



AFR
Reserved

Criminal Appeal No.3889 of 2006

Veer Singh.....Appellant

Vs.

State of U.P.....Opposite party

Connected with

Criminal Appeal No.4371 of 2006

Ram Ratan.....Appellant

Vs.

State of U.P.....Opposite party

Hon'ble Vinod Prasad, J.
Hon'ble Virendra Singh, J.

(Delivered by Hon'ble Vinod Prasad, J.)

The two sibling brother appellants Veer Singh and Ram Ratan, have been convicted for offences under Sections 302/34, 302 IPC, respectively, with sentence of life imprisonment and a fine of Rs.1000/-, with further direction that in default of payment of fine they shall undergo six months further imprisonment, by Additional Sessions Judge, court no.4, Rampur, vide his impugned judgement and order dated 7.7.2006 passed in Sessions Trial No.508 of 2005, State Versus Ram Ratan and another which conviction and sentences have been

challenged in the above two appeals preferred by the appellants. For the sake of convenience both the appeals were clubbed together and are being decided by this common judgement.

In an abridged form, prosecution allegations against the appellants, as were contained in the written report Ext. Ka-1, were that Nathia, a resident of Bara Kashipur, and *nanad* of Kamla (*mausi* of informant Shanti and her sister Kanta), is a common relative of informant and Dayawati, wife of Ram Ratan appellant. Kanta had visited house of Nathia in Bara Kashipur, which visit was not relished by Dayawati, who was making obnoxious utterances in that respect.

On the date of the incident, 6.7.2005 at 7-7.30 p.m., appellant Ram Ratan, armed with *ballam* was passing through the front of the informant's house along with his brother Veer Singh appellant, when, all of a sudden, a triadic altercation ensued between appellant Ram Ratan and father of informant Hemraj (deceased), which attracted informant's brother Tejveer,

Savitri, Kanta, co-villager Ram Autar and many others at the spot, who all intervened in the verbal onslaught and tried to pacify ongoing altercation. In the midst of this, all of a sudden, Ram Ratan pierced his *ballam* in the chest of Hemraj, who, after sustaining grievous injury, fell down and thereafter, both the accused fled away towards the plateau . Injured father Hemraj was transported to the police station Patwai at a distance of 2 Kms where a written report Ext. Ka-8 was lodged by the informant, as Crime No.320 of 2005, under Section 308 I.P.C., at 8.40 p.m. same day after getting the same scribed by Amar Singh Sagar.

Constable 604 Mala Ram prepared the Chik FIR Ext. Ka-8 and the relevant GD entry in Ext. Ka-7. Investigation of the crime was commenced by S.I. Suraj Bhan, P.W.5, who first of all copied the Chik FIR and the GD entry and thereafter recorded 161 Cr.P.C. statement of the informant. He thereafter sent the injured Hemraj along with Head Constable Lalman to the district hospital Rampur for nursing of his injury. Same day Investigating

Officer recorded the statements of other witnesses and made a vain endeavour to apprehend the accused. Injured Hemraj lost his life on 6.7.2005 at 9.20.p.m. and therefore I.O., on 7.7.2005, came to the District Hospital, Rampur where he copied the memo Ext. Ka-3, sent by the doctor regarding demise of the deceased. I.O. also copied other relevant documents and other GD entries, which he had proved as Ext. ka-5 to Ka-9.

Inquest on the dead body of the deceased was conducted in the District Hospital and the relevant documents from Ext. Ka-10 to Ka-16, were prepared by the Investigating Officer. Three cloths of the deceased were taken in possession by I.O. as material Ext. 4 to 6 and the cloth in which they were sealed was proved as material Ext. 7. Investigation Officer had further proved other GD entries Ext. Ka-17, Ext. Ka-18 regarding mentioning of receipt of cloths of the deceased from the hospital and crime conversion GD. Concluding the investigation he had laid the charge sheet Ext. ka-23, on 30.7.2005, against the accused persons.

The autopsy on the dead body of the deceased was performed by Doctor Mohammad Ashraf Ali, P.W.3 on 7.7.2005 at 12.15 p.m. According to the post-mortem examination report Ext. Ka-2, deceased was an average built person. Rigor mortis was present in both the upper and lower extremities. There was no sign of decomposition. Eyes were open and mouth was half open. 150 ml. semi digested food matter was present in the stomach and large intestine contained digested food with gases and faecal matter. Right lung of the deceased was perforated and about 2 litres of clotted blood was present in the right pleural cavity. His Pericardium was perforated and one litre blood was present in pericardium cavity. Sternum of the deceased was also perforated. Pleura on right side chest was cut. Following anti-mortem injury was detected by the doctor:-

1. A stab wound 1 cm x 0.8 cm x 10.5 cm situated on front of chest between two nipples 7 cm below root of neck.

The tract of wound was directed inwards and towards

right side.

In the estimation of the doctor, cause of deceased death was haemorrhage and shock due to sustained ante-mortem injuries.

Chief Judicial Magistrate, Rampur, took cognizance of the offence on 8.9.2005 and, after summoning accused persons, committed their case to the court of Sessions for trial, where it was registered as Sessions Trial No.508 of 2005, State Vs. Ram Ratan and another. Trial Judge framed the charges against the appellants on 21.7.2006 under Sections 302/34, 504 IPC, which were denied by them who claimed to be tried.

In order to substantiate the charges and bring home the guilt of the appellants, prosecution examined in all five witnesses out of whom Shanti, informant, P.W.1 and Munshi Lal P.W.2 were the witnesses of fact. Doctor Mohd. Ashraf Ali P.W.3, D.C. Sharma, S.I., P.S. Patwai, Rampur P.W.4 and Suraj Bhanu, S.I., P.S. Patwai, Rampur, P.W.5 were formal witnesses.

In his deposition before the court, informant Shanti

P.W.1, narrated the prosecution story dictated by him in his written report, Ext. Ka-1 and had further testified that, on the date of the incident Dayawati was vetuparising standing at door of informant's house, on which firstly Hemraj,(deceased) and then informant, his mother, sister Kanta, brother Tejveer, Munshi Lal, Ram Autar and Shyam Singh gathered there. Hemraj forbade Dayawati from abusing and asked her the cause of such abuse. Meanwhile, the two appellants also reached there. Veer Singh appellant cuddled Hemraj and Ram Autar appellant struck a blow in his chest from his carried *ballam* and then both the accused sprinted towards the plateau and they could not be apprehended inspite of a apprehending chase. Sustaining injury, Hemraj fell down on the ground and was transported to the District Hospital, Patwai, district Rampur in an arranged tractor but, there, the doctor was absent. There informant got Ext.Ka-1 scribed from Amar Singh Sagar and lodged it at the police station covering the distance on the same tractor. Subsequent thereto, informant carried his father

to the hospital in the same transport but there he was declared dead. P.W. 1 was subjected to searching cross-examination wherein he had deposed that he had proceeded for the hospital 15 minutes after the incident and had reached Patwai Hospital within half an hour and there he got the FIR scribed through Amar Singh Sagar as he himself was illiterate. He had further testified that it took him 10 to 15 minutes to dictate the FIR. He had denied the suggestion that FIR was not dictated by him as he did not know the meanings of some of the words mentioned in written report. He had further deposed that his statement under Section 161 Cr.P.C. was recorded 15 or 20 minutes after the registration of the FIR. However he had admitted that neither in the FIR nor in his 161 Cr.P.C. statement he had stated that appellant Veer Singh had caught hold of the deceased by circling him from both of his hands. He had also admitted that he had not informed anybody regarding catching hold of the deceased by appellant Veer Singh and that fact was stated by him for the first time in the court. Informant

had further deposed that appellant Veer Singh was empty handed and only appellant Ram Ratan had carried a *ballam* with him and it was he who had escaped with that weapon from the spot. He had also admitted that he had informed the I.O. that the incident had occurred during heated exchange and after giving a single blow the weapon was pulled back by the accused Ram Ratan, who had made his escape good towards the plateau. He had further admitted non mentioning of Dayawati's presence at the time of the incident and abusing by her in his FIR and 161 Cr.P.C. Statement. He had also not disclosed to the I.O. regarding his sister's going to the house of Nathia because of which Dayawati nurtured a grudge. Other insignificant contradictions and omissions had been put to this witness to which he had denied by offering an explanation that because of his father's murder he was terrified and not in normal senses. He had further deposed that he had disclosed the names of Munshi Lal (P.W.2) and Shyam Singh to the Investigating Officer and the spot inspection was conducted at his

pointing out. He had denied the suggestion that incident did not occur at the time and place alleged by him nor he had witnessed it and that he was deposing falsely. He had also denied the suggestion that his father had sustained injury in a loot attempt and he had cooked up a false case against the appellants because of enmity.

P.W.2, Munshi Lal, had supported informant, PW1, on material aspects of the matter and had further testified that the incident had occurred in day light and Investigating Officer had recorded his statement 10 and 15 days after the incident. He had admitted that at the time of the incident Hemraj and appellant Ram Ratan had indulged into a triadic bitter altercation and, even though, collected persons tried to pacify them but they did not budge and yielded to their advice . This witness was also subjected to searching cross-examination but nothing material could be elicited from his testimony, which could discredit prosecution story in it's broad aspects and regarding participation of appellant Ram Ratan. He had further deposed that the cloths of the

deceased were got pierced because of the sustained blow. He had denied the suggestions that he was deposing falsely because of his relationship with the informant and appellant Ram Ratan had not caused any injury to the deceased.

Doctor Mohammad Ashraf Ali P.W.3, in his deposition had narrated the facts recorded above and had testified that sustained injuries by the deceased was sufficient to cause his death. He had proved his post-mortem examination report as Ext. Ka-2. He had also proved the death memo sent by Doctor R.K. Dhal to the police as Ext. Ka-3. Question had been asked from this doctor regarding presence of rigour mortis but from his cross-examination no damaging material could be brought-forth against the prosecution.

D.C. Sharma, S.I., P.W.4 had deposed that on 7.7.2005, while he was searching for the accused along with Constables Kailash Chandra, Narendra Kumar and Chandra Pal, he got the information that the accused of the present murder case was standing near the road to

village Nandana. On the said information he had gone to that spot and had arrested appellant Ram Ratan at 5.15 p.m. Appellant had made a disclosure statement regarding the weapon of the crime and at his disclosure statement, he had recovered that weapon at 7.45 p.m. from a paddy field near the temple and he had prepared its recovery memo Ext. Ka-4. He had also proved GD of that crime, as Ext. Ka-5 and the other relevant GDs regarding the arrest and dispatch of the accused, as Ext. Ka-6. He had also proved the recovered weapon as material Ext.1 and material Ext.2 and the cloths in which it was sealed as material Ext. 3. In his cross-examination this witness had deposed that he had searched many places to apprehend the accused of the murder charge. This witness was cross-examined regarding his movements but no material favourable to the defence could be elicited from his cross- examination. He had further deposed that the place of arrest was two and half or three kilometres away from the police station and had denied the suggestion that he had shown a false arrest.

Suraj Bhanu, S.I., P.W.5, had testified that the crime was registered in his presence at the police station under Section 308 I.P.C. He had narrated various steps taken by him during investigation as have been mentioned herein above. He had further deposed that he had sent the recovered articles to the Forensic Science Laboratory whose report Ext. Ka-24, dated 23.11.2005 was received on 8.12.2005. He had further testified that he had interrogated the informant half an hour after the registration of the FIR and he had started conducting the inquest at 10.00 a.m. and had completed it at 11.30 a.m. He had further deposed that the hospital was 2-2-1/2 kilometres away from the police lines and the injured was immediately dispatched for his medical treatment soon after registration of the FIR. He had denied the suggestion regarding anti-timing of the FIR and had also denied that a false case was cooked up. He, however, had admitted that during investigation, he had come to know that the blow was given in heat of passion and such a statement was also given to him by witness Ram Avtar.

He had been cross examined at length to surface omissions in his investigation to show that the incident did not occur as alleged by the prosecution. This witness has, however, admitted that Dayawati was not present at the spot and there was absence of blood as well at the scene of the incident. He had also admitted that in both 161 Cr.P.C. Statement, informant had not disclosed to him regarding abuses hurled by Dayawati at the time of the incident. He had further admitted that since the occurrence took place all of a sudden in heated moments , therefore he had found the offence only under section 304 IPC for which offence only he had filed the charge sheet.

In their statements under Section 313 Cr.P.C. the accused persons had taken the defence of denial and of false implication because of election rivalry.

Additional Sessions Judge, Court No.4, Rampur, on the analysis of evidence led before it came to the conclusions that the prosecution had established the charge and therefore, convicted and sentenced the two

appellants as is mentioned in the opening part of this judgement hence, these appeals by the two appellants.

We have heard Dr. Rajesh Kumar Srivastava, Advocate in support of the appeal preferred by appellant Ram Ratan and Sri P.C. Srivastava, Advocate in support of appeal preferred by another accused Veer Singh. We have also heard Sri A.N. Srivastava on behalf of the informant and Smt. Raj Laxmi Sinha, learned AGA for the opposite party State and have gone through the record of this appeal as well as trial court record.

It was contended by both the counsels for the appellants that the prosecution has not been able to substantiate the charge against the appellants, FIR is a manufactured document and is the outcome of consultation and deliberations. It is a cooked up version and in fact informant had never dictated it. They also contended that the conviction under Section 302 IPC is bad in law as admittedly the incident had occurred at the spur of the moment amidst heated arguments and therefore, in any view, Section 302 I.P.C. is not applicable

on the facts of the present case and that is why I.O. had filed charge sheet only under section 304 I.P.C. They also submitted that the charge framed against both the appellants were under 302/34 and 504 I.P.C. only and since no charge under Section 302 IPC was framed against appellant Ram Ratan therefore, his conviction under Section 302 I.P.C. simplicitor is bad in law. Learned counsels further submitted that acquittal under Section 504 IPC further erodes the credibility of two prosecution witnesses and makes them unreliable witnesses and consequently it will be very unsafe to record conviction on the testimony of such partly unreliable witnesses. It was further submitted that a single blow intermission heated exchange of words given by appellant Ram Ratan will only make him liable for his individual act and since appellant Veer Singh was unarmed and did not participate in the verbal war, his conviction with the aid of Section 34 IPC is bad in law. It was an assault at the spur of the moment , without any pre concerted mind and therefore common intention to commit the crime does not and should not be

applied on the facts of the present case. Assault was not pre-meditated and Veer Singh had no idea at all for such an impulsive act of Ram Ratan, consequently his conviction is unsustainable. They further contended that the investigation of the offence was also not above board and the Investigating Officer had cooked up a false case. It was further submitted that the incident did not occur, as was alleged by the prosecution and the testimonies of P.W.1 and 2 suffers from intrinsic inherent improbabilities and unnaturality and cannot be accepted to established the guilt of the appellants. Concludingly, it was submitted that both the appeals deserves to be allowed and both the appellants deserves to be acquitted.

Dr. Rajesh Kumar Srivastava, learned counsel for the appellant Ram Ratan additionally submitted that, in case this court comes to the conclusion that appellant Ram Ratan did participate in the incident then in that event his crime will fall only under section 304 part II, I.P.C. and not under 302 I.P.C. and therefore, his conviction under Section 302 I.P.C. and sentence of life imprisonment be

altered to one under Section 304 (part II) I.P.C. with sentence of 7 years R.I.

Per contra Smt. Raj Laxmi Sinha, learned AGA and Sri A.N. Srivastava, learned counsel for the informant, contended that both the appeals are bereft of merits and deserves to be dismissed. A single blow according to the doctor's opinion was sufficient to cause death and therefore, appellant Ram Ratan was rightly convicted under Section 302 I.P.C. Learned AGA as well as learned counsel for the informant categorically stated that so far as Veer Singh is concerned since he had accompanied his brother, which was most natural, therefore his conviction with the aid of Section 34 I.P.C. is also well merited and consequently both the appeals deserves to be dismissed through a judgement of affirmation of conviction and sentences.

Analysing and cogitating over rival contentions, we consider it appropriate to take up the case of appellant Veer Singh first.

According to the prosecution version, as was

narrated in the FIR, both the accused had come to the scene of the incident and after giving a single blow to Hemraj, they fled away from the place of the incident. This case, however, was exchanged during the trial and a new case, hitherto unknown, was set up by the witnesses of facts, according to which, Dayawati appeared at the scene of the incident first and it was she who had started abusing the family members of the informant's house. Thereafter the two appellants appeared at the scene and appellant Veer Singh caught hold of the deceased, whereas appellant Ram Ratan thrust a ballam in his chest. This was not the case at any earlier occasion, either in the FIR or in 161 Cr.P.C. Statements. I.O. had also admitted that Dayawati was not present at the spot. This embellishment, ostensibly was done to rope in Dayawati also in the case. PW 1 informant had to admit the fact that he had deposed regarding presence of Dayawati for the first time in the court and not prior to it. Moreover the FIR case was modulated to make it congruent with the autopsy report of a single injury by testifying that

appellant Veer Singh was empty handed and did not carry any weapon with him and he had only caught hold of the deceased. He even did not participate in the verbal tirade. Story of catching hold was disclosed for the first time in the court by the informant albeit he was interrogated twice by the I.O. during investigation but in none of the two statements he had stated that fact . To us, this was yet another attempt to rope in the male members of accused side by the two prosecution witnesses. Depositions of both the witnesses of facts, PW 1 and PW 2, regarding participation of Veer Singh are conspicuously silent without assigning any role to him. Ipse dixit of these two witnesses that Veer Singh accompanied Ram Ratan at the time of the incident, by modifying prosecution version, without assigning any overt act to this appellant, creates suspicion on his presence and participation in the incident. It is because of this reason that omission to state the role assigned to this appellant Veer Singh of catching hold of the deceased while he was struck a blow on the chest during

investigation assumes importance and we consider it an after thought and an improvement, which can not be relied upon. Had this fact of catching hold been true , the informant and his witnesses would not have missed it in informing the I.O. the said fact during the course of investigation nor the informant would have missed it while dictating Ext. Ka 1. Absence of this very important fact, which could not have missed it's narration, prior to the deposition in court, makes the said fact suspect and disproved. We find it absolutely hazardous to cement a conviction on such evidence even with the aid of section 34 I.P.C.

At this juncture we would also like to consider the harangued contention that section 34 I.P.C. can not be pressed into consideration to convict appellant Veer Singh, as the same does not apply at all. From the evidence on record , we find the said contention well merited. Section 34 I.P.C. is a rule of evidence and is not a substantive penal section. It is in the statute book to deal with situations of joint liability, where the crime is

committed by several accused. If the crime is committed in furtherance of common intention of all, there is no distinction between individual act of one accused with the others. From the statements recorded in the court it is well perceptible that assault was preceded by a verbal onslaught between Ram Ratan and Hemraj. Both the witnesses are clear and cogent in stating the said fact and PW 2 even went on to depose that collected persons even tried to pacify them but neither Ram Ratan nor deceased Hemraj, budged at all and attempt to clam them down went unheeded. It was further testified that during that verbal tirade all of a sudden, Ram Ratan pierced his Ballam in the chest of the deceased. In such a scenario, when the allegations of catching hold is an improvement and an embellishment, the act of assault by Ram Ratan was his individual act without prior concert of mind and sharing of common intention by appellant Veer Singh. For the applicability of section 34 I.P.C. Consensus ad idem (meeting of minds) of the accused is sine -qua-non. There is a distinction between intention common to

all and common intention of all. For the applicability of section 34 I.P.C. not the first but the second – common intention of all must be present. This legal aspect is born out from the words of section 34 I.P.C. itself which provides that if an offence is committed by several persons “in furtherance of common intention of all” each of such person shall be liable for the act in the same manner as if it were done by him alone. In the present appeals, there is no evidence that appellant Veer Singh shared such consensus. He was empty handed. Absence of role of catching hold in the FIR and during interrogation by the I.O. makes participation of appellant Veer Singh in the incident doubtful. There is no other evidence to establish his sharing of common intention with that of appellant Ram Ratan. Here we would like to refer some of the decisions of the apex court. In the case of **Shashi Mohan versus State of M.P.: AIR 2008 SC 2961**, apex court has held as under :-

“6. In support of the appeal, learned counsel for the

appellant submitted that the High Court has categorically noted that none of the eye witnesses stated that A2, the present appellant has pre-mediated with A1 and A3 before the offence was committed. The witnesses admitted that the appellant was not armed with weapon and no overt act was attributed to him. Further, he was coming from a different direction and, therefore, the question of his sharing the common intention was not there.

7. Learned counsel for the respondent, on the other hand, submitted that though A2 was not armed with and was coming from a different direction, his presence has been established. He being the son of A1 and the brother of A3, the main assailant the ingredients of Section 34 have been clearly established.

8. Under the provisions of Section 34 IPC the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34,

when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh (AIR 1993 SC 1899), Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused. 1993 AIR SCW 1843

9. When the background facts are considered in the light of legal principles set out above, the position is clear that the accusations were not established so far as the present appellant is concerned. No evidence was led to show sharing of common intention. The appeal deserves to be allowed which we direct. He be set at liberty

forthwith unless required to be in custody in connection with any other case."

In another decision **Baso Prasad and others versus State of Bihar :AIR 2007 SC 1019**, the apex court has held as under :-

"41. We, however, are not oblivious of one patent fact. In the First Information Report, the first informant, attributed the act of firing to Brijandan Prasad and Sahdeo. PW-4, however, in his deposition before the Court attributed the act of firing only to Brijnandan Prasad. According to him, other persons were only wielding rifles. Shivanandan Prasad fell down after receiving the gunshot and died. He in his cross-examination also attributed the act of firing only to Brijnandan Prasad. PW-5 although stated that all the accused had started firing but even according to her Brijnandan Prasad fired shot which had hit the deceased on his chest. Evidence of PW-6 is also to the same effect that the shot which had hit his father on the chest was fired by Brijnandan Prasad. PW-7 and PW-8 also named

Brijnandan Prasad.

42. The prosecution case is that the dispute started on lighting of fire on a heap of straw. The accused allegedly hurled brick bats, which compelled the deceased to come to the roof to forbid them from doing so. Whereas Brijnandan Prasad alone fired a shot which had hit the deceased, there is no evidence brought on record to show that any other accused did so. No gun shot injury was suffered by any person. The deceased has also suffered only one gun shot injury. No sign of firing was found on the walls or any other part of the building. No cartridge was recovered.

43. Even no other person had suffered any injury by reason of hurling of brick bats. Having regard to the materials brought on records, we are of the opinion that in this case although the prosecution has proved the charge of committing the murder of the deceased, it has failed to establish that the accused had any common intention in relation thereto. Brijnandan Prasad alone was, thus, responsible therefore. Had the other accused

shared common intention with Brijnandan Prasad, they would have also fired. No such evidence having been brought on record, benefit of doubt must be extended to the other accused persons.”

Yet in another decision **Anil versus State of Haryana AIR 2007 Supreme Court(Suppl) 761**

supreme court has upheld the acquittal of other accused than the main accused as they did not share the common intention and did not participate in the incident.

In the present case trial court went wrong in convicting appellant Veer Singh on such embellished, improved, un-established evidence, which was stated in the court for the first time, without being mentioned at any earlier stage. In our view , trial court committed grave error in accepting new case stated before it for the first time. There was no evidence that prior to the incident there was any common intention shared by both the appellants. The said intention did not develop at the time of the incident as well and therefore we are of the view that section 34 I.P.C. can not be resorted, to hold

appellant veer Singh guilty of any crime. His presence at the spot and participation in the crime is doubtful and therefore he is entitled to the benefit of doubt.

Turning towards the appeal of appellant Ram Ratan, we find his participation in the incident established beyond a shadow of reasonable doubt. His wife Dayawati, was related with Nathia. According to the prosecution case Dayawati had been making bitter utterances because of visit of Kanta to Nathia, which she did not relish. Even though we ignored the modulated version of vetuparisation by Dayawati preceding the assault, as the said fact does not find mention either in the FIR or in statements of the informant given to the I.O. and also because of acquittal of appellants under section 506 I.P.C., and go only by the FIR version, even then the participation of Ram Ratan appellant is writ large on the evidence on record. Going by narrations in the FIR some altercation ensued between Ram Ratan accused and deceased while the former was passing through from the front of the house of the informant. Whether deceased

generated the heated exchange or Ram Ratan generated it is not clear,as, even deceased also had good reasons to start the altercation because of utterances made by Dayawati against Kanta,who was his daughter, but the proved fact is that both appellant Ram Ratan and deceased engaged themselves in a verbal dual in the course of which a single blow was pierced by the appellant in the chest of the deceased. In this respect we don't find prosecution case to be shaky or dented. Both the witnesses of facts are clear and unambiguous on the said issue. Inspite of tiring and lengthy cross examination, defence has not been able to shake their testimony in this respect. Their evidence is in consonance with medical evidence and the role of this accused appellant Ram Ratan is well deposed, which finds corroboration from attending circumstances as well. This version of assault by Ram Ratan appellant could not be dislodged by the defence, even on the suggestion that the deceased sustained injury in an incident of attempt to loot him. Record of the appeal sans material for such an

empty suggestion. Thus, unhesitatingly, we are of the opinion that incident did occur between Ram Ratan and deceased Hemraj at the time and date of the incident at a place suggested by the prosecution and in this respect prosecution has been able to establish its allegations.

Now we take up the concluding submission that the guilt of appellant Ram Ratan can not be culpable homicide amounting to murder punishable under section 302 I.P.C., but will fall short of it of culpable homicide not amounting to murder punishable under section 304 part II, I.P.C. This raised argument depended upon the factual matrix of the evidence led during the trial and we find much substance in it. According to the FIR allegations, while appellant Ram Ratan was passing through the front of the house of the informant an altercation ensued between him and Hemraj deceased. Who generated it is shrouded in mystery, but, from the facts we can safely conclude that it was the deceased who started it. Kanta against whom utterances were made by the wife of appellant Ram Ratan is the daughter

of the deceased and therefore deceased must have taken those bitter words as temerity or faux pas. There was every reason for him to accost Ram Ratan for the conduct of his wife. This seems to be more probable genesis of the incident and it transpires that because of this reason that FIR does not mention abuses by Dayawati prior to assault and catching hold of the deceased by appellant Veer Singh. What is most significant is that Dayawati was not prosecuted at all for any offence what so ever nor the prosecution endeavoured for her prosecution. I.O. also did not find her presence at the spot and therefore presence of Dayawati at the spot is not an established fact. Accosting by Hemraj regarding the conduct of his wife must have been taken to be an ignominy by appellant accused Ram Ratan. Evidence of the two fact witnesses further reveal that inspite of attempts by collected people to pacify both of them, neither the deceased nor the appellant heeded to the said requests. In such a fact situation, if a single blow was given by the appellant to the deceased, it is very difficult to conclude

that appellant acted with the requisite intention to commit murder within the parameters of section 300 I.P.C. It is not known , whether appellant intended to inflict such an injury as was sustained by the deceased or it was just an impulsive act during heated exchange of words which resulted in causing injury to the deceased. Assault by making a single blow further strengthen the view that the appellant did not intended to cause death of the deceased and it was an act of moment in heat of passion. Thus there was absence of intention on the part of the appellant to cause death of the deceased or to cause him such bodily injury as was likely to cause his death in all probability. Further, death of the deceased was not instantaneous. Non availability of the doctor at the hospital, not carrying the deceased to another hospital but instead, dictating the FIR and going to the police station first and there getting the FIR registered before carrying the injured to the hospital and the woeful loss of time in getting medical help to the injured, all these factors must have also contributed in loss of deceased

life, for which the act of appellant Ram Ratan can not be held to be responsible. Further un-established fact of introduction of wife of appellant Ram Ratan at the scene and not proven fact of her hurbingering the incident by hurling abuses dents the credibility of prosecution witnesses making them only partly reliable. As stated above narration of the incident in Ext. Ka 1 indicates occurring of the incident at the spur of the moment without any preceding abusive altercation or in a pre concerted manner. I.O. had also charge sheeted the appellants only under sections 304 I.P.C. And therefore we find that the conviction of appellant Ram Ratan under section 302 I.P.C. is indefensible and can not be sustained. He can be held to be guilty only under section 304 Part I, I.P.C. as knowledge of death being the outcome can not be denied.

In view of our above findings, we consider it wholly un-necessary to deal with another point that charge under section 302 I.P.C. simplicitor was not framed against appellant Ram Ratan and therefore, he could not

have been convicted under that offence as that will be only an academic discussion.

Summing up, Criminal appeal No. 3889 of 2006, Veer Singh versus State of U.P is allowed. Appellant Veer Singh is acquitted of the charge under section 302 /34 I.P.C and his sentence of life imprisonment with fine of Rs.1000/- recorded by Additional Sessions Judge, court no.4, Rampur, vide his impugned judgement and order dated 7.7.2006 passed in Sessions Trial No.508 of 2005, State Versus Ram Ratan and another are hereby set aside. He is on bail. He need not surrender. His personal and surety bonds are discharged.

Criminal Appeal No. 4371 of 2006, Ram Ratan Versus State of U.P. is party allowed. Conviction of appellant Ram Ratan under section 302 IPC and his sentence of life imprisonment with fine of Rs. 1000/= recorded by Additional Sessions Judge, court no.4, Rampur, vide his impugned judgement and order dated 7.7.2006 passed in Sessions Trial No.508 of 2005, State Versus Ram Ratan and another are hereby set aside and

instead he is convicted under section 304 I, I.P.C. in the said Session's trial and is sentenced to 7 years RI, which on the facts of the case shall meet the ends of justice. Appellant is in jail. He shall serve out his sentence.

Let a copy of this judgement be certified to the trial court for intimation and necessary action.

Dt/25.8.2009
RK/