
(2012) 09 CHH CK 0013
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1054 of 2007

Rameshwar and Another

APPELLANT

Vs

State of C.G.

RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 300, 302, 304, 323, 34

Citation : (2012) 4 CGLJ 591

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Advocate : Sharmila Singhai, for the Appellant; Rajendra Tripathi, Panel Lawyer, for the Respondent

Judgement

Radhe Shyam Sharma, J.—This appeal is directed against judgment dated 20-9-2007 passed by Additional Sessions Judge, Mungeli, District Bilaspur in Sessions Trial No. 407/ 2006. By the impugned judgment, accused persons/appellants Rameshwar and Sanwat have been convicted and sentenced in the following manner, with a direction to run the sentences of appellant Rameshwar concurrently:

Case of the prosecution, in brief, is as under:

On 3-5-2006, deceased Pardeshiram had gone to Bilaspur. On that day, appellant Rameshwar had entered the house of the deceased with intent to outrage modesty of wife of the deceased, namely, Amrikabai (PW-1). When the deceased returned home, Amrikabai (PW-1) narrated him the incident. The deceased went to the house of appellant Rameshwar. A dispute took place between appellant Rameshwar and the deceased. On 5-5-2006, at about 7 A.M., the deceased had gone to the field for attending call of nature. While returning, when he reached near the house of the appellants, the appellants and acquitted co-accused persons caught the deceased and assaulted him. The appellants assaulted the deceased with Lathi. The deceased sustained injury on his head. When Amrikabai

(PW-1) tried to save her husband (the deceased), appellant Rameshwar assaulted her also. The incident was witnessed by Manglinbai (PW-7) and Nawal Kishore (PW-2). The deceased was taken to Community Health Centre, Lormi, where he died. Amrikabai (PW-1) lodged Merg Intimation (Ex. P-1) in Police Station Lormi. First Information Report (Ex. P-2) was also registered there. The Investigating Officer reached CHC, Lormi, gave notice (Ex. P-5) to Panchas and prepared inquest (Ex. P-4) on the dead body of the deceased. The dead body of the deceased was sent to CHC, Lormi for post mortem examination vide Ex. P-24. Dr. Sagar Shukla (PW-10) conducted autopsy on the dead body of the deceased and gave his report (Ex. P-24), in which, he found--

- (i) lacerated wound, 3 cms. x 1/2 cm. x 1/2 cm. over frontal region of head underlying bone was fractured,
- (ii) contusion, 3 cms. x 2 cms. over right thigh,
- (iii) contusion, 3 cms. x 2 cms. over left thigh,
- (iv) contusion, 2 cms. x 1 cm. over right side of thorax, anterior aspect.

All the injuries were anti mortem. He opined that cause of death of the deceased was increase in intra cranial pressure due to extradural haemorrhage caused by head injury.

In further investigation, memorandum statement (Ex. P-8) of appellant Rameshwar and memorandum statement (Ex. P-9) of appellant Sanwat were recorded u/s 27 of the Evidence Act. At the instance of appellant Rameshwar, a Lathi was seized vide Ex. P-7. At the instance of appellant Sanwat, another Lathi was seized vide Ex. P-10. T-Shirt worn by appellant Rameshwar was seized vide Ex. P-6 and Shirt worn by appellant Sanwat was seized vide Ex. P-11. Plain soil and blood stained soil were seized from the place of occurrence vide Ex. P-21. Wrist watch and spectacles were seized from the place of occurrence near the dead body vide Ex. P-22. Identification of the wrist watch and the spectacles was conducted vide Ex. P-19. Amrikabai (PW-1) was also sent to CHC, Lormi for medical examination vide Ex. P-25A. Dr. Sagar Shukla (PW-10) examined her and gave his report (Ex. P-25), in which he found lacerated wound, 3 cms. x 1/2 cm. x 1/2 cm. on vertex of the head. She was referred to District Hospital, Bilaspur for radiological examination.

After completion of the investigation, charge sheet was filed against the appellants and other acquitted co-accused persons in the Court of Judicial Magistrate First Class, Mungeli, who, in turn, committed the case to the Court of Session, Bilaspur, from where, it was received on transfer by Additional Sessions Judge, Mungeli, District Bilaspur, who conducted the trial and convicted and sentenced the appellants as mentioned above.

2. Miss Sharmila Singhai, learned counsel for the appellants argued that Amrikabai (PW-1) is wife of the deceased. She is highly interested witness. Her evidence is not reliable. She further argued that in Merg Intimation (Ex. P-1),

overt act of appellant Sanwat is not mentioned. She further argued that the prosecution has not been able to prove that the appellants shared common intention to commit murder of the deceased. There is no clinching and reliable evidence against the appellants. She further argued that according to the prosecution, initially the quarrel took place between the deceased and appellant Rameshwar and appellant Rameshwar assaulted the deceased. Therefore, it is established that there was no any common intention on the part of appellant Sanwat to assault the deceased. Mere presence of appellant Sanwat at the place of occurrence is not sufficient to connect him with the crime in question. Therefore, conviction of appellant Sanwat u/s 302 IPC with the aid of Section 34 IPC is not sustainable. She further argued that the prosecution has not been able to prove the ingredients of offence u/s 450 IPC. The evidence of Amrikabai (PW-1) cannot be based for conviction. Therefore, appellant Rameshwar also cannot be convicted under Sections 450, 302/34 and 323 IPC. Hence, the appellants deserve to be acquitted.

3. Shri Rajendra Tripathi, learned Panel Lawyer for the State/respondent, supporting the impugned judgment, submitted that the conviction and sentence awarded by the learned Additional Sessions Judge do not warrant any interference by this Court.

4. We have heard learned counsel for the parties at length and have perused the record of Sessions Trial No. 407/2006. The conviction of the appellants is based on the evidence of Amrikabai (PW-1) and Nawal Kishore (PW-2).

5. Amrikabai (PW-1) deposed that the appellants assaulted her husband (the deceased). Her daughter Panchkumari came to her and told that the appellants were assaulting the deceased. She immediately rushed the place of occurrence. She saw that the appellants were assaulting the deceased. She tried to save the deceased. Appellant Sanwat assaulted her also with the Lathi. She sustained injury on her head. Nawal Kishore (PW-2) also deposed that Amrikabai (PW-1) sustained injury on her head when she tried to save the deceased. Dr. Sagar Shukla (PW-10) deposed that on 5-5-2006, he examined Amrikabai (PW-1) and gave his report (Ex. P-25), in which, he found lacerated wound, 3 cms. x 1/2 cm. x 1/2 cm. on vertex of the head.

6. Looking to the evidence of Amrikabai (PW-1), Nawal Kishore (PW-2) and Dr. Sagar Shukla (PW-10), it appears that Amrikabai (PW-1) is an injured witness, therefore, her presence at the place of occurrence is not doubted.

7. In *Mano Dutt and another v. State of Uttar Pradesh* 2012)4 SCC 79, the Hon"ble Supreme Court observed as follows:

30. ...Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain protect the real culprit. We need not discuss more elaborately the weightage that should be attached by the Court to the testimony of an injured

witness. In fact, this aspect of criminal jurisprudence is no more *res integra*, as has been consistently stated by this Court in uniform language.

31. We may merely refer to *Abdul Sayeed Vs. State of Madhya Pradesh*, , where this Court held as under: (SCC pp. 271-72, paras 28-30)

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh and Others Vs. State of Bihar*, , *Malkhan Singh and Another Vs. State of U.P.*, , *Machhi Singh and Others Vs. State of Punjab*, *Appabhai and Another Vs. State of Gujarat*, *Bonkya Alias Bharat Shivaji Mane and others Vs. State of Maharashtra*, , *Bhag Singh and Others Vs. State of Punjab*, , *Mohar and Another Vs. State of U.P.*, *Dinesh Kumar Vs. State of Rajasthan*, , *Vishnu v. State of Rajasthan*, (2009) 10 SCC 477, *Anna Reddy Sambasiva Reddy and Others Vs. State of Andhra Pradesh*, and *Balraje @ Trimbak Vs. State of Maharashtra*, .]

29. While deciding this issue, a similar view was taken in *Jarnail Singh and Others Vs. State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under; (SCC pp. 726-27, paras 28-29)

28. *Darshan Singh (PW 4)* was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa and others Vs. State of Karnataka*, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. Vs. Kishan Chand and Others*, , a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana*, (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of *Darshan Singh (PW 4)* has rightly been relied upon by the courts below.

30. The law on the point can be summarized to the effect that the testimony of

the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

8. In *Dharnidhar Vs. State of U.P. and Others*, , the Hon''ble Supreme Court held as follows:

12. There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In *Jayabalan Vs. U.T. of Pondicherry*, , this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under: (SCC p.213, paras 23-24)

23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

13. Similar view was taken by this Court in *Ram Bharosey Vs. State of U.P.*, , where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

9. Amrikabai (PW-1) deposed that Pardeshiram (the deceased) was her husband. On the date of incident, at about 7 A.M., the deceased had gone to the field to attend the call of nature. While returning, when he reached near the house of appellant Rameshwar, acquitted accused persons Munnibai, Chhenharin and Kacharabai caught him and the appellants assaulted him. Appellant Rameshwar gave Lathi blow on his head and appellant Sanwat gave Lathi blow on his leg. She further deposed that her daughter Panchkumari came to her and told that

the accused persons were assaulting the deceased. She went to the place of occurrence and saw that the appellants were assaulting the deceased with Lathi. She further deposed that when she tried to save the deceased, appellant Sanwat assaulted her also with the Lathi. She sustained injury on her head. She ran towards the Basti and narrated the incident to her uncle-in-law (Kaka-Sasur) Padum and one Umaram.

10. Nawal Kishore (PW-2) deposed that on 5-5-2006, at about 6-7 A.M., he was going to take bath in a pond. When he reached near the field of Guhira, he saw that the deceased was returning after attending the call of nature. When the deceased reached near the house of appellant Rameshwar, acquitted accused persons Chhenharin, Munnibai and Kacharabai caught the deceased. The appellants, armed with Lathi, came there. Appellant Rameshwar gave Lathi blow on the head of the deceased and appellant Sanwat assaulted on the leg of the deceased. The deceased and his spectacles fell down. Having seen the incident, Amrikabai (PW-1), running came there and intervened. Appellant Rameshwar, saying that the fight took place due to her only, gave Lathi blow on her head. Amrikabai (PW-1), having feared, ran towards the village. Thereafter, the appellants gave multiple Lathi blows to the deceased. After assaulting the deceased, appellant Rameshwar fled from there and appellant Sanwat, Chhenharin, Munnibai and Kacharabai entered their houses. In cross-examination, he deposed that it is true that on the date of incident, when police officials had come to the village, they had not recorded his statement. It is true that houses of appellant Sanwat and Amrikabai (PW-1) were situated adjacent to each other's house.

11. Dr. Sagar Shukla (PW-10) deposed that he conducted autopsy on the dead body of the deceased and gave his report (Ex. P-24), in which, he found--

(i) lacerated wound, 3 cms. x 1/2 cm. x 1/2 cm. over frontal region of head underlying bone was fractured,

(ii) contusion, 3 cms. x 2 cms. over right thigh,

(iii) contusion, 3 cms. x 2 cms. over left thigh,

(iv) contusion, 2 cms. x 1 cm. over right side of thorax, anterior aspect.

He further found that all the injuries were anti mortem. He opined that cause of death of the deceased was increase in intra cranial pressure due to extradural haemorrhage caused by head injury.

12. We have perused the evidence of Amrikabai (PW-1) and Nawal Kishore (PW-2). These witnesses have specifically deposed that appellant Rameshwar assaulted the deceased with a Lathi. Their evidence is duly corroborated by medical evidence also. From the medical evidence, we find that cause of death of the deceased was increase in intra cranial pressure due to extradural haemorrhage caused by head injury. It is also established that the death of the deceased was homicidal in nature. Therefore, we do not find any infirmity in the

finding recorded by the learned trial Court that it was appellant Rameshwar who caused injury on the head of the deceased with a Lathi and the deceased died on account of the injury caused by him.

13. Now, we shall examine whether the prosecution has been able to prove ingredients of offence u/s 450 IPC against appellant Rameshwar. Section 450 IPC reads as under:

450. House-trespass in order to commit offence punishable with imprisonment for life.--Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

14. Amrikabai (PW-1) deposed that she had gone to wash a container at the tap. At that time, appellant Rameshwar came there and asked whereabouts of her husband (the deceased). Thereafter, appellant Rameshwar sat in the verandah of her house. When she returned her house and entered therein, appellant Rameshwar also entered her house behind her. He, having caught her, caused her to fell down and started committing Marpeet with her.

15. Amrikabai (PW-1) deposed in cross-examination that appellant Rameshwar came and sat in the verandah of her house. At that time, 3 children were also sitting there. It is true that appellant Rameshwar had given a currency note of Rs. 10/- to her children. It is true that her children had told their father (her husband-the deceased) that appellant Rameshwar had given them a currency note of Rs. 10/-. According to Amrikabai (PW-1), she had gone to the house of Manglinbai (PW-7), but Manglinbai (PW-7) did not corroborate her evidence. The evidence of Amrikabai (PW-1) is not reliable in this regard that appellant Rameshwar had entered her house with an intent to outrage her modesty. Therefore, the conviction of appellant Rameshwar u/s 450 IPC is not sustainable.

16. Now, we shall examine the conviction of appellant Sanwat with the aid of Section 34 IPC.

17. Implication of Section 34 of the Indian Penal Code can arise only when two conditions stand fulfilled, i.e., the mental element or the intention to commit the criminal act conjointly with another or others and the other is the actual participation in one form or the other in the commission of the crime. The common intention postulates the existence of a pre-arranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime. Section 34 of the Indian Penal Code does not create any distinct offence but it lays down the principle of constructive liability. Section 34 of the Indian Penal Code stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be pre-arranged and pre-meditated concert between the

accused persons for doing the act actually done though there might not be long interval between the act and the pre-meditation and though the plan may be formed suddenly. The prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34 of the Indian Penal Code, be it prearranged or on the spur of the moment, but it must necessarily be before the commission of the crime. To constitute common intention, it is necessary that intention of each one of the accused be known to the rest and shared by them.

18. In *Ramashish Yadav and Others Vs. State of Bihar*, the Supreme Court held that "The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a pre-arranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. It can also be developed at the spur of the moment but there must be pre-arrangement or premeditated concert. This being the requirement of law for applicability of Section 34 of the Indian Penal Code, from the mere fact that accused "RP" and "RY" came and caught hold of deceased, whereafter "SY" and "SL" came with gandasa (chopper) in their hands and gave blows by means of gandasa (chopper), it cannot be said that the accused "RP" and "RY" shared the common intention with accused "SY" and "SL". Consequently, accused "RP" and "RY" cannot be held guilty of the charge u/s 302/34, IPC but accused "SY" and "SL" did commit the offence u/s 302/34, having assaulted deceased on his head by means of gandasa (chopper) on account of which he died."

19. In *Rajesh Kumar Vs. State of H.P.*, the Hon'ble Supreme Court observed as follows:

According to the prosecution case, S, the main accused, was armed with drat and the appellant with danda and S hit the deceased with the drat (on the head). So far as the appellant was concerned he was carrying a lathi and had assaulted on non-vital parts of the body of the deceased. The doctor had noticed five injuries, except the incised wound on the scalp, which were attributable to the assault done by danda on non-vital parts. The doctor's evidence was to the effect that Injury 1 (on the head) was the fatal one. Though the aforesaid aspect cannot always be the determinative of the question as to whether Section 34 IPC has application, yet in the present case, PW 14 took away the lathi from the appellant and threw it out. Thereafter the only role played by the appellant, according to the prosecution witnesses, was that he was running. He did not pick up the lathi which had been thrown up by PW 14 and the prosecution witnesses had accepted that he did nothing thereafter except running. In that view of the matter there is substance in the plea of the appellant that Section 34 had no

application so far as Section 302 was concerned.

20. In the case on hand, Merg Intimation (Ex. P-1) was lodged by Amrikabai (PW-1), who is an injured eye-witness of the occurrence. In Ex. P-1, overt act of appellant Sanwat is not mentioned. Ex. P-1 reads thus:

21. In the FIR (Ex. P-2), it is mentioned that--

22. Amrikabai (PW-1), who is an injured eye witness and who lodged Merg Intimation (Ex. P-1), did not state in Merg Intimation (Ex. P-1) that appellant Sanwat also assaulted the deceased. In the FIR (Ex. P-2), it is not specifically mentioned that appellant Sanwat assaulted which part of the body of the deceased and with which weapon. Had appellant Sanwat assaulted the deceased, his name would have been mentioned in the Merg Intimation (Ex. P-1).

23. The learned Additional Sessions Judge has held in paragraph 22 of the impugned judgment that it is an admitted fact that the place of occurrence is in front of the house of appellant Rameshwar, therefore, presence of ladies at the place of occurrence was natural. The prosecution did not adduce any evidence that the ladies present at the place of occurrence participated in committing Marpeet with the deceased. Therefore, mere presence of lady accused persons is not sufficient to connect them with the crime in question.

24. Appellant Sanwat is real brother of appellant Rameshwar. The place of occurrence is in front of the house of the appellants. Therefore, presence of appellant Sanwat at the place of occurrence was also natural.

25. Amrikabai (PW-1) specifically deposed that appellant Sanwat assaulted her with a Lathi. Looking to the evidence of Amrikabai (PW-1) and the finding recorded by the learned Additional Sessions Judge in paragraph 22 of the impugned judgment, we find that appellant Sanwat assaulted Amrikabai (PW-1) only. There is absolutely no evidence of existence of pre-arranged, pre-planned or a prior concert. There is no evidence at all of prior meeting of minds. In the facts and circumstances of the case, appellant Sanwat cannot be convicted u/s 302 IPC with the aid of Section 34 IPC. He would be only responsible for his individual act. He assaulted Amrikabai (PW-1) with a Lathi, therefore, he would be liable for punishment u/s 323 IPC only.

26. Learned counsel for the appellants has argued that the deceased sustained single injury on his head. Rest of the injuries were contusions which were found on the thigh and thorax region. She has further argued that the incident took place in a sudden quarrel and, therefore, act of appellant Rameshwar would not be punishable u/s 302 IPC. Instead thereof, he would be liable for punishment u/s 304 IPC.

27. Now, we shall examine the matter in light of the provisions of Section 302 vis-a-vis Section 304 of the Indian Penal Code.

28. Section 304 of the Indian Penal Code provides the punishment for culpable

homicide not amounting to murder. It draws a distinction between the penalty to be inflicted in cases, where, an intention to kill being present, the act would have amounted to murder, but for its having fallen within one of the Exceptions in Section 300 of the Indian Penal Code, and cases in which the crime is culpable homicide not amounting to murder, that means, where there is knowledge that death will be a likely result, but the intention to cause death, or bodily injury likely to cause death, is absent. The first part of Section 304 of the Indian Penal Code applies where there is intention, whereas the second part applies where there is knowledge but the important thing is that before holding the accused guilty under any part of Section 304 of the Indian Penal Code, it has to be observed that a death must have been caused by him under any of the circumstances mentioned in the five Exceptions to Section 300 of the Indian Penal Code, which include death caused while deprived of power of self-control under grave and sudden provocation, while exercising in good faith the right of private defence of person or property, and in a sudden fight in the heat of passion without premeditation. Knowledge of consequences which may result in doing an act is quite different than the intention which denotes that a particular consequence should ensue. For attracting the former part of Section 304 of the Indian Penal Code, an element of intention is a factor whereas for attracting the later part, an element of knowledge is a factor. The intention is the purposeful doing of a thing to achieve a particular result, whereas, the knowledge is an awareness which attributes to be well informed that a particular result may happen by doing a thing.

29. In Jagtar Singh Vs. State of Punjab, the Hon"ble Supreme Court held as follows:

8. The next question is what offence the appellant is shown to have committed? In a trivial quarrel the appellant wielded a weapon like a knife. The incident occurred around 1.45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence u/s 304 Part II of the IPC and a sentence of imprisonment for five years will meet the ends of justice.

30. In Satish Narayan Sawant Vs. State of Goa, , the Hon"ble Supreme Court held as follows:

40. That being the well-settled legal position, when we test the factual background of the present case on the principles laid down by this Court in the aforesaid decisions, we are unable to agree with the views taken by the High Court. As already noted, it is quite clear from the record that there was an altercation preceding the incident. The place of occurrence is a residence inhabited by both the parties and there is no evidence on record that the deceased was armed with any weapon. Initially the appellant-accused also did

not have any weapon with him but during the course of the incident he went inside and got a knife with the help of which he stabbed the deceased. PW 7 in his cross-examination has categorically stated that death due to stab injury was in consequence of Injury 1 and all other injuries were superficial in nature. So, it was only Injury 1 which was fatal in nature. Factually therefore, there was only one main injury caused due to stabbing and that also was given on the back side of the deceased and therefore, it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness.

31. In the instant case, looking to the evidence of Amrikabai (PW-1), it appears that some altercation took place between the deceased and appellant Rameshwar. From perusal of the post mortem report (Ex. P-24), it appears that the injuries sustained by the deceased were caused by a hard and blunt object, which was a Lathi in this case and which is normally carried by villagers. All these show that there was no intention on the part of appellant Rameshwar to commit murder of the deceased, but knowledge can be attributed to him.

32. In the above facts and circumstances of the case, the conviction of appellant Rameshwar u/s 302 IPC cannot be sustained. In our considered opinion, appellant Rameshwar would be liable for punishment u/s 304 Part II IPC.

33. In the result, appeal of appellant Sanwat is partly allowed. His conviction and sentence u/s 302/34 IPC are set aside. Instead thereof, he is convicted u/s 323 IPC and sentenced to undergo rigorous imprisonment for 1 year and to pay fine of Rs. 1,000/-. He is granted 2 months' time to deposit the amount of fine, failing which, he shall be liable to undergo rigorous imprisonment for 2 months. It is stated that he was in custody from 5-5-2006 to 3-1-2008, i.e., for 1 year 7 months and 28 days. Presently, he is on bail. His bail bonds are cancelled and sureties stand discharged. Appeal of appellant Rameshwar is also partly allowed. His conviction and sentence u/s 450 IPC are set aside. He is acquitted of the charge framed thereunder. His conviction and sentence u/s 302 IPC are also set aside. Instead thereof, he is convicted u/s 304 Part II IPC and sentenced to undergo rigorous imprisonment for 7 years. His conviction and sentence u/s 323 IPC are affirmed. It is directed that the sentences awarded to appellant Rameshwar shall run concurrently. It is stated that he is in jail since 5-5-2006. He shall be entitled to set off for the period already undergone.