
(2017) 04 RAJ CK 0102
In the Rajasthan High Court
Case No : 768 of 2012

Jitu @ Jitendra S/o Chhoga Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 374\(2\)](#) - Power to examine the accused - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 302](#)

Citation : (2017) 04 RAJ CK 0102

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : Dharendra Singh, Rajeev Bishnoi, J.P. Choudhary, Surendra Surana

Judgement

1. The instant appeal has been filed by accused appellants, Jitu @ Jitendra and Laxman, both son of Chhoga Ram, under Section 374 (2) of Cr.P.C . assailing the validity of judgment dated 31.07.2012 passed by learned Addl. Sessions Judge, Abu Road, District Sirohi in Session Case No.18/2010, whereby the learned trial court convicted the appellants for the offences under Section 302 and 302 / 34 of IPC and passed following sentence:

Appellant- Jitu @ Jitendra:

302 of IPC Life Imprisonment & fine of Rs.5000/-. In default of payment of fine, to further undergo six months- imprisonment. Appellant- Laxman:

302/34 of IPC Life Imprisonment & fine of Rs.5000/-. In default of payment of fine, to further undergo six months- imprisonment.

2. Succinctly stated, the facts of the case are that on 26.03.2010, complainant Rawta Ram (PW.4) made a telephonic call at Police Station Abu Road, and informed that accused, Jitu and Laxman inflicted injury by knife to my son, Vijay and killed him. The police registered the said information in "Rojnamcha" vide Ex.P/22 and immediately rushed to the place of occurrence, where complainant, Rawta Ram (PW.4) father of deceased, Vijay, submitted a written report (Ex.P/12) alleging therein that I am running a restaurant in the name of "Shrinath Restaurant" at Ambaji Road, where me and my son, both are doing hotel business. Today, in the night at about 09.45 PM, when I was sitting in the parking near my restaurant and my son, Vijay and one waiter, Mohan were standing in front of restaurant. We all were waiting for the bus to go home, that that time, accused Jitu & Jitendra and Laxman came there on a motorcycle, being driven by Laxman and Jitu @ Jitendra was the pillion rider. When they reached near my son, Vijay, they come down from the motorcycle and accused, Laxman caught hold my son, Vijay and accused Jitu @ Jitendra inflicted injury by knife on the left temporal region. Due the said injury Vijay fell down, the waiter Mohan of the restaurant shouted, therefore, the accused ran away from the place of occurrence. As per complainant, they took injured Vijay to the hospital for treatment, however, Vijay expired in the hospital. The complainant further stated that there is some enmity due to hotel business, therefore, both the accused caused injury to my son and killed my son, Vijay. It was thus prayed that action may be taken against them for committing offence of murder.

3. Upon the aforesaid complaint, an FIR No.69/2010 was registered at Police Station Abu Road, for the offences under Sections 302 and 302 / 34 of IPC and after arresting both he

accused thorough investigation was conducted and charge sheet came to be filed against both the accused appellants in the court of learned Judicial Magistrate, Abu Road, from where the case was committed for trial to the court of learned Sessions Judge, Sirohi, but later on, it was transferred to the court of Addl. Sessions Judge (FT), Abu Road for trial. The case was further transferred to the court of Addl. Sessions Judge, Abu Road for further trial vide order dated 01.04.2011.

4. The learned trial court after providing an opportunity of hearing to the accused appellants framed charge against appellant Jitu @ Jitendra for the offence u/s 302 and 34 of IPC but later on, the charge against accused appellant, Jitu @ Jitendra was amended and charge u/s 302 of IPC was framed against him because there was specific allegation against him for inflicting injury by knife to the deceased. The accused appellants, however, denied the charges and prayed for trial.

5. The learned trial court granted an opportunity to the prosecution to lead evidence. In support of prosecution case, statements of 21 prosecution witnesses were recorded and after recording the oral evidence of prosecution the statements of accused appellants were recorded u/s 313 Cr.P.C . in they denied the allegations levelled by the prosecution witnesses and said that they have been falsely implicated in this case and said that no recovery was made from them. In defence, three witnesses were produced before the court viz. DW.1 Sajjan Singh, DW.2 Ganpat Singh and DW.3 Sabir Khan and thereafter final arguments were heard by the trial court.

6. The learned trial court after evaluating the evidence led by the parties proceeded to convict both the accused appellant, Jitu @ Jitendra for the offence u/s 302 and accused appellant, Laxman

under Section 302 / 34 of IPC and passed sentenced against them for life imprisonment with fine of Rs.5000/- with default stipulation to undergo six months" additional imprisonment.

7. In this appeal filed by the appellant, the learned counsel for the appellants submitted that there is no allegation of the witnesses against the accused appellant, Laxman for inflicting any injury to the deceased but falsely implicated him upon the false allegation that he has caught hold of deceased, Vijay, and thereafter accused appellant, Jitu @ Jitendra inflicted injury by knife, which resulted into his death.

8. Mr. Dharendra Singh, learned counsel appearing on behalf of appellants further submit that upon perusal of statements of eye witnesses viz. PW.2, Mohan, PW.4 Rawta Ram (author of FIR) and PW.11, Bhanwar Singh, it is clear that there is no allegation in their statements for inflicting any injury to the deceased, the only allegation is that accused appellant, Laxman was driving the motorcycle and Jitu was sitting behind him, having a knife in his hand and in the incident accused Laxman caught hold the deceased, Vijay and accused Jitu @ Jitendra caused injury by knife but no witnesses have supported the testimony of these interested witnesses because other eyewitnesses of the incident viz. PW.8 Praveen Kumar PW.9 Bheema Ram, PW.10, Siraj Hussain turned hostile. Out of three eye witnesses, PW.2 Mohan was employee at the restaurant of the complainant, Rawta Ram, is the father of deceased. It is also pointed out that learned trial court disbelieved the presence of PW.11 Bhanwar Singh, therefore, both the witnesses are interested witnesses and it is nowhere stated by them about the motive of the incident. Thus, the finding of conviction recorded by the trial court against the accused appellant, Laxman for the offence u/s 302/34 IPC is not

sustainable in law and, therefore, deserves to be quashed.

9. Learned counsel for the appellants further argued that appellant, Laxman, is real brother of the accused Jitu @ Jitendra, therefore, falsely implicated by the complainant, whereas he was not even present at the time of occurrence. It is also argued that witnesses of recovery of blood stained clothes viz. PW.6 Chandra Shekhar and PW.7 Vishnu Kumar turned hostile, therefore, prosecution has failed to prove the recovery of blood stained clothes, the independent eye witnesses PW.8 Praveen Kumar, PW.9 Bheema Ram and PW.10 Siraj Husain turned hostile and did not support the prosecution case. Therefore, it is a case in which the appellant, Laxman has been implicated by the prosecution on the basis of testimony of interested witnesses, which is not corroborated by the independent witnesses. There is no allegation for inflicting any injury on the person of deceased by appellant, Laxman, therefore, finding of guilt recorded against the accused appellant Laxman deserves to be quashed and he is entitled to be acquitted from the charge levelled against him.

10. With regard to the accused appellant, Jitu @ Jitendra, learned counsel for the appellant submitted that accused Jitu @ Jitendra is not disputing the incident of inflicting one injury by him but submits that even if entire prosecution story is accepted, then also, no offence u/s 302 of IPC is made out in absence of any evidence of motive/intention, but learned trial court relied upon the testimony of PW.4 Rawta Ram (complainant and father of deceased) and waiter PW.2 Mohan, who were said to be present at the place of occurrence held that one injury by knife was inflicted by accused appellant, Jitu @ Jitendra to the deceased. However, a bare perusal of the statements of these two witness revealed that there is no evidence of motive except allegation of business rivalry,

therefore, even if the testimony of these witnesses is accepted, then also, conclusion of the trial court holding the appellants guilty for committing offence under Section 302 of IPC, is not sustainable for the reason that recovery of clothes has not been proved by the prosecution. It is also argued that during investigation two knives were recovered upon information given by accused appellant, Jitu @ Jitendra, but as per allegation levelled by eye witnesses PW.2, Mohan, PW.4, Rawta Ram only one injury was inflicted by accused appellant Jitu @ Jitendra, therefore, the finding of guilt recorded by the trial court against the appellant for offence under Section 302 of IPC is totally erroneous.

11. Learned counsel for the appellants invited our attention towards the fact that no question was put to the accused Jitu @ Jitendra in his statements recorded u/s 313 Cr.P.C . with regard to FSL report, wherein the blood was said to be found upon the knife(s) and clothes alleged to be recovered. Further, as per prosecution case, first information for recovery of knife u/s 27 of the Evidence Act was given vide Ex.P/30 by accused appellant, Jitu @ Jitendra at 12.45 PM on 29.03.2010 and in pursuance of that a knife was recovered vide Ex.P/21 and another information was given u/s 27 of the Evidence Act on 02.04.2010 in pursuance of that another knife was recovered vide Ex.P/7 at 05.25 PM on 02.04.2010 and as per prosecution case blood was found upon both the knife. Learned counsel for the appellants further submitted that at the time of arrest, nine injuries were found upon the body of accused appellant, Jitu @ Jitendra, and he was medically examined by the Medical Officer of Primary Health Centre, Aru Board on 28.03.2010 at 05.00 PM and Injury Report (Ex.P/28) was prepared, in which nine injuries were recorded by

the doctor but there is no explanation of the prosecution who has inflicted those injuries upon the body of accused appellant, Jitu @ Jitendra, therefore, it is obvious that true facts are not produced before the court.

12. According to learned counsel for the appellants, in the investigation if two knives were recovered vide Ex.P/7 and P/21 and blood was found upon both the knives, then question arose which knife was used by the accused Jitu @ Jitendra, therefore, recovery of weapon is seriously doubtful. There is no corroboration of the testimony of eye witnesses by the independent witness but it can be said that in the incident took place on 26.03.2010 in front of shop of the complainant, one injury was caused by the accused appellant Jitu @ Jitendra without intention which is cause of death. Thus, it is prayed that accused appellant, Lamxan may be acquitted from the charge levelled against him because there is no allegation for inflicting any injury to the deceased and conviction of appellant, Jitu @ Jitendar may kindly be altered from the offence u/s 302 to offence 304 Part-I of IPC and sentence imposed against him may be reduced to the sentence already undergone.

13. In support of his arguments, the learned counsel for the appellants invited our attention towards following judgments of the Hon''ble Supreme Court and this court, viz.

1. State of HP Vs. Ram Pal reported in (2006) 2 SCC (Cri.) 165
2. Arjun Vs. State of Maharashtra reported in 2012 Cr.L.R. (SC) 506.
3. Buddhu Singh Vs. State of Bihar (now Jharkhand) reported in 2011 Cr. L.R. (SC) page 519
4. Chandra Mohan Vs. State of Rajasthan reported in 2006(2) Cr.L.R. (Raj.) 1208.

14. Per contra, learned Public Prosecutor and learned counsel

appearing on behalf of complainant vehemently argued that it is a case in which both the accused appellants, Jitu @ Jitendra and Laxman, came on the spot armed with sharp edged weapon (knife) with intention to cause death in front of shop of the deceased, Vijay and inflicted two injuries by knife due to those injuries, deceased Vijay died. It is argued that there is no strength in the argument of the learned counsel for the appellants that accused appellant, Laxman, has been falsely implicated in this case only for the reason that he is brother of main accused, Jitu @ Jitendra. In fact, he has actively participated in the commission of offence which is evident from the testimony of two witnesses viz. PW.2 Mohan and PW.4, Rawta Ram, who were present at the time of occurrence. The accused appellant, Laxman came on the spot while driving the motorcycle along with main accused, Jitu @ Jitendra and it was the appellant, Laxman who caught hold of deceased, Vijay and other accused, Jitu @ Jitendra inflicted injury to the deceased. As per postmortem report (Ex.P/27) two injuries were found upon the body of deceased Vijay, out of which, Injury No.1 was stab wound and Injury No.2 was incised wound and as per opinion of the Medical Board, the cause of death of deceased was hemorrhagic shock due to heart and left lung injury upon the injuries were ante mortem in nature.

15. Learned counsel for the complainant and Public Prosecutor argued that it is a case in which prosecution has proved beyond reasonable doubt that both the accused, Laxman and Jitu @ Jitendra, came on the spot on motorcycled and caused injuries to the deceased, Vijay. Thus, looking to the participation of both the accused appellants in commission of crime, the learned trial court has rightly arrived with the finding of guilt u/s 302 of IPC against the appellant, Jitu @ Jitendra and u/s 302/34 of IPC against

appellant, Laxman. With regard to argument of learned counsel for the appellants that at the time of arrest, number of injuries were found upon the body of accused appellant, Jitu @ Jitendra it is submitted that those injuries were superficial injuries, therefore, there was no question to explain those injuries by the prosecution.

16. Learned Public Prosecutor and learned counsel for the complainant vehemently argued that it is a case in which a young boy was murdered by the appellants, causing injury by sharp weapon in front of eye witnesses and this fact has been proved by the trustworthy witnesses of prosecution, PW.2, Mohan and PW.4, Rawta Ram. Therefore, there is no question to accept the plea of appellants for acquittal of appellant No.2, Laxman and to alter the conviction of accused appellant, Jitu @ Jitendra from the offence u/s 302 of IPC to the offence u/s 304 Part-I of IPC . According to them, there is no force in this appeal, therefore, the same be dismissed.

17. After hearing the learned counsel for the parties, we have perused the entire evidence of prosecution, more specifically, testimony of eye witnesses and considered the arguments advanced by the learned counsel for the parties.

18. First of all it is required to be observed that out of six eye witnesses, the learned trial court has relied upon the testimonies only two witnesses PW.2, Mohan, who was the employee and working in the restaurant of deceased and complainant, and PW.4, Rawta Ram, author of FIR and father of deceased, so as to hold accused appellants guilty, however, the learned trial court disbelieved the presence of PW.11, Bhanwar Singh, who was said to be the eye witnesses. Similarly, other three independent eye witnesses viz. PW.8 Praveen Kumar PW.9 Bheema Ram, PW.10, Siraj Hussain turned hostile and did not support the prosecution

case. The PW.6 Chandra Shekhar and PW.7 Vishnu Kumar, witnesses of recovery of blood stained clothes of Laxman, turned hostile and did not support the prosecution case. It is worthwhile to observe that two knives were recovered in the investigation by the Investigating Officer and upon both the knives blood was found and those knives were sent for chemical analysis to the FSL for ascertaining the blood group and blood upon two knives. It is admitted position that no question was put to the appellants in their statements recorded under Section 313 of Cr.P.C. with regard to FSL report dated 21.04.2010 nor is proved by any witness.

19. In the judgment learned trial court gave categorical finding that out of 21 prosecution witnesses, testimony of three witnesses, PW.3, Hansraj and PW.13, Narayanlal and PW.15 Sanjay, is based upon here say evidence, therefore, cannot be relied upon and it is specifically held that presence of PW.11- Bhanwar Singh was not disclosed at the place of occurrence by the complainant and other eye witnesses Mohan, therefore, his testimony cannot be relied upon to hold accused appellants guilty. The learned trial court convicted the accused appellants only on the basis of testimony of two witnesses PW.2, Mohan who was admittedly working as waiter in the hotel of complainant and testimony of complainant PW.4, Rawta Ram, in which allegations was levelled for inflicting injury to the deceased by the accused appellant Jitu @ Jitendra and alleged that accused Laxman caught hold the deceased.

20. Upon considering the statement of above two eye-witnesses, and the fact that post mortem of the dead body of deceased was performed by the Medical Board in which PW.20, Dr. M.L. Hindoniya, who was one of the Member of the Board stated after

examination of the body of deceased the postmortem report (Ex.P/27) was prepared by the Medical Board all the Members of the Medical Board put their signatures upon the postmortem report. As per postmortem report, two injuries were found upon the body of deceased and out of two injuries, Injury No.1 was stab wound and Injury No.2 was incised wound and as per opinion of the Medical Board, the cause of death was excessive blood loss. The following statement is given by the PW.20, Dr. M.L.

Hindoniya, on oath, which reads as under: -

"VERNACULAR MATTER OMITTED"

21. With regard to medical examination of accused appellant, Jitu @ Jitendra, it is stated by the Dr. M.L. Hindoniya (PW. 20) that upon examination of the body of accused Jitu @ Jitendra nine injuries were found upon his body, which reads as under: -

"VERNACULAR MATTER OMITTED"

22. Admittedly, there is no explanation of the prosecution for the injuries found upon the body of accused appellant, Jitu @ Jitendra, but we cannot loose sight of the fact that in the written report (Ex.P/12) submitted by complainant, Rawta Ram (PW.4) it is specifically alleged that only one injury was caused by accused appellant, Jitu to the deceased Vijay. It is also stated by the PW.4 Rawta Ram that accused appellant, Laxman caught Vijay and thereafter, Jitu @ Jitendra inflicted said injury. Although PW.4, Rawta Ram is father of deceased, Vijay but his presence cannot be disbelieved at the place of occurrence. The complainant PW.4- Rawta Ram, specifically disclosed in the written complaint (Ex.P/12) that Mohan (PW.2) was also standing in front of hotel on the road side alongwith his son Vijay and he was sitting in the parking but there is no disclosure of any motive to cause death of deceased Vijay except some dispute going on with regard to hotel

business between the parties, no specific reason is assigned for motive or intention of accused appellants for causing death of deceased, but in the written report (Ex.P/12) there is disclosure of the presence of PW.2, Mohan at the place of occurrence none else, therefore, the testimony of PW.2 Mohan cannot be disbelieved.

23. In view of above evidence, the learned trial court has rightly relied upon the testimony of two eye witnesses of PW.2 Mohan, waiter of the restaurant and PW.4 Rawta Ram father of deceased, so as to accept the occurrence. But, in absence of any evidence of motive or intention to commit murder of deceased, erroneously held them guilty for offence under Sections 302 and 302 / 34 of IPC, instead of offence under Section 304 Part I IPC and Section 304 Part I, read with Section 34 of IPC.

24. In the case of State of HP Vs. Ram Pal reported in (2006) 2 SCC (Cri.) 165, the Hon''ble Supreme Court, gave following finding upon the identical facts. The paras nos. 5 to 8 of the said judgment are as follows: -

"5. Having perused the record for the limited purpose of finding the nature of offence, we see that it is clear from the evidence of PW- 3 himself that he and Jaiwant consumed liquor before going to the tea stall of the respondent herein to demand the money which was due to him and when they reached there the deceased went inside the tea stall and started quarreling with the accused persons. During the said quarrel it is stated that the deceased called the accused persons as "cheat" and "beiman" and the quarrel then spilled outside the stall at which point of time a stick that was carried by Choudhary Ram was snatched by PW- 3, in the process Choudhary Ram got injured and fell down. Here we must notice the case of the defence is that PW- 3 assaulted Choudhary Ram which caused him facial injury and noticing his father being assaulted the respondent intervened and assaulted PW- 3 first with a knife and then assaulted the deceased twice on his back. 6. On the facts of this case whichever version we take it is clear that it is the deceased and PW- 3 after consuming liquor went to the tea stall of the accused. When the deceased went inside and abused the accused, the said verbal quarrel then spilled outside the shop when Choudhary Ram was injured on the fact either intentionally or otherwise by PW- 3. It is at that time the respondent stabbed PW--3 and the deceased. From the above facts stand proved are (a) the deceased went with PW- 3 to the shop of the

accused; (b) picked up an argument during which he abused the accused; (c) Choudhary Ram was injured first and then the respondent stabbed PW- 3 and the deceased; (d) injury was inflicted on the back of the deceased. 7. On the above facts we are of the opinion that the High Court was justified in altering the sentence from Section 302 IPC to Section 304 Part I IPC. We are also in agreement with the finding of the High Court that sentence of over 4 years" RI suffered by the respondent meets the ends of justice. 8. For the reasons stated, this appeal fails hence dismissed."

25. The Hon"ble Apex Court in the case of Arjun Vs. State of Maharashtra reported in 2012 Cr.L.R. (SC) 506 held that if motive is absent and there was allegation of prosecution for inflicting one injury may be that too by force, then also no offence under Section 302 IPC is said to be made out because offence cannot travel beyond offence under Section 304 Part I IPC. The relevant para No.17 of the said judgment is quoted herein below for ready reference: -

"17. Considering the background facts as well as the fact that there was no premeditation and the act was committed in a heat and passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, we are of the view that this case falls under the forth exception to Section 300 IPC and hence it is just and proper to alter the conviction from Section 302 IPC to Section 304 Part I IPC and we do so."

26. In the case of Buddhu Singh Vs. State of Bihar (now Jharkhand) reported in 2011 Cr. L.R. (SC) page 519 the Hon"ble Supreme Court gave following verdict in paras nos. 6 to 9, which reads as under:

"6. Mr. Ajit Pandey, learned counsel appearing for the accused persons contended that firstly this was a case of single blow and the blow could not have been intended to be given on the head though it did land on the head. Mr. Pandey further argued that if the intention was to commit the murder, then the accused persons, more particularly accused Buddhu Singh would have repeated the assault which he actually and admittedly did not repeat.

7. Mr. Pandey further contended that once the injury was unintended, the offence could be converted into Section 304 Part II IPC from Section 302 IPC because the accused ought to have the knowledge that a single assault by an axe could result into the death of the deceased.

8. Mr. Manish Mohan, learned counsel appearing for the State supported the judgment and contended that the injury was serious enough and was on a very vital part i.e. head and resulted in the fracture of frontal bone and the death was almost instantaneous, though in the hospital.

9. Considering the overall material, we are of the view that there is hardly anything on record which can be said against the accused Ledwa Singh and Balchand

Singh though the common intention on their part could be attributed since they had done the over act of grappling with and pinning down the deceased. Now, seeing his father and brother had been grappling with the deceased, the accused Buddhu Singh dealt an axe blow which could not be said to be intended towards the head. It could have landed anywhere. However, it landed on the head of the deceased. Therefore, the element of intention is ruled out. Again the defence raised on behalf of the accused that there could not have been the intention to commit the murder of the deceased is justified by the fact that the accused Buddhu Singh did not repeat the assault. Under the circumstances, we feel that the prosecution has been able to establish the guilt of the accused persons under Section 304 Part II I.P.C."

27. In case of Chandra Mohan Vs. State of Rajasthan reported in 2006(2) Cr.L.R. (Raj.) 1208, this Hon''ble Court gave the following verdict, which reads as under:

"5. Learned Public Prosecutor took us to the evidence on record and canvassed that Chandra Mohan ought to have been convicted under Section 302 IPC in view of the nature of injury sustained by the deceased. We have considered the submissions. From the scheme of the Penal Code we notice that it is the degree of probability of death which determines whether a culpable homicidal is of the gravest medium or the lowest degree. The word "likely" in Clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The word "bodily injury.... Sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature ". Whenever the Court is confronted with the question whether the offence is "murder" or culpable homicide not amounting to murder" on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether he accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299 . If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of

the definition of "murder" contained in Section 300 . If the answer to the question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder" punishable under the first Part of Section 304, Penal Code.

6. To invoke Exception 4 of Section 300 IPC for requirements must be satisfied:-

- (i) it was a sudden fight;
- (ii) there was no premeditation;
- (iii) the act was done in the heat and passion; and
- (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

In the instant case all these ingredients are found present. The appellant inflicted solitary blow. His act appears to us sudden and unpremeditated. There was no previous enmity and the appellant did not take undue advantage of the situation. Taking an overall view of the incident, we are inclined to think that the appellant was rightly granted the benefit of exception 4 to Section 300 IPC. On the facts and circumstances of the case looking to the fact that the appellant had undergone the confinement for a period of more than six years it would be in the interest of justice to reduce the sentence from ten years and fine to the period already undergone by the appellant in confinement."

28. In the light of aforesaid judgments and upon assessment of entire evidence it emerges from the facts that only one injury was caused by the appellant Jitu @ Jitendra and two knives were recovered in the investigation. Upon both the knives and clothes, blood was found, however, as per statements of two witnesses, only one injury was inflicted by accused appellant, Jitu @ Jitendra on the person of deceased, Vijay and there is no allegation for repeated blow to the deceased. Looking to the injuries sustained by the deceased and circumstances as enumerated above, conclusion is irresistible that death was caused by the acts of the accused done with intention to causing such bodily injury as is likely to cause death. It is settled principal of law that if there is

intent and knowledge for causing bodily injury, likely to cause death, then, the same would be a case of Section 304 Part I and if it is only a case with knowledge and not intention to cause death and bodily injury, then the same would fall under Section 304 Part-II IPC. But as per the facts and circumstances of the case, it cannot be said that appellants had any intention to cause death of deceased when they committed the act in question. Thus in entirety, considering the facts and scenario of the case in hand, legal evidence on record and the background and legal principal laid by the Hon"ble Supreme Court in the cases referred supra, inevitable conclusion is that the act of the accused appellants was not a cruel act because accused appellant Jitu @ Jitendra himself sustained nine injuries, which were not explained by the prosecution. Therefore, offence would squarely come within the first part of Section 304 of IPC and the appellants would be liable to be convicted for the said offence. Therefore, the learned trial court has committed an error in holding accused appellant, Jitu @ Jitendra, guilty for offence under Section 302 IPC and appellant, Laxman for offence u/s 302/34 of IPC . We thus deem it appropriate to alter the finding of guilt from offence under Section 302 of IPC to offence under Section 304 Part I of the IPC against the appellant, Jitu @ Jitendra and also alter the finding of guilt recorded against appellant, Laxman, from the offence u/s 302/34 to offence u/s 304 Part-I/34 of IPC .

29. It is also worthwhile to consider that in this case, deceased Vijay, who was young son of complaint Rawta Ram, lost his life leaving behind him his old aged father, therefore, we deem it appropriate to direct the District Legal Service Authority, Sirohi to consider the case for grant of compensation to the complainant Rawta Ram under the Rajasthan Victim Compensation Scheme,

2011 and grant compensation to the father, Rawta Ram, after making necessary enquiry in this regard within two months.

30. In the case of Ankush Shivaji Gaikwad Vs. State of Maharashtra reported in (2013) 6 SCC 770 the Hon"ble Supreme Court, held that at the time of deciding any criminal case it is the duty of the Court to take care of damages suffered by the victim. In this case, the accused appellants are not challenging the incident and ready to pay compensation, therefore, we deemed it appropriate to pass an order of compensation also to the wife of deceased Sahab Ram who is actual victim of quarrel. The Hon"ble Apex Court gave direction that it is the mandatory duty of the Court to apply its mind in every criminal case so as to grant compensation or to refuse compensation to the victim. The relevant paragraph 66 of the said judgment reads as under:-

"66. To sum up: While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/ refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/ her family."

31. In view of above discussion and considering the judgments cited at Bar by the learned counsel for the parties, the instant criminal appeal is partly allowed. The conviction of accused appellant, Jitu @ Jitendra recorded by the learned Addl. Sessions

Judge, Abu Road, District Sirohi vide judgment dated 31.07.2012 in Session Case No.18/2010 for the offence u/s 302 of IPC is hereby altered to Section 304 Part-I of IPC and, so also, the finding of guilt recorded against accused appellant, Laxman, from the offence u/s 302/34 of IPC is altered to offence u/s 304 Part-I/34 of IPC . The sentence of both the appellants is hereby reduced from life imprisonment to ten years" rigorous imprisonment, however, the order of fine, is hereby maintained.