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Reserved

CRIMINAL JAIL APPEAL NO. 5622 of 2007

Ram Pyare and others ..... Appellants

Vs.

State of U.P. .... Respondent

Hon'ble Vinod Prasad, J.

Hon'ble Surendra Singh, J.

(Delivered by Hon'ble Vinod Prasad J)

The three appellants, Ram Pyare and his two sons Magroo and Ashok @ Buchu, were tried and convicted for offences under Sections 302/34, 323/34 I.P.C. by Additional Sessions Judge (F.T.C.), Sonbhadra in S.T. No. 205 of 2004 (State Vs. Ram Pyare Urao and others), P.S. Kon, District Sonbhadra who sentenced each of them to life imprisonment with fine of Rs. Five Thousand and in default of payment of fine to undergone two months further imprisonment on the first count and three months simple imprisonment on the second count with further direction that both the sentences shall run concurrently vide his impugned judgement and order dated 13.4.2006. Challenged in this Jail Appeal by the three appellants are to their aforesaid conviction and sentences.

Abbreviated background facts are that Baleshwar (deceased) and Ram Pyare (A1) both were sons of Moti Ram, Baleshwar deceased being the elder of the two. Magaroo (A2) and Ashok @ Buchu(A3), two other appellants, are the sons of A1. Informant

PW1 Sukurti Devi is the wife of the deceased while Naresh(PW2) and Ram Adhin(PW3), both injured are her brothers. On 24.9.2004 in the night at 11 p.m. deceased was accosting A1 for cutting and trading in jungle woods on which all the appellants abusively raided house of the deceased/ informant, dragged him to their door and belaboured him by *lathi* and *danda*. PW1 Informant reached at the spot and seeing her husband being belaboured raised hue and cry which attracted PW2 and PW3 at the spot who also sprinted at the scene but they were also assaulted. Deceased died because of beating. Hue and cry by all the witnesses attracted co-villagers also towards murder spot, on which murderers had taken to their heels. PW1 brought the cadaver of her husband at her door and leaving the corpse there she carried her two injured brothers to the police station Kon at a distance of 14 Kms, where she lodged her written FIR Ext. Ka 1 on 25.9.2004 at 8.30 a.m. which she had got scribed through Kameshwar Prasad Gupta.

S.I. Mansoor Ahmad, P.W. 6 registered the written report as crime no. 68 of 2004, prepared the chik FIR Ext. Ka 5 and the relevant G.D. entry Ext. Ka 6 and entrusted the investigation to Inspector V.S. Yadav, P.W. 7, who recorded 161 Cr.P.C. statements of P.W.1 and 6, copied chik FIR and the G.D. entry and thereafter, reaching the spot, performed inquest on the dead body and got inquest memo and other relevant documents, Ext Ka 7 to Ka 12,

scribed through S.I. Ram Darash Tiwari. Thereafter the dead body was dispatched for autopsy purposes. I.O., thereafter conducted spot inspection, prepared site plan Ext. Ka 13, collected blood stained and plain earth and got its recovery memo Ext Ka 14 scribed through same S.I. Ram Darash Tiwari. Same day Investigating Officer arrested all the three accused persons. On 26.9.2004, PW7 interrogated appellants and looked into their medical examination reports. On 13.9.2004, I.O. copied the post-mortem examination report and thereafter, on 18.10.2004, he dispatched cloths of the deceased and blood stained and plain earth for Forensic Science examination to laboratory at Lucknow. Forensic Science Laboratory report dated 8.2.2005 indicate that blood was found on the clothes of the deceased and in the blood stained soil. Concluding investigation P.W.7 (I.O.) charge sheeted all the appellants vide Ext. Ka 15 on 12.10.2004.

Autopsy on the dead body of the deceased was performed on 25.9.2004 at 4.30 p.m. by Dr. Udai Nath, PW4, Medical Officer, CHC, Dudhi. In the estimation of the doctor, deceased was aged about Fifty years and twenty hours had lapsed since his death. He was average built, his eyes and mouth were half open. Rigour mortis was present on the upper and lower limbs. Following injuries were detected on the body of the deceased by P.W.4:-

*1. Incised wound 6 c.m. X 1 c.m. X skin deep on right parietal*

*area.*

*2. Contusion 5 c.m. X 3 c.m. on right side of forehead.*

*3. Contusion 6 c.m. X 2 c.m. on right side of face near right eye.*

*4. Contusion 5 c.m. X 1.5 c.m. on nose.*

*5. Lacerated wound 2 c.m. X 1 c.m. on upper lip.*

*6. Contusion 2 c.m. X 0.5 c.m. on right shoulder.*

*7. Contusion 4 c.m. X 3 c.m. on left hand upper fracture of index fingure.*

*8. Contusion 15 c.m. X 7 c.m. on lower part of left side of chest.*

*9. Contusion 6 c.m. X 3 c.m. on upper part of left side of abdomen.*

On internal examination autopsy doctor found 5th and 6th ribs of left side chest of the deceased fractured with rupture of tissues of inter costal muscles. Stomach of the deceased contained semi digested food, small intestine had digested food whereas large intestine contained faecal matter. In the estimation of the doctor, cause of death was shock due to haemorrhage from rupture of spleen.

Injured Naresh, PW2 was medically examined on 25.9.2004 at 5.30 p.m. vide Ext. Ka 3 by the same autopsy doctor as P.W. 5. On his person following injuries were detected by the doctor:-

(1) *Lacerated 4cm X .5 cm skin deep on upper part of frontal area, blood cloth present.*

(2) *Contused swelling 5cm x 2cm on left shoulder, red in colour.*

(3) *Contused swelling 5cm x 2cm on lower part of right thigh 4cm above right knee, red in colour.*

(4) *Contused swelling 4cm x 2cm on dorsal aspect of right hand. 2cm before right wrist, red in colour.*

All injuries were simple in nature which were caused by hard and blunt object. Duration of the injuries was one day old.

Another injured Ram Adhin, PW3 was also medically examined on the same day at 5.45 p.m. by P.W. 5. On the body of Ram Adhin following injuries were found by the doctor:-

(1) *Lacerated 8cm x 10cm x skin deep on right parietal area 7cm above right eye brow, blood clot present.*

(2) *Contused swelling 11cm x 2cm on forearm 3cm below left elbow joint, red in colour.*

(3) *Contused swelling 6cm x 4cm on dorsal aspect on right hand. 2cm below right wrist, red in colour.*

(4) *Lacerated wound 11cm x .5cm x skin deep on right thumb, blood clot present.*

All the injuries of this witness were also simple in nature and were caused by hard and blunt object and the duration of those

injuries was also one day.

After submission of charge sheet, the case of the appellants was committed to the Session's court for trial, where Sessions Judge, Sonbhadra charged them with offences under Sections 302/34, 323/34 and 504 I.P.C. on 24.2.2005 which charges were denied by the appellants who claimed to be tried and hence their trial commenced.

In order to establish guilt of the appellants prosecution examined in all seven witnesses during the course of the trial out of whom Sukurti Devi P.W. 1 (informant), Naresh P.W. 2 (injured) and Ram Adhin P.W. 3 (injured) were witnesses of fact. Rest of the witnesses Dr. Udai Nath P.W. 4 and P.W. 5, S.I. Mansoor Ahmad P.W. 6 and S.I. V.S. Yadav P.W. 7 were the formal witnesses.

In her deposition before the Court, P.W. 1 informant narrated the same story, which was disclosed by her in her FIR Ext. Ka 1. She confirmed the relationship between the deceased and the appellants and further deposed that the deceased was forbidding appellant Ram Pyare from cutting forest woods and not to sell it in the market as Ram Pyare used to do the same without knowledge of the Forest Department. The objection of the deceased was affronted by the appellants who took it to be a temerity and thereafter they dragged the deceased at their door where he was assaulted with lathi and danda. She further testified that the lathi of

Ram Pyare was studded with an iron ring. She further deposed that she was issueless and because of dead hour of night she remained near the corpse. Next day morning she got the written FIR scribed and then went to the police station along with her brothers and got it registered. She has proved her written report Ext. Ka 1. In her cross examination she disclosed that there was *karma* festival on the date of the incident which all the aboriginals celebrate with liquor, music, dance and feast to please the GOD. First of all liquor is offered to the GOD and then it is consumed as his blessings by the devotees. However PW1 and the deceased had not participated in the festival as they had never celebrated it. She had further deposed that her parental relatives used to look after her agriculture. According to her deposition festival of '*karma*' was being celebrated in the house of Satya Narayan at a distance of one kilometre in Rohania Bakharia Tola, which had a cluster of forty or fifty houses. Her brothers P.W. 2 and P.W.3 were the resident of the said Tola. Nobody from the house of the informant or that of the appellants had gone to participate in the festival. P.W.1 further deposed that her house in Shikari Khuli Tola consists of ten or twelve houses. Her neighbours are Ram Kaval, Lallu, Jokhu, Ram Chandra etc. who all have gone to participate in the festival and were not present at the spot at the time of the incident. She further deposed that she had not sustained any injury in the incident as she

was standing away and prior to the incident there was no enmity between the appellants and them. She admitted that the deceased was not a Forest Department personnel and the appellants were never challaned under the Forest Act for cutting jungle woods at any time. She further deposed that the incident occurred in the Hindi calendar month of *Bhado*, which had rains and clouded clouds off and on. According to her deposition the incident night was a moonlit night and the incident had occurred at the door of the appellants where blood had also tickled down. Some of the blood had also sprinkled at her door, which she had shown to the Investigating Officer. She confessed that she did not endeavour to save her husband because she was deterred of being assaulted. Soon after the incident she had brought the injured since deceased at her door. She had stayed at the police station for ten or twelve minutes and prior to going to the police station she had already got her FIR scribed. From the police station she had returned to her house in a police jeep. She was interrogated on the subsequent day of conducting of inquest in the village. The assault continued for two or three minutes. She further deposed that she had gone to the police station in a jeep from the road. F.I.R. was scribed at her dictation by Kameshwar. All the accused persons had belaboured the deceased at a distance of ten or fifteen paces from her house. She emphatically denied defence suggestion that the accused

persons are not the murderers nor any incident occurred in front of their house.

Naresh P.W.2 in his deposition testified the relationship and supported P.W.1 in all material aspects of the incident. He further deposed that he and his brother Ram Adhin were also belaboured when they intervened to save their brother-in-law. He also confirmed that the night was a moonlit night and there was a lantern, which was also burning. He further confirmed that P.W.1 had carried the deceased at her door but soon thereafter he had lost his life. He further deposed that both the injured were carried to the hospital by the police where they were medically examined. Regarding the topography of the place of the incident also this witness has supported the deposition of P.W.1. On being questioned regarding the celebration of festivity he has supported the deposition of P.W.1. He further confirmed that they had gone to the police station in a private jeep next day morning and they had reached the police station in half an hour. This witness was clear that the Investigating Officer did not interrogate him at the time when he had gone to the police station at the time of lodging of FIR but he was interrogated three or four days subsequently. He has also confirmed the place of the incident to be the front of the house of the appellants. From his entire cross examination, nothing has come out which can discredit his testimony. This witness has

also denied the defence suggestion that the incident was executed by some unknown persons and they have not been able to recognize the real assailants and a false FIR has been lodged and that he was deposing falsely.

Testimony of P.W. 3 Ram Adhin, another injured also supported version of P.W. 1 and P.W. 2 in all the material aspects of the case . From his cross examination also defence has not been able to surface any damaging or destructive evidence. He is also categorical in his testimony that he had witnessed the assault on the deceased by the appellants and when he endeavour to save him he was also beaten. He had further supported the earlier two witnesses by saying that in the night, there is no plying of vehicles and, therefore, they had gone to the police station next day morning. He further testified that because of terror they did not inform the other people in night. His further deposition is that the incident occurred because of cutting of wood and the deceased had no previous enmity with the appellants. His deposition was categorical that he and his brother P.W. 2 were assaulted at the door of the accused and not on the road. He denied the suggestion that he was deposing falsely and the deceased was done to death in the dark hours and because of enmity, he was deposing falsely against the appellants.

P.W. 4, Dr. Uadi Nath, Autopsy doctor has testified the same

facts, which have already been mentioned herein before. He had further deposed that the deceased can sustain the injuries detected on his body by blunt object studded with an iron ring and the death may ensue at the time alleged by the prosecution. He further deposed that there was no mark of dragging found on the body of the deceased. Regarding injuries sustained by P.W. 2 and P.W. 3, the doctor has testified those very facts which have already been recorded herein before. During his cross examination, nothing material has come out to damage prosecution case. P.W. 6, S.I. Mansoor Ahmad has deposed regarding registration of FIR, preparation of chik FIR and G.D. entry and had denied the suggestion that the FIR was cooked up after due consultation. P.W. 7, Investigating Officer has testified regarding various steps taken by him during investigation as has already been inked herein before.

In their statements under Section 313 Cr.P.C. all the appellant accused pleaded the defence of false implication by stating that the deceased was done to death by some unknown persons and because of enmity, they have been falsely implicated. In their defence, appellants had examined constable Raghu Nath as D.W. 1.

Trial court placed reliance on the depositions of prosecution witnesses and reposing confidence in their testimonies concluded that prosecution has proved it's case to the hilt and therefore it

convicted all the appellants for the charge of murdering the deceased and causing simple hurt to the witnesses and consequently convicted and sentenced them for those offences as is already mentioned in the opening paragraph of this judgement. It however, acquitted them for the charge U/S 504 IPC. Hence this Jail appeal by all the three appellants.

On above facts we have heard Sri Sudhist, learned counsel for the appellants in support of this appeal and Mrs. Raj Lakshami Sinha, learned AGA for the appellee State.

Sri Sudhist, learned counsel for the appellants contended that the incident occurred in the dark hours of night and the cause of death is bursting of spleen and, therefore, it cannot be said that the appellants really intended to cause murder of the deceased. He further contended that it was the deceased who picked up the quarrel with the appellants by accosting them to forbade from cutting of woods when he was neither an employee of the Forest Department nor had got anything to do with those woods. Learned counsel further submitted that all of sudden it was the deceased who made utterances which must have rankled the appellants who all took it to be a faux pas because of which the incident occurred. He further submitted that the perusal of the injuries of the deceased indicates that injury no. 1, which is an incised wound, was only skin deep with only a linear fracture of right parietal bone, which is not

the cause of death. Rest of the injuries are on non vital part of the body. It was therefore submitted that on such facts it is difficult to presume that the appellants intended to cause death of the deceased or they intended to cause such bodily injury as in all probability was likely to result in death and, therefore, conviction of the appellants under Section 302 I.P.C. is not sustainable. He further pointed out some small contradictions in the depositions of the witnesses which are wholly immaterial to be recorded. Learned counsel further castigated the impugned judgement by contending that no independent witness came forward to lend credence to the prosecution case which relied upon only on testimonies of interested, partisan and related witnesses and therefore testimonies of those witnesses be not relied upon. However, the sheet anchor of the argument of learned counsel for the appellants is that conviction of the appellants be altered from one under section 302 I.P.C. to one under Section 304 part (II) I.P.C. and since the appellants have already undergone imprisonment for six years, their appeal deserves to be allowed by altering their conviction to one under Section 304 (II) I.P.C. with sentence of imprisonment already undergone by them.

Learned AGA, on the other hand contended that there was no motive for the prosecution witnesses to falsely implicate the appellants and, therefore, the appeal lacks merits and deserves

dismissal in full. She further submitted that the deceased died because of bursting of spleen because of injury caused by the appellants and therefore there is no ground to alter the conviction and the sentence.

We have considered the arguments raised by both the sides. Admittedly the incident occurred at the spur of the moment. It was accosting by the deceased at that unusual hour of night which had engineered the quarrel. It is not known whether the accused persons were cutting the woods at the time of the incident or not? Neither in the FIR nor in statement in court, it has been testified by any of the witness as to whether at the time of the incident, the appellants were cutting wood or not? No axe etc. was carried by the accused persons so as to indicate that the accused persons were chopping the woods at that time. It seems that because the accused persons were cutting woods in the past that a tiradic alteration ensued between the deceased and the accused appellants at the door of the appellants in which the deceased was assaulted. However no fatal physical injury was caused to the deceased. Cause of his death was bursting of spleen. The incident had occurred in the dead hour of night. The charge levelled by the deceased must have affronted the appellants as in essence it was a charge of theft and appellants being the thieves. In such a view, it is difficult to presume that the accused really intended to cause death of the

deceased. This opinion finds support from the injuries sustained by the injured persons as well as they both sustained only simple injuries. Therefore a glimpse of the injuries sustained by the deceased and injured does not give indication that any of the accused really intended to cause death of the deceased. What can be held with certainty is that the appellants intended to give severe beating to the deceased and not to cause his death. Nature of injuries and its situs also lead us to this conclusion. Injury no. 1 of the deceased was only skin deep, injury no. 2 was a contusion on right side forehead, injury no. 3 was contusion on right eye, injury no. 4, 6, 7, 8 and 9 all were contusions on right shoulder, upper index finger, left hand, upper side of chest and left side of abdomen. It seems that because of injury no. 9 that the spleen of the deceased bursted and he lost his life. It is not known who had caused that injury which could have been sustained because of fall in the brawl as well in the night. The autopsy report does not indicate any external physical damage sustained by the deceased capable of causing his death independently or cumulatively. In such a view, it is very difficult to cogitate and conclude that the appellants really intended to cause death of the deceased.

It is also noted that at the initial stage of the incident, the deceased was dragged at the door by the accused-appellants. At that time they were all empty handed as alleged by the prosecution.

Assault was made on the deceased only by blunt objects, but not with much force, so as to cause only contusions and not even lacerated wound but for one injury, which is on the lips, being injury no. 5. In such a view, when the accused persons were assaulting the deceased, it will be puerile to cogitate that they harbingered intention or knowledge to cause death. We also doubt dragging part of prosecution story as the deceased had not sustained any dragging injury. Incident occurred at the door of the appellants and therefore it seems that the deceased had gone to the door of the appellants accusing them of being thieves and because of that conduct of the deceased himself that the incident occurred at a very unusual time in the night. There was no occasion for him to have picked up the brawl at that hour of night for some thing which had occurred in the past. In our view the case of the appellants is covered under more than one exception of section 300 IPC and their offence will not travel beyond the scope of section 304 part II IPC.

From the evidence led in the trial, P.W. 1 had no animus against the appellants to falsely implicate them. She is a close relative and defence has not been able to shake her testimony at all to indicate that she had any reason to rope in the accused-appellants falsely. P.W. 2 and 3 are injured witnesses and their presence at the spot cannot be doubted. They have supported the

evidence of P.W. 1 in all its material aspects of the incident. They are close relatives and prior to the present incident they had no animus with the appellants so as to motivate them to depose falsely against them. We are not in agreement with the argument of learned counsel for the appellants that the appellants have been falsely implicated and that some unknown persons are perpetrators of the crime, other than the appellants. Presence of the appellants at the spot is established beyond any shadow of doubt.

In view of above discussion we are of the opinion that though accused persons did participate in the incident, but the offence, which they have committed will be purviewed only under section 304 part II IPC and not under section 302 IPC. In our this conclusion we are fortified with the following judgment of the apex court. In the case of **Abani K. Debnath v. State of Tripura: AIR 2006 SUPREME COURT 518**; apex court has held as under :-

*"5. This leads us to consider as to under what Section of law A-1 Abani K. Debnath is liable to be convicted in a given facts of the case. The prosecution evidence clearly discloses that the dao blow dealt by A-1 is preceded by a mutual quarrel. We have already noted that there was no common intention to kill Ranjit Das. From the nature of injuries it is disclosed that A-1 dealt only one dao blow perhaps in the spur of moment. The incident had taken place on*

*10-8-1990 and the deceased succumbed to injury on 15-8-1990 after a lapse of 7 days. Taking the prosecution evidence and medical evidence cumulatively we are of the view that the conviction of A-1 also cannot be fell under Section 302 IPC but at the most under Section 304 Part II. We accordingly convert the sentence of A-1 Abani K. Debnath under Section 302 IPC to that one under Section 304 Part II IPC and sentence him to suffer R.I. for five years."*

**IN Cmilo Vaz v. State of Goa: AIR 2000 SUPREME COURT 1374;** it has been held by the apex court as under:-

*"14. This section is in two parts. If analysed the section provides for two kinds of punishment to two different situations. (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here important ingredient is the "intention"; (2) if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304, IPC as in the present case. We are also not oblivious of the fact that other four accused who were similarly convicted with the appellant with the aid of Section 149,*

*IPC have been held guilty only for offence under Section 326, IPC.*

*15. We, therefore, hold the appellant to be guilty for an offence under Section 304, Part II, IPC. His conviction under Section 302, IPC is, therefore, set aside."*

**In Chinnathaman v. State, Rep. by Inspector of Police: AIR 2008 SUPREME COURT 784; it has been held as under :-**

*"10. This brings the court to consider the question as to which offence is committed by the appellant. Admittedly, the incident had taken place in the field/garden belonging to the appellant, where he was engaged in his farming activities. From the evidence led by the prosecution it is evident that the deceased, in the company of witness Senthil Kumar had gone to the field of the appellant to get bitterguard though they were warned not to do so by the father of the deceased. In spite of knowing that the appellant was nurturing a feeling that the deceased and his own sister's son had facilitated elopement of Punitha with her teacher, the deceased in the company of Senthil Kumar had gone to the field of the appellant on the pretext of getting bitterguard. The testimony of the father of the deceased establishes that his deceased son, in the company of witness Senthil Kumar had stayed in the field of the appellant for about 15 minutes and that there was an altercation between the appellant and the deceased. The appellant never knew and anticipated that the deceased would*

*enter his field nor had prepared himself in advance to attack the deceased. Thus there was no premeditation or pre-plan on the part of the appellant, to cause the death of the deceased. Though the appellant is senior in age to the deceased, the deceased had advised the appellant to behave nicely without rhyme or reason, when the appellant had refused to part with bitterguard saying that the deceased and others had disgraced his family by facilitating elopement of Punitha with her teacher. It is not the case of the prosecution that on seeing that the deceased was entering his field in the company of Senthil Kumar, the appellant had straightway attacked him. The evidence led by the prosecution clearly establishes that after verbal duel, which had lasted for pretty long time, the appellant had picked up a sickle which is an agricultural implement, lying on the ground and delivered a blow on the neck of the deceased. By entering the field of the appellant on the pretext of getting bitterguard, though he was knowing fully well that the appellant was nurturing a feeling that he had played a role in the elopement of Punitha with her teacher as well as engaging himself in an altercation with the appellant, and advising the appellant to behave the deceased had offered grave and sudden provocation to the appellant as a result of which the appellant, in the heat of the moment had delivered a blow with sickle to the deceased. The Medical Officer who had performed autopsy on the dead body of*

*the deceased has not stated that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death. It is not the case of the prosecution that the appellant had acted cruelly, in the sense that he had delivered successive blows to the deceased. There was sufficient time and opportunity to the appellant to give repeated blows. It is not the case of the prosecution that the appellant wanted to deliver other blows and that he was prevented from doing so, by any person. So, there is reasonable ground to believe that after giving the blow, the appellant had stopped and not acted cruelly. As noticed earlier, the appellant was doing his work and was not waiting for the deceased to come. On the facts and in the circumstances of the case, this Court is of the opinion that Exception 1 to Section 300, IPC would apply to the facts of the case and the offence committed by the appellant would be one punishable under Section 304, IPC. There is nothing on record to indicate that the appellant had committed culpable homicide amounting to murder by causing death of the deceased with the intention of causing death of the deceased or of causing such bodily injury as was likely to cause his death. Therefore, the provisions of Part II of Section 304, IPC would apply to the facts of the case on hand. Thus, the appeal will have to be allowed by converting the conviction of the appellant under Section 302, IPC to one punishable under Section 304 Part II, IPC. This*

*Court has considered the submissions advanced at the bar for the purpose of imposition of sentence on the appellant for commission of offence punishable under Section 304, Part II, IPC. As held earlier there was no pre-meditation or pre-plan on the part of the appellant to cause death of the deceased, and the occurrence had taken place when the deceased, with another had entered the field of the appellant and engaged himself in an altercation with the appellant when the appellant had refused to part with bitterguard. Having regard to the attending circumstances in which the incident had taken place, this Court is of the opinion that the interest of justice would be served if the appellant is sentenced to rigorous imprisonment for five years for commission of offence punishable under Section 304, Part II, IPC."*

**IN Nafe Singh v. State of Haryana : AIR 2009 SUPREME COURT 2825** the facts were :-

*"4. On 30.5.2002, Kanwar Singh (PW.4) complainant along with his brother, namely, deceased Bhanwar Singh was working in the fields known by the name of Yamuna belt. Ram Phal son of Sugna, resident of Goela Khurd, was also ploughing his fields. Besides, the sons of the complainant, namely, Vinod and Mukesh, were also working in the field. At about 12 noon, appellant Nafe Singh armed with a Ballam, Dheeraj armed with a Gandasi and Angrej Singh armed with a lathi, came to their fields and raised a*

*lalkara that Bhanwar Singh be taught a lesson for ploughing the fields, whereafter Nafe Singh gave a Ballam blow to Bhanwar Singh on the right side of his chest on its lateral side lower part, while Dheeraj gave a Gandasi blow on his left knee and Angrej gave a lathi blow to him. Upon this, Bhanwar Singh cried "Mar Diya Mar Diya" and on hearing his noise, Vinod and Mukesh went to rescue their uncle Bhanwar Singh; but they were also inflicted injuries by the above three accused with their respective weapons. When Kanwar Singh - complainant along with Ram Phal intervened, the accused along with their respective weapons fled away from the spot. Accused Nafe Singh while leaving told them that his brothers Sahab Singh and Iqbal Singh has lot of money and can manage the affairs. Kanwar Singh, complainant along with Ram Phal went to the spot and found his brother Bhanwar Singh lying dead. Thereafter, Hari Singh son of Phula Singh and his wife Kiran Sarpanch who were coming from the fields along with Jhota Buggi took the injured to village and subsequently, to Civil Hospital, Panipat. Complainant Kanwar Singh made statement exhibits PB before ASI Randhir Singh in regard to the occurrence which led to registration of formal FIR exhibit PB/1 after making an endorsement Ex. PB/2."*

On such facts it was held as under :-

*"10. Considering the facts of this case, according to us, the appropriate conviction will be under Section 304, Part-II IPC instead*

*of Section 302 IPC. Ends of justice would be met if the conviction is altered from Section 302 IPC to Section 304, Part II IPC and the custodial sentence is reduced to 7 years R.I. We order accordingly."*

In view of our above discussion this Criminal Jail Appeal is partly allowed. While we maintain conviction of all the appellants under section 323/34 IPC and the sentence recorded therefor by the trial court in its impugned judgement, but we set aside their conviction under section 302/34 IPC and imposed sentence of life imprisonment with fine of Rs. Five thousand there for and instead convict them under section 304 Part II/ 34 IPC. Since the appellants had already undergone six years of imprisonment, in our view, the same will suffice as the sentence for the said charge.

Appellants are already in jail. Since they have already served out the entire period of sentence on both the charges, we direct that they shall be released from jail forthwith unless they are required or incarcerated in connection with any other offence.

This Criminal Jail Appeal is allowed in part as above. Let a copy of this judgement be certified to the trial court for its intimation.

**Date:16.7.2010**  
**AKG/**