Railway Station and Amarjeet (PW19) was also working with him. On 03.05.2012 at about 8:15-8:30 AM, he was present at *Fad* No. 7 & 8, when 3-4 pick-pocketers after pick pocketing were coming towards their *Fad* No. 7 & 8 and some public persons were chasing them. Out of 3-4 pick-pocketers, two were apprehended by the public persons and gave beatings to them but somehow they escaped from the spot. After 2-3 minutes two pick-pocketers reached the spot while running and one of them was carrying a *sua* in his hand and another was having stone in his hand whereas the other two pick-pocketers were following them. On reaching at the spot, the person who was having a *sua* in his hand inflicted *sua* blow on the neck of one boy after which the said boy (assailant) brandished the *sua* in air to threaten other persons. Thereafter, all the four pick-pocketers including the said pick-pocketers who inflicted the *sua* injury, ran towards Adarsh Nagar Railway Station. The public persons chased them and PW18 also ran

towards them. The pick-pocketers started pelting stones and as a result of which one person sustained injury. The accused persons could not be arrested on the spot and they ran away after crossing the railway track. One of the above said pick-pocketers was in the age group of 15-16 years and others were of 18-21 years. One of the accused was wearing T-shirt but PW18 does not recollect the description of clothes of the other accused persons. Thereafter, police reached at the spot and took the injured to the hospital. The incident was witnessed by many public persons however; he was unable to give their names except Amarjeet (PW19). Police had recorded his statement after making inquiries from him. The appellant was correctly identified by PW18 as the person who inflicted *sua* blow to the deceased.

20. In his cross-examination, PW18 stated that the place of incident was at a distance of about 5-7 steps from his shop (*Fad*) and had witnessed the same. He was not known to the person who was murdered in the instant case. PW18 further stated that the appellant had picked up *sua* from a *rehri* and inflicted *sua* blow to the deceased. PW18 denied the suggestion that the incident did not occur in his presence or that he was not present at the spot. The police had reached the spot within 10-15 minutes. He was not aware as to who had made call on 100 number. It was further stated by PW18 that CCTV cameras were installed at the place of incident.
21. PW19 Amarjeet has deposed that at the time of incident i.e. on 03.05.2012 he was working at *Fad* No.13 in D Block, Azadpur Subzi Mandi in front of Adarsh Nagar, Railway Station and on that day at about 8:25-8:30AM, 3-4 boys had committed pick pocketing and thereafter verbal altercation was going on between the public persons

and 3-4 pick-pocketers. PW19 further deposed that in the meanwhile deceased along with his brother told to the pick-pocketers as to what they were doing and told them to leave the place, to which one boy took out a *sua* and said “*pehle tere ko hi dekh lete hai*” and inflicted *sua* blow on the left side of the neck of the deceased, due to which he fell on the ground. PW19 noticed some red spots on the neck of the deceased and after inflicting *sua* blows, the said boy along with his other three associates fled towards Adarsh Nagar, Railway Station. PW19 deposed that they chased assailants in order to apprehend them on which the said accused persons started pelting stones towards them and one person received injuries on his head due to the stones pelted by the assailants. It was further deposed by PW19 that the said accused persons could not be apprehended as they fled towards the railway track. He has further deposed that the above said accused persons were in the age group of 19-20 years and the assailant who inflicted *sua* injury was wearing white clothes at the time of the incident whereas other assailants were also wearing shirt/T-shirt and pants. Police was called at the spot and took the deceased as well as the injured to the hospital. Police made inquiries from him and recorded his statement. CCTV cameras were installed near the spot. The appellant was correctly identified by PW19 in the Court as the boy who gave *sua* blow to the deceased.

22. In his cross-examination, PW19 stated that Jagbir (PW18) was also working with him and was also present at the time of the incident. On the date of incident, he reached the above said *Fad* at about 8:00 AM. PW19 further stated that the place of incident was at a distance of about 8-10 steps from his above said *Fad*. PW19 knew the deceased

and his brother Sanjay. PW19 was not aware as to who made the call on 100 number. He explained that he did not lift the deceased from the ground since he immediately rushed towards the accused persons to chase them. The witness has also testified that he had not seen the accused persons/pick-pocketers prior to the present incident. PW19 further stated that his statement was recorded at the Police Station. PW19 denied suggestion that the incident of inflicting *sua* injury had not occurred in his presence or that he was not present at the spot and further denied that he was a planted witness.

23. After a careful reading of the testimonies of the aforementioned witnesses, we have found that both Jagbeer Singh (PW18) and Amarjeet (PW19) were working at the adjoining *Fad* No. 7 & 8 and were eye-witnesses to the incident. They have corroborated the testimony of Bharat Bhushan (PW17) in *toto*. They both have identified the appellant as the boy who gave *sua* blow on the neck of the deceased. They have confirmed that while the deceased tried to intervene and prevent them from committing pick-pocketing on the customers, one of the boys inflicted a *sua* blow on the neck of deceased by threatening him '*pehle tere ko hi dekh lete hain*' and after the incident the assailants waived *sua* in the air and threatened other persons and ran towards Adarsh Nagar Railway Station, where public persons chased assailants while they threw stones on public persons to prevent them from chasing them which finds independent corroboration from the CCTV visuals clearly showing the appellant running and throwing stones on the public persons chasing him. Jagbir Singh (PW18) and Amarjeet (PW19) have proved that they themselves had chased the assailants. The ocular evidence on record

in the form of oral testimonies of Sanjay Kumar (PW12), Bharat Bhushan (PW17), Jagbir Singh (PW18) and Amarjeet (PW19) confirm that it was the appellant who inflicted the *sua* blow to the deceased and while escaping, the appellant threw stones at the public persons injuring Lal Chand (PW15) which finds independent confirmation from the testimony of Madan Lal (PW16) who came to the spot after the incident and found the accused persons including the appellant running towards the Railway Station Adarsh Nagar. There is no reason to disbelieve the evidence of all the above mentioned witnesses since there is no history of previous animosity between the above mentioned prosecution witnesses and the appellant nor there was any reason for them to falsely implicate the appellant. Therefore, we are of the view that the ocular evidence on record connects the appellant with the crime and of causing injuries on the head of Lal Chand.

Medical Evidence:

24. The injured witness Lal Chand (PW15) was examined by Dr. Chetan on 02.05.2012. After local examination one clean lacerated wound of 3 cm x 0.5 cm over left parietal scalp and other wound of 2.5cm x 0.5 cm over left temporal parietal scalp i.e. on vital organ was found on the body of the injured Lal Chand. The MLC was proved by Dr. Rachit as Ex.PW2/A. PW2 opined the injuries sustained by Lal Chand were caused by blunt object and were simple in nature. PW2 has also proved the MLC of the deceased as Ex.PW2/B which was prepared by Dr. Pankaj on 03.05.2012 at 9.00AM whereby he was declared brought dead.

25. PW11 Dr. Sudesh Kumar, Medical Officer from BJRM Hospital deposed that on 03.05.2012, he conducted post-mortem examination on the dead body of the deceased Satpal who was declared brought dead in BJRM Hospital. On external examination, PW11 had found the following injuries on the body of the deceased:

“1. Deep punctured wound present at lower part, left side of the neck of size 0.5 x 0.5 round in shape, margin of the wound are sharp, depth of the wound is 6 cm, it is from the center of clavicle 2.5 cm, from the center of the mandible is 10 cm, from the left ear labule 10 cm and from the adam apple of neck is 6 cm.

2. Abrasion mark present on the upper part of the left shoulder of size 0.5 x 0.5cm round in shape.

3. Lacerated wound present at center of lower lip of size 1 x 1 cm.”

26. On internal examination of the deceased, PW11 found dissection of neck structure layer, beneath the layer at the place of punctured wound all tissues, muscles, carotid artery of left side and other blood vessels and trachea was cut and blood clot present in huge amount was present around the neck inner structure. The weapon used was pointed and pierced trachea, huge blood was present in trachea about one litres. As to the cause of death, PW11 opined that it was due to Haemorrhagic shock as a result of huge blood loss consequent upon injury No.1 which was ante-mortem in nature, fresh in duration and caused by sharp pointed metallic thin rod. The injury No.1 was sufficient to cause death in the ordinary course of nature and the time since death was opined as five hours. His detailed report was proved as Ex.PW11/A.

27. With regard to the weapon of offence, PW11 opined that the injury No.1 in the post-mortem report was possible by thin metallic rod with wooden handle/poker (*sua*) which was found to be sufficient to cause death. His opinion was proved as Ex.PW11/C. In his cross-examination, PW11 stated that apart from the neck there was another injury on the left shoulder. He has denied the suggestion that injury present on the neck/trachea could have been caused by a fall on a sharp object. He further denied the suggestion that he had given his opinion at the instance of the Investigating Officer or that his opinion was biased.

FSL Results:

28. PW23 Dr. Rajender Kumar, Deputy Director, Biology, FSL Rohini, Delhi deposed in his examination-in-chief that on 25.05.2012, three sealed parcels were received by him. Parcel No.1 was containing Exhibit-1 i.e *sua*; Parcel No.2 was containing Exhibit-2a, 2b and 2c i.e shirt, *baniyan* and pants respectively and Parcel No.3 was containing exhibit-3 i.e brown gauze cloth piece. On biological examination, blood was detected on exhibit 1, 2a, 2b & 3 however; blood could not be detected on exhibit 2c. His detailed biological report in this regard was proved as Ex.PW23/A. On serological examination, human blood was detected on exhibits 1 (*sua*), 2a (shirt), 2b (*baniyan*) and 3 (brown gauze cloth piece) and human blood of A group was detected in exhibits 2a, 2b and 3 but Exhibit No.1 failed to show any grouping because of no reaction. His detailed serological report in this regard was proved as Ex.PW23/B.

29. The first issue which arises for our consideration is as to whether the present case falls under Section 302 of IPC or whether it falls under one of the special exceptions carved out under Section 300 of IPC?
30. It is the case of the prosecution that admittedly, the appellant was a pick-pocket and he alongwith 3-4 persons were attempting to rob the customers of the deceased. After analysing the evidence on record, it is evidently clear that the occurrence has the features of an incident in which the injuries were inflicted in a sudden fight without pre-meditation in the heat of passion upon a sudden quarrel. The appellant did not carry the weapon of offence i.e. an ice-pick and merely picked up from the nearby *rehri* as deposed by PW18 Jagbir Singh in his cross-examination. The blow of ice-pick had accidentally landed on the neck of the deceased which resulted in his death. Thus, in the absence of any evidence that the appellant 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 IPC. Hence, the possibility that in the sudden heat of passion/arguments between the deceased and the appellant, it led to a sudden fight between them which ultimately led to the death of the deceased cannot be ruled out in entirety.
31. We may also note the view taken by another Division Bench of this Court, of which one of us, (G. S. Sistani, J.) was a member in the case of *Jagbir Singh and Others vs. State* reported at **2016 SCC Online Del 2722**, wherein the injuries were inflicted with the ice-pick. The conviction of the accused persons was modified from Section 302 to

Section 304 Part I of IPC and were sentenced for a period of eight years. The relevant para 45 reads as under:

“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.”

(Emphasis Supplied)

32. Having regard to the genesis of the occurrence and the surrounding circumstances and the fact that there was only one blow with a poker/*sua* which landed on the neck of the deceased which proved fatal to the deceased, it cannot be said with reasonable certainty that the appellant committed murder of the deceased or the appellant intended to cause the particular injury and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. The appellant *per se* did not act in a cruel manner against the deceased after inflicting the injury. 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 Exception-4 to Section 300 of IPC. The ends of justice would be met if we modify the sentence awarded to the appellant and sentence him to undergo rigorous imprisonment for a period of 8 years.

33. The second issue which arises for our consideration is as to whether both the sentences passed by the learned Trial Court are to run consecutively or concurrently and requires interference of this Court?
34. The answer to the second question lies in Section 31 of Cr.P.C. which provides quantum of punishment which may be legally passed when there is (a) one trial, and (b) the accused is convicted of '*two or more offences*'.
35. In the case of ***O. M. Cherian @ Thankachan vs. State of Kerala*** reported at ***(2015) 2 SCC 501***, whereby a Constitutional bench of Supreme Court answered the reference with regard to the issue as to whether the sentence imposed upon the accused could run concurrently or consecutively. In the facts of the case, the accused was convicted for the offences punishable under Section 498-A and Section 306 of IPC and was sentenced to two years and seven years of rigorous imprisonment respectively. Both the sentences were ordered to run consecutively. The conviction as well as sentence was affirmed by the High Court of Kerala. In view of the peculiar facts of the given case, the Apex Court held sentences to run concurrently. The relevant para 10-21 read as under:

"10. Section 31 CrPC relates to the quantum of punishment which may be legally passed when there is (a) one trial, and (b) the accused is convicted of "two or more offences". Section 31 CrPC says that subject to the provisions of Section 71 IPC, the court may pass separate sentences for two or more offences of which the accused is found guilty, but the aggregate punishment must not exceed the limit fixed in provisos (a) and (b) of sub-section (2) of Section 31 CrPC. In Section 31(1) CrPC, since the word "may" is used, in our considered view, when a person is convicted for two or more offences at one trial, the court may exercise its discretion in directing that the sentence for each offence may either run

consecutively or concurrently subject to the provisions of Section 71 IPC. But the aggregate must not exceed the limit fixed in provisos (a) and (b) of sub-section (2) of Section 31 CrPC, that is; (i) it should not exceed 14 years; and (ii) it cannot exceed twice the maximum imprisonment awardable by the sentencing court for a single offence.

11. The words “unless the court directs that such punishments shall run concurrently” occurring in sub-section (1) of Section 31, make it clear that Section 31 CrPC vests a discretion in the court to direct that the punishment shall run concurrently when the accused is convicted at one trial for two or more offences. It is manifest from Section 31 CrPC that the court has the power and discretion to issue a direction for concurrent running of the sentences when the accused is convicted at one trial for two or more offences. Section 31 CrPC authorises the passing of concurrent sentences in cases of substantive sentences of imprisonment. Any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the convict may have been sentenced.

12. The words in Section 31 CrPC

“... sentence him for such offences, to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct”

indicate that in case the court directs sentences to run one after the other, the court has to specify the order in which the sentences are to run. If the court directs running of sentences concurrently, order of running of sentences is not required to be mentioned. Discretion to order running of sentences concurrently or consecutively is judicial discretion of the court which is to be exercised as per the established law of sentencing. The court before exercising its discretion under Section 31 CrPC is required to consider the totality of the facts and circumstances of those offences against the accused while

deciding whether sentences are to run consecutively or concurrently.

13. Section 31(1) CrPC enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31(1) CrPC. There is no question of the convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, the court has to direct those sentences to run concurrently.

14. The opening words “in the case of consecutive sentences” in sub-section (2) of Section 31 CrPC make it clear that this sub-section refers to a case in which “consecutive sentences” are ordered. The provision says that if an aggregate punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence, it shall not be necessary for the court to send the offender for trial before a higher court. Proviso (a) is added to sub-section (2) of Section 31 CrPC to limit the aggregate of sentences—that in no case, the aggregate of consecutive sentences passed against an accused shall exceed fourteen years. “Fourteen years’ rule” contained in clause (a) of the proviso to Section 31(2) CrPC may not be applicable in relation to sentence of imprisonment for life, since imprisonment for life means the convict will remain in jail till the end of his normal life.

15. In Ramesh Chilwal v. State of Uttarakhand [(2012) 11 SCC 629 : (2013) 1 SCC (Cri) 1086] the accused was convicted under Section 302 IPC and sentenced to undergo imprisonment for life. The accused was also convicted under Sections 2/3 [3(1)] of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 and sentenced to undergo rigorous imprisonment for ten years and under Section 27 of the Arms Act sentenced to further undergo rigorous imprisonment for seven years. Considering the fact that the trial court had awarded life sentence under Section 302 IPC, this Court directed all sentences imposed under Section 302 IPC, Sections 2/3 [3(1)] of the Gangsters Act and Section 27 of the Arms Act to run concurrently.

16. When the prosecution is based on single transaction where it constitutes two or more offences, sentences are to run concurrently. Imposing separate sentences, when the acts constituting different offences form part of the single transaction is not justified. So far as the benefit available to the accused to have the sentences to run concurrently of several offences based on single transaction, in V.K. Bansal v. State of Haryana [(2013) 7 SCC 211 : (2013) 3 SCC (Civ) 498 : (2013) 3 SCC (Cri) 282], in which one of us (T.S. Thakur, J.) was a member, this Court held as under: (SCC p. 217, para 16)

“16. ... we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

17. This Court in Mohd. Akhtar Hussain v. Collector of Customs [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921], recognised the basic rule of conviction arising out of a single transaction justifying the concurrent running of the sentences. The following passage in this regard is relevant to be noted: (SCC p. 187, para 10)

“10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

In Manoj v. State of Haryana [(2014) 2 SCC 153 : (2014) 1 SCC (Cri) 763] the Bench followed Mohd. Akhtar Hussain case [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921]

18. While referring the matter to a larger Bench, the Bench observed that in Mohd. Akhtar Hussain case [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921], Section 31 CrPC was not noticed by this Court. It is to be pointed out that in Mohd. Akhtar Hussain case [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] and Manoj case [(2014) 2 SCC 153 : (2014) 1 SCC (Cri) 763], the appellants who were convicted for different counts of offences arose out of a single transaction, favouring the exercise of discretion to the benefit of the accused that the sentences shall run concurrently. Those decisions are not cases arising out of conviction at one trial of two or more offences and therefore, reference to Section 31 CrPC in those cases was not necessitated.

19. As pointed out earlier, Section 31 CrPC deals with quantum of punishment which may be legally passed when there is (a) one trial; and (b) the accused is convicted of two or more offences. The ambit of Section 31 is wide, covering not only a single transaction constituting two or more offences but also offences arising out of two or more transactions. In the two judgments in Mohd. Akhtar Hussain [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] and Manoj [(2014) 2 SCC 153 : (2014) 1 SCC (Cri) 763], the issue that fell for consideration was the

imposition of sentence for two or more offences arising out of the single transaction. It is in that context, in those cases, this Court held that the sentences shall run concurrently.

20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

21. Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in Mohd. Akhtar Hussain [Mohd. Akhtar Hussain v. Collector of Customs, (1988) 4 SCC 183 : 1988 SCC (Cri) 921] and Section 31 CrPC.”

(Emphasis Supplied)

36. Adverting to the case in hand, the learned counsel for the appellant submitted that the instant case falls under Section 304 of IPC and is based on a single transaction as the appellant in the presence of other assailants gave a single blow with an ice-pick to the deceased which

was not being carried by the appellant but picked up from a nearby *rehri* and also pelted stones on the public persons while they were fleeing from the place of occurrence, thereby constituting a single transaction. It is noteworthy to mention that the learned Trial Court while sentencing the appellant Bunty considered the aggravating and mitigating factors only for the limited purpose of sentencing the appellant for rigorous imprisonment for life and found that the instant case does not fall within the category of rarest of rare or least even in the category of rare case. The relevant para reads as under:

“Now I would like to draw a balance sheet of aggravating and mitigating factors. The only mitigating factor in the present case is that the convict Bunty is a young boy. The aggravating factors are that the convict Bunty had given a sua blow to the an innocent shopkeeper Satpal without any instigation from his side only because Satpal had dared to challenge his authority and illegal act of snatching money from the customers coming to the market. His (Satpal's) only fault was that he had tried to protect the innocent customers and objected to the illegal activities of snatching / robbery etc. of the accused Bunty and his associates. No sooner the deceased Satpal had objected to their illegal acts, Bunty picked up the ice-pick / poker / Sua lying at one of the rehri and gave the fatal blow to Satpal on his neck. He did not stop at this. While escaping he indiscriminately threw stones by directing them on public persons and in the said process caused injuries on the head of Lal Chand an innocent bye-stander.”

37. The Hon'ble Supreme Court in the case of ***O. M. Cherian's*** case (*supra*) observed that a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. As per the mandate of Section 31 of Cr.P.C., it is left to the full

discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offences. The Apex Court further observed that it was difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. The discretion has to be exercised along the judicial lines and not mechanically

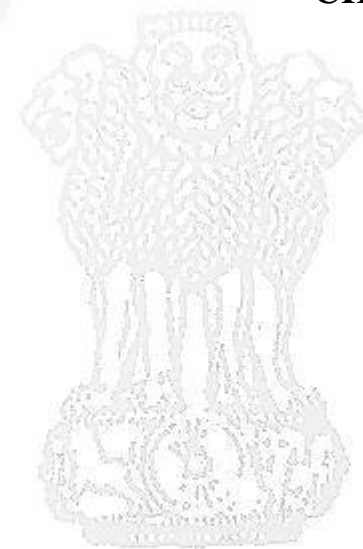
38. We have found that the learned Trial Court did not give reasons while sentencing the appellant for the consecutive running of the sentences imposed upon the appellant. In view of the absence of reasons in the order on sentence while sentencing the appellant, we find force in the argument raised by the counsel for the appellant.
39. Applying the law as laid down in *O. M. Cherian's* case (*supra*) to the facts of the present case, we are of the considered view that there was no aggravating circumstance which attracts the sentences to run consecutively. We have discussed hereinabove that the conviction of the appellant is squarely covered under Section 304 Part I of IPC, having regard to the facts and circumstances of the present case; we are of the considered view that the learned Trial Court was not justified in awarding consecutive sentences to the appellant.
40. Consequently, the appeal is allowed in part, the conviction and order on sentence recorded by the Trial Court is modified and the sentence imposed by the learned Trial Court is modified to the extent indicated hereinabove. The appeal stands disposed of. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered.
41. The Trial Court record be sent back along with a copy of this judgment.

42. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 12, 2017
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