MANOJ KUMAR

v.

STATE OF HIMACHAL PRADESH

(Criminal Appeal No. 795 of 2011)

MAY 15, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code, 1860 – ss. 304 Part-II and 302 – Prosecution case that PW-1 and 'P' disturbed with interference of appellants on their land had filed suit against them – It was alleged that when 'P' along with PW-13 and DW-1 were returning to their village from nearby village they came across the disputed land, suddenly, appellants armed with weapons attacked 'P' and assaulted him – Injured 'P' was taken to a police post, where he lodged a report – Thereafter, he was taken to a Health Centre, where doctor-PW-4 attended him and referred him to hospital, however, on the way to hospital his situation deteriorated and was brought back to PW-4, who declared him dead – Trial Court convicted all the 7 accused u/ss. 302,341 and 323 r/w.149 and ss.147 and 148 – However, High Court acquitted 4 persons but confirmed the conviction of other 3 accused-appellants – On appeal, held: The totality of circumstances of the case on hand would amply show that there was a sudden verbal quarrel and evidently there was no pre-meditated plan to attack the deceased – In view of the civil disputes already pending between both the families, a minor verbal exchange bloated into a sudden physical attack – In instant case, death was not instantaneous, and 'P' died after sometime, due to hemorrhage – Two simple injuries were inflicted and one turned out to be fatal later – The circumstances demonstrates that the appellant had no intention to cause death, though he had knowledge that the weapon used by him to inflict injury on scalp of the deceased may cause death – But in the absence of intention to cause death or to cause such bodily injury as is likely to cause death, the offence does not fall within the scope of s.300 IPC but it will fall within s.304 Part-II, IPC – Therefore, appellants-accused (A-1,A-2 and A-3) guilty for an offence punishable u/s.304 Part-II and not for the offence u/s.300.

A **Disposing of the appeals, the Court**

HELD: 1. The totality of circumstances of the case on hand would amply show that there was a sudden verbal quarrel and evidently there was no pre-meditated plan to attack the deceased. In view of the civil disputes already pending between both the
B **families, a minor verbal exchange bloated into a sudden physical attack. [Para 25] [373-D-E]**

2. It is important to have a look at the evidence of PW5 who has conducted Post mortem and according to him there was an incised wound on the right parietal region of size 4" and 10"
C **above right ear and another incised wound of 1" in size on the right index finger. He has deposed that "the brain was found congested, yet no fracture was seen on the scalp". Though in the cross examination he has stated at one place that the injury No 2 on the scalp might be 'grievous' that caused brain hemorrhage. This particular fact is not noted in the postmortem report.**
D **Regarding the cause of such injury, PW5 stated that it can be caused by striking with sharp edged object and the depth of the scalp injury depends upon the force and speed. He maintains the stand that it was a 'scalp injury' and not 'skull injury'. Moreover, he did not measure the depth of the head injury which was**
E **necessary for classification of injury. [Para 28] [374-E-G]**

3. The force and gravity of assault indicates that the aforesaid assault was carried out with only sufficient knowledge of likely death of the deceased in a free fight situation. Had he got intention to commit the murder of the deceased by inflicting
F **such injury, he might have used the weapon with sufficient force and in that case, definitely it would have caused a deep injury causing fracture of skull. This court is bound to show some deference to this particular aspect while evaluating the facts and circumstances of this case at hand. [Para 30] [375-C-E]**

G **4. In the case on hand, the death is not instantaneous, but the deceased died after sometime, due to hemorrhage. When several persons of the accused group wielding weapons attacked the deceased, it is surprising to see only two injuries, that too, two simple injuries alone are inflicted; of course, one such simple injury turns out to be fatal sometime later. This circumstance**
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demonstrates that the appellant had no intention to cause death, though he has knowledge that the weapon used by him to inflict injury on the scalp of the deceased may cause death. But in the absence of intention to cause death or to cause such bodily injury as is likely to cause death, the offence does not fall within the scope of Section 300, IPC but it will fall within Section 304, Part II of the IPC. Therefore, the appellants A-1, A-3 and A-4 are guilty for an offence punishable under Section 304 Part II IPC and not for the offence under Section 300 IPC. [Paras 31, 32] [375-E-G; 376-A]

Sridhar Bhuyan v. State of Orissa, **(2004) 11 SCC 395 : [2004] 3 Suppl. SCR 395**; *Deo Nath Rai* v. *State of Bihar and Others etc,* **AIR 2017 SC 5428 – relied on.**

Camilo Vaz v. *State of Goa,* **(2000) 9 SCC 1: [2000] 2 SCR 1088 – referred to.**

Modi, A Textbook of Medical Jurisprudence and Toxicology, **25th Edition- referred to.**

Case Law Reference

[2004] 3 Suppl. SCR 395	**relied on**	**Para 24**
[2000] 2 SCR 1088	**referred to**	**Para 26**
AIR 2017 SC 5428	**relied on**	**Para 27**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 795 of 2011.

From the Judgment and Order dated 20.11.2009 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 312 of 2006

WITH

Crl. A. No. 796 & 797 of 2011.

Shiv Ram Sharma, Satyendra Kumar Srivastav, Gopal Prasad, Pukhrambam Ramesh Kumar, Advs. for the Appellant.

Abhinav Mukerji, AAG, Ms. Bihu Shamra, Siddharth Garg, Ajay Marwah, Advs. for the Respondent.

A The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. These appeals by special leave are directed against the judgment dated 20th November, 2009 passed by the High Court of Himachal Pradesh in Criminal Appeal No. 312 of 2006 whereby the High Court upheld the conviction and sentence against the B appellants as awarded by the learned Sessions Judge for the offences punishable under Sections 302, 341 and 323 read with Section 34 of the Indian Penal Code (IPC).

2. The facts necessary to deal with these appeals, as culled out from the prosecution case, are that as per the revenue records one Jaram C Singh (PW1) and others are the owners of land bearing Khata/Khatauni No. 164/220, Khasra No. 605. The said Jaram Singh (PW1) had mortgaged the aforesaid land with one Krishan Lal and Subhash Chand, but the land remained in the possession of Prem Dass (deceased). Disturbed with the interference of the appellants in the said land, PW1— Jaram Singh and the deceased Prem Dass filed a civil suit against the D appellants and thereby restrained the appellants from raising any construction in the disputed land.

3. On 24th March, 2004 at about 8.30 p.m. Jeewan (PW12)— complainant left his house in search of his father Prem Dass who went to a nearby village, and found his father Prem Dass in the company of E Yashwant Singh (PW13) and Narso Ram (DW1) near a village called Chhedu. All of them while returning to their village, they came across the disputed land where they found the appellants and their family members, seven persons in all. Suddenly at once, they attacked Prem Dass. Manoj Kumar (A4) was wielding a spade (belcha), Surinder Kumar F (A3) was carrying a Drat (sickle) and other accused were armed with sticks. Manoj Kumar (A4) gave a belcha (spade) blow on the head of Prem Dass and accused Surinder Singh struck him with a blow of sickle causing injury on the right hand index finger of Prem Dass while other accused were beating him with sticks. In order to save their lives the deceased Prem Dass, Yashwant Singh (PW13), Narso Ram (DW1) G and the complainant Jeewan (PW12) ran from the scene helter-skelter, while the accused Rangeel Singh (A1) was declaring that Prem Dass will have to lose his life. By adopting another route, Jeewan (PW12) reached the shop of Yashwant Singh (PW13) where he found his father Prem Dass in semiconscious condition with bleeding profusely. They

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called the driver Ashok Kumar (PW2) with his Maruti Van and took the injured Prem Dass to the police post at Sinhunta and lodged a report. Accordingly, FIR No. 45 of 2004 (Ext. PW.6/A) was registered.

4. Police sent the injured Prem Dass to Primary Health Centre, Sihunta where Dr. Parveen Kumar (PW4) attended him and issued Medico Legal Certificate (Ext. PW4/A). As his condition was getting deteriorated, he was referred to Rajinder Prasad Medical College (RPMC), Dharmshala for better treatment, however, on the way it was noticed that the victim was not responding to the calls of his son Jeevan. Sensing something wrong, he was brought back to Dr. Praveen Kumar (PW4), who on examination, declared him to have succumbed to the injuries.

5. The Investigating Officer, PW18—Partap Singh, upon receiving the information of death of the deceased, called the photographer to get the snaps of the deceased, conducted inquest (Ext. PW11/A) and sent the deadbody for postmortem. Thereafter, he prepared the site plan (Ext. PW18/A), got the injured Yashwant Singh (PW 13) medically examined and seized his bloodstained shirt (Ext.PW13/B). During the course of investigation, the I.O. visited the place of occurrence and collected bloodstained earth, stones (Ext. PW16/A), belcha (Ext.P2) and recovered one sickle (Ext.P1) and sticks (Ext.P3) from the possession of A5 vide seizure memo Ext.PW17/A. From the possession of appellant—accused No. 1 (Rangeel Singh) his bloodstained clothes were recovered vide Ex.PW14/A and sent the same for forensic examination.

6. On completion of investigation, the case was presented to the learned SDJM, Dalhousie who in turn committed the same to the Court of learned Sessions Judge, Chamba who framed charges against the accused for the offences punishable under Sections 147/149, 148/149, 341/149, 323/149, 302/149 and 506/149, IPC. Rangeel Singh (accused no. 1), Mohinder Singh (accused no. 2) Surinder Singh (accused no. 3), Manoj Kumar (accused no. 4), Rekha Devi (accused no. 5), Veena Devi (accused no. 6) and Biaso Devi (accused no. 7) pleaded not guilty and claimed to be tried. To bring home the guilt of the accused, prosecution has examined as many as 18 witnesses and there was one witness for the defence. Carrying out a full fledged trial, learned Sessions Judge formed the opinion that the accused were proved to be guilty of the offences with which they were charged except for the charge against

A Section 506/149, IPC. Accordingly, they were convicted and sentenced as indicated below, with the direction that all sentences were to run concurrently.

Name of the accused	Sections	punishment
All the accused	302 r/w. 149 of IPC	Imprisonment for life and fine of Rs. 10,000/- each. In case of default in payment of fine, each one of them would be liable to suffer further imprisonment of two years.
All the accused	147 of IPC	Rigorous imprisonment for a period of six months and fine of Rs. 1000/- each. In case of default in payment of fine, each one of them would be liable to suffer further imprisonment of two months.
All the accused	148 of IPC	Rigorous imprisonment for a period of six months and fine of Rs. 1000/- each. In case of default in payment of fine, each one of them would be liable to suffer further imprisonment of two months.
All the accused	323 r/w. 149 of IPC	Rigorous imprisonment for a period of six months and fine of Rs. 1000/- each. In case of default in payment of fine, each one of them would be liable to suffer further imprisonment of two months.
All the accused	341 r/w, 149 of IPC	Simple imprisonment for one month and fine of Rs. 500/- each. In default of payment of fine, each one of them shall undergo simple imprisonment for a period of seven days more.

7. It would be relevant to state the brief reasoning of the trial court which led to the conviction of the accused-appellant herein-

i. That the witnesses having interest in the property or being a close friend of the deceased, would not qualify them as interested witnesses.

ii. Non-examination of two witnesses, who are alleged to have accompanied the deceased,is not fatal for the case of the prosecution.

iii. That the DW-1 has not denied the incident wherein the deceased was beaten by the accused.

iv. The court cannot place reliance on the theories introduced by DW-1, as his statements are contradictory.

v. That the blood stains found on the Belcha (alleged weapon used) is indicative of the occurrence of the crime.

vi. That no alcohol was found in the viscera of the deceased.

vii. That the prosecution was able to prove the case beyond reasonable doubt.

8. The aggrieved accused preferred appeal before the High Court against their conviction and sentence passed by the trial Court. By the judgment impugned herein, the High Court while partly allowing their appeal, acquitted the accused Mohinder Singh (A2), Biaso Devi (A7), Rekha Devi (A5) and Veena Devi (A6) extending them the benefit of doubt. However, the High Court affirmed the conviction and sentence passed by the trial Court against Rangeel Singh (A1), Surinder Kumar (A3) and Manoj Kumar (A4) on the following grounds-

i. That the motive of the crime was due to the prior land dispute.

ii. That the statement of DW-1 was not believable.

iii. That the blood group found on the clothes of accused no. 1 matched with that of the deceased.

iv. That the High Court, accepted that the prosecution case was exaggerated to the extent of roping other unconnected family members.

A 9. Aggrieved by the impugned judgment of the High Court, Manoj Kumar (**Criminal Appeal No. 795 of 2017**), Surinder Singh (**Criminal Appeal No. 796 of 2011**) and Rangeel Singh (**Criminal Appeal No. 797 of 2011**) are in appeal before this Court. We propose to dispose of these appeals by this common order as all the accused-appellants are challenging the same impugned common judgment.

B 10. While taking us through the evidence on record vis-a-vis the portions of the findings of trial court as well as the High Court, the Ld. counsel for the appellants argued that the entire case of the prosecution rests on the motive of pending civil litigations between the parties and there is absolutely no proof that the appellants have pre-meditated to C attack the deceased and his party at the given place and given time as propounded by the prosecution. According to him the occurrence has taken place near the disputed property which is not on the way to the village proceeded by the deceased and this would show that the deceased had arrived at the disputed property to attack the appellants or to cause D damage or otherwise destroy the property of appellants. He then, maintains the stand that where several accused persons attacked the deceased with multiple weapons and with intention to do away with his life, presence of negligible simple injuries found on the body of deceased does not support the presence of intention to cause death of deceased so as to attract punishment under Sec. 300 read with Sec. 302 IPC. The E Ld counsel relied upon the medical evidence also to buttress this argument.

11. On the other hand, the learned counsel appearing on behalf of the State has supported the judgment of the High Court and sought dismissal of these appeals before this Court.

F 12. Heard the arguments on either side and perused the material available on record. A mixed question of law and fact which falls for our consideration is whether the accused-herein are liable to be punished for the offence of culpable homicide amounting to murder or not?

G 13. PW-1 (Jaram Singh), states that he is the brother of the deceased. He is not an eyewitness to the incident and his evidence is not an important piece of evidence, being the hearsay evidence. The only aspect which can be looked into is the existence of dispute over the landed property. He states that the accused had forcibly constructed shops over the disputed land and he had filed a civil suit for eviction H before the Dalhousie Court.

14. PW-4 (Dr. Parveen Kumar) was the Doctor when the deceased (Prem Dass) was referred to the hospital. He states that the referred patient was calm, conscious and well-oriented to time and place. He further states that injury no. 1 and 2 appears to have been caused by sharp weapon, while the third injury on the sacral region was opined to have been caused by a blunt weapon. He states that the patient was thereafter referred to RPMC Dharamshala, for further treatment. After two-two and half hours, deceased was declared as brought dead.

15. In the cross examination he accepts that his advice for an x-ray, to RPMC Dharamshala is not reflected anywhere in the OPD records. It is of some significance to note that PW-4 accepts that the deceased was brought to the health center in a private van and the deceased returned to his house in the same vehicle. Although he has denied later that the patient returned to the home instead of going to RPMC Dharamshala. On the aspect of treatment, he states that the condition of the patient was not so serious.

16. PW-5 (Dr. Arvind Kanwar), stated the nature of injuries on opening of the scalp in the following manner-

> On opening the scalp cap extradural and sub-Dural hematoma seen in the right parietal temporal region. Extensive in size. The brain was congested, no fracture was seen on the scalp.

It may be relevant to note his cross examination

> Self stated that injury No. 2 on scalp was grievous in nature which caused brain hemorrhage. It is correct to suggest that there was no facture on the head injury. It is correct that Dr. Modi is authority on medical jurisprudence. I have seen the 18th edition of Dr. Modi in which, at page 229, he has defined the grievous injury, I agree with this definition. I did not see the weapon of the offence at the time of post mortem examination. The injury No. 2 can be caused by blade of the Dr at Ex. P-1 shown to me in the court. It is correct that the injury No. 2 can be caused by striking with sharp-edged object but it depends on force and speed. … **I have not mentioned the depth of the scalp injury in post mortem report. It is correct that without ascertaining the depth of the scalp injury, it was not possible to opine that it was grievous injury**.
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> (**emphasis supplied**)

A 17. PW-12 (Jeewan), son of the deceased is stated to be an eye witness to the alleged incident. He has repeated the prosecution story in entirety to the effect that in the presence of himself, Yashwant Singh (PW-13) and Narso Ram (DW1), the accused-party suddenly attacked the deceased. When Yashwant Singh intervened to save the deceased, he was also beaten up by the accused party. As the accused were rushing B towards PW-12 (Jeewan), he ran from the spot. While running he turned back and saw deceased (after receiving multiple injuries including a head injury), Yashwant Singh and Narso Ram were running from the spot. With respect to the treatment, he states that the deceased was taken to the PHC Sihunta wherein he was preliminarily treated and referred further C to the Hospital at Dharmashala. As the deceased was not responding, he was brought back to the PHC Sihunta, wherein he was declared dead.

18. Another important witness, who was alleged to have been present at the scene of the crime, is PW-13 (Yashwant Singh). He has D re-iterated the prosecution story. It may be noted that this witness has specifically stated that the deceased was taken back to the home after taking treatment at PHC Sinhunta. As the condition of the deceased worsened thereafter, he was brought back to the PHC Sinhunta, wherein he was declared as brought dead.

E 19. Having observed the prosecution evidence, we need to concentrate on the defense witness. DW1—Narso Ram was in fact a prosecution witness initially and even according to the prosecution theory, DW1 was the eyewitness. According to DW1, he was accompanying *Yashwant Singh* (PW13) and while they were proceeding towards village *Thukrla*, the deceased *Prem Dass* met them at a distance of 50 yards F and they went to a liquor shop and nearby the disputed property wherein certain shop rooms were constructed, the accused were found closing the shops and at that time the deceased and PW13 started abusing the accused persons and he saw accused *Surinder Singh* and *Manoj Kumar* (appellants in Criminal Appeals No. 796/2011 and 795/2011 G respectively) coming from the house with empty hands.

20. The High Court however has disbelieved the evidence of DW1 to the extent of deceased and PW13 consuming alcohol since the FSL report (Ex PW-18/C) does not indicate presence of alcohol in the intestine of the deceased. Except this, the High Court has taken into consideration

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the part of the statement of DW1. Merely because one part of the evidence of certain witness is not believed, it does not mean that his entire evidence shall be discarded. To the extent that DW1 was present at the time of occurrence is admitted even according to the prosecution. His evidence that the deceased started abusing the appellants' group who were present at the relevant time is acceptable for that reason and this behavior of deceased must have instigated the appellants to retaliate. This view is substantiating the plea of the defense to some extent as propounded by them in their examination under Sec. 313 of the Code of Criminal Procedure.

21. Having taken into consideration, the statement of witnesses on questions of fact, it would be appropriate to have thorough look at the question of law pertaining to Culpable Homicide.Learned counsel for the appellants contended that the defenseemerging from the evidence is that the deceased party arrived at the place of the incident wherein PW-13 started verbally abusing the accused which ensued a sudden fight resulting in the injuries being caused to the deceased and while so the High Court failed to appreciate that there was no premeditation on behalf of the appellant-accused and the entire incident was due to a sudden fight and the High Court ought to have invoked Exception 4 to Section 300 IPC.

22. Exception 4 to Section 300 IPC reads as under:

> Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

23. There is no dispute about the ingredients of Exception 4 to Section 300 IPC, the following conditions are to be satisfied namely:

(i) that the incident happened without premeditation;

(ii) in a sudden fight;

(iii) in the heat of passion;

(iv) upon a sudden quarrel and

(v) without the offender having taken undue advantage or acted in a cruel or unusual manner.

A 24. It may be relevant to note that in the case of ***Sridhar Bhuyan v. State of Orissa***, (2004) 11 SCC 395, it was held as under-

> For bringing in operation of Exception 4 to Section 300 Indian Penal Code, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.
>
> The fourth exception of Section 300 Indian Penal Code covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the

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ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 Indian Penal Code is not defined in Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

25. Thus, the totality of circumstances of the case on hand would amply show that there was a sudden verbal quarrel and evidently there was no pre-meditated plan to attack the deceased. In view of the civil disputes already pending between both the families, a minor verbal exchange bloated into a sudden physical attack.

26. In ***Camilo Vaz*** vs. ***State of Goa,*** (2000) 9 SCC 1, referring to the ambit of Section 304 of the Code, this Court in similar set of circumstances held thus:

"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 ingredients 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."

27. Again, this Court in ***Deo Nath Rai*** vs ***State of Bihar and Othersetc,***AIR 2017 SC 5428 observed-

A "Looking to the totality of the facts and circumstances of the case and the evidence on record, it is clear that it was only the accused - Parsuram Rai who had assaulted Mohan Rai with the help of sword, whose assault resulted grievous injury, and the deceased Mohan Rai ultimately succumbed to the said injury during the course of transit to the hospital.

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The incident had taken place when the deceased was returning from the disputed land and the accused persons were busy in the adjacent field transplanting paddy seedlings from where they saw Mohan Rai crossing their land. There was no premeditation of any kind on the part of the accused to commit the murder of the

C deceased. However, the eye witnesses have deposed that accused - Wakil Rai came and started quarreling with Mohan Rai when other family members also joined. The quarrel not only suddenly erupted but also escalated without any premeditation. As rightly concluded by the High Court, the whole incident was spontaneous

D and went out of hand that too within short spell of time.

In the facts and circumstances of the case, though the High Court was justified in altering the conviction of the accused from Section 302 and 302/149 IPC to Section 304 Part-II IPC, it was not justified in imposing lesser sentence on the accused…"

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28. It is important to have a look at the evidence of PW 5-*Dr. Arvind Kanwar*who has conducted Post mortem and according to him there was an incised wound on the right parietal region of size 4" and 10" above right ear and another incised wound of 1" in size on the right index finger. He has deposed that "the brain was found congested, yet no

F fracture was seen on the scalp". Though in the cross examination he has stated at one place that the injury No 2 on the scalp might be 'grievous' that caused brain hemorrhage. This particular fact is not noted in the postmortem report. Regarding the cause of such injury, PW5 stated that it can be caused by striking with sharp edged object and the depth of the scalp injury depends upon the force and speed. He maintains the stand

G that it was a 'scalp injury' and not 'skull injury'. Moreover, he did not measure the depth of the head injury which was necessary for classification of injury.

29. We may note that the injury to the head resulted in Extra-Dural and Sub-Dural Hematoma. We are conscious of the fact that

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such symptoms of the same may take some hours to develop in many cases as has happened in this case at hand.[1] We are also apprised that in such cases a detailed post-mortem may be necessary and it is important to know the existence of prior medical history and condition. In this case a generalized statement by the Doctor conducting the post-mortem that he had causally enquired about any existing medical condition with the deceased. It may further be relevant to note the extract from the Modi, A Textbook of Medical Jurisprudence and Toxicology, wherein it is noted that-

> **It must be born in mind that a slight injury on the head may cause cerebral hemorrhage in a person previously predisposed to it from age or disease**.[2]

30. The above opinion goes to show that the injury no. 2 on the scalp resulted in hemorrhage which has not been duly accounted for. Moreover, the force and gravity of assault indicates that the aforesaid assault was carried out with only sufficient knowledge of likely death of the deceased in a free fight situation. Had he got intention to commit the murder of the deceased by inflicting such injury, he might have used the weapon with sufficient force and in that case, definitely it would have caused a deep injury causing fracture of skull. This court is bound to show some deference to this particular aspect while evaluating the facts and circumstances of this case at hand.

31. In the case on hand, the death is not instantaneous, but the deceased died after sometime, due to hemorrhage. When several persons of the accused group wielding weapons attacked the deceased, it is surprising to see only two injuries, that too, two simple injuries alone are inflicted; of course, one such simple injury turns out to be fatal sometime later. This circumstance demonstrates that the appellant had no intention to cause death, though he has knowledge that the weapon used by him to inflict injury on the scalp of the deceased may cause death. But in the absence of intention to cause death or to cause such bodily injury as is likely to cause death, the offence does not fall within the scope of Section 300, IPC but it will fall within Section 304, Part II of the IPC.

32. We, therefore, hold that the appellants *Manoj Kumar*, *Rangeel Singh* and *Surinder Singh* are guilty for an offence punishable under

[1] Modi, A Textbook of Medical Jurisprudence and Toxicology, 25th Eds., p. 701.
[2] Id. At 704.

A Section 304 Part II IPC and not for the offence under Sec. 300 IPC. Their conviction under Section 302 IPC is, therefore, set aside. While modifying the conviction accordingly, the appellants are sentenced to suffer rigorous imprisonment for a period of ten years. However, we are informed that the appellants have already undergone more than 11½ years imprisonment so far, consequently, the appellants are directed to be released forthwith, if not required in any other case.

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33. Accordingly, these appeals are disposed of in the above terms.

Ankit Gyan Appeals disposed of.