
(2021) 12 BOM CK 0101
In the Bombay High Court
Case No : Criminal Appeal No. 608 Of 2018

Machhindra @ Avinash S/O. Ganpat Teltumde	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 18-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 300, 300II, 302, 302I, 303 I, 304, 304I, 304II

Citation : (2021) 12 BOM CK 0101

Hon'ble Judges : M. S. Sonak, J;P. V. Ganediwala, J

Bench : Division Bench

Advocate : R. M. Daga, T. A. Mirza

Final Decision : Dismissed

Judgement

M. S. Sonak, J

1. Heard Shri R. M. Daga, learned counsel for the appellant, and Shri T. A. Mirza learned counsel for respondent/State.

2. The challenge in this appeal is to the judgment and order dated 19.06.2018 made by learned Principal District and Sessions Judge, Nagpur in Sessions Trial No. 513/2014 convicting the appellant for the offense under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay a fine of Rs. 5000/-, in default to suffer rigorous imprisonment for six months.

3. The prosecution version is that there was some dispute between the families of the deceased-Sudhir and the appellant-Machhindra over their children's clothing. Therefore, on 12.05.2014, Machhindra came to Sudhir's house and enquired with Sudhir's wife Kalpana (PW1) whether Sudhir was at home and if so to send Sudhir out. After Sudhir came out, there was a quarrel between Sudhir and Machhindra on the road and Machhindra murdered Sudhir by inflicting no less than eight grievous injuries with a knife that he had carried with him. According to the prosecution, this murderous assault was witnessed entirely by Shubhangi (PW2), the daughter of Kalpana's sister, and partly by Adesh (PW3),

Kalpana, and Sudhir's son.

4. Shri Daga, learned counsel for the appellant submitted that the prosecution has failed to prove beyond reasonable doubt that the appellant was indeed the author of the crime. He submitted that Adesh (PW3) has not witnessed the incident and Shubhangi (PW2) is not a reliable witness. He submitted that the spot panchnama does not refer to Bhushan Popali's (PW4) house at all though Shubhangi (PW2) claims to have witnessed the incident from the terrace of his house. There is no evidence on record to establish that the incident could be seen from the terrace of Bhushan Popali's (PW4) house. There is evidence about the injuries sustained by the appellant and Shubhangi (PW2), who claims to be an eyewitness, failed to give any satisfactory account about the genesis of the incident and these injuries. He submitted that learned Sessions Judge has also totally ignored evidence of Dr. Harshda (PW10) about the injuries sustained by the appellant on his person. Shri Daga, based on all these, submitted that it is impossible to say that the prosecution, in this case, has established beyond reasonable doubt the involvement of the appellant in the crime.

5. Shri Daga in the alternate submitted that evidence on record does not make out a case under Section 302 of the IPC. He submitted that there is a clear time gap between Sudhir going out to meet the appellant and the alleged assault by the appellant on Sudhir. He submitted that there is clear evidence about a scuffle between the two. He submitted that there is evidence about injuries sustained by the appellant during the scuffle. He submitted that the so-called motive, in this case, is too trivial to warrant any serious consideration. He submitted that there is no evidence of pre-meditation. He submitted that evidence on record, at the highest, points out to sudden fight in the heat of passion and upon a sudden quarrel. He submitted that there is no evidence about the appellant having taken undue advantage and acted cruelly or unusually. He submitted that intention to commit death was singularly absent and therefore, and in the alternative, a punishment under Section 304, Part-II of the IPC and not under Section 302 of the IPC could have been imposed.

6. Shri Daga relied on the case of Atul Thakur Vs. State of Himachal Pradesh [(2018) 2 SCC 496] to contend that repeated eight knife blows by the accused resulting in the death of the deceased is not sufficient for not to convert the conviction under Section 302 of the IPC to that under Section 300, Part-II of the IPC. He relied upon the case of Sukhbir Singh Vs. State of Haryana [(2002) 3 SCC 327] and Gali Venkataiah Vs. State of Andhra Pradesh [(2008) ALL MR (Cri) 561 (S.C.)] to submit that in circumstances similar to those in the present case, the Hon'ble Supreme Court convicted the accused under Section 304 instead of Section 302 of the IPC.

7. Shri Daga also relied upon the case of Vijay Ramkrishan Gaikwad Vs. State of Maharashtra [(2012) 11 SC 592] to submit that merely because the accused might have gone to the house of the deceased armed with a knife, it is not sufficient to sustain a conviction under Section 302 instead of Section 304 of the

IPC. He also relied upon *State of Madhya Pradesh Vs. Ramniwas* [2018 All SCR (Cri) 362], *Suresh Maruti Shinde (Waikar) Vs. State of Maharashtra* [2018 All MR (Cri) 3328] and *Somling Ramanna Patrigida & Ors. Vs. State of Maharashtra* [2012 All MR (Cri) 1577] to submit that failure to explain the injuries on the person of the accused amounts to suppression of genesis of the offense and this aspect is to be taken into account for determining whether the case of the accused falls within Exception 4 to Section 300 of the IPC.

8. Shri Mirza, learned A.P.P. defended the impugned judgment and order based on reasoning reflected therein. He submitted that this was a case of pre-meditation because otherwise there was no reason for the appellant to go to the house of the deceased armed with a dangerous weapon i.e. knife. He submitted that there is no evidence about any sudden fight in this case. He submitted that the appellant, in this case, has inflicted no less than eight injuries on the person of the deceased with the knife, and out of these three injuries proved to be fatal injuries. Based on the medical evidence on record, Shri Mirza submitted that this is clearly a case where the appellant took undue advantage of the situation and acted most cruelly and unusually. Therefore, submitted that this is a case where the prosecution has proved beyond reasonable doubt its case and further, the evidence on record does not warrant the conversion of the conviction under Section 302 of the IPC to Section 304 of the IPC. He relied on the case of *Pulicherala Nagaraju @ Nagaraja Reddy Vs. State of A.P.* [(2006) 11 SCC 444] in support of his submission.

9. The rival contentions now fall for our determination.

10. In this case, there is no doubt, whatsoever about the death of the deceased being homicidal. The oral evidence and the documentary evidence in the form of post-mortem report etc. leave no manner of doubt that the deceased died of the eight stab injuries inflicted upon him on 12.05.2014 at or about noon. Therefore, this aspect of the death being homicidal has been proved beyond reasonable doubt by the prosecution.

11. According to us, there is ample evidence on record that establishes that the appellant, has inflicted these stab injuries on the deceased on 12.05.2014 at about noon resulting in his demise. The learned Sessions Judge has quite correctly marshaled the evidence to evaluate the same and has found that the appellant was the author of the crime. This finding warrants no interference in this appeal.

12. Even, we have carefully evaluated the evidence on this aspect independently, and see no good reasons to take a different view in the matter. There is direct evidence and medical evidence to corroborate the same, assuming that such corroboration was necessary. We refer to this material in brief to sustain this finding.

13. Kalpana (PW1), wife of the deceased, has deposed about how the appellant came to call her husband Sudhir at about noon on 12.05.2014, stating that he

had some urgent work with Sudhir. She then woke up Sudhir and after Sudhir went out, she resumed her activities in the kitchen. She then came out after she heard a noise of quarrel from outside and when her son Adesh (PW3) told her that there was a quarrel involving her husband Sudhir and the Appellant. She then rushed on the road and saw her husband Sudhir lying in front of Shri Popali's house. She even saw the appellant standing there but, the appellant fled away after she pelted a stone at him. She then took her husband to Rachana Hospital but, the Doctor declared him dead on arrival. Kalpana (PW1) deposed to the incident in which the appellant's wife taunted her daughter Sharddha about wearing socks in summer. She stated that there was a quarrel and one Shri Shende from the colony pacified both the parties and resolved the quarrel. She even stated that the appellant carried a grudge and therefore, murdered her husband Sudhir.

14. Subhangi (PW2) was the daughter of Kalpana's sister and was staying with Kalpana(PW1) during the summer vacation. She deposed that she knows the appellant, who was residing in the same colony, and the appellant on 12.05.2014 between 11.30 to 11.45 a.m. came in front of their house. Shubhangi (PW2) has deposed that the appellant inquired about the deceased being at home and upon being told that he was sleeping told Kalpana (PW1) that he had urgent work. Kalpana (PW1) woke up Sudhir, who then went to talk with the appellant on the road.

15. Subhangi (PW2) has deposed that since there was a dispute between her family and family of the appellant, she and Adesh (PW3)- son of the deceased and Kalpana went to the terrace of the house of Bhushan Popali to watch what would happen. She deposed that first, they went to the terrace of the house of Suresh Gundala, which is adjacent to the house of Bhushan Popali from there went directly to the terrace of Bhushan Popali, which was attached.

16. Shubhangi (PW2) then deposed that she and Adesh (PW3) were watching the events develop and saw that the appellant was talking to the deceased in loud voice and thereafter, a scuffle took place between both of them. Upon seeing this, Adesh (PW3) ran down the stairs to report this to his mother Kalpana. Shubhangi (PW2) stated that she was standing on the terrace watching the events unfold and she saw the appellant push the deceased due to which the deceased fell to the ground. Shubhangi (PW2) then deposed that the appellant gave knife blows to the deceased upon his chest and stomach. She further deposed that upon seeing this, she too ran down the stairs and went near the spot, where the deceased was lying. Kalpana (PW1) and Adesh(PW3) were also reached the spot shouting and, the appellant thereupon fled away.

17. Shubhangi (PW2) also deposed about the quarrel between Kalpana and the wife of the appellant over Sharddha wearing socks during summer. She also deposed about the intervention of Shri Shende in resolving this dispute and pacifying them both. Shubhangi (PW2) even identified the knife used in the incident.

18. There is nothing in the cross-examination of Shubhangi (PW2) sufficient to make any dent in her clear and cogent deposition about the appellant being the author of the crime. Shubhangi (PW2) is an eye-witness to the incident and her evidence inspires confidence. Her evidence is corroborated by the testimony of Kalpana(PW1) and Adesh (PW3), who witnessed at least a part of the incident. The prosecution also examined Bhushan Popali (PW4) and his evidence also supports Shubhangi's (PW2) version about access to the terrace of Popali's house through the terrace of Suresh Gundala's house. Bhushan Popali (PW4) also supports Shugbhangi (PW2) and Adesh's (PW3) version of being able to see the spot of the incident from the terrace of his house.

19. If the spot of the offense panchnama and sketch is perused then, there is a clear reference to Bhushan Popali's house. Simply because there is no icon to indicate the house of Bhushan Popali in the sketch attached to the spot of offense panchnama, there is no ground to infer any lapse in the investigation or to suggest that no such house exists. All this material has been quite correctly assessed by the learned Sessions Judge. Upon independent assessment by us, we are quite satisfied that the prosecution has proved beyond reasonable doubt the complicity of the appellant in the homicidal death of the deceased in the present matter.

20. In this case, though Shri Daga is somewhat justified in contending that the learned Sessions Judge has ignored the testimony of Dr. Harshda (PW10) concerning the injuries on the person of the appellant, this is certainly not a case where the prosecution has withheld any evidence or suppressed the genesis of the offense. The prosecution examined Dr. Harshda (PW10), who deposed about the contusion with suspected fracture over the right-hand shift ulna to the appellant. She stated that the injury was simple in nature and was caused by a hard and blunt object. She also deposed that these injuries were seven and half hours old when she examined the appellant on 12.05.2014 at about 7.45 p.m.

21. Dr. Harshda (PW10) deposed that injury on the person of the appellant was possible by way of jerk while he was assaulting some person with the right hand and with a knife. In her cross-examination, she admitted that such injury is possible by a blunt and hard object. She also admitted that such injury is possible if the person falls on the ground touching the right-hand shift ulna to the ground. She also admitted that such injury is possible if the appellant was assaulted with a stick on the right-hand shift ulna.

22. The testimony of Dr. Harshada (PW10), no doubt, establishes that some simple injuries were found on the person of the appellant. Her evidence may also suggest that such injuries have their genesis to the incident that took place at about noon on the said date, in which the deceased was killed by the appellant. However, this evidence of Dr. Harshda (PW10) also suggests that the said injuries were a result of a jerk suffered by the appellant when he was assaulting some person with a knife held in his right hand. This evidence also establishes that such injuries were possible if the appellant were fell on the ground touching his

right-hand shift ulna to the ground. Therefore, the evidence of Dr. Harshda (PW10) neither detracts from the prosecution version nor based upon the same, Shubhangi (PW2) can be styled as an unreliable witness as suggested by Shri Daga.

23. In the case of Somling Ramanna Patrigida (*supra*), the Division Bench of this Court was concerned with the assault on one Nagappa by several persons, and the prosecution alleged that Somling gave a knife blow to Nagappa and pulled out his intestine. The Division Bench found that several injuries were noticed on the person of the accused himself and the prosecution offered no explanation for the same. The Division Bench found that though the injuries sustained by some of the accused persons were neither simple nor superficial but, were quite grievous, and yet there was no explanation from the prosecution about the same. It is in these circumstances, the Division Bench concluded with the defense of the accused persons that they acted in self-defense or a free fight deserved to be accepted and the Exception 4 of Section 300 of the IPC is extended to them.

24. In the present case, the appellant, has neither raised any plea of self-defense nor does the evidence on record suggest even remotely that the appellant may have acted in self-defense. This is also not a case of any free fight and such a plea was not even advanced before us. Besides, Dr. Harshda (PW10) has clearly deposed that injuries were simple and therefore, the decision of the Hon'ble Supreme Court in the case of Lakshmi Singh Vs. State of Bihar [(1976) 4 SCC 394] would apply. Therefore, the decision in Somling Ramanna Patrigida (*supra*) can be of no assistance to the appellant in this case.

25. In Suresh Maruti Shinde (*supra*), the Division Bench found that serious injuries were suffered by the accused persons, and even though the eye-witnesses claimed to have seen the entire incident from beginning to end and there was no whisper to explain how such serious injuries were suffered by the accused person. It is in this state of facts that the Division Bench held that the prosecution suppressed the genesis and origin of occurrence and therefore, it would not be safe to rely on the prosecution version. Again, such circumstances, are not to be found in the present matter.

26. In the case of Khalid Abdul Razak Vs. State of Maharashtra [2012 All MR (Cri) 2157], again the serious injuries on the person of the accused were not at all explained by the prosecution and in this circumstance, the Division Bench ruled that the prosecution withholding the real genesis could not be ruled out. Ultimately, the Division Bench converted the conviction from that under Section 302 of the IPC to 304, Part-I of the IPC.

27. In State of M. P. Vs. Ram Niwas (*supra*), the Hon'ble Supreme Court found that the prosecution failed to explain the injuries sustained by the accused persons in the same incident. Based on this, the Hon'ble Supreme Court observed that there was some doubt cast on the credibility of the prosecution

witnesses. Having regard to the evidence of Dr. Harshda (PW10), no such circumstance exists in the present case and therefore, there is no reason to question the credibility of the prosecution version in this matter.

28. Therefore, we are quite satisfied that in this case, the prosecution has proved beyond reasonable doubt the involvement of the appellant in the incident that took place on 12.05.2014 at about noon, resulting in the death of the deceased due to the stab injuries inflicted by the appellant with the knife which he was carrying, on the person of the deceased.

29. Therefore, now the only question which remains for consideration is whether the appellant is entitled to benefit of Exception 4 to Section 300 of the IPC to hold that though this is a case of capable homicide, it is nevertheless of culpable homicide not amounting to murder. This exception provides that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage of the situation and acted in a cruel or unusual manner.

30. The evidence on the record does not make out any case that the appellant had not acted with premeditation. There is no explanation forthcoming about the appellant carrying with him the dangerous weapon like a knife to the house of the deceased, where the appellant had gone to accost the deceased about the fight that took place earlier between their wives or between their families. This is a case, where the appellant went to the house of the deceased and called him outside the house, and the evidence on record establishes that the appellant was armed with a knife with which he inflicted no less than eight stab injuries on the person of the deceased. Based on this evidence, therefore, we find it difficult to agree with Shri Daga that there was no pre-meditation involved in this matter.

31. Shri Daga however relied upon the case of Vijay Ramkrishan Gaikwad (supra) to point out that even in that case, the accused had carried a knife to the house of the deceased and after an exchange of abuses leading to a scuffle between the deceased and his brother on one side and accused and his four accompanied on other, the accused took out a knife, stabbed and grievously injured the deceased Pawar.

32. We have carefully perused the ruling in Vijay Ramkrishan Gaikwad (supra) and according to us, the same will not assist the case of the present appellant because the position of facts in the said decision was quite different from the facts proved in the present case. There was clear evidence about the absence of premeditation and that was a case of a free fight between the two groups and there was evidence that the accused, as well as the family of the deceased, were engaged in the business of breeding pigs. There was, therefore, nothing unusual for them to carry knives with them. Besides, in that case, the accused inflicted only one knife blow to the deceased and himself received injuries on his fingers as was certified by Dr. Sushant Mahale (PW2). Based on this evidence, the Hon'ble Supreme Court converted the conviction from Section 302 to 304, Part-I

of the IPC

33. The evidence on record in this case also establishes that the appellant took undue advantage of the situation of his having gone prepared with a knife to confront the deceased on the fateful day. The evidence on record also establishes that the appellant, in this case, acted cruelly and unusually. Shubhangi (PW2) has deposed in clear terms as to how the appellant pushed the deceased on the ground and after he fell, gave knife blows upon the chest and stomach of the deceased when he was quite helpless. This evidence is fully corroborated by the medical evidence, both oral as well as documentary.

34. Dr. Jaideo Borkar (PW7), who conducted a post-mortem in this matter has deposed that on external examination, he found the following injuries on the dead body:-

"[i] Stab injury 1 cm x 0.3 cm x bone deep, oblique, both angle acute, margin clean directing anteroposteriorly, present on left zygomatic area.

[ii] Stab injury 2 cm x 0.5 cm x cavity deep, horizontal, both angles acute, margins clean cut, directing anteroposteriorly, present on left side of chest at 4th intercostal space just medial to midclavicular line.

[iii] Stab injury 1.5 cm x 0.5 cm x cavity deep, horizontal, both angles acute, margins clean cut, directing anteroposteriorly present on epigastric region of abdomen.

[iv] Stab injury 1.5 cm x 0.5 cm x cavity deep, horizontal, both angles acute, margins clean cut, directing anteroposteriorly present on left lumbar region of abdomen.

[v] Stab injury 1.5 cm x 0.5 cm x muscle deep, oblique, both angles acute, margins clean cut, directing lateral to medially present on posterior of left arm, 2 cm above elbow joint.

[vi] Stab injury 2 cm. 0.3 x muscle deep, oblique, both angles acute, margins clean cut, directing posterior to anteriorly, present on exterior aspect of left forearm, 1 cm below elbow joint.

[vii] Stab injury 2.5 cm x 0.7 cm x muscle deep, oblique, both angles acute, margins clean cut, directing posteromedially present on exterior aspect of left forearm, 3 cm above wrist joint.

[viii] Incised wound 3 cm x 0.5 cm x bone deep, vertical, present on dorsal aspect of left hand little finger."

35. Dr. Borkar (PW7) deposed that injury nos. 2, 3, and 4 with its internal damage mentioned in column nos. 20 and 21 of the post-mortem report were individually sufficient in the ordinary course of nature to cause death. He deposed that probable cause of death is an injury to the vital organs. He deposed that injuries in the post-mortem report with its internal damage could be caused

by a knife, which was attached at the spot and sealed after it was shown to him in the course of the evidence. He deposed that he had issued the weapon report after examining and analyzing this knife, which he refers to as 'Gupti'.

36. The injuries suffered by the deceased, in this case, militate against Shri Daga's contentions about the appellant having taken no undue advantage or having not acted cruelly or unusually. The appellant, in this case, inflicted no less than eight injuries on the helpless deceased after the deceased was put to the ground by the appellant. The injuries described as numbers 2, 3, and 4 are very serious and they were inflicted on the vital organs of the deceased. The weapon of assault is also a dangerous weapon and the appellant carried this weapon with him when he went to confront the deceased. Based on all this, we are afraid that the appellant has failed to bring the case within Exception 4 of Section 300 of the IPC.

37. Shri Daga, however, submitted that even Shubhangi (PW2) spoke about "scuffle". True, Shubhangi (PW2) did speak about a scuffle between the appellant and the deceased. Also, this is a case where some simple injuries were found on the person of the appellant. However, the evidence on record does not suggest this to be a case of sudden fight in the heat of passion upon a sudden quarrel. In a case where the assailant seeks to stab his victim, surely, it is not unreasonable that the victim will offer some resistance. Now, such resistance again always be styled as some scuffle. Similarly, even if the accused suffered some simple injuries while his victim is resisting assault, that by itself, will not be sufficient to either question the credibility of the prosecution version or to bring the case within Exception 4 of Section 300 of the IPC.

38. Besides, to bring the case within this Exception, it is not sufficient that the evidence on record only points to some sudden fight or sudden quarrel, there is a further requirement of the absence of pre-meditation and the accused has not taken undue advantage or acted cruelly or unusually. Unless all these circumstances are cumulatively established that there is no question of the accused claiming benefit of Exception 4 of Section 300 of the IPC.

39. In the case of Pulicherla Nagaraju (supra), the Hon'ble Supreme Court after considering various rulings on the subject, including that of Virsa Singh Vs. State of Punjab [AIR 1958 SC 465] has held that the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304, Part I or 304, Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to

ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention

40. The Hon'ble Supreme Court in the case of Pulicherala Nagaraju (supra) noted that the weapon, which the accused was carrying was dangerous. There was the previous enmity and the deceased was unarmed, there was no indication of any cause or any apprehension on the part of the accused that the deceased may attack him and the stabbing was with great force causing injury on the vital part of the body, sufficient in the ordinary course of nature to cause death. Based on all these, the Hon'ble Supreme Court concluded that the intention to cause death or at all having intention of causing bodily injury will sufficient in the ordinary course of nature was made out and therefore, the circumstance to bring the case under Exception 4 of Section 300 of the IPC did not exist.

41. The decision in Pulicherala Nagaraju (supra) quite entirely supports the contention of Shri Mirza, learned A.P.P. having regard to similar circumstances that are borne out from the evidence on record in the present case. Applying the law laid down in Pulicherala Nagaraju (supra), therefore, we feel that this is not a fit case to extend the benefit of Exception 4 of Section 300 of the IPC to the appellant in the present case.

42. The decision in the case of Gali Venkataiah (supra) turns on the facts which are in no manner similar to the facts of the case borne out of the evidence on record in the present matter. Similarly, the facts in Atul Thakur (supra) are also quite different and there was no evidence whatsoever about pre-meditation. The accused, immediately after the incident of stabbing showed some contrition upon recovering his senses and took the deceased to the hospital. The incident took place when the appellant and the deceased gathered at the house of one of the accused persons for a drinking party arranged at the instance of the deceased. All of them consume drinks at the time of the incident. Quarreling started when

the deceased while smoking blew smoke on the face of the appellant, who got enraged. The Hon'ble Supreme Court did hold that number of wounds caused by itself could not be a decisive factor and that all other factors have to be cumulatively considered. Upon cumulative consideration of all such factors, the Hon'ble Supreme Court converted the conviction from that under Section 302 of IPC to Section 304, Part-II of the IPC.

43. Sukhbir Singh (*supra*) also turns on facts that have no similar facts whatsoever with the facts of the present case. Again, in this case, there was evidence that after the deceased had fallen down, the appellant did not inflict any injury on his person, when he was in a helpless position. There was no evidence of the accused acting cruelly or unusually. Such circumstances are not found in the present case concerning the present appellant.

44. For the aforesaid reasons, we see no good reason to interfere with the impugned judgment made by the learned Sessions Judge in this case.

45. This appeal is hereby dismissed. There shall be no order as to costs.