

(2019) 07 DEL CK 0254

In the Delhi High Court

Case No : Criminal Appeal No. 466 Of 2004

Mohd. Riazuddin

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 299, 300, 302, 304, 304A, 304I, 304II, 338
Code Of Criminal Procedure, 1973 — Section 174, 313

Citation : (2019) 6 AD(Delhi) 393 : (2019) 3 JCC 2085

Hon'ble Judges : Hima Kohli, J; Vinod Goel, J

Bench : Division Bench

Advocate : Sumeet Verma, Rahul Keshav, Mahinder Partap Singh, Aashaa Tiwari

Final Decision : Partly Allowed

Judgement

Hima Kohli, J

1. The appellant has preferred the present appeal against the judgment dated 27.03.2004 passed by the court of the learned Additional Sessions Judge,

Delhi in SC No.4/099, arising from FIR No.172/1999, registered at Police Station: Bara Hindu Rao, whereunder he has been convicted under Section

302 IPC for having murdered his cousin, Mohd. Usman. Vide order on sentence dated 27.03.2004, the appellant has been sentenced to undergo

rigorous imprisonment for life and pay a fine of Rs.5,000/- and in default thereof, suffer simple imprisonment for a period of three years.

2. The facts of the case lie in a narrow compass. The deceased, Mohd. Usman was the cousin brother of the appellant. They and their families were

living next doors to each other. While the deceased and his three brothers alongwith their family members were jointly residing at House No.1081, Gali

Laslase Wali, Kishan Ganj, Bara Hindu Rao, Delhi, the appellant and his three

brothers (sons of one Mirazuddin, uncle of the deceased) were living with their families in the adjoining House No.1080. The prosecution version is that the appellant was jobless. As the house of the deceased was visible from the window of the appellant's house, the latter used to constantly peep into the house of the deceased and stare at his three young nieces. Despite repeated requests made to the appellant to forbear from peeping into the house of the deceased, he did not pay any heed. On the fateful day, i.e., on 20.08.1999 at about 6:45 AM, when the deceased was getting ready to proceed to his shop at Sadar Bazar, he found the appellant yet again standing at his window. When the deceased asked the appellant to move away, the latter started abusing him and exhorted him that if he had the guts, he should come down. At this, the deceased rushed downstairs and simultaneously, the appellant came downstairs from his house armed with a gupti (thin knife). The appellant assaulted the deceased by giving him 3-4 blows on his chest with the gupti. On hearing the screams of the deceased, his brother, Mohd. Arfin, who happens to be the maker of the FIR, rushed downstairs and tried to save his brother. At this, the appellant also tried to unsuccessfully assault him with the gupti but in the meantime, the neighbours gathered at the spot. Mohd. Arfin rushed his brother to St. Stephens Hospital in a TSR, where he was declared as brought dead. The wheels of criminal justice were set into motion on recording of DD No.2A.

3. The police rushed to the scene of crime, where the appellant was found present still holding the blood stained gupti in his hand. Public persons who apprehended him, handed him over to the police. The investigation was conducted by Inspector Raj Beer Malik, Additional SHO, PS: Bara Hindu Rao and on completing the investigation, a challan was filed in the Court. Vide order dated 11.01.2000, the appellant was charged for committing an offence punishable under Section 302 IPC to which he pleaded not guilty and claimed trial. The prosecution examined 16 witnesses in all to bring home the guilt of the appellant.

PUBLIC WITNESSES

4. The prime public witnesses in the instant case were Mohd. Arfin (PW-14) and Mohd. Raisuddin (PW-10). Mohd. Arfin (PW-14), brother of the deceased, Mohd. Usman at whose instance the FIR was registered, is an eye witness to the incident. He deposed that on 20.08.1999, in the early

hours, at 7:45 AM, his brother, Mohd. Usman was getting ready to go to his shop situated at Subzi Mandi when he saw the appellant standing at the window of his house that overlooks their house. When his brother objected to the appellant standing and staring from his window, the latter started abusing him and challenged him that if he had the guts, he should come down. At this, Mohd. Usman rushed downstairs and so did the appellant. The appellant immediately attacked Mohd. Usman with a gupti and gave him 3-4 blows on his chest. On hearing the cries of Mohd. Usman, PW-14 rushed downstairs to save his brother. At this, the appellant started assaulting him as well but he managed to avoid the gupti blows. He stated that in the meanwhile, the people in the locality gathered at the spot. With the help of his neighbours, PW-14 rushed his brother in a TSR to St. Stephens Hospital. His statement as recorded by the police is marked as Ex.PW14/A. He deposed that a sketch of the blood stained gupti (Ex.PW13/B) was prepared in his presence and the weapon was seized vide seizure memo (Ex.PW10/A). Blood stained earth was also seized by the IO in his presence vide seizure memo (Ex.PW14/B).

5. The second public witness is Mohd. Riazuddin who appeared as PW-10. He deposed that he was related to both, the appellant and the deceased, who were the sons of his wife's paternal uncle; that he was residing alongwith the appellant in the same building. While the appellant was occupying the first floor, he was residing on the ground floor. He stated that on 20.08.1999, he had witnessed the deceased catching hold of the left wrist of the appellant, who had a gupti in his right hand; that the appellant was unable to free his wrist from the clutches of the deceased; that he had seen all this happening while standing in the staircase of their house; that in the meantime, the police reached the spot and overpowered the appellant, extricated the gupti from his hand and took it in their possession. The sketch of the gupti was prepared by the police officers in his presence and it was seized vide seizure memo (Ex.PW10/A). The blood stained earth and earth control were also seized from the spot in his presence vide seizure memo (Ex.PW10/B). PW-10 was also a witness to the personal search of the appellant conducted vide search memo (Ex.PW10/C). He identified the gupti recovered from the appellant and seized by the police, marked as Ex.P1.

MEDICAL AND SCIENTIFIC EVIDENCE

6. Coming next to the medical evidence, Dr. Manish Kulshreshtha (PW-7), Senior Resident, Department of Surgery, Hindu Rao Hospital, who had examined the appellant on 20.08.1999, proved the MLC of the deceased marked as Ex.PW7/A. Dr. Rishi Kant (PW-8), Senior House Officer

(Pediatric), St. Stephens Hospital, Delhi, who was working as the Casualty Medical Officer on the relevant date, deposed that he had medically

examined the deceased who was brought to the hospital by his relatives and had declared him as brought dead vide Ex.PW8/A. Dr.Sarvesh Tandon

(PW-11), posted as Senior Resident in the Mortuary, Subzi Mandi, had conducted the post mortem on the body of the deceased and proved the post

mortem report as Ex.PW11/A. The said doctor opined as follows:-

â??Opinion:- Cause of death is hemorrhagic shock due to injury to right lung and liver by sharp edge weapon by other party. All the injuries are ante

mortem in nature. All the injuries are singularly and collectively fatal and sufficient to cause death in ordinary course of nature. Time since death is

about 7-8 hours approx. Blood samples are preserved and handed over to police IO in person. My report is Ex.PW11/A and bears my signature at

point A.â??

7. PW-11 also proved the report regarding the weapon of offence i.e., the gupti described as a sharp edge elongated weapon with two edges as

Ex.PW11/B wherein he opined that injuries No.1, 2 and 3 mentioned in the post mortem report were possible with the said weapon or a similar

weapon. The scientific evidence in the shape of the FSL report dated 29.10.1999 revealed that the human blood found on the clothes of the appellant

matched with the blood group of the deceased, i.e., Group â??Bâ??.

POLICE WITNESSES

8. W/SI Bhupinder Kaur (PW-2), posted as the Duty Officer at Police Station: Bara Hindu Rao on the relevant date, deposed that Ct. Jaibir (PW-4)

had brought a rukka sent by ASI Ratan Lal (PW-13) at the Police Station, based whereon she had recorded FIR No.172/1999. She had also recorded

DD Entry No.6A regarding registration of the FIR and of sending intimation of the incident to senior police officers and the area Magistrate. Copy of

the FIR was proved by her as Ex.PW2/A and copy of DD Entry No.6A was proved as Ex.PW2/A.

9. The I.O., Inspector Raj Beer Malik (PW-16) deposed that on receiving

information from the hospital that the injured was declared as brought dead, he arrived there and found that ASI Ratan Lal was already present alongwith SI Shiv Raj (PW-15). After giving necessary instructions to ASI Ratan Lal (PW-13), the IO went to the scene of crime alongwith his staff, where SI Shiv Raj (PW-15) and another police personnel were present alongwith the appellant. He stated that the Crime Team had also reached the spot for inspection and tried to lift chance prints from the handle of the weapon of offence, gupti but no chance prints were found. Photographs of the spot were taken. The IO said that he took the gupti (Ex.P-1) from the appellant, prepared its scaled plan (Ex.PW13/B) and sealed it in a parcel vide seizure memo (Ex.PW10/A), duly witnessed by a public witness and SI Shiv Raj (PW-15). The exhibits from the spot including blood stained earth, earth control, blood stained cotton etc. were seized vide seizure memos (Ex.PW10/B and PW14/B). The appellant was sent with SI Shiv Raj (PW-15) to Hindu Rao Hospital for collecting his blood sample and preserving his blood stained clothes. The IO deposed that he conducted proceedings under Section 174 Cr.P.C. (Ex.PW16/A) and later on, arrested the appellant; that the blood stained clothes of the appellant and his blood samples were seized vide seizure memo (Ex.PW5/A); that a scaled site plan of the spot was prepared by the Draftsman, SI Mahesh Kumar (PW-5) and marked as Ex.PW16/B; that the post mortem of the body of the deceased was conducted at the Mortuary, Subzi Mandi and the clothes of the deceased and other samples were seized vide seizure memos (Ex.PW15/B and PW16/C); that the dead body of the deceased was identified by a relative, Hazi Mohd. Saiphuddin (PW-1) and handed over to the family members. All the case property was deposited with the MHC(M), HC Partap Singh (PW-3).

10. HC Partap Singh (PW-3) the Record Keeper posted at Police Station: Bara Hindu Rao, deposed about receiving various case exhibits in sealed parcels from the IO, Inspector Raj Beer Malik (PW-16) and of handing over some of the parcels for obtaining reports from the Mortuary, Subzi Mandi and the CFSL. The said witness also produced the original Register, wherein the movement of the case exhibits was entered. The said entries are marked as Ex.PW3/A. The witness deposed that as long as the case property had remained in his custody, the same was intact. SI Mahesh Kumar (PW-5), the Draftsman was posted at the Crime Branch, Delhi proved the

scaled site plan prepared by him at the instance of the IO and marked as Ex.PW5/A. Ct. Pradeep Singh (PW-6) posted at Police Station: Bara Hindu Rao, deposed that he was handed over the reports by W/SI Bhupinder Kaur (PW-2) for delivering the same to the area Magistrate and senior police officers. HC D.K. Tyagi (PW-9) had collected the case property from the Record Keeper and deposited the same with the FSL, Malviya Nagar for obtaining a report. Ct. Ranjeet (PW-12) stated that he had gone to FSL, Malviya Nagar to collect the FSL report and the case property, which he deposited in the Malkhana and handed over the report to the SHO (Ex.PX). The remaining police witnesses, namely, Ct. Jaibir (PW-4), ASI Ratan Lal (PW-13) and SI Shiv Raj (PW-15) deposed about the investigation on the same lines as the IO, Inspector Raj Beer Malik (PW-16).

11. On completion of the prosecution evidence, an opportunity was afforded to the appellant to lead evidence but he declined to do so. His statement was recorded under Section 313 Cr.P.C., wherein he stated that he was innocent and he had been falsely implicated in the case by the police and that he had no concern with the case.

12. After examining the evidence brought on record including the ocular evidence of the eye witnesses, the medical evidence including the MLC and the post mortem report of the deceased and the scientific evidence, the learned ASJ held that the prosecution had been successful in proving through the sequence of circumstances duly corroborated by the eye witnesses that it was the appellant who had murdered the deceased. Resultantly, he was convicted under Section 302 IPC.

ARGUMENTS

13. Mr. Sumeet Verma, learned counsel for the appellant has not questioned the findings returned in the impugned judgment on merits but confined his argument to a plea that having regard to the peculiar facts of the case and the sequence of events as had unfolded on the fateful day, the appellant ought to have been convicted under Section 304 Part II IPC and not under Section 302 IPC. He urged that it is evident from the facts and circumstances brought on record that the incident had taken place at the spur of the moment. It was not as if any of the nieces of the deceased were present at the spot on the day when the deceased had ticked off the appellant for standing at the window and staring. In fact, it was the unprovoked

comment from the deceased that had riled the appellant, who exhorted the former to come downstairs. When the deceased was coming downstairs, in the heat of the moment, the appellant had grabbed a gupti lying in his house and had also rushed downstairs. This sudden quarrel was not pre-mediated and the act of the appellant of inflicting three injuries on the chest of the deceased was done in the heat of passion, whereafter he remained rooted at the spot and did not take any undue advantage or act in a cruel manner. It was thus submitted that the appellant is entitled to the benefit of Exception 4 to Section 300 of the IPC. In support of his submission, learned counsel cited the following decisions:-

(i) Surinder Kumar vs. Union Territory, Chandigarh; AIR 1989 SC 1094

(ii) Devku Bhikha vs. State of Gujarat; (1996) 11 SCC 641

(iii) Gurpal Singh vs. State of Punjab; (2017) 2 SCC 365

14. Per contra, Ms. Aashaa Tiwari, learned APP contended that in the present case, the provocation, if any, came from the side of the appellant and not the deceased. It was the appellant, who had exhorted the deceased and challenged him to come downstairs. When the deceased did descend, the appellant rushed out from his house with a gupti in his hand and gave three fatal blows on the vital parts of the body of the deceased, i.e., the chest region, which the doctor opined in the post mortem report, "were singularly and collectively fatal and sufficient to cause death in the ordinary course of nature". She stated that not only the ocular and the medical evidence, even the scientific evidence went against the appellant, who is not entitled to any relief.

ANALYSIS & DISCUSSION

15. We have given our thoughtful consideration to the arguments advanced by learned counsels for the parties, critically examined the testimony of the witnesses as also the medical and scientific evidence brought on record.

16. The leitmotif of the arguments advanced by Mr. Sumeet Verma, learned counsel for the appellant is that the trial court erred in convicting the appellant under Section 302 IPC and that this is a case covered under Section 304 IPC, which provides punishment for culpable homicide not amounting to murder. For the purposes of ready reference, the said provision is reproduced hereinbelow:-

304. Punishment for culpable homicide not amounting to murder "Whoever commits culpable homicide not amounting to murder shall be

punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if

the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with

imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is

likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

17. A glance at the aforesaid provision shows that it casts a duty on the prosecution not only to prove the death of the person in question, but also to

prove that the said death was caused by the act of the accused and he knew that the said act was likely to cause death. That is to say that once it is

established that the accused has committed an act with knowledge that it is likely to cause death, but without an intention to cause death, then the

sentence imposed on him may extend to 10 years along with imposition of fine.

18. As Section 304 IPC does not define the expression, "culpable homicide not amounting to murder", it is necessary to fall back on Section 299

and 300 IPC that prescribe as follows:-

299. Culpable homicide- 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.

300. Murder - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention

of causing death, or-

Secondly- XXXX, or-

Thirdly- XXXX, or -

Fourthly,- XXXX, or-

19. As against the definition of culpable homicide provided in Section 299 IPC, Section 300 IPC defines the circumstances in which homicide is

murder and carves out five Exceptions thereto which state that culpable homicide will not be murder, if the act is done with the intention or knowledge

in the circumstances and subject to the conditions specified therein. The exceptions to Section 300 IPC, relevant in the present case read as below:-

Exception 1- When culpable homicide is not murder-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control

by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 2 - XXXX

Exception 3 - XXXX

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel

and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - XXXX

20. In a recent decision in the case of Jagraj Singh alias Rajan Bhaiya vs. State of Delhi reported as (2019) DLT 756 (DB), a Division Bench of this

Court of which one of us (Hima Kohli, J.) was a member, had the occasion to examine the law in circumstances where the accused therein had

caused the death of the deceased in a hit and run case and pleaded that he ought not to have been indicted under Section 302 IPC but for the

commission of a lesser offence under Section 304 Part II of the IPC and it was observed as follows:-

22. Looking at the circumstances in which the accident had taken place in the case before us, we find force in the submission made by learned

counsel for the appellant that the appellant did not have any intention to cause death but at the same time, it cannot be denied that he had knowledge

that his act may result in death. In the case of Prakash Chand vs. State of H.P. reported as (2004) 11 SCC 381, the Supreme Court held as under:-

7. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender having

taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within

Exception 4, all the ingredients mentioned in it must be found. It is to be noted

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

These aspects have been highlighted in *Dhirajbhai Gorakhbhai Nayak v. State of Gujarat* (2003) 9 SCC 322. When the factual scenario is considered in the light of legal principles indicated above, the inevitable conclusion is that Exception 4 to Section 300 IPC is clearly applicable. (emphasis added).

23. In *Surinder Kumar vs. Union Territory, Chandigarh* reported as 1989 2 SCC 217, the Supreme Court had emphasised that what is important is that the occurrence must have taken place on account of sudden and unpremeditated fight and the offender had acted in a fit of anger, for being entitled to the benefit of Exception 4 to Section 300 IPC.

24. In *Ghapoo Yadav & Ors. vs. State of M.P.* reported as 2003 3 SCC 528, apart from highlighting the sudden accident without premeditation, the Supreme Court had observed that the respondent should not have taken undue advantage or acted in a cruel or unusual manner for claiming the benefit of Section 304 IPC. A similar view was expressed by the Supreme Court in *Mahesh vs. State of M.P.*, 1996 10 SCC 668; *Sukhbir Singh vs. State of Haryana*, 2002 3 SCC 327, *Vadla Chandraiah vs. State of A.P.*, 2006 13 SCC 587, *Shankar Diwal Wadu vs. State of Maharashtra*, 2007 12 SCC 518, *Jagriti Devi vs. State of M.P.*, 2009 14 SCC 771 and *Ankush Shivaji Gaikwad vs. State of Maharashtra*, 2013 6 SCC 770.

25. In *Alister Anthony Pereira vs. State of Maharashtra* reported as 2012 2 SCC 648, the Supreme Court highlighted the fact that criminal culpability

is determined by referring to what a person with reasonable prudence would have known. In the said case, the appellant had rammed his car over the pavement during pre-dawn hours thereby killing seven persons and causing injury to eight persons and he was convicted by the High Court for offence punishable under Sections 304 Part-II and 338 IPC. While answering the question as to whether his indictment under Section 304 Part-II IPC can co-exist with Section 338 IPC, the Supreme Court had held as follows:-

40. The question is whether indictment of an accused under Section 304 Part II and Section 338 IPC can coexist in a case of single rash or negligent act. We think it can. We do not think that the two charges are mutually destructive. If the act is done with the knowledge of the dangerous consequences which are likely to follow and if death is caused, then not only that the punishment is for the act but also for the resulting homicide and a case may fall within Section 299 or Section 300 depending upon the mental state of the accused viz. as to whether the act was done with one kind of knowledge or the other or the intention. Knowledge is awareness on the part of the person concerned of the consequences of his act of omission or commission indicating his state of mind. There may be knowledge of likely consequences without any intention. Criminal culpability is determined by referring to what a person with reasonable prudence would have known.

XXXX XXXXX XXXX

47. Each case obviously has to be decided on its own facts. In a case where negligence or rashness is the cause of death and nothing more, Section 304-A may be attracted but where the rash or negligent act is preceded with the knowledge that such act is likely to cause death, Section 304 Part II IPC may be attracted and if such a rash and negligent act is preceded by real intention on the part of the wrongdoer to cause death, offence may be punishable under Section 302 IPC.

26. In *State through PS Lodhi Colony, New Delhi vs. Sanjeev Nanda* reported as (2012) 8 SCC 450, the Supreme Court had reiterated the principles laid down in *Alister Anthony Pereira* (supra).

21. In the instant case, the evidence brought on record shows that on the relevant date, the appellant was no doubt standing at his window that overlooked the house of the deceased but was not ogling at his nieces, who were not even present at the spot. The sequence of events reveal that on

seeing the appellant standing at his window, the deceased had got annoyed and ticked him off by asking him to remove himself from there, which had in turn had enraged the appellant. Feeling insulted, the appellant exhorted the deceased to come downstairs and at the same time, he too rushed downstairs, picked up a gupti on the way, which he used to stab the deceased on his chest. The three wounds on the right side of the chest of the deceased, about 1 cm x 0.3 cm deep, proved fatal.

22. On taking an overall view of the incident, we are of the opinion that simply because there were three injuries on the vital parts of the body of the deceased, would not be a ground to deprive the appellant of the benefit of the exception to Section 300 of the IPC. In a recent decision in the case of State of Madhya Pradesh vs. Kalicharan & Ors. in CrI.Appeal No.1411/2013, decided on 31.05.2019, the Supreme Court has held that even if an injury is caused on a vital part of the body that proved to be fatal, it would not be a ground to disallow conviction under Section 304 Part I of the IPC but the precondition is that the Court must satisfy itself that the facts and circumstances of the case entitle the accused to conviction for a lesser offence. In the said case, the Supreme Court had ultimately altered the conviction of one of the accused from Section 304 Part II to Section 304 Part I of the IPC.

CONCLUSION

23. The genesis of the incident in the case in hand lies in a trivial issue, which led to a sudden spurt of anger between the parties. It is more a case where the appellant was overpowered by a fit of anger to such an extent that he was deprived of his self-control. Moreover, it was the deceased who had called out the appellant, thus provoking him. While rushing downstairs, he grabbed the weapon of offence and on seeing the deceased, stabbed him thrice. At the same time, having regard to the fact that the appellant used a double edged weapon like a gupti and used it to give three blows on the vital parts of the body of the deceased i.e., the chest, it cannot be denied that he had the intention of causing such bodily injury as he knew would be likely to cause the death of the deceased. In the facts and circumstances of the present case, the medical evidence brought on record and the manner in which the incident had occurred, it becomes abundantly clear that the crime committed by the appellant was in the heat of the moment. The

incident occurred out of the blues and escalated in minutes to the point that the appellant lost his self control and inflicted injuries on the deceased by

giving three successive blows within seconds. We are therefore of the opinion that the offence made out against the appellant is under Exception 1 to

Section 300 IPC. Accordingly, the impugned judgment of conviction, is modified and the offence committed by the appellant is scaled down from one

punishable under Section 302 IPC to one punishable under Section 304 Part I of the IPC.

24. Insofar as the order on sentence is concerned, as per the latest nominal roll on record, as on 22.08.2005, the appellant had undergone sentence for

a period of six years, three months and 20 days and earned remission for a period of three months and 20 days. The appellant is presently 47 years

old. He is earning a livelihood as a vegetable vendor. He is married and the sole bread earner in the family. He has no criminal background and his

conduct while in jail, was reported to be satisfactory. In our opinion, having regard to the time lag of two decades, the incident in question having taken

place in the year 1999, we are of the view that ends of justice would be adequately met if the appellant is sentenced to undergo rigorous imprisonment

for a period of seven years and pay a fine of Rs.5,000/- and in default of payment of fine, undergo rigorous imprisonment for a period of six months.

The order of sentence is accordingly modified as above.

25. The appellant's Bail Bonds are cancelled. He is directed to surrender before the court concerned/Superintendent Jail within two weeks from

today to serve the remaining part of his sentence.

26. The appeal is partly allowed and disposed of on the above terms. Trial court record be released forthwith alongwith a copy of the judgment.