
(2003) 10 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal A. No. 1780 of 2001

Ankula Sadananda Behara @ Mojiya Behara and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 324

Citation : (2003) 2 ALD(Cri) 935 : (2004) 2 ALT(Cri) 316

Hon'ble Judges : K.C. Bhanu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. The appeal is directed against the judgment in Sessions Case No.111 of 1999 dated 2.11.2001 on the file of the Sessions Judge, Srikakulam, whereunder the Appellants i.e. A1 to A7 were found guilty u/s 302 read with Section 34 IPC and sentenced them with imprisonment for life and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for a period of three months each. The learned Judge also convicted the Appellants for the offence u/s 342 IPC read with Section 34 IPC and sentenced them with rigorous imprisonment for a period of six months each and directed that both the substantive sentences shall run concurrently. The appellants were acquitted u/s 324 read with Section 34 IPC. A8 to A14 were acquitted of all the three charges against them.

2. The substance of the charge against A1 to A14 is that on 12.11.1998 at about 7.00 p.m. at Kandaveedhi of Ichapuram, the accused wrongfully confined and caused the death of one Nagula Shankara Behara (deceased).

3. The brief facts that are necessary for the disposal of the present appeal may be depicted as follows.

P.W.1 is the brother and P.W.2 is the maternal uncle of the deceased. The

deceased, accused and all the material witnesses belong to Kandraveedi of Ichapuram Town. The deceased was a fisherman and was having a tea stall. He was originally married to one Guruva from Ganjam, but he deserted her and married one Brundavana Behara and subsequently he developed illicit intimacy with her younger sister namely Seshi Behara, which was opposed by his wife. Due to the illicit intimacy with Seshi Behara, all the accused who are related to Brundavana Behara bore grudge against the deceased.

One day prior to the date of incident at about 8.00 p.m. at the Tea stall of P.W.2, there was an altercation between the deceased and accused 1 to 10 with regard to age of Lord Krishna and His brother Balaram. Thereupon P.W.1 took the deceased from the said place to his house. Thereafter on the next day while the deceased was at his home, A1 to A5 and A7 to A14 visited his house being armed with sticks and stones and took the deceased to Trinadh Mandir via the Tea Stall of P.W.3 and beat the accused with sticks, iron rods and stones. When P.W.2 tried to rescue the deceased, A1 and other accused fisted P.W.2 on his face below the right eye, as a result of which, he fell down. Thereafter all the accused took the deceased to Mankodadhara Street, tied him to an electrical pole and beat the deceased with sticks, iron rods, stones and a grinder stone. Thereafter, accused untied the deceased and took him towards Gorja. Then immediately P.W.1 went to Ichapuram Police Station and gave a complaint with regard to the above incident.

On 12.11.1998 at about 9.00 p.m. P.W.6-S.I. of Police, Ichapuram Town Police Station received a complaint from P.W.1 which is marked as Ex.P.1. On the basis of Ex.P.1, P.W.6 registered a case in Crime No.137 of 1998 under Sections 342, 324, 326 read with 34 IPC and issued Ex.P.6-F.I.R. Thereafter P.W.6 along with P.W.1 visited the scene of occurrence and found the deceased in an unconscious state. Then he sent the injured to Government hospital, Ichapuram along with a requisition. Subsequently at about 1.15 a.m. P.W.6 on receiving the death intimation-Ex.P.7, altered the Section of Law to 302 IPC. Ex.P.8 is the altered F.I.R. Thereafter P.W.7 took up further investigation and proceeded to the scene of occurrence and seized M.Os.1 to 10 under cover of panchanama. Ex.P.9 is the observation report. He prepared Ex.P.10 rough sketch of the scene of occurrence and examined the witnesses. Thereafter he visited Government hospital and conducted inquest over the dead body of the deceased in the presence of mediators. Ex.P.11 is the inquest report. After inquest, the dead body was sent to post-mortem examination.

On 13.11.1998, P.W.5-Civil Assistant Surgeon conducted autopsy on the dead body of the deceased and opined that the cause of death was due to shock, multiple injuries and injury to vital organs like brain and heart. Ex.P.3 is the preliminary post-mortem certificate and Ex.P.4 is the final report. He further examined P.W.2 and issued Ex.P.5-wound certificate.

On 14.11.1998, P.W.7 arrested A3 and sent him for remand. On 15.11.1998 he recorded the statements of P.W.3 and P.W.4 which were marked as Ex.P.12 and

P.13. On 23.11.1998 P.W.7 arrested A1, A2, A5, A6, A8 to A14 and sent them for remand. On 29.11.1998 he arrested A4 and A7 and sent them for remand. After completion of investigation P.W.7 filed a charge-sheet.

The plea of the accused is one of denial. In support of prosecution's case, it has examined 7 witnesses and marked 14 documents besides the case properties M.Os. 1 to 10.

Believing the evidence of P.Ws.1 and 2, the lower court convicted the appellants and sentenced them aforesaid. Against the said conviction, appellants preferred this appeal questioning the legality and correctness thereof.

4. The learned counsel for Appellants submitted that except the interested and discrepant testimony of P.Ws.1 and 2 who are closely related to the deceased, there is no evidence to show the involvement of the appellants in the commission of offence, that there is a variance in the place of occurrence, further the evidence varies from the statements recorded by the Police, that the version made by P.Ws.1 and 2 is nothing but improvement and specific overt acts were attributed, that there was no intention for the accused to commit the murder of the deceased, that P.W.2 was not examined by the Doctor on the same day, that there was no possibility for the witnesses to identify the assailants as the incident in question took place at about 7 p.m. and therefore he prays to acquit the Appellants.

On the other hand, the learned Public Prosecutor contended that the presence of P.Ws.1 and 2 is established beyond all reasonable doubt, that within two hours of the incident P.W.1 lodged a report to the Police and there was no motive for P.W.1 to implicate the accused falsely leaving the real assailants, that the main incident in question took place near the electric pole to which the deceased was tied and the same was noticed by the mediators, that non-examination of independent witnesses is not fatal to the case of the prosecution and that the lower court after considering the evidence on record came to right conclusion in convicting the appellants and there are no grounds to interfere with the order of conviction.

5. P.W. 7 conducted inquest on the dead body of the deceased under Ex.P.11. A perusal of Ex.P.11 shows that on 13.11.1998 from 10 a.m. to 1 p.m. inquest was conducted and inquest mediators opined that the deceased died as a result of injuries sustained by him.

P.W. 5 is the Doctor who conducted autopsy on the dead body of the deceased on 13.11.1998 at 2.40 p.m. and found the following injuries :

1. Laceration above outer aspect of left eye 3 x 2 x 2 cm red, margins irregular;
2. Black eye present on left side;
3. Abrasion front of left ear 1 x 1 cm red;
4. Laceration below right eye 1 x 1 x 1 cm, red edges irregular;

5. Abrasion over right cheek 3 x 3 cm red;
6. Contusion over upper part of right cheek 5 x 3 cm, red,
7. Abrasion below right clavicle 5 x 2 cm transverse, red,
8. Contusion over right side of middle of chest, transverse, 6 x 3 cm, dark reddish brown;
9. Contusion over left side of middle of chest, oblique 5 x 3 cm dark reddish brown
10. Contusion below left clavicle 5 x 4 cm, dark reddish brown;
11. Six abrasions over right lower chest 2 x 2 cm each, red
12. Contusion over lower part of right fore arm 7 x 7 cm dark red;
13. Three contusions over middle of front of right leg 5 x 3 cm, dark red;
14. Four abrasions over right ankle 4 x 2 cm each, red;
15. Fracture of both bones above left ankle; on cut section firm blood clots were present fracture cite;
16. Abrasion over base of left great toe 2 x 2 cm, red;
17. Abrasion below right scapula 3 x 2 cm, red
18. Ten abrasions all over the back 2 x 2 cm each, red
19. Fracture of first phalanx left ring finger.

6. He opined that the deceased appears to have died of shock and hammeorage due to multiple injuries to vital organs like brain and heart. He issued Ex. P.3 preliminary postmortem certificate and Ex.P.4 final report. Nothing has been elicited to discredit his testimony as to the cause of death. So, the homicidal death of the deceased is established beyond all reasonable doubt.

With regard to the incident in question, P.Ws. 1 and 2 are the eyewitnesses, of whom P.W. 2 is an injured witness. P.W. 1 is no other than the brother of the deceased and P.W. 2 is the maternal uncle of the deceased. Simply because P.Ws. 2 and 3 are the relatives of the deceased, it does mean that their evidence has to be disbelieved on that ground. In case an eyewitness is related to the deceased, it becomes the duty of the court to scrutinise his statement with great care and caution. Ordinarily close relatives of the deceased would not allow the real culprits to escape although the possibility of their implicating others with the real offenders need to be kept in mind. On this aspect, it is pertinent to refer to a decision reported in the case of State of Punjab v. Karnail Singh, 2003 AIR SCW 4065 wherein the Apex Court held as follows :

"We may also observe that the ground that the witnesses being close relative and consequently being partisan witnesses, should not be relied upon, has no

substance. This theory was repelled by this Court as early as in Dalip Singh and Others Vs. State of Punjab, in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose.] it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in " Rameshwar Vs. The State of Rajasthan, . We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel".

Again in Masalti Vs. State of U.P., this Court observed : "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct".

7. The motive for the offence is that the deceased being married to Brindavan Behara developed illicit intimacy with Seshi Behara who is the sister of Brindavan Behara. Because they both became pregnant, deceased deserted both the sisters about 15 days prior to his death. A10 is the senior Paternal Uncle of Brindavan and Seshi Behara. P.W. 1 stated that the accused have enmity with the deceased as he married Brindavan Behara and was having illicit intimacy with Seshi Behara. It is suggested to him that the deceased was not having any relationship with Brindavan and Seshi Behara, but the same is denied. The other accused are the cousins of Brindavan Behara. Though P.W. 1 did not give the exact relationship of all the accused, but he was very assertive that all the accused belonged to one family. The fact that Brindavan Behara and Seshi Behara became pregnant through the deceased and the deceased deserted both about 15 days prior to his death is not denied or disputed in the cross-examination. Therefore there was every possibility for the accused to entertain grouse against the deceased, as he was having illicit contacts with Seshi Behara and had also deserted both Brindavan Behara and Seshi Behara.

Coming to the incident proper, P.W. 1 stated that on 12.11.1998 at about 7 p.m. when the deceased when he was present at his house, all the accused armed with sticks and stones took the deceased to Trinadh Mandir, and when P.W. 2 tried to intervene, A1 fisted on his face and pushed him. Then the accused took the deceased to the place where the community meetings were held and at that

place, the deceased was tied to an electric pole and was beaten by the accused with sticks, iron rods and stones. At that place electrical lamp was functioning. Thereafter when Shankar Behara (deceased) was in a dying position, all the accused took him to a Gorja and threw him. Thereupon P.W. 1 got scribed Ex.P.1 report and presented to P.W. 6. It is suggested to him that no body witnessed when the deceased was beaten and that he foisted a false case against the accused due to enmity. P.W. 1 admitted that he is the supporter of Congress Party, whereas the accused belong to Telugu Desam Party. On that ground, it cannot be said that P.W. 1 was determined to implicate the accused falsely leaving the real assailants.

P.W. 2 is the maternal uncle of the deceased. According to him, he was present at the Panshop near Trinadha Temple on 12.11.1998 at about 7 p.m. At that time he saw all the accused beating the deceased with sticks and stones and when he went to rescue the deceased, one of the accused fisted him on his face below the right eye, as a result he fell down. Thereafter all the accused took the deceased to the office of their caste persons, tied him to the electric pole, and was beaten with sticks, iron rods, stones and grinder stone. Thereafter the deceased was taken to Gorja. According to this witness, he went to the place of incident five or six minutes prior to the incident. He also admitted that for the first time accused beat the deceased at Trinadha Temple.

8. The scene of occurrence, according to the learned counsel, was changed from stage to stage. A perusal of Ex.P.1 shows that the deceased was taken by (8) named accused i.e. A1 to A8 from his house, tied him to a pole near Temple and all the accused beat the deceased with sticks and stones, and when he became unconscious due to the injuries, they pushed the deceased into the mud situated behind the Kandra Street. Whereas in the evidence of P.W.1, he stated that in the first instance all the accused took the deceased to Trinadha Mandir and beat him with sticks, iron rods and stones, and from there the deceased was taken to the place where community meetings were held and tied him to the electric pole.

The F.I.R. need not contain all the minute details. The main fabric of the case is that the accused was tied to an electric pole. It is not specifically stated in Ex.P.1 that the deceased was tied to an electric pole, but it is mentioned that he was tied at the temple situated in the street. As seen from Ex.P.10, the Trinadha Temple and the electric pole to which the deceased was tied are located very close by. Therefore it cannot be said that there is an improvement with regard to the scene of occurrence in the testimony of P.Ws.1 and 2. The evidence of P.Ws.1 and 2 would clearly go to show that the deceased was tied to an electric pole. Therefore it can be said that the incident in question took place at an electric pole near Sangam office. Ex.P.9 is the observation report. A perusal of this report shows that the place of occurrence is at Kandra veedhi mandapam. As seen from this report, the mediators found sticks, stones, threat, iron rod, grinding stone near the Electric pole. The police seized the same. P.W.7-Investigating Officer has categorically stated that the scene of occurrence is located in Bellamkonda street

which a sub-street of Kandra Veedhi and at that place, there was an electric pole, and a house belonging to Sangham building located at the scene of occurrence and seized four sticks and a coconut rope from that place. They are marked as M.Os.3 to 10. He also found jeans pant of the deceased at a distance of 50 yards. It is specifically suggested to him that M.Os.1 to 10 were not seized at the scene of occurrence, but the same was denied. It is not specifically suggested to him that Ex.P.9 was brought into existence after due deliberations. In view of the above and in view of the recitals in Ex.P.9, it is established beyond all reasonable doubt that the incident in question took place near electric pole in front of Sangham office.

9. As the deceased was taken from house, there was every possibility for P.W.1 to follow him and therefore he had the opportunity to witness the incident.

With regard to certain improvements made by him, which are as follows :

P.W.1 stated before the Investigating Officer that the deceased was taken to the Temple Street, tied and beaten with sticks and stones. This is marked as Ex.D.2. P.W.1 did not state before P.W.7 that there was an electric pole. P.W.2 did not state about the names of A8 to A14. P.W.2 also did not state that the deceased was taken to the electric pole. These contradictions or improvements made by these two witnesses are with regard to collateral or subsidiary facts. These discrepancies are hardly a ground to reject the evidence of P.Ws.1 and 2. The incident had occurred on 12.11.1998 and P.Ws. 1 and 2 were examined on 3.9.2001 i.e. nearly after lapse of three years. Therefore these discrepancies would occur even in the case of wholly truth witnesses. In our opinion, the discrepancies pointed out by the learned counsel are of minor variance and they would not affect the main core of the prosecution case.

It is also contended by the learned counsel for appellants that if the evidence of P.Ws. 1 and 2 is to be accepted that all the accused participated in the offence, the learned Sessions Judge having given the benefit of doubt to A8 to A14, the same should have been extended to the present appellants. Impliedly he has argued that the evidence of P.Ws. 1 and 2 has to be disbelieved on the ground of "falsus in uno falsus in omnibus".

We are unable to accept the said contention, because in a situation like this, it is the duty of the court to closely scrutinize the statement and if possible, to separate falsehood from truth. The lower court has given benefit of doubt to A8 to A14, because the presence of these accused has not been mentioned specifically in Ex.P.1. On the other hand, the names of the present accused with fathers' names have been specifically stated in Ex.P.1. The lower court observed that the names of A8 to A14 have not been stated in the F.I.R and as such they were acquitted. On this aspect, it is pertinent to refer to a decision reported in the case of "Sucha Singh v. State of Punjab, 2003 AIR SCW 3984 wherein the Apex Court has held as follows:

"To the same effect is the decision in The State of Punjab Vs. Jagir Singh, Baljit

Singh and Karam Singh, and Lehna Vs. State of Haryana, . Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false is one thing, false in every thing). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient or prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (see Nisar Ali Vs. The State of Uttar Pradesh, . Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurcharan Singh and Another Vs. State of Punjab, . The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab and Another Vs. The State of Madhya Pradesh, an Ugar Ahir and Others Vs. The State of Bihar, . An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available

course to be made is to discard the evidence in toto. (See *Zwinglee Ariel Vs. State of Madhya Pradesh*, and *Balaka Singh and Others Vs. The State of Punjab*, . As observed by this Court in *State of Rajasthan Vs. Smt. Kalki and Another*, , normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi and Others Vs. State of Bihar*, . Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned".

10. Therefore the evidence of P.W.1 is consistent right from the lodging of Ex.P.1 till he gave evidence in the court with regard to the involvement of A1 to A7.

It is also contended by the learned counsel for appellants that it is difficult for the witnesses to identify the accused during nighttime. We are unable to accept the same, because all the accused are known to P.Ws.1 and 2 prior to the incident. P.W.1 saw the accused taking the deceased from his house and later he was tied to a pole. As seen from the rough sketch, the electric pole is situated near the scene of occurrence. No doubt P.W.1 did not state to the Police that a bulb was burning at the time of incident, but the electric pole was situated. It is reasonable to draw inference that the bulb would be burning during nighttime. Even otherwise, it is not that difficult for P.Ws. 1 and 2 to identify the accused during dusk time, as they are known persons.

P.W.2 is the injured witness. P.W.5 examined P.W.2 on 13.11.1998 and found (1) an abrasion near outer angle of right eye 2 x 2 cms, red in colour; (2) an abrasion over right cheek 2 x 2 cms, red in colour; and (3) an abrasion over lower part of shin of left leg 5 x 1 cms, red in colour. No doubt he was not either examined by the Doctor immediately or sent to treatment by the Police when he went to Police Station, but that cannot be a ground to disbelieve his evidence with regard to sustaining of injuries. The fact that P.W.2 sustained injuries as stated by P.W.5 and as mentioned in Ex.P.5-wound certificate are not shown to have been caused during the same transaction in which the deceased sustained injuries. It is not suggested to P.W.2 that he sustained injuries in some other manner and at some other place. Simply because he was not examined by the Doctor immediately, it cannot be a ground to disbelieve his evidence that he sustained injuries when the medical evidence is completely in corroboration with evidence of P.W.2.

11. It is also contended by the learned counsel for appellants that the conduct and behaviour of P.W1. who is no other than the brother of deceased is very

strange and unnatural, because he did not make any attempts to save the life of the deceased while the deceased was taken from the house or resist the accused, or give any report to the police while deceased was taken from his house. P.W.1 gave an explanation stating that he did not interfere or resist, as the accused were armed with weapons and that if he intervened, they would not spare him and take him to task as they were armed with weapons.

It is also contended by the learned counsel for Appellants that independent witnesses were not examined and therefore no reliance can be placed on the evidence of P.Ws.1 and 2 who are interested witnesses. There is no evidence to show that the incident was witnessed by an independent witness of that locality, so as to disbelieve the evidence of P.Ws.1 and 2 on the ground of non-examination of such independent witness.

12. P.W.1 within two hours after the incident went to the Police Station and lodged Ex.P.1 report. According to P.W.1 he got scribed Ex.P.1 report through Mr.Vibhu Patnaik. He informed about the incident in Oriya language and the said Patnaik reduced the same into writing in Telugu language as he knows both languages. P.W.6 is the person who received Ex.P.1 complaint. He stated that on 12.11.1998 while he was present in the Police Station, P.W.1 presented Ex.P.1 complaint which was in Telugu. Therefore the contents of Ex.P.1 were translated into Oriya through his Constable who knows Oriya and Telugu and as P.W.1 admitted the contents, then he registered the case. It is not specifically suggested to him that P.W.1 did not bring Ex.P.1 at 9 p.m. on 12.11.1998 or that Ex.P.1 was brought into existence after due deliberations. The fact that P.W.6 received Ex.P.1 report from P.W.1 is not disputed or denied. So the prompt lodging of F.I.R. rules out the possibility of false implication of the accused, unless there are strong circumstances to indicate that P.W.1 had got enmity or grouse against the accused. There was no such grouse or enmity surfaced during the course of cross-examination of witnesses. P.Ws. 1 and 2 were subjected to grueling cross-examination and in the entire conspectus of their evidence in cross-examination, defence has not been able to spin out any infirmity or discrepancy which may render them unworthy of reliance. The learned Sessions Judge after elaborate discussion of evidence placed reliance on the evidence of P.Ws.1 and 2 and held that there are no grounds to disbelieve the evidence of P.Ws. 1 and 2.

The other contention raised by the learned Counsel for Appellants is that the lower court having come to the conclusion that the material on record was not sufficient to come to the conclusion that the appellants had an intention to kill the deceased and that the act of the appellants definitely fell either under the second or third or fourth category of Section 300 IPC should have convicted the accused u/s 304 Part-I IPC.

13. The learned counsel for Appellants contended that the lower court gave a finding that the appellants had no intention to kill the deceased and the act of appellants definitely falls either under Category-II, III or IV of Section 300 IPC

and the finding of the trial court that causing of injuries to the deceased by Accused 1 to 7 would amount to murder within the meaning of Section 300 IPC.

Section 299 IPC reads that whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

14. In view of Section 300 IPC, except in the cases covered by the five exceptions mentioned therein, culpable homicide is murder. It is well known that if the death is homicidal in nature and is covered by any of five exceptions of Section 300 IPC, then such culpable homicide shall not amount to murder. Section 304 IPC provides punishment for culpable homicide not amounting to murder and draws distinction in cases where the act by which the death is caused is done, intention of causing death and where the act is done with knowledge that it is likely to cause death but without any intention to cause death. To put it otherwise, if the act of the accused falls within the language of clauses I, II and III of Section 300 IPC and is covered by any of the five exceptions, it will be punishable under the first part of Section 304. The case does not fit into any one of the exceptions to Section 300 IPC so as to convict them u/s 304 Part-I IPC. The contention of the learned counsel for appellants on this aspect is wholly untenable. The finding of the learned Judge is erroneous and contrary to the evidence on record.

We confirm the conviction and sentence of learned Sessions Judge and the appeal is accordingly dismissed.