

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Appeal No. 736/2013

1. Jeetmal Son of Bherulal, by caste Dhakad,
2. Phool Chand S/o Bherulal, by caste Dhakad
3. Kalu Lal S/o Bherulal, by caste Dhakad,
4. Rajaram Son of Chhitarlal, b/c Dhakad,

All residents of village Mamor, Police Station Kanwas, District Kota (Raj.)

(At present in Central Jail, Kota)

Appellant

Versus

The State Of Rajasthan Through P.P.

----Respondent



For Appellant(s) : Mr. Ajay Singh
For Respondent(s) : Mrs. Sonia Shandilya

**HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR**

Judgment

//Reportable//

Per Hon'ble Mr. Justice Mohammad Rafiq

22/03/2018

This criminal appeal on behalf of four accused-appellants, namely, Jeetmal, Phool Chand, Kalu Lal and Rajaram, seeks to challenge judgment and order dated 19.09.2013 passed by the Court of Additional Sessions Judge, Ramganjmandi, District Kota (Rajasthan) (for short, 'the trial court') in Sessions Case No.45/2008, who thereby convicted and sentenced them as indicated below:-

Accused-appellants	Offence under Section	Sentence
Jeetmal, Phool Chand,	Section 148 IPC	To undergo two years

Kalu Lal and Raja Ram		rigorous imprisonment with fine of Rs.200/- each; in default of payment of fine, each to further undergo seven days simple imprisonment
	Section 302/149 IPC	To undergo life imprisonment with fine of Rs.5000/- each; in default of payment of fine, each to further undergo one month's simple imprisonment
	Section 307/149 IPC	To undergo seven years rigorous imprisonment with fine of Rs.1000/- each; in default of payment of fine, each to further undergo ten days simple imprisonment
All the sentences were ordered to run concurrently.		

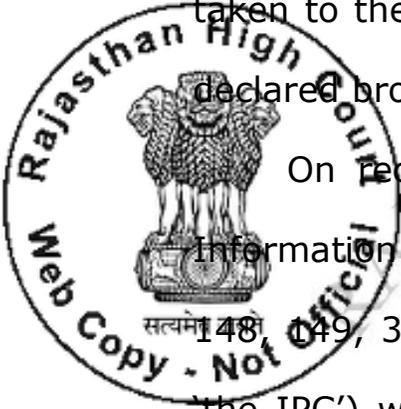


Facts of the case are that a written report was submitted by one Madholal Dhakad to Station House Officer, Police Station Kanwas on 13.09.2008 alleging therein that on that day at 1:00 PM he along-with his nephew Bheemraj and granddaughter Rena was sitting on 'chabutri' (platform) outside his house in village Mamor. While they were talking to each other, Jeetmal, Phoolchand, Kalulal, all sons of Bhairulal, who is a neighbour as he resided in front of his house, came there armed with 'gandasi' and knives. They were abusing the informant and others. Rajaram and Ramaotar, who were armed with lathis, also accompanied them. Soon they reached there, Phoolchand and Kalulal started causing injuries to them by use of 'dharia' and 'gandasi'. Jeetmal, who was having knife in his hands, started causing multiple injuries to Bheemraj. When he (informant) tried to save Bheemraj, Rajaram

and Ramaotar caused injuries to him by 'lathis', Phoolchand and Kalulal also inflicted 'gandasi' and 'dharial' blows on his head, hand and shoulder. While his younger nephew Pappu came out of the house to save them, the accused also subjected him to beating as a result of which he sustained injuries. Accused also gave beating to his granddaughter Rena. Injured Bheemraj was immediately taken to the hospital in seriously injured condition, where he was declared brought dead.

On receipt of the aforesaid written report, a regular First Information Report No.158/2008 for offence under Sections 147, 148, 149, 302, 307 and 323 of the Indian Penal Code (for short, 'the IPC') was registered at Police Station Kanwas, District Kota. After usual investigation, the police submitted charge-sheet in the court of Judicial Magistrate, Kanwas. Since the matter was triable by a Court of Sessions, the matter was committed to that Court, wherefrom the same was made over to the Court of the Additional Sessions Judge, Ramganjmandi, District Kota (hereinafter, shall be referred to as 'the trial court'), for trial. The trial court framed charges against accused Rajaram, Kalulal, Phoolchand for offence under Sections 148, 302/149, 307/149 and against accused Jeetmal for offence under Sections 148, 302/149, 307/149 of the IPC and under Section 4/25 of the Arms Act. They denied the charges and claimed to be tried. The prosecution produced 24 witnesses and exhibited 59 documents. The defence produced one witness and exhibited one document. The learned trial court, on conclusion of the trial, convicted and sentenced the accused-appellant as indicated above. Hence this appeal.

Mr. Ajay Singh, learned counsel for the accused-appellants, has argued that the learned trial court has seriously erred in law



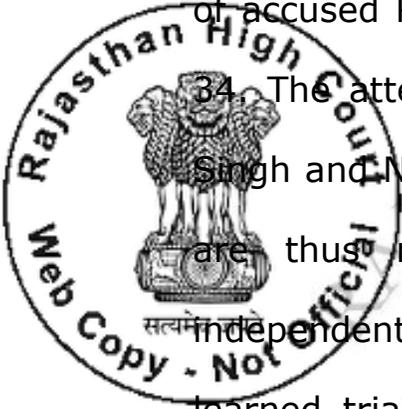
in convicting the accused-appellants and the same is contrary to material evidence on record. The prosecution has completely failed to prove the guilt against the accused-appellants beyond reasonable doubt. There are number of contradictions in the statements of the prosecution witnesses. Even name of Jagannathi, who also alleged to have received injuries, was not mentioned in the FIR as injured person. In fact, Madholal and Jagannathi both sustained injuries due to fall from a motorcycle. This fact has been proved by sole defence witness Gokul (DW-1). It is argued that in the seizure memo of the clothes of the deceased vide Exhibit P-2 it is nowhere mentioned that his clothes had any cut mark. It cannot therefore be believed that the deceased sustained injuries by use of sharp edged weapon. As per postmortem report (Exhibit P-19), postmortem was conducted on 13.09.2008 between 4:30 and 5:15 PM, as against which delivery memo of the dead body (Exhibit P-27), indicates that the dead body of the deceased was handed over to the family members at 4:30 PM on 13.09.2008. Both facts are irreconcilable. There is thus discrepancy in the case of the prosecution.

It is argued that the statement of Jagannathi Bai under Section 161 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') was recorded by the Investigating Officer with considerable delay. No satisfactory explanation has been given for the said delay and thus it is clear that Jagannathi Bai was not present at the place of incident and she has been wrongly made an eye witness or that at the maximum she was a chance witness. As per the prosecution witnesses, accused-appellant Rajaram was having 'lathi' in his hands and caused injuries to the deceased but none of the injuries were sustained by the deceased by blunt



weapon and all the five injuries are opined to have been caused by sharp edged weapon. Recovery of knife at the instance of accused Jeetmal was made on 17.09.2008 vide Exhibit P-28. Knife at the instance of accused Kalulal was recovered on 17.09.2008 vide Exhibit P-30. 'Dharia' at the instance of accused Phoolchand was recovered on 17.09.2008 vide Exhibit P-32. 'Lakdi' at the instance of accused Rajaram was recovered on 17.09.2008 vide Exhibit P-34. The attesting witnesses to all these recoveries are Surendra Singh and Nandkishore, who are police constables. The recoveries are thus result of police padding and fabrication, as no independent witness was associated to any such recovery. The learned trial court has neither properly considered nor critically examined the statement of the prosecution witnesses and has mechanically convicted the accused-appellants.

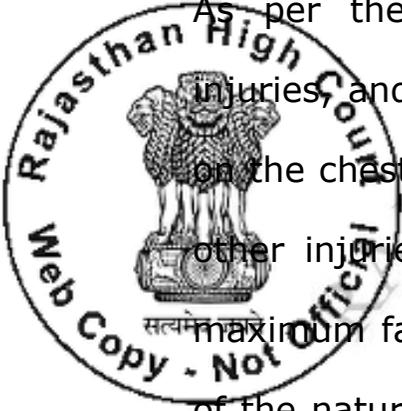
Mr. Ajay Singh, learned counsel for the accused-appellants, further argued that the prosecution has failed to consider the statement of Jagannathi Bai (PW-17), who has thrown some light as to why the incident took place. She has stated that 'patwa' (street vendor) had come to their village to sell ladies items such as bangles, earrings, chain etc. Jeetmal was harassing him. Her husband Madholal forbade Jeetmal from harassing the street vendor. Thereupon Jeetmal started abusing her husband Madholal. This witness then took Madholal inside the house. After sometime, when Madholal, this witness and their granddaughter Rena were sitting outside at the platform ('chabutra') of the house, the accused then came there. They were abusing. Accused Kalu was armed with 'gandasi', Phool was armed with 'dharia', Ramaotar and Rajaram were armed with 'lakdi' and Jeetmal was armed with 'chhura'. These persons subjected Bhemraj to beating, who came



to save Madholal. It is by accident that he sustained fatal injuries otherwise intention of the accused was never to commit his murder. The incident had taken place all of a sudden in the heat of passion at the spur of moment and therefore guilt of the accused-appellants cannot be described as culpable homicide amounting to murder, it is rather a culpable homicide not amounting to murder.

As per the postmortem report, the deceased sustained five injuries, and the only injury which proved fatal is the stab wound on the chest below the nipple. Only one injury was serious and all other injuries were simple. The case of accused Jeetmal at the maximum fall within purview of Section 304-I of the IPC. In view of the nature of the injuries sustained by deceased Bheemraj and Madholal (PW-1), Pappuram (PW-7), Jagannathi Bai (PW-17) and Rena (PW-4), the common object of the said assembly was at the most to give severe beating to the members of the complainant party but not to murder anyone of them. Even if it is assumed that it was an unlawful assembly, all accused, at the maximum, were the members of unlawful assembly for giving severe beating to the complainant party. If incidentally, one of the members of the unlawful assembly had exceeded that common object and by suddenly taking out knives out from his pocket, inflicted fatal injury into the chest of the deceased, intention of same cannot be attributed to other accused and charge against that single person i.e. principal accused, can be taken to have been proved for offence under Section 304-I of the IPC but not under Section 302 IPC.

Learned counsel for the accused-appellant, in support of his arguments, has relied on the judgments of this court in Kapoora Vs. State of Rajasthan - 2016 (2) RCC (Raj.) 685, Illiyas & 15

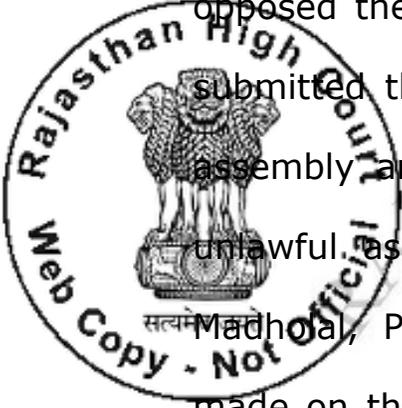


Others Vs. State of Rajasthan – 2010 (3) R.C.C. 1271, Mustaq @ Kardia Vs. State of Rajasthan – 2010 (3) R.C.C. 1283, Raghunath Singh & Ors. Vs. State of Rajasthan through P.P. - 2016 (3) RCC (Raj.) 1028 and Sheru Khan Vs. State of Rajasthan – D.B. Criminal Appeal No.973/2012 decided on 15.02.2017.

Per contra, Mrs. Sonia Shandilya, learned Public Prosecutor, opposed the appeal and supported the impugned judgment. She submitted that all the appellants were members of the unlawful assembly and that pursuant to the common object of the said unlawful assembly, attempted to commit murder of deceased, Madholal, Pappulal and Jagannathi Bai. Recovery of knife was made on the basis of information given by Jeetmal, who had no valid licence to carry such weapon. Further argument of learned Public Prosecutor is that human blood was found on the 'lathi' and 'gandasi' recovered during investigation. Learned Public Prosecutor argued that the F.S.L. report (Exhibit P-57) does not prove the fact that human blood was found on the 'kurta' of the deceased, knife and 'lakdi'. Unless blood group is determined, it cannot be connected with the accused. It is argued that in the present case four persons from the side of the complainant party sustained injuries. Reference is made to the injury-report of Madholal (Exhibit P-15), Pappulal (Exhibit P-16), Jagannathi Bai (Exhibit P-17) and that of Rena (Exhibit P-18).

Learned Public Prosecutor, in support of the arguments, has relied on the judgments of the Supreme Court in Upendra Pradhan Vs. State of Orissa – 2015 (2) WLC (SC) Cri. 172 and Sunil Khergade Vs. State of Maharashtra – 2015 (2) WLC (SC) Cri. 564.

We have given our thoughtful consideration to rival submissions and minutely scanned the material on record.

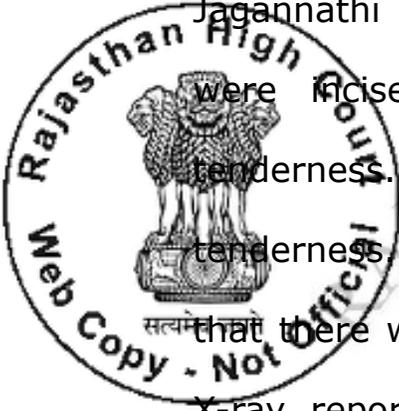


In this case, apart from deceased Bheemraj, injured Madholal (PW-1) sustained five injuries, out of which three were incised wounds and two were swellings. Pappulal (PW-7) sustained three injuries, all of which were incised wounds. X-ray report (Exhibit P-47) of Madholal indicates that there were the fracture of proximal phalanx of little finger (fifth finger of right hand).

Jagannathi Bai (PW-17) sustained six injuries, out of which four were incised wounds and one was swelling and one was tenderness. Rena (PW-4) has sustained one injury, which was tenderness. X-ray report (Exhibit P-52) of Jagannathi indicates that there was fracture of first metacarpal bone of her left hand.

X-ray report (Exhibit P-50) of Pappulal also indicates that he sustained fracture of lower 1/3rd ulna bone of right arm. None of these injured therefore sustained any injury on the vital part of their bodies, inasmuch as none of their injuries was opined to be dangerous to life. The incident had taken place on the dispute when accused Jeetmal started abusing Madholal owing to his annoyance, which he took when forbidden to harass the street vendor.

Shankar Lal (PW-12), who was the concerned street vendor, though has turned hostile and not fully supported the prosecution case but he admitted that he used to sell ladies items by taking round of the village on foot. He had even gone to village Mamor but when he was confronted with his police statement (Exhibit P-14), he denied the suggestion that a bearded person talked to Jeetmal about him or that any quarrel had taken place with Jeetmal. Even Madholal (PW-1) in his cross-examination, has admitted that when the 'patwa' (street vendor) came to their village to sell the ladies items, Jeetmal started harassing him.

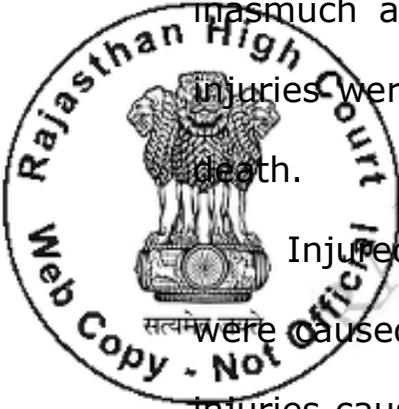


When he tried to intervene, Jeetmal started abusing him as well. This indicates that the incident in the present case was preceded by an altercation and hot exchange of words between accused Jeetmal and Madholal. When the incident is appreciated in this context, it becomes clear that Jeetmal went to his house and came back with his brothers and two others with 'gandasi', knives and 'lathis. The common object of all these accused was thus apparently to give severe thrashing/beating to the members of the complainant party so as to teach them a lesson, which is evident from the fact that none of the injured sustained injuries on the vital part of their bodies. Only one of the four incised wounds of the deceased proved fatal and others were superficial in nature being simple. His injury no.2 was stab wound in the size of 5cmx2cm which led to piercing chest below nipple, consequently ruptured the left chamber of the heart, and proved fatal leading to death of Bheemraj. Dr. Girdhar Gupta (PW-13) has proved injury report of injured Madholal (Exhibit P-15), injury report of Pappulal (Exhibit P-16), injury report of Jagannathi Bai (Exhibit P-17) and that of Rena (Exhibit P-18). In fact, Dr. Girdhar Gupta has proved the postmortem report (Exhibit P-19) of Bheemraj and stated that on opening of the heart, injury was found therein. It was found ruptured/cut due to injury aforesaid by sharp edged weapon. Recovery of all these weapons does not become doubtful merely because the attesting witnesses to these recoveries were police constables. Dr. Girdhari Gupta (PW-13) has also proved the postmortem report (Exhibit P-19), according to which the deceased sustained total five injuries. Only injury that proved fatal was injury no.2 being stab wound. The other four injuries, even though were incised wounds, were respectively on right side of



scalp, aniline region, arm and chest region in middle part. The cause of death, as per the postmortem report, was due to hemorrhagic shock because of rupture of chamber of heart. In fact, the stab wound pierced into the heart up to the right chamber. Dr. Girdhari Gupta (PW-13) has not opined, except injury no.2, any one of other four injuries to be dangerous to life or inasmuch as no opinion has been expressed that any of these injuries were sufficient in the ordinary course of nature to cause death.

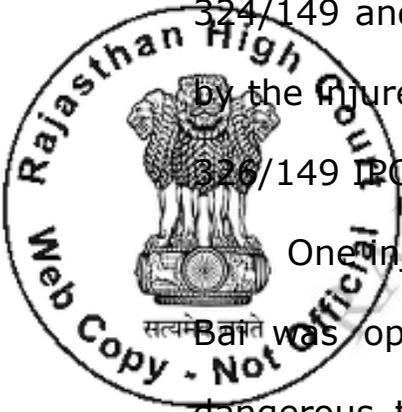
Injured Madholal has sustained five injuries, out of which two were caused by sharp weapon and three by blunt weapon. Both injuries caused by sharp weapon have been found to be simple in nature, but one of the injuries by blunt weapon has resulted into fracture of proximal phalanx of his little finger (fifth finger of right hand) and therefore was opined to be grievous. This injury obviously was not caused by any dangerous weapon. Injured Pappulal has sustained four injuries, out of which three were incised wounds caused by sharp weapon but were opined to be simple in nature and the fourth one was swelling with tenderness caused by blunt weapon, which on X-ray examination was found to be fracture of lower 1/3rd of right ulna bone and therefore was opined to be grievous. Obviously, this fourth injury was also caused by blunt weapon and therefore it was not an injury by dangerous weapon. Jagannathi Bai received six injuries, four of which were incised wounds caused by sharp weapon but all these four were opined to be simple. 5th and 6th injuries were caused by blunt weapon, wherefor X-ray was advised. While 6th injury was opined to be simple, the 5th injury was found to be fracture of first metacarpal bone of left hand. Even this injury was caused by blunt



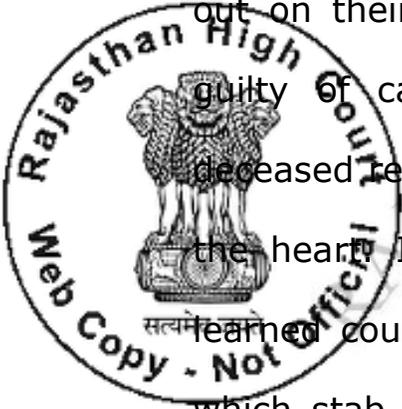
weapon and therefore was not by dangerous weapon. Rena did not receive any apparent injury but had tenderness on right shoulder and right knee joint, which too was opined to be simple in nature caused by blunt weapon. In view of the above, accused-appellants, namely, Phool Chand, Kalu Lal and Rajaram would at the most be guilty of committing offence under Sections 323/149, 324/149 and 325/149 of the IPC, as none of the injury sustained by the injured would bring their guilt within the purview of Section 326/149 IPC.

One injury each of injured Madholal, Pappulal and Jagannathi Bai was opined to be grievous but none of them was found dangerous to life. The learned trial court has not recorded any definite finding as to on what basis it decided to convict the accused for offence under Section 307 read with Section 149 of the IPC. The conviction of the accused-appellants for offence under Section 307 read with Section 149 IPC cannot be justified. However, at the same time, the fact is that the accused and the deceased had sustained number of simple injuries except one injury, each grievous injury sustained by three injured led to fracture on the non-vital part of the body. The accused-appellants, as members of unlawful assembly can therefore be held to have the common object of committing offence under Section 323/149, 324/149 and 325/149 of the IPC. However, as far as the injury caused by accused-appellant Jeetmal is concerned, he having exceeded that common object by causing stab wound in the chest of the deceased puncturing his heart up to the left chamber, must be individually held responsible for his act.

Coming now to the alternative argument of the learned counsel for the accused-appellants that the offence of the



accused-appellant Jeetmal would at the maximum fall in the purview of Section 304-I of the IPC and not beyond that, we have carefully studied the cited precedents in the cases of Kapoora Vs. State of Rajasthan, Illiyas & 15 Others Vs. State of Rajasthan, Mustaq @ Kardia Vs. State of Rajasthan and Raghunath Singh & Others Vs. State of Rajasthan, supra. All these four cases turned out on their facts and in none of them the accused was found guilty of causing stab wound piercing into the heart of the deceased resulting into puncturing of the wall and left chamber of the heart. In the case of Sheru Khan, the judgment relied by learned counsel for the accused-appellant, was of course one in which stab wound was caused in the size of 3 x ¾cm x cavity deep below and medial to left nipple inter costal space elliptical in shape lower end pointed and sharp upper end blunt and rounded and on dissection, there was sub-contenous haemorrhage in area 4½ x 3½ cm beneath the injury and window in chest wall piercing the ms pleurae or and pericardium was seen up to left ventricular cavity. But facts of that case were entirely different. Therein, the accused was getting his beard shaved while sitting on the shop of barber. Few other persons were also present in that shop. All seven accused were present in that shop. It was alleged that the accused abused the deceased, when his wife and elder brother came out of the room. They found that one of the accused caught hold of the deceased and another accused exhorted Sheru to kill Raju. Then Sheru Khan picked up a scissors lying in the shop of Sonu Barber and caused injuries on his chest. The Coordinate Bench of this Court noted that Sheru Khan had no intention to cause murder of Raju. The incident took place in front of the house of the complainant party. When deceased Raju, his father



and brother entered their house with their vending carts and while unloading the goods that time they saw 5-6 persons standing and giving abuses, Sheru Khan was sitting in the barber shop and was getting his beard shaved. When abuses were exchanged followed altercation, beating had also taken place. It is at that stage that Sheru Khan picked up scissors and caused injury on the chest of the deceased. He did not cause any second blow. Thus there was no repetition of wound. The court found that accused went to the shop without any weapon in his hands and picked up the scissors lying in the shop itself, which being the shop of the barber was naturally found there. The court therefore held that accused had no knowledge of the fact that a situation may arise and he would cause injuries to the deceased from the scissors lying in the shop. The incident was thus held to have taken place in the heat of passion at the spur of moment without any premeditation and the accused had no intention to cause murder of the deceased and therefore it was inferred that he merely had knowledge that the injury caused by him could lead to death.

In the present case, the occurrence was preceded by hot altercation between accused Jeetmal and Madholal. The accused then went to his house and returned with four other accused. They all were armed with weapons. Jeetmal had knife, Kalulal had 'gandasi', Phoolchand had 'dharial' and Rajaram had 'lakdi' in their hands. It cannot therefore be accepted that it was not a premeditated attack. Unlike accused Sheru Khan, supra, in the present case, the accused did not pick up weapon lying in the place of incident. He rather carried knife from his home and caused injuries to the deceased. No doubt, other two incised wounds, which were simple, as per statement of Madholal (PW-1)



were attributed to Jeetmal, who inflicted 'gandasi' blow on the head of the deceased Kalu. According to Madholal, Kalu inflicted 'gandasi' blow and Phoolchand inflicted 'dharia' blow on the head of deceased. Unless these injuries are opined to be dangerous to life, conviction under Section 307 IPC cannot be justified. Reference in this connection be made to the decision of the Supreme Court in Babulal Bhagwan Khandare and Another Vs.

State of Maharashtra - (2005) 10 SCC 404. The Supreme Court therein held that Exception 4 to Section 300 IPC can be invoked if the death is caused in certain circumstances. In the facts of the case, we are not inclined to countenance the argument that the case of accused Jeetmal would fall within Exception 4 to Section 300 IPC. In Babulal Bhagwan Khandare, supra, it was held that 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.

Heat of passion requires that there must be no time for the passions to cool down and in the present case, the incident was preceded by the heated exchange of words and altercation between the accused and the complainant party and accused Jeetmal went back to his home and returned back with his two brothers and two others, all armed with variety of weapons. It cannot be held that it was a sudden quarrel where the accused Jeetmal, without any premeditation, in the heat of passion and spur of moment caused stab wound to the deceased. It must be further shown that the offender has not taken any undue advantage or has acted in undue and cruel manner. Here it is evident that the weapon used or the manner of attack by the



assailant was out of all proportion, that circumstance clearly proves that accused has taken undue advantage.

In Kikar Singh Vs. State of Rajasthan – (1993) 4 SCC 238, the Supreme Court held if the accused used deadly weapons against the unarmed man, it must be held that by causing the blows with the knowledge that they were likely to cause death, he has taken undue advantage.

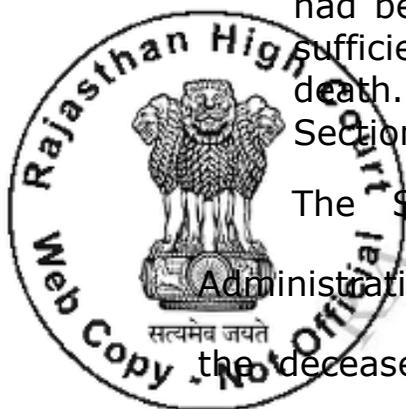
The Supreme Court in Aditya Mohapatra Vs. State of Orissa – AIR 1980 SC 2110 dealt with a case where the accused inflicted stab injuries to the deceased, who came to the spot as peacemaker. The injury was found on the vital part. In that case the accused with his two companions reached the Bazar and they shouted abusive words and challenged the villagers to come and see. Certain persons, who happened to be sitting on the culvert, asked them why they were using abusive language. The appellant caught hold of one of them. Hearing this, one Chitaranjan and certain other villagers came there. Chitaranjan raised his hands and asked the accused not to quarrel. The companions of Aditya instigated to stab him. Aditya took out a knife and stabbed Chitaranjan in the left side of the chest. In those facts, the accused was convicted by the trial court for offence of murder under Section 302 IPC and sentenced to undergo life imprisonment, which was maintained by the High Court. The argument before the Supreme Court was that the offence fell under the second or the fourth exception to Section 300 I.P.C., and that having regard to the circumstances of the case and the lack of premeditation, even if exceptions 1 and 4 did not apply, the offence would only fall under the second part of Section 304.



Repelling that argument, the Supreme Court in para 2 of the report held as under:-

"...We are also unable to see how the offence can possibly be brought within the second limb of Section 304 I.P.C. The injury was intended. It was not accidental. The injury was on a vital portion of the body. It had penetrated the chest to a depth of 1 and 3/4 inch. The left lung had been pierced. The fourth rib was cut through and through, indicating that considerable force had been used. The injury inflicted by the accused was sufficient in the ordinary course of nature to cause death. The offence clearly fell within the 3rd limb of Section 300 I.P.C. ..."

The Supreme Court in *Jai Prakash Vs. State (Delhi Administration)* – (1991) 2 SCC 32 was dealing with a case where the deceased was attacked pursuant to hot words exchanged between the accused and the deceased and not due to any fight between them. The plea of exercise of right of private defence was held to be not sustainable. On facts, the court found that though there was exchange of hot words between the appellant and the deceased but there was no fight between two. The accused immediately took out 'kripan' (chhura) from his waist and stabbed the deceased in the chest. It was held that the accused intentionally inflicted injuries though it may not be premeditated one. All the circumstances indicated towards such state of mind that he inflicted injuries with deadly weapon. In the absence of evidence or reasonable explanation to show that accused did not intend to stab into chest with 'kripan' with that degree of force sufficient to penetrate the heart, it would be perverse to conclude that he did not intend to inflict that injury that he did. Once the ingredient 'intention' is established, the offence would be murder as the intended injury was found sufficient in the ordinary course of nature to cause death. It was therefore held by the Supreme



Court that it is fallacious to contend that if death is caused by a single blow Clause thirdly is not attracted and therefore it would not amount to murder. Their Lordships held that Clause thirdly to Section 300 I.P.C. consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and the second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part, the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury, whereas the second part whether it was sufficient to cause the death is an objective enquiry and it is a matter of inference or deduction from the particulars of the injury.

In view of the above discussion, this appeal is partly allowed in the following terms:-

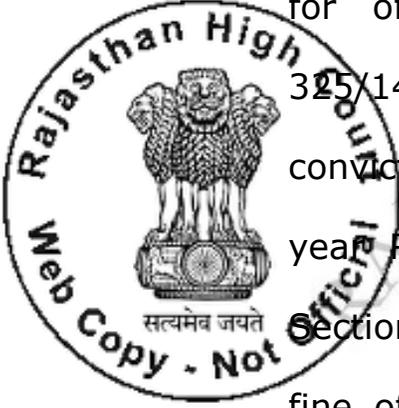
- (i) Conviction of accused-appellant Jeetmal for offence under Section 302/149 IPC is altered to one under Section 302 IPC simplicitor, wherefor he is sentenced to life imprisonment with fine of Rs.5000/- (five thousand rupees); in default of payment of fine, he shall be liable to further undergo simple imprisonment of one month.
- (ii) Conviction of accused-appellants Phool Chand, Kalu Lal and Rajaram for offence under Section 302/149 IPC and sentence awarded on that count, is set aside.
- (iii) Conviction of accused-appellants Jeetmal, Phool Chand, Kalu Lal and Rajaram and sentence awarded on that count under Section 307/149, is set aside.
- (iv) Conviction of all four accused-appellants for offence under Section 148 IPC is maintained. While the sentence of accused-appellant Jeetmal for this offence for a period

of two years with fine of Rs.200/- is maintained, accused-appellants, Phool Chand, Kalu Lal and Rajaram for this offence are sentenced to the period already undergone by them.

- (v) Accused-appellants Jeetmal, Phool Chand, Kalu Lal and Rajaram, instead of Section 307/149 IPC, are convicted for offence under Sections 323/149, 324/149 and 325/149 IPC. Accused-appellant Jeetmal for his conviction under Section 323/149 IPC is sentenced to one year RI with fine of Rs.500, for his conviction under Section 324/149 IPC he is sentenced to 2 years RI with fine of Rs.1000/- and for his conviction under Section 325/149 IPC he is sentenced to three years RI with fine of Rs.2000/-. In default of payment of fines, he shall further undergo 15 days, one month and two months simple imprisonment on all the three counts. Accused-appellant Kalu Lal has already undergone imprisonment for a period of more than five years and five months and accused-appellants Phool Chand and Rajaram have undergone imprisonment for a period of almost one year, therefore, for their conviction under Sections 323/149, 324/149 and 325/149, they are sentenced to the period already undergone by them, with sentence of fine as ordered by the trial court.

- (vi) Sentence awarded to the accused-appellants on various counts shall run concurrently.

- (vii) Keeping, however, in view the provisions of Section 437-A of the Code of Criminal Procedure, appellants, namely, Phool Chand S/o Bherulal, Kalu Lal S/o Bherulal and



Rajaram S/o Chhitarlal are directed to forthwith furnish a personal bond in the sum of Rs.20,000/- and a surety bond in the like amount each, before the Deputy Registrar (Judicial) of this Court, which shall be effective for period of six months, with the undertaking that in the event of filing of Special Leave Petition against this judgment or on grant of leave, the appellants, on receipt of notices thereof, shall appear before the Supreme Court.

The appeal accordingly stands disposed off.



(GOVERDHAN BARDHAR),J

(MOHAMMAD RAFIQ),J

//Jaiman//



सत्यमेव जयते