RAMANLAL AND ANR. A

v.

STATE OF HARYANA

(Criminal Appeal No. 2279 of 2009)

MAY 15, 2015 B

[T. S. THAKUR AND R. F. NARIMAN, JJ.]

Penal Code, 1860 – ss. 148, 323, 325 and 304 (Part I) – Prosecution u/ss. 148, 323, 325 and 302 r/w s. 149 – Of ten C *accused – Trial court convicted all the accused – High Court confirmed the conviction of 4 of the accused while acquitted rest of them – On appeal, held: Prosecution proved its case qua the appellants-accused – However, since the incident was without premeditation and a sudden fight upon a sudden* D *quarrel and since the injuries were inflicted in the heat of passion without taking any undue advantage or acting in a cruel and unusual manner – Therefore, by invoking Exception 4 to s. 300 the offence will not fall u/s. 302 but u/s. 304 (Part I) – Since the number of accused was reduced to* E *only 4 due to acquittal of 6 of the accused, the appellants also cannot be convicted with the aid of s. 149 – The conviction of appellant-accused 'H' is converted from s. 302/ 149 to s. 304 (Part I) – Other appellants-accused are acquitted u/s. 302/149 while their conviction u/ss. 325 and 323* F *confirmed.*

Partly allowing the appeals, the Court

HELD: 1. There is nothing in the evidence to G **probablise the defence version that the incident in question had taken place on account of an attempt on the part of the deceased to sodomise 'J'. There are no tell tale signs of any such attempt having been made. Not only that, the defence has not taken care to examine** H

A 'J', the alleged victim of the attempted act as a witness to prove that any such attempt was at all made by the deceased. [Para 6] [153-H; 154-A-B]

2. The provisions of Section 149 IPC are no longer
B available to the prosecution for convicting the appellants whose number is reduced to 4 consequent upon the acquittal of the remaining accused persons. In the present case, the prosecution had named all those constituting the unlawful assembly, but, only four of
C those named were eventually convicted, thereby reducing the number to less than five. There is no evidence to suggest that any one, apart from the persons named in the charge-sheet were members of the unlawful assembly, but, were either not available or remained
D unidentified. Such being the position, the conviction of the appellants with the help of Section 149 IPC does not appear to be legally sustainable. [Para 12] [161-C-E]

Mohan Singh v. State of Punjab AIR 1963 SC 174:
E 1962 Suppl. SCR 848; *Nagamalleswara Rao (K) and Ors. v. State of Andhra Pradesh* (1991) 2 SCC 532: 1991 (1) SCR 875 – relied on.

3.1 The fact that accused 'H' had inflicted a single
F injury on the head of the deceased, showed that there was no intention to kill the deceased, other injuries inflicted by the remaining accused being only simple in nature. The offence could not, therefore, be graver than culpable homicide not amounting to murder punishable
G u/s. 304 (Part-I) IPC. [Para 13] [161-H; 162-A-B]

Virsa Singh v. State of Punjab AIR 1958 SC 465:1958 SCR 1495 – relied on.

H 3.2 Even when the act may not have been committed

with the intention of causing death, the same was intended to cause such bodily injury as was likely to cause death, within the meaning of Section 304 Part I. However, the circumstances of the present case leave no manner of doubt that the incident was without any pre-meditation and a sudden fight upon a sudden quarrel. The injuries upon the deceased were inflicted in the heat of passion and without the appellant taking any undue advantage or acting in a cruel or unusual manner. The fact situation of the case, therefore, attracts Exception 4 to s. 300 especially when in terms of explanation to Exception 4, it is immaterial in such cases which party offers the provocation or commits the first assault. That being so, the offence committed by the author of the injury is not murder but culpable homicide not amounting to murder punishable u/s. 304 IPC. Therefore, the conviction of the appellants u/s. 302 r/w. Section 149 IPC and the sentence of imprisonment for life awarded to them is set aside. Appellant 'H' is, instead, convicted u/s. 304 Part-I. [Paras 16, 17 and 18] [164-B-H]

4. The conviction of other three appellants-accused for offences punishable under Sections 325 and 323 of the IPC and the sentence awarded to them shall stand affirmed. [Para 18] [165-B-G]

Case Law Reference

1962 Suppl. SCR 848	relied on.	Para 10
1991 (1) SCR 875	relied on.	Para 11
1958 SCR 1495	relied on.	Para 14

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2279 of 2009.

A From the Judgment and Order dated 07.05.2009 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 631-DB of 2000.

WITH

B Criminal Appeal No. 1351 of 2010

Bhagwati Prasad, Fakhruddin, Sanjeev Bhatnagar, Pushpinder Singh, Manju Jaitley, Ram Niwas Buri, Divya Mishra, N. Annapoorani for the Appellants.

C Arun Kumar, AAG, Kamal Mohan Gupta, Sanjay Kumar Visen, M. Qamaruddin for the Respondent.

The Judgment of the Court was delivered by

D **T. S. THAKUR, J.** 1. These two appeals by special leave assail a common judgment and order dated 7th May, 2009 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh whereby Criminal Appeal No.631 E of 2000 filed by the appellants challenging their conviction for offences punishable under Sections 323, 325, 302 read with Section 149 of the IPC has been dismissed and the sentence of life imprisonment awarded to each one of them by the trial Court affirmed.

F 2. The prosecution case in a nutshell is that on 2nd July, 1998 at about 10 O' clock in the morning Ved Pal and his brother Gopal, now deceased, were watering their fields in village Doongriwala, district Faridabad in the State of Haryana. G At about 12.00 noon Jai Pal, son of Nihar Singh entered their field in which the two brothers had grown their paddy crop. Deceased-Gopal appears to have objected to Jai Pal's trespass into the paddy crop to which objection Jai Pal gave an abusive reply insisting that he would pass through the paddy H crop regardless of Gopal's objection. While this altercation

was going on between deceased-Gopal and Jai Pal, 10 to 12 persons appeared on the spot armed with lathis, pharsas and ballams. They included Har Chand, Digamber and Bhagat Singh sons of Jairam; Rajbir, Lal and Bhola sons of Har Chand; Jagdish son of Girraj; Rattan Lal son of Jagdish; Naresh and Rajkumar sons of Ramesh all Jats by caste and residents of village Doongriwala. They are alleged to have given a lalkara to eliminate Ved Pal and deceased Gopal and assaulted both of them causing several injuries including an injury on the head of the deceased-Gopal that felled him to the ground. The injured were removed to the hospital at Hodal for treatment where Ved Pal made a statement which was made before ASI Narain Singh that led to the registration of a case against the persons aforementioned for offences punishable under Sections 148, 149, 323 and 307 of the IPC. With Gopal succumbing to the injuries in the Escorts Hospital at Faridabad, the offence under Section 307 of the IPC was converted into one of murder punishable under Section 302 of the IPC. Investigation by the police led to the arrest of accused Har Chand, Digambar and Jagdish on 3rd July, 1998. Several recoveries from the accused persons are said to have been made in the course of investigation which culminated in filing of a charge-sheet against ten persons in all excluding Bhagat Singh son of Jai Ram who even though named in the FIR, was found innocent while Jai Pal being a juvenile was referred to the Juvenile Court at Faridabad. The net result was that nine out of those named in the FIR only were eventually committed to face the trial before the Additional Sessions Judge at Faridabad for offences under Sections 148, 323, 325 and 302 read with Section 149 of the IPC. At the trial, Bhagat Singh son of Jai Ram was also added as an accused under Section 319 of the Cr.P.C, taking the number of those accused to face the trial to ten in all.

3. In support of its case, the prosecution examined as many as ten witnesses. These included the first informant Ved

A Pal examined as PW-1; Prakash examined as PW-2; Kishan Singh examined as PW-3; Satbir Singh examined as PW-4 and Drs. HK Mishra, VR Gupta and SP Jayant examined as PWs 5, 6 and 10 respectively. The remaining witnesses happened to be police officials including the investigating
B officer. The accused did not lead any evidence in defence. In their statements recorded under Section 313 of the Cr.P.C., they alleged false implication. It was further alleged that Jai Prakash and Har Chand alone were present on the spot at the time of the incident and that the remaining nine accused
C persons had been falsely implicated. Their further case was that on the fateful day Jai Pal was watering his fields when deceased Gopal tried to commit sodomy upon him. Har Chand noticed this attempt of the deceased and objected to it, whereupon deceased Gopal inflicted a lathi blow upon the
D person of Har Chand. Har Chand, in exercise of the right of private defence and with a view to rescuing Jai Pal, inflicted a lathi blow on deceased Gopal, while Jai Pal caused injuries to Ved Pal in the incident.

E 4. The Trial Court appraised the evidence adduced by the prosecution and came to the conclusion that the depositions of PW1-Ved Pal and PW2-Prakash were completely reliable. The Trial Court rejected the contention
F urged on behalf of the accused persons that the delay in the lodging of the FIR was not satisfactorily explained or that the prosecution ought to suffer on account of its failure to explain the injuries sustained by the accused persons. The Trial Court also rejected the contention that there was no motive for the
G commission of the offence or that there was any contradiction between the medical and ocular evidence led in the case. The Trial Court on that reasoning sentenced all the ten accused persons arraigned before it to undergo imprisonment for life under Section 302 of the IPC and a fine of Rs.5,000/- each. In
H default of payment of fine, they were directed to undergo further

rigorous imprisonment for a period of one year each. They were also sentenced to under rigorous imprisonment for a period of one year and a fine of Rs.1,000/- with a default sentence of three months each under Section 325 of the IPC. For the offences punishable under Sections 323 and 148 of the IPC the accused were sentenced to pay a fine of Rs.1,000/- each. No default sentence in regard to those offences was, however, awarded.

5. Aggrieved by the conviction and sentence awarded to them, the appellants filed Criminal Appeal No.631 of 2000 before the High Court of Punjab and Haryana at Chandigarh, which was disposed of along with Criminal Revision No.345 of 2001 filed by Ved Pal-the first informant by a common judgment and order impugned in these appeals. The High Court upon a reappraisal of the evidence adduced at the trial came to the conclusion that the appeal filed by Digamber, Rajbir, Lala, Bhola, Jagdish and Raj Kapoor deserved to be allowed, while the same deserved dismissal *qua* Har Chand, Raman Lal, Naresh and Bhagat Singh. That is precisely the backdrop in which Har Chand, Raman Lal, Naresh and Bhagat Singh are before us in these appeals by special leave assailing their conviction and the sentence awarded to them.

6. On behalf of the appellants it was argued that the courts below had fallen in error in convicting the appellants by placing an implicit reliance upon the depositions of PW1-Ved Pal and PW2-Prakash and in the process, ignoring the defence version about the genesis of the incident. It was contended that the incident had occurred on account of an attempted act of sodomy by the deceased upon Jaipal to which the appellant-Har Chand had objected resulting in lathi blows being inflicted by the two sides rivals to each other. The argument needs notice only to be rejected. We say so because there is nothing in the evidence to probablise the defence version that the

A incident in question had taken place on account of an attempt on the part of Gopal to sodomise Jaipal. There are no tell tale signs of any such attempt having been made. Not only that, the defence has not taken care to examine Jaipal the alleged victim of the attempted act as a witness to prove that any such B attempt was at all made by the deceased-Gopal. We have, therefore, no hesitation in rejecting the argument that the defence version was a probable version which could not be given credence. The courts below have, in our opinion, rightly rejected the defence version for which there was no factual C foundation whatsoever in the evidence.

7. It was next argued by learned counsel for the appellants that with the acquittal of 6 out of 10 accused persons, the charge that the appellants constituted an unlawful assembly ought to D fail and as an inevitable consequence thereof, the conviction of the appellants for murder with the help of Section 149 of the IPC rendered unsustainable. It was contended that acquittal of other accused persons alleged to be members of the unlawful assembly, implied that the said accused had been E falsely implicated in the case or that they, even if physically present on the spot as alleged, did not share the common object of the convicted accused.

8. Section 141 of the IPC defines *unlawful assembly* as F under:

> *"**141. Unlawful assembly**.—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that* G *assembly is—*
>
> *(First) — To overawe by criminal force, or show of criminal force, 1[the Central or any State Government or Parliament or the Legis-lature of any State], or any* H *public servant in the exercise of the lawful power of such*

public servant; or

(Second) — To resist the execution of any law, or of any legal process; or

(Third) — To commit any mischief or criminal trespass, or other offence; or

(Fourth) — By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) — By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assem-bled, may subsequently become an unlawful assembly."

9. In terms of Section 149 of the IPC every member of an unlawful assembly is guilty of the offence committed by any other member of the assembly in prosecution of the common object. Section 149 of the IPC reads:

*"**149. Every member of unlawful assembly guilty of offence commit-ted in prosecution of common object**.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the*

A *same assembly, is guilty of that offence."*

10. The question is whether acquittal of some of the accused persons reducing the number of those convicted to less than 5 has the effect of taking the case out of the purview B of Section 149 *(supra)*. A Constitution Bench of this Court has in ***Mohan Singh v. State of Punjab***[1] examined that question and authoritatively answered the same. The prosecution story in that case also was that on the date of the incident 5 accused persons composed an unlawful assembly and that in C prosecution of the common object of the said assembly, they committed rioting while armed with deadly weapons. The prosecution alleged that in pursuance of the common object of the assembly Gurdip Singh was murdered and injuries caused to Harnam Singh. The prosecution alleged that D although the fatal injury was inflicted by only one of the accused persons on Gurudip Singh's head since the same was in prosecution of the common object of unlawful assembly, all those who were members of the assembly were guilty under Section 302 read with Section 149 of the IPC. On behalf of the E defence it was argued that the constructive criminal liability under Section 149 did not arise once two of the accused who were alleged to be members of that assembly were acquitted thereby reducing the number comprising the assembly to three F persons only. This Court while dealing with that contention conceived of three possible situations and the legal position applicable to each one of such situations. This Court observed:

G *"**8.** The true legal position in regard to the essential ingredients of an offence specified by s. 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in*

H [1] AIR 1963 SC 174

prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of section 149 is that the offence must have been committed by any member of an unlawful assembly, and S.141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course; the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. ***The argument, therefore, is that as soon as the two Piara Singhs were acquitted, the membership of the assembly was reduced from five to three and that made s. 141 inapplicable which inevitably leads to the result that S. 149 cannot be invoked against the appellants. In our opinion, on the facts of this case, this argument has to be upheld.*** *We have already observed that the point raised by the appellants has to be dealt with on the assumption that only five persons were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons. If that be so,* ***as soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly."***

9. *In dealing with the question as to the applicability of S.149 in such cases it is necessary to bear in mind the several categories of cases which come before the Criminal Courts for their decision. If five or more persons*

A *are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very clear case where S.149 can be invoked. It is, however, not necessary that five or more persons must be*
B *convicted before a charge under S.149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under S.302/149 if the charge is that the persons before the Court, along with*
C *others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that*
D *less than five persons are before the Court does not make section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the court and others number more than five in all, and as Such, they together*
E *constitute an unlawful assembly. Therefore, in order to bring home a charge under S.149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than five persons may be charged under s. 149 if the prosecution*
F *case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and*
G *un-named assailants or members composed an unlawful assembly, those before the Court, can be convicted under section 149 though the unnamed. and unidentified persons are not traced and charged. Cases may also arise where in the charge, the prosecution*
H *names five or more persons and alleges that they*

constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving, before the court less than five persons to be tried, then s. 149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons is composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases the acquittal of one or more persons named in the charge does not affect the validity of the charge under section 149 because-on the evidence the court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and unidentified may conceivably raise the point as to whether prejudice would be caused to the persons before the Court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no

A *legal bar preventing the court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several*
B *categories of cases which may fall to be tried when a charge under section 149 is framed."*

(emphasis supplied)

C 11. To the same effect is the decision of this Court in ***Nagamalleswara Rao (K) and Ors. v. State of Andhra Pradesh***[2] *where* this Court observed:

"However, the learned Judges over-looked that since
D *the accused who are convicted were only four in number and the prosecution has not proved the involvement of other persons and the courts below have acquitted all the other accused of all the offences, section 149 cannot be invoked for convicting the four appellants herein.*
E *The learned Judges were not correct in stating that A1, A2, A5 and A11 "can be held to be the members of the unlawful assembly along with some others unidentified persons' on the facts and circumstances of this case. The charge was not that accused 1, 2, 5 and 11 "and*
F *others' or "and other unidentified persons" formed into an unlawful assembly but it is that "you accused 1 to 15" who formed into an unlawful assembly. It is not the prosecution case that apart from the said 15 persons there were other persons who were involved in the crime.*
G *When the 11 other accused were acquitted it means that their involvement in the offence had not been proved. It would not also be permissible to assume or conclude that others named or unnamed acted conjointly with the charged accused in the case unless*

H [2] (1991)2 SCC532

the charge itself specifically said so and there was evidence to conclude that some others also were involved in the commission of the offence conjointly with the charged accused in furtherance of a common object."

12. Applying the above principles to the case at hand, we are of the view that the provisions of Section 149 of the IPC are no longer available to the prosecution for convicting the appellants whose number is reduced to 4 consequent upon the acquittal of the remaining accused persons. The facts of the case at hand are not covered by situations one and two referred to in ***Mohan Singh's*** case (supra). It is a case which, in our opinion, falls more appropriately in situation three where the prosecution had named all those constituting the unlawful assembly, but, only four of those named were eventually convicted, thereby reducing the number to less than five. There is no evidence to suggest that any one, apart from the persons named in the charge-sheet were members of the unlawful assembly, but, were either not available or remained unidentified. Such being the position, the conviction of the appellants with the help of Section 149 of the IPC does not appear to be legally sustainable.

13. The third and the only other submission made by learned counsel for the appellants related to the nature of the offence committed by Har Chand, the author of the fatal injury. It was urged that the incident in question had taken place without any pre-meditation in a sudden fight because of a sudden quarrel following Jai Pal's insistence to enter the crop growing field of the complainant. Injuries were caused by those involved in the fight to each other. Appellant-Har Chand had not taken any undue advantage nor had he acted in a cruel or unusual manner. The case, therefore, fell within Exception 4 to Section 300 of the IPC. The fact that Har Chand had inflicted

A a single injury on the head of the deceased-Gopal showed that there was no intention to kill deceased-Gopal, other injuries inflicted by the remaining accused being only simple in nature. The offence, according to the learned counsel, could not, therefore, be graver than culpable homicide not amounting
B to murder punishable under Section 304 Part-II of the IPC.

14. The locus classicus on the interpretation of Sections 299 and 300 of the IPC is the often quoted decision of this Court in ***Virsa Singh v. State of Punjab***[3] where Vivian Bose,
C J. speaking for the Court, explained the ingredients that must be satisfied for a culpable homicide to amount to murder. Dealing with clause *'Thirdly'* under Section 300 of the IPC, the Court explained the essentials of that clause in the following words:

D

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

E *First, it must establish, quite objectively, that a bodily injury is present.*

Secondly, the nature of the injury must be proved; These are purely objective investigations.

F *Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.*

G *Once these three elements are proved to be present, the enquiry proceeds further and,*

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out

H [3] AIR 1958 SC 465

above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

15. The Court then goes on to explain the third ingredient referred to the above passage and makes the following observations which bring home the essence of the third ingredient in simple words:

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

16. Applying the above to the case at hand, we have no difficulty in holding that keeping in view the nature of the injury, the vital part of the body on which the same was inflicted and the weapon used by the accused appellant-Har Chand, and the medical evidence, that the said injury was sufficient in the ordinary course to cause death, culpable homicide would, in the case at hand, tantamount to murder but for the application

A of Exception 4 to Section 300. The question, however, is whether Exception 4 really applies and, if so, whether the injury was inflicted with the intention of causing death or of causing such bodily injury as is likely to cause death. The circumstances of the case to which we have referred in the earlier part of this B judgment, however, leave no manner of doubt that the incident was without any pre-meditation and a sudden fight upon a sudden quarrel. The injuries upon the deceased were inflicted in the heat of passion and without the appellant taking any undue advantage or acting in a cruel or unusual manner. The C fact situation of the case, therefore, attracts Exception 4 especially when in terms of explanation to Exception 4, it is immaterial in such cases which party offers the provocation or commits the first assault. That being so, the offence committed by the author of the injury is not murder but culpable homicide D not amounting to murder punishable under Section 304 of the IPC.

17. Coming then to the question whether the act committed by Har Chand-appellant was with intention to cause E death or of causing such bodily injury as was likely to cause death, we are of the opinion that even when the act may not have been committed with the intention of causing death, the same was intended to cause such bodily injury as was likely to F cause death, within the meaning of Section 304 Part I.

18. In the result, we allow these appeals in part and to the following extent:

1. The conviction of the appellants under Section 302 G read with Section 149 IPC and the sentence of imprisonment for life awarded to them is set aside.

2. Appellant Har Chand is, instead, convicted under Section 304 Part-I and sentenced to undergo rigorous H imprisonment for a period of eight years and a fine of

Rs.5000/-. In default payment of fine he shall undergo further imprisonment for a period of six months. His conviction and sentence for offences punishable under Section 325 shall remain unaffected and so also the fine and default sentence awarded to him. A

B

3. The conviction of Appellants-Raman Lal, Naresh and Bhagat Singh for offences punishable under Sections 325 and 323 of the IPC and the sentence awarded to them shall stand affirmed. They shall be set free unless required in connection of any other case, as they have already undergone the imprisonment awarded to them. C

Kalpana K. Tripathy Appeals partly allowed.

D