

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1) **CRA-S-169-SB of 2018 (O&M)**
Date of Decision: 02.07.2018

Dinesh ...Appellant

Versus

State of Haryana ...Respondent

2) **CRA-S-183-SB of 2018 (O&M)**

Manish ...Appellant

Versus

State of Haryana ...Respondent

3) **Crl. Revision No.806 of 2018**

Shanti Devi through LRs ...Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Gautam Dutt, Advocate,
for the appellants in the appeals.

Mr. Surender Singh, AAG, Haryana.

Mr. M. K. Tanwar, Advocate,
for the complainant in the appeals and
for the petitioner in CRR no.806 of 2018.

Amol Rattan Singh, J.

CRM No.7699 of 2018 in CRR no.806 of 2018

By this application, invoking jurisdiction under Section 391 read

with Section 482 of the Cr.P.C., the petitioners in the revision petition seek to lead additional evidence before this Court, such evidence being in the form of an application addressed by the doctor on duty (H/S) ICU (A&E), on 02.02.2016, to the person incharge of the Police Post, PGIMS, Rohtak.

A perusal of the doctors' application (Annexure P-2 with the petition) shows that it is stated therein that the "stay file" of patient Shanti Devi was missing from her bed side since 1:00 pm on 31.01.2016. Therefore, the doctor sought further action by the police with regard to the patients' file being missing. It is also stated in the application that she was admitted in Ward 4/v on 22.01.2016 at 1:05 pm, "in Daycare" on 25.01.2016 at 4:00 pm, and was admitted to the ICU on the same date at 10:10 pm, with her having a history of an assault on her on 21.01.2016.

As a matter of fact, no arguments were addressed on this application by learned counsel for the petitioners, which in any case is misplaced, as the said document was already led by way of evidence as part of Ex.PM, and is available on the reverse of page 191 of the record of evidence led before the trial Court, as would also be noticed by this Court in the main body of this judgment.

Consequently, this application is dismissed.

CRA-S-169-SB of 2018;
CRA-S-183-SB of 2018; and
CrI. Revision No.806 of 2018

These two appeals and one revision petition have all been instituted challenging the judgment of the learned trial Court (Additional Sessions Judge, Jhajjar), dated 20.12.2017.

Vide the said judgment that Court convicted the appellants in

these two appeals, for having committed offences punishable under Sections 304-II and 323 IPC, both read with Section 34 of the said Code.

Both the appellants were sentenced to 5 years rigorous imprisonment, with a fine of Rs.25,000/- also imposed on each of them, for the commission of the offence punishable under Section 304-II, with them to further undergo 6 months rigorous imprisonment in case of default of payment of the fine. As regards the offence punishable under Section 323 IPC, they have both been sentenced to 6 months rigorous imprisonment each, in addition to a fine of Rs.1000/- having been imposed on each of them, in default of payment of which they are to undergo 15 days rigorous imprisonment.

The revision petition is seen to be filed (actually) on behalf of the deceased, through her legal representatives, shown to be her three sons, as per the memo of parties given in the petition. The deceased Shanti Devi in fact is the person due to whose death the appellants in the two appeals were convicted and sentenced.

2. The facts leading up to the institution of criminal proceedings, are that a complaint was made to the police by the deceased Shanti Devi on 25.01.2016, to the effect that on the night of 21.01.2016, her neighbour, Manish (presently the appellant in CRA-S-183-SB of 2018), parked his car in front of her house (i.e. her and her familys' house) and when her son Bhupender asked him not to park the car there, Manish allegedly hurled abuses on him and grabbed his neck. On hearing the noise of the quarrel, her other sons, Surender and Jitender, are stated to have come out of the house onto the street, upon which Manish was stated to have inflicted leg and fist blows on Surender.

Upon hearing the noise, a friend of Manish, Dinesh (presently the

appellant in CRA-S-169-SB of 2018), also came to the spot and allegedly also started beating her sons.

3. On hearing the commotion, the complainant, Shanti Devi, also came out onto the street and intervened in the matter, upon which Manish is stated to have 'felled her down' by pushing her, she then falling upon a water supply pipe in the street.

Shanti Devi is stated to have received an injury on the right side of her chest, with Dinesh thereafter also causing an injury to her on the left side of her chest, with his leg; (he is stated to have kicked to her).

She and her sons are stated to have been saved by their neighbours, with her son, Bhupinder, shifting her to the General Hospital, Bahadurgarh, but she then having been referred to the PGIMS, Rohtak, due to the nature of the injury, where her statement is stated to have been recorded by HC Jalbir Singh, she having been declared to be fit to make such statement, by the concerned doctor.

4. On the aforesaid statement, FIR no.12 dated 26.01.2016 was registered at Police Station Line Paar, Bahadurgarh, initially making out therein offences punishable under Sections 323/506/34 IPC but thereafter, upon Shanti Devi having died on 24.02.2016, at the PGIMS, Rohtak itself, an offence punishable under Section 302 IPC, as also an offence punishable under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, were added in the FIR.

Upon further investigation, the offence punishable under Section 302 IPC was 'dropped', and instead an offence punishable under Section 304 of the said Code was added, after which the accused are stated to have been arrested and after completion of investigation, the report under Section 173

Cr.P.C. was presented to the Area Magistrate.

5. The offences made out in the *challan* being exclusively triable by a Court of Sessions, the case was committed to that Court, after which the appellants in these two appeals were charged with the commission of offences punishable under Sections 304 and 323, both read with Section 34 IPC, as also Section 506 IPC and Section 3 (2) (v) of the Act of 1989, and upon them pleading that they were not guilty, they were tried for commission of the aforesaid offences.

6. The prosecution examined 17 witnesses, as named hereinbelow:-

Bhupender Kumar	PW1
EASI Jai Chand no.777	PW2
ASI Karambir Singh	PW3
Constable Naseeb Singh	PW4
SI Dharambir Singh	PW5
Inspector Chanderveer	PW6
HC Jalbir Singh	PW7
Jitender Kumar	PW8
Dr. Sandeep Kumar Giri	PW9
Dr. Shilpi Bhargava	PW10
Ramdhan, OTA	PW11
Inspector Sandeep Kumar	PW12
Dr. Murthi	PW13
Dheeraj Kumar, DSP	PW14
SI Anoop Singh	PW15
Dr. Kuldeep	PW16
Dr. S. K. Yadav	PW17

The prosecution also led documentary evidence, including the statement of injured Shanti Devi (since deceased) as Ex.PA, statement of PW1 Bhupender Kumar, vide which he identified the dead body of his mother,

Ex.PB; scaled site plan, Ex.PC; a photocopy of a caste certificate, Ex.P1, as

well as Ex.PD vide which the said certificate was taken into possession; *tehrir* Ex.PA vide which a “formal FIR”, Ex.PF, was got registered; and an endorsement, Ex.PF/1 thereupon; post mortem report, Ex.PK/2; opinion of the Board of Doctors, Ex.PK/5; treatment file, Ex.PM; x-ray film, Ex.PM/1; and photographs of the dead body, Exs.PO/1 to PO/3 respectively.

After their examination under Section 313 Cr.P.C., with the accused claiming innocence, they also examined, as DWs1 and 2 respectively, Gobind Singh, the father of appellant Dinesh, and Manoj Kumar, he being the brother of appellant Manish.

7. Of the prosecution witnesses, PWs2, 3, 4, 5 and 6 are seen to be formal witnesses from the police, who deposed in respect of the site plan prepared, production of a scheduled caste certificate, handing over of envelopes, depositing parcels of the case property in the *Malkhana* and formally recording the FIR, respectively.

8. PW1, Bhupender Kumar, is a son of the deceased, who is seen to have essentially deposed in terms of the complaint made by his mother, as contained in the FIR, also stating that accused Manish had threatened them by naming them by caste and stating that though they had all survived at that time, thereafter they would not 'leave them'.

As per this witness, the thumb impressions of his mother were taken at the PGIMS, Rohtak, on her statement Ex.PA, by an official, during which time he (this witness) was asked to remain outside the room, by the police.

His own statement was recorded on the next day, i.e. 26.01.2016, with this witness further deposing that his mother had died on 24.02.2016 in the PGIMS, Rohtak, during the course of her treatment, due to the injuries

received by her in the occurrence, with him also having pointed out the place of occurrence to the police.

In cross-examination, PW1 stated that he had sustained minor injuries in the altercation, which he did not report to the police and in respect of which he also did not get himself medically examined, while denying that he had picked up any quarrel with appellant Manish or his brother Manoj, after consuming liquor.

He also denied that any complaint was filed against him in that context.

As regards his mothers' death, PW1 denied that she had died only of cardiac arrest and not due to the injuries sustained by her.

9. PW7 HC Jalbir Singh testified with regard to having received information over the phone from Police Station, PGIMS, Rohtak, to the effect that Shanti Devi wife of Kanshi Ram, resident of Johari Nagar, Line Paar, Bahadurgarh, was admitted in that hospital after sustaining injuries in a quarrel, upon which he and Constable Pardeep Kumar went to the PGIMS, Rohtak, and collected the MLR and 'medical *ruqa*', after which he moved the application Ex.PG, seeking the opinion of the Medical Officer with regard to the condition of Shanti Devi; and upon her being declared fit to make a statement (vide the opinion Ex.PG/1), her statement, Ex.PA, was recorded, thumb marked by Shanti Devi and attested by this witness himself.

He stated thereafter that he visited the place of occurrence on 26.01.2016 and prepared a rough site plan, Ex.P1, with marginal notes made on it, and thereafter he arrested both the accused on 28.01.2016, who were released on bail by the Illaqa Magistrate on 29.01.2016.

Further, as per the testimony of PW7, a wireless message was

received from Police Station PGIMS, Rohtak, to the effect that Shanti Devi had died, after which further investigation of the case was entrusted to SI Anoop Singh (PW15), whom PW7 then accompanied to the PGIMS, Rohtak, and obtained from the Medical Officer, sealed parcels, a sample seal, as also a copy of the post mortem report, all of which were taken into possession vide a memo, Ex.PJ, by SI Anoop Singh, with PW7 attesting to the said memo.

The said witness is also shown to have identified the accused in the trial Court.

10. A perusal of the cross-examination of PW7 shows that he admitted to not having visited the place of occurrence from 21.01.2016 to 25.01.2016, as also to not having recorded his arrival at the Police Station, PGIMS, Rohtak, on 25.01.2016, nor remembering the name of the doctor whom he met seeking the opinion as to the fitness of Shanti Devi, though he denied as incorrect the suggestion that Shanti Devi was actually not able to speak on 25.01.2016 on account of a food pipe inserted in her nose.

11. PW8, Jitender Kumar, is another son of the deceased, who essentially corroborated the testimony of his brother, PW1 Bhupender Kumar, and in cross-examination, he denied that his mother was suffering from acute bronchitis, due to which she died of cardiac arrest.

12. PW9 is seen to be Dr. Sandeep Kumar Giri, who conducted the post mortem examination on the body of the deceased, showing that she was 65 years old, the examination of whose body showed that there was no external mark of any injury, but on “dissection of her chest wall, healing fractures in form of soft callus with irregular margins and hardening at places were present over the posterior angle of 7th, 8th and 9th ribs of right side”.

Thus, her 7th, 8th and 9th ribs were found to be fractured at the

posterior angle, with healing soft callus, her pleural cavity containing 150 to 200 cc of straw coloured fluid.

As per PW9, the opinion on the cause of death was chest injuries as described, and its complications.

In cross-examination, other than admitting that ICD insertion was done on account of pleural effusion, which is developed due to chronic disease, importantly, he is also shown to have denied to be incorrect, the suggestion that the deceased was ill for a long time and had died due to multiple organ failure and cardiac arrest.

He however admitted that such injuries can also be sustained due to a sudden fall.

13. PW10, Dr. Shilpi Bhargava, testified in respect of the pathology report as regards the viscera of the deceased, and admitted in cross-examination that her report, Ex.PL, suggested that the deceased had died due to multiple organ failure.

14. PW11, Ram Dhan, was an Assistant from the PGIMS, Rohtak, who brought the treatment file of the deceased to the Court and deposed with regard thereto; and PW12 was Inspector Sandeep Kumar, who had prepared the report under Section 173 Cr.P.C.

15. PW13, Dr. Murthi from the department of Radiology, PGIMS, Rohtak, testified as regards the x-ray film, Ex.PM/1, to the effect that he had found the 7th and 8th ribs of the patient to have been fractured, and consequently issued the report, Ex.PN.

PW14, Dheeraj Kumar, DSP, testified in respect of deleting the offence punishable under Section 302 IPC from the FIR and instead making out therein an offence punishable under Section 304 IPC.

16. PW15 is seen to be the Investigating Officer, SI Anoop Singh, who testified to having added Section 302 IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as offences seen to be made out, in respect of which he sent special reports and thereafter gave information to the DSP, as also with regard to having collected evidence in the form of photographs, taking into possession the body of Shanti Devi and sealed jars given to him (by the Medical Officer) and collection of the post mortem report.

In cross-examination, this witness is seen to have admitted that neither on 24.02.2016 nor on 25.02.2016, did he examine any person from the neighbourhood at the place of occurrence, though on 25.02.2016 he had taken photographs of the spot.

17. PW16 was Dr. Kuldeep, 'the Casualty Medical Officer', PGIMS, Rohtak, who testified in respect of issuing the medico-legal report (Ex.PP) in respect of Shanti Devi, on 25.01.2016, further admitting in cross-examination that she was examined by him on that date and not before, and that no referral card of the Civil Hospital, Bahadurgarh, was produced before him.

He is further seen to have denied that he had given the history of the assault in the MLR on the direction of his superiors.

He also stated in his cross-examination that the injury on the right side of the chest was serious in nature.

18. The last prosecution witness (PW17) is seen to be Dr. Sunil Kumar Yadav, Senior Resident in the Department of General Surgery, PGIMS, Rohtak, who testified that, on 22.01.2016 Shanti Devi was brought to the Accidental & Emergency Department, with the history given to him, being that she had suffered a fall on the ground due to a push by some boy at about 8:00

pm at Bahadurgarh. He also stated that the patient was conscious when she came to the hospital, though he did not record her statement.

As per this witness, the patient developed respiratory distress due to subcutaneous emphysema.

[Note:- The said condition is seen to be one when gas or air is present in the layer under the skin.]

19. After the prosecution evidence, it is seen that as per the statements made by the appellants-accused under Section 313 Cr.P.C., they have both stated that they had been falsely involved in the case and that the son of the complainant had testified falsely, as on the date of the occurrence, Manoj, brother of appellant Manish, had already got registered a complaint at the same police station against (PW1) Bhupender Kumar, who under the influence of liquor had tried to damage the car of appellant Manish, though when they were all called to the police station, they had entered into a compromise.

As per the statements of each of the accused, the complainant had not received any injury on 21.01.2016; and the case was registered on 26.01.2016 only in connivance with the police, and that actually she had died due to old age ailments.

20. Next, a perusal of the testimony of DW1, Gobind Singh, father of appellant Dinesh, shows that he testified to the effect that he had applied for information under the RTI Act, 2005 'to get the truth', as (according to this witness), his son had been falsely implicated, with such information having been received by him as per Ex.DW1/A, which is to the effect that on 21.01.2016 Manoj Kumar son of Manphool Singh (DW2, brother of appellant Manish), had made an application to the police and that on 21.02.2016, the

complainant party had made no complaint, but had been called to the police station on the complaint of Manoj.

(Note:- The date 21.02.2016 shown at Sr. no. 2 in Ex.DW1/A, obviously seems to be an error, because there is no specific significance of that date, with Sr. nos.1, 3 and 4, all mentioning the date 21.01.2016; and what is noted at Sr. nos. 5,7 and 8 showing the dates, 26.01.2016, 28.01.2016 and 25.01.2016 respectively.)

It is further stated in the said exhibit that both parties had entered into a compromise on 21.01.2016 and that on 26.01.2016, the statement of Shanti Devi was recorded, after which a case was registered on that date itself against both the accused, making out therein, the commission of offences punishable under Sections 323 and 506, read with Section 34 IPC. The factum of the arrest of the accused has also been given in the said document.

In cross-examination, DW1 admitted that in the compromise document, Ex.DW1/C, no date is mentioned, further admitting that he had obtained the information (under the RTI Act), 'by hand', due to the fact that postal services had been affected due to the Jat agitation.

21. DW2 is seen to have stated that he had made a call on the police emergency number (100) on 21.01.2016, after (PW1) Bhupender Kumar had hit his car under the influence of liquor and had hurled filthy abuses at him in the street.

He further testified that 'SI Jalbir Singh' reached the spot, upon which he made a written complaint Ex.DW1/B, upon which the three sons of the deceased-complainant were taken to the police station, where they gave an assurance that they would not make a nuisance in the street in future; and consequently the matter had been compromised 'under social pressure'.

In cross-examination, DW2 admitted that there was no date given on the complaint Ex.DW1/B, though he denied that it had actually been made by him on 21.01.2016.

He denied that accused Manish had parked his car in front of the house of Shanti Devi, or that he had hurled abuses at PW1 Bhupender Kumar, or that he had attacked Bhupender Kumar and Surender, and that accused Dinesh had also thereafter come and taken part in the fight.

He also denied the fact that the accused had given any push to Shanti Devi or that Dinesh had hit her on the ribs.

22. Upon appraising the aforesaid evidence, the learned trial Court first took up the charge qua the offence punishable under Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and observed that the allegation in that regard was levelled by the son of the complainant, i.e. PW1 Bhupender Kumar, to the effect that accused Manish had threatened them by saying that '*DHANAKO AAJ TO BACH GAYE HO AAGE NAHI CHHODENGE*'. However, it was observed by that Court that PW8 Jitender, who also was otherwise stated to be present at the spot at the time of the occurrence, did not depose to that effect and further, that there was no such allegation actually levelled against the accused by Shanti Devi, and at the end of her statement (on the basis of which the FIR was registered), she ended by saying that Manish and Dinesh had stated that the complainant having been saved that day, in future they would kill them.

Hence, finding that there was actually no corroboration of any utterance by the accused as regards the caste of the complainant and her family, the appellants herein were acquitted of having committed any offence as regards that charge.

23. Similarly, as regards the allegation of a threat having been made, it was again noticed that PW1 had not deposed that the accused had threatened the complainant with regard to killing them, with PW8 Jitender also not having stated anything in that regard, in his testimony. Consequently, the appellants herein were also acquitted of the charge framed as regards the commission of an offence punishable under 506 IPC.

24. Discussing the evidence as regards the offence punishable under Section 304 IPC, the trial Court first observed that PW17, Dr. Sunil Kumar Yadav, had deposed that despite “best efforts patient developed Cardiopulmonary arrest on 24.02.2016 and expired at 6:05 PM”.

However, the contention on behalf of the accused that the complainant had actually died due to cardiac arrest, was not accepted by the trial Court, on the ground that she had suffered injuries and eventually had developed cardiac arrest, she having earlier been treated for the injuries. Similarly, no evidence had been led that she had suffered from a cardiac problem for a long time.

25. As regards the testimony of Dr. Shilpi Bhargava (PW10), the trial Court found that though her report suggested that the patient died due to multiple failure of organs, however, it was further stated that “if there is failure of organ of a person, there can be no death”.- [Note:- It is to be noticed here that as per the record, the last part is not actually seen to be recorded in the testimony of PW10].

It was also held that it had not actually been admitted anywhere by the said witness, that Shanti Devi died due to multiple failure of organs 'in the natural course of life'.

26. Still further, on the charge under Section 304 IPC, the trial Court

found that though a suggestion was put to PW1 that his mother was suffering from chronic asthmatic disease, for which she was being treated for several years, however, in the cross-examination of PW8 the suggestion was that she was actually suffering from acute bronchitis (and therefore, no inference could be drawn that she had died due to any disease).

27. Going on to examine the injuries on the person of the deceased, the trial Court reproduced the injuries found as per the post mortem report, with the opinion of the Board of Doctors (Ex.PWK/5), stating that the Board was of the opinion that the cause of death was the chest injury as described, and its complications.

The suggestion put to Dr. Sandeep Kumar Giri that the ICD insertion had actually caused damage to the ribs, was also not considered sufficient by the trial Court to hold that the injuries had actually caused the fracture of the ribs, with no such evidence having been led (other than the suggestion).

As regards the admission by the said doctor that the injury could also be the result of a sudden fall, that was also not accepted to be any firm finding.

Thus the trial Court held that the injury actually occurred on account of her being pushed onto the water pipe.

This was held to be so essentially on the reasoning that the complainant in her statement, Ex.PA, had stated to the aforesaid effect.

28. As regards the plea taken on behalf of the accused that the delay in lodging the FIR showed that no such incident had taken place, that was also rejected, on the ground that with the family interested in saving the life of the deceased, the delay was not fatal and was duly explained.

Similarly, the allegation that the whole story of the complainant was concocted, was also rejected by the trial court despite what was referred to in the complaint made by Manoj DW2 (Ex.DW1/B), to the effect that actually it was PW1 Bhupender Kumar who on consuming liquor had damaged Manoj's vehicle after which a compromise was also reached between the parties. The said contention was rejected because even the Investigating Officer had not found that the accused had been falsely implicated in the case.

29. Hence, after reproducing Section 304 of the IPC, the trial Court held that the act having been done with the knowledge that it was likely to cause death, even if death was not caused with any such intention, the accused were held guilty of causing the death of Shanti Devi by pushing her on the pipe, and thereby committing an offence punishable under the 2nd part of Section 304, read with Section 34 of the IPC.

30. Coming last to the charge framed in respect of the offence punishable under Section 323 IPC, the learned trial Court found that most definitely simple injuries had also been received by the deceased, as was testified to by PW16 Dr. Kuldeep, by pointing to the MLR, Ex.PP. Hence, the accused were also held guilty of having committed the aforesaid offence.

31. Thus, acquitting the appellants-accused of the commission of offences punishable under Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 IPC, they were however held guilty of the commission of offences punishable under Sections 304-II and 323 IPC, read with Section 34 thereof, and sentenced to terms of imprisonment as already stated at the commencement of this judgment.

32. Before this Court, Mr. Gautam Dutt, learned counsel appearing

for the applicants-appellants in both these appeals, after referring to the facts of the case, pointed first to the compromise deed (Ex.DW1/C) dated 21.1.2016, and thereafter to the MLR (Ex.PP1), the postmortem report (Ex.PK/2) and the testimony of PW9, Dr. Sandeep Kumar Giri, his affidavit (Ex.PK/3), and his cross-examination, to submit that the deceased, Shanti Devi, aged about 65 years, was suffering from a chronic disease, and therefore the cause of her death cannot be the push given to her by appellant, Manish, resulting in her falling on an exposed water pipe in the street.

He further submitted that obviously nothing untoward had actually taken place at the time of the occurrence, which is why on the next day, in fact, a compromise was effected between the parties, and eventually the deceased was admitted to hospital (PGIMS, Rohtak) only on 25.1.2016, i.e. 4 days after the occurrence, and therefore, no connection can be established between her death and the occurrence 5 days earlier, especially as she died only one month thereafter.

He next submitted that as a matter of fact, Jalbir Singh (PW7), never actually visited the hospital and only testified to that effect on the basis of the statement recorded by him of the complainant, i.e. Shanti Devi, which is stated to have been corroborated by her son Surinder, who was an eye witness to the occurrence, but who was eventually given up as a witness on 19.10.2016, being 'unnecessary'.

He also referred to the testimonies of Bhupinder Kumar (PW1) and Jitender Kumar (PW8), both sons of the deceased, where they denied that their mother was suffering from any chronic disease, which is actually contrary to the medical record led by way of evidence as Ex.PM (testified to by PW11-

Ramdhan, OTA, PGIMS, Rohtak).

He also cited two judgments, in Murgan alias Chitravie vs. State 1992 CriLJ 930 (of a Division Bench of the Madras High Court) and Manish vs. State 2015 (37) RCR (Criminal) 575 (of a coordinate Bench of the Delhi High Court).

33. He next submitted that the appellants in both these appeals having been acquitted of the charge framed against them under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as also of the charge framed under Section 506 of the IPC, also shows that the whole story of the prosecution stands belied.

Mr. Dutt then submitted that even if this Court comes to the conclusion that the occurrence did take place, it would also consider that the death of the deceased did not take place due to the fact that she may have been pushed by appellant Manish (even if the prosecution version is to be believed, though refuted on behalf of the appellant), and that her death actually occurred in the course of old age, with multiple organ failure having taken place more than a month after the alleged occurrence.

34. Lastly, he submitted that if this Court eventually comes to the conclusion that the death had resulted from the injuries sustained by Shanti Devi as a result of any push given to her, or any kick below given to her by either of the appellants in these two appeals, then at best, it only being a push given to her resulting in some injuries, knowledge of the fact that such a push/kick could result in her death cannot be attributed to either of the appellants, and therefore, no offence punishable under Section 304-II IPC would be made out, and that in that eventuality also, at best an offence

punishable under Section 325 IPC may be made out; and consequently, the sentence of 5 years rigorous imprisonment imposed by the trial Court would not be sustainable, with it in that eventuality also, to be reduced to the extent of imprisonment already undergone by the appellants, i.e. 9 months in the case of Manish (as on the date that judgment was reserved in this case on April 26, 2018) and 4 months in the case of appellant Dinesh.

35. *Per contra*, Mr. M.K. Tanwar, learned counsel for the petitioners in the revision petition (sons of the complainant), referred first to the FIR (Ex.PF), to submit that even as per the case of the complainant (now deceased), the accused, Manish, first pushed her hard, resulting in her falling on her right side on the water supply pipe in the lane/road, and the other accused thereafter kicked her on her left side. He submitted that therefore the fracture in the ribs actually resulted from the kicks given on the left side, which would consequently attract punishment for an offence punishable under Section 304, Part II, IPC.

He also submitted that the deceased was first taken to the Civil hospital at Bahadurgarh, from where she was referred to the PGIMS, Rohtak.

He next referred to the compromise deed, Ex.DW-1/C, to submit that the compromise actually took place immediately after the occurrence on 21.01.2016 itself, which was due to the fact the the complainant side did not know of the nature of seriousness of the injuries sustained by Shanti Devi.

He next referred to para 4 of the testimony (Ex.PK/3) of Dr. Sandeep Kumar Giri-PW9, by way of his examination in chief, to submit that the deceased was actually healthy and was not suffering from any disease prior to that. (However, as noticed in the argument of the learned counsel for the

petitioner, he referred to the medical record, to show that she was actually suffering from pulmonary fusion etc.)

Mr. Tanwar then referred to the cross examination of PW-9, to submit that the cause of death opined by the board was chest injury and its complications.

He next referred to the testimony of PW-1, to submit that this witness corroborated the statement of Shanti Devi, made at the time of the registration of the FIR.

He further referred to the findings of the trial Court in paragraph 15 of its judgment, to the effect that cardiac arrest occurred due to failure of organs and further submitted that it was eventually due to the injuries sustained by her, even as per the opinion of the board of doctors.

Thus, he concluded that the learned trial court has not erred in convicting the appellants for the commission of an offence punishable under Section 304 Part II of the IPC.

36. Learned State counsel reiterated the aforesaid arguments.

37. In rebuttal, Mr. Gautam Dutt again referred to the cross-examination of PW-16, Dr. Kuldeep, to submit that deceased Shanti Devi was first medico legally examined on 25.01.2016, with the said witness testifying that there was no document showing that she was referred from the Civil Hospital, Bahadurgarh to the PGIMS, Rohtak. Therefore, she not having been treated for about 4 days between 21.01.2016 to 25.01.2016, her death could also be due to negligence in treatment.

He again further referred to the cross-examination of PW-9, Dr. Sandeep Kumar Giri, to submit that ICD insertion is only made when a patient

is suffering from pleural effusion, it being developed in a chronic disease.

38. Having considered the judgment of the learned trial Court, as also the arguments addressed by learned counsel on both sides, having also perused the record of evidence before the trial Court, the findings of this Court are as recorded hereinafter.

Criminal Revision no.806 of 2018

39. First of course, it needs to be stated that Criminal Revision no.806 of 2018 is shown to be filed by Shanti Devi through her LR's, with an application for impleading them having been filed alongwith the revision petition itself, which has been allowed now, by orders separately passed, (though as a matter of fact, the petition should have been filed by the LR's alone, she already having died, with the entire trial being in respect of her death).

It is to be first noticed here that even though Criminal Revision no.806 of 2018 has been filed by the LR's of the deceased Shanti Devi, there is no prayer in the said revision petition, against the acquittal of the convicts, i.e. the appellants in the accompanying appeals, on the charge of the commission of an offence punishable under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, or even as regards their acquittal for the commission of an offence punishable under Section 506 IPC, with no appeal in any case having been filed in terms of the proviso to Section 372 Cr.P.C.

Thus, the prayer in the revision petition is limited to enhancement of the sentence awarded to respondents no.2 and 3, i.e. the appellants in the accompanying appeals, with the petitioners stating that the death of a woman having taken place, it is a crime against a woman, which should be punished

with the maximum punishment imposable on them as per Section 304 IPC.

That aspect would be considered at the end of this judgment, while adjudicating on the accompanying appeals.

CRA-S-169-SB of 2018 and CRA-S-183-SB of 2018

40. Firstly, coming to the argument of Mr. Gautam Dutt that Shanti Devi died on account of the fact that she was suffering from a chronic disease. Though, undoubtedly, a perusal of the cross-examination of PW9 Dr. Sandeep Kumar Giri, Resident in the Department of Forensic Medicine, PGIMS, Rohtak, who was a member of the Board of Doctors that opined on the cause of death of Shanti Devi, shows that he did state that pleural effusion is developed in chronic diseases and that ICD insertion is done when the patient is suffering from pleural effusion, that does not alter the fact that this witness specifically stated, pointing to the opinion of the Board of Doctors, Ex.PK/5, that the cause of death was the “chest injury as described and its complications”.

The opinion is being reproduced hereinunder in toto:-

“After careful perusal of post mortem report (vide no.PMR/177/16 dated 25/02/16) (*sic*) pathological examination report of viscera (vide no.Path/V/16/513 dated 5/4/16), treatment record and death summary of the deceased. The Board of Doctors is of the opinion that cause of death in this case is chest injury as described & its complications.”

Hence, it is very obvious that the testimony of Dr. Sandeep Kumar Giri with regard to pleural effusion being developed in chronic diseases, is being taken wholly out of context by learned counsel for the appellants, especially if the said testimony is seen alongwith the 'SHORT

STAY FILE', which is Ex.PM, that shows that the deceased was admitted to hospital on 22.01.2016 with a chest pain, initially in Ward 4 (v), with her being later shifted to the ICU on 25.01.2016 and an ICD tube being inserted in her on the said date, despite which she eventually expired on 24.02.2016 at 6:05 pm, in the RICU.

It needs to be noticed here that there seems to be a change of dates given on one of the pages (page 161 of the lower Court record), which however is not seemingly changed from a subsequent to a previous date but from “21” to “22”. Though otherwise that fact may have been looked at in a different manner by this Court, however, a perusal of the continued 'short stay file' (at page 181 of the record) shows that it again showed her admission in Ward 4 (v) on 22.01.2016 at 1:05 pm, in the 'Daycare Centre' on 25.01.2016 at 4:00 pm and on the same date in the ICU at 10:10 pm, with a mask, chest tube and catheter having been 'administered' to her.

The application addressed to the incharge of Police Post to the PGIMS, Rohtak, as was sought to be placed on record by way of additional evidence, is also actually a part of the said file, i.e. Ex.PM, pasted on to it on the reverse of page 191 of the record. Yet further, a perusal of the testimony of PW11, Ramdhan, Operation Theater Attendant, PGIMS, Rohtak, also shows that he stated that as per the record, the patient was admitted on 22.01.2016 and died on 24.02.2016 during her treatment, with the said witness not having been cross-examined at all, despite opportunity given.

41. A perusal of the statement of the deceased Shanti Devi, as made before HC Jalbir Singh (PW7) on 25.01.2016 (Ex.PA), shows that she has thumb marked the statement recorded, stating therein that the incident took place on 21.01.2016, after which she was taken to the Civil Hospital,

Bahadurgarh, from where she was told to be taken to the PGIMS, Rohtak, where she was brought on 22.02.2016.

The thumb mark of the deceased is not shown to be disputed at any stage, even by learned counsel for the appellants in these two appeals.

Hence, the contention that Shanti Devi died not as the result of any push that was given to her by appellant Manish but on account of some old chronic disease, cannot be accepted.

In this context, it has also to be held that in view of the detailed medical evidence led before the trial court, even if this Court was to presume that she had indeed earlier being suffering Bronchitis or even from Bronchial Asthma, which possibly aggravated her condition after she sustained the fall and fractured her ribs, that would not alter the conclusion arrived at by this Court, in the light of the testimonies of the eye witnesses (PWs1 and 8, Bhupender Kumar and Jitender), seen with the statement of Shanti Devi herself, Ex.PA, (on the basis of which the FIR was registered), and the medical evidence by which it was opined that it was the injuries in the chest that led to her death; yet further seen with the testimonies of the IOs at different stages, i.e. PW7 Jalbir Singh, PW14 Dheeraj Kumar, DSP and PW15 SI Anoop Singh.

Thus, the fractures in her ribs having been sustained due to her falling down on the water pipe as the result of a push given to her by appellant Manish, that eventually led to her death, the cause not being her previous sickness, which may have, however, got aggravated due to her injuries.

42. Next, the delay in lodging the FIR, has also been correctly dealt with by the learned trial Court, though not in detail.

As already seen, it is well established from the medical record that Shanti Devi was admitted to the PGIMS, Rohtak, at about 1:00 pm on

22.01.2016, the incident having taken place on 21.01.2016 at about 8:00 pm at night.

The oral testimonies of the witnesses, as also a perusal of the MLR, Ex.PP, shows that even at the time of admission, a history of physical assault was mentioned to the doctors, and even though the MLR itself is seen to be dated 25.01.2016, that is for the reason that admittedly the police moved an application only on that date seeking an opinion as to whether she was fit to make a statement or not.

The date and hour of arrival, even in the said document (MLR) is shown to be 12:45 pm on 22.01.2016.

Simply because no referral certificate was given by the Civil Hospital at Bahadurgarh on 21.01.2016, would not alter the fact that the patient was admitted the very next day at the PGIMS, Rohtak, and at that stage possibly her injuries were not considered to be so serious (till the x-ray report came in, which is part of Ex.PM), and the FIR was not actually registered till 25.01.2016; and at that time also only making out the commission of offences punishable under Sections 323 and 506 IPC, read with Section 34 thereof.

43. Hence, I see no reason at all to disagree with the findings of the learned trial Court, based on medical evidence and oral testimonies of witnesses and Investigating Officers, that Shanti Devi sustained three fractures in her 7th, 8th and 9th ribs on the right side of her chest, as a result of a push given to her by appellant Manish, due to which, at her age of 65 years, she fell down on some pipes and thereafter developed various complications which she could not recover from.

It also needs to be noticed that a perusal of the photographs of her dead body (Exs.PO/1, 2 and 3) display very clearly the face of an old woman

(in fact apparently even beyond 65 years of age, though she is shown in the post mortem report (Ex.PK/2), as also her MLR Ex.PP, to be of that age).

44. The question then is as to whether, in view of the fact that she died one month and three days after the occurrence, an offence punishable under Section 304 IPC is made out against the appellants.

In this context, as regards the appellant in CRA-S-183-SB of 2018, i.e. Manish, I have no doubt in my mind, that the said offence is made out against him at least.

The relevant exception carved out in Sections 299, 300 and 304 of the IPC, are reproduced hereinbelow:-

“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.”

XXXXX XXXXX XXXXX
“300. XXXXX XXXXX XXXXX

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.

XXXXX XXXXX XXXXX”
“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.”

45. Thus, culpable homicide, not amounting to murder, is committed whenever death is caused by a person causing bodily injury to the deceased, having knowledge that by his act, death is likely to be caused.

Looking at the fact that Shanti Devi was admittedly at least 65 years old, with her appearance very obviously being that of a very old woman, if a hard push was given to her on a street paved with concrete, the person giving the push necessarily had to have knowledge that such a hard push would result in the victim falling on the hard surface (as can be seen from the photographs, Exs.PJ/1 and PJ/3), and if a vital part of the body hits such surface with the violence of the push, it would result in her death.

No doubt, the push given to Shanti Devi by appellant Manoj, was in the heat of passion upon a sudden fight having taken place with her sons; however, that would not, in the opinion of this Court, change the fact that seeing her physical condition, the said appellant would not have knowledge that his action could actually cause her death.

46. As has been seen, her death eventually occurred due to complications arising from her ribs being fractured and pulmonary problems occurring in her body, which eventually of course led to cardiac arrest.

An argument could be raised that there was no intention of the said appellant to push her on to the water pipe; yet, in the opinion of this Court, knowledge necessarily has to be imputed to appellant Manish, that even

if she had hit her head on a hard surface (and not the pipe), she was likely to have died, seeing her age and appearance.

Consequently, as regards the appellant in CRA-S-183-SB of 2018, ie. Manish, I see no error in the finding of the learned trial Court in convicting him for the commission of an offence punishable under Section 304 IPC.

47. Coming then to the appeal filed by appellant Dinesh, i.e. CRA-S-169-SB of 2018, who is stated to have kicked Shanti Devi on the left side of her chest after she fell down.

In fact, what is stated even by Shanti Devi in her statement recorded as Ex.PA, (with the said statement being made after she had sustained an injury on her right side), Dinesh hit her with his leg on her left side, after which she shouted that she be saved.

Whereas I have no reason to doubt the said statement, which is duly corroborated by the eye witnesses PWs1 and 8, (even being her sons); however, whether appellant Dinesh can be stated to have committed an offence punishable under Section 304 IPC, even read with Section 34, is doubtful, as neither in the MLR (Ex.PP) nor in the post mortem report, Ex.PK/2, has it been shown that there was any injury on the left side, which could have aggravated her condition of already having fractured her ribs on the right side upon being pushed down by appellant Manish.

There were in any case no external marks of injury on her body as per the post mortem report, with the injuries to the ribs however found as per the x-ray film of the chest. Yet, the fractures are also found to be only on the right side, i.e. of the 7th, 8th and 9th ribs on that side, and not on the left side,

which is where appellant Dinesh is said to have kicked her.

Hence, in my opinion, it is difficult to attribute a common intention to appellant Dinesh, of having knowledge that kicking her on her chest, would be likely to cause her death, unless the force of the kick was so hard that it actually resulted in any kind of bruise or injury to her. No such bruise being present on her left side, it has to be presumed that the kick/leg blow was not given with any great force so as to impute knowledge to the person giving the blow, that his blow may cause her death.

Hence, as regards appellant Dinesh, he is to be acquitted of the charge framed against him in respect of the commission of an offence punishable under Section 304 IPC.

48. Yet, hurt having been caused by him to Shanti Devi, resulting in at least pain to her, with the leg blow, as can be discerned from her statement Ex.PA, duly corroborated by the eye witnesses and the investigation carried out by the police, (also reflected in the testimonies of the police officials before the Court), I see no error in the trial Court convicting him for the commission of an offence punishable under Section 323 IPC.

49. As already stated earlier, there being no appeal against the acquittal of the appellants in these two appeals, as regards the commission of offences punishable under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 IPC, there would be no occasion to reverse those findings of the trial Court, the prayer in the revision petition also only seeking enhancement of sentence as regards the commission of an offence punishable under Section 304 IPC.

50. Coming then to the question of quantum of sentence imposed upon the appellants in these two appeals.

First, coming to the question of enhancement of sentence as is prayed for the petitioners, i.e. the legal heirs of the deceased in CRR no.806 of 2018.

51. Looking at the fact that the occurrence was the result of a sudden fight, in which appellant Manish pushed deceased Shanti Devi, leading to the fracture of her ribs and eventual death, with Manish being convicted for the commission of an offence punishable under Section 304-II of the IPC for the reasons given hereinabove (despite it being a sudden fight), even though that provision lays down a maximum punishment of 10 years; in my opinion, it is not an appropriate case where the sentence imposed upon appellant Manish needs to be enhanced in any case, such sentence being 5 years rigorous imprisonment, keeping in mind the totality of the circumstances.

Consequently, CRR no.806 of 2018 is hereby dismissed.

52. Whether the quantum of punishment in respect of Manish needs to be sustained at 5 years as imposed by the trial Court, or needs to be reduced as eventually submitted by Mr. Gautam Dutt, learned counsel for the appellants, is to be seen from the fact that the deceased was undoubtedly a lady at least 65 years of age, and as per appearance from photographs (as already discussed), possibly older. Hence, in the opinion of this Court, it would be appropriate that the sentence to be imposed upon appellant Manish in respect of an offence punishable under Section 304-II IPC is reduced to 3 years rigorous imprisonment, provided he pays compensation to the tune of Rs.3,00,000/- to the legal heirs of the deceased. In default of such payment, he would undergo imprisonment for a further period of one and half years.

It needs to be stated here that though no premium can be placed on the loss of human life at any age, however, at best, somewhat appropriate

compensation can be ordered to be paid in terms of Section 357 Cr.P.C. and therefore, the aforesaid sentence imposed by this Court, would be in terms thereof. The said amount would be set off against any further compensation awarded in terms of Section 357-A, as recommended by the learned trial Court.

As regards the sentence imposed by the trial Court upon Manish, for the commission of an offence punishable under Section 323 IPC, it requires no interference with, it being 6 months rigorous imprisonment, plus a fine of Rs.1000/-, in default of payment of which he is to undergo 15 days further imprisonment as imposed by that Court. Both sentences would run concurrently.

53. As regards appellant Dinesh (in CRA-S-169-SB of 2018), he having been acquitted by this Court of the commission of an offence punishable under Section 304, as regards the commission of an offence punishable under Section 323 IPC, keeping in view the fact that no visible injury was seen due to the leg below inflicted by him, but pain obviously caused to the deceased, his sentence is reduced to the extent of imprisonment already undergone by him. The fine of Rs.1000/- ordered to be paid by him by that court, in default of payment of which he is to undergo 15 days further imprisonment, is maintained, to be paid by him within 3 months.

54. Consequently, these three cases are disposed of as follows:-

- (i) Criminal Revision no.806 of 2018, is dismissed.
- (ii) The appeal of appellant Dinesh, i.e. CRA-S-169-SB of 2018, is allowed to the extent that the appellant is acquitted of the charge framed against him for the commission of an offence punishable under Section 304 read with Section 34 IPC, with his conviction for the commission of an offence punishable under

Section 323 read with Section 34 IPC maintained by this Court, the sentence imposed by the trial Court in respect of that offence, however, reduced to the extent of imprisonment already undergone by him, but with the fine imposed upon him by that Court, maintained, alongwith the imprisonment to be undergone in default thereof.

(iii) The appeal of appellant Manish, i.e. CRA-S-183-SB of 2018, is dismissed qua the conviction of the appellant for the commission of the offence punishable under Sections 304-II and Section 323 IPC; however, with the conviction under Section 304 to be not read with Section 34 of the Code, though the conviction in respect of the offence punishable under Section 323 IPC would be so read.

The appeal is allowed to the extent of the sentence imposed upon the appellant for the commission of an offence punishable under Section 304-II IPC, which is reduced to 3 years rigorous imprisonment, with a compensation of Rs.3,00,000/- to be paid by him to the legal heirs of the deceased, in default of payment of which he would further undergo rigorous imprisonment for a period of 1 year and 6 months.

The sentence of the appellant for the commission of an offence punishable under Section 323 read with Section 34 IPC is maintained, as imposed upon him for that offence by the trial Court.

02.07.2018
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No