

(2025) 11 DEL CK 1814
In the Delhi High Court
Case No : Criminal Appeal No. 1044 Of 2023

Rohit & Anr

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 161, 428
Indian Penal Code, 1860 — Section 34, 300, 302, 304A, 304I, 304II, 323, 341

Citation : (2025) 11 DEL CK 1814

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Inderpreet Singh, Faraz Maqbool, Sana Juneja, A. Sahitya Verma, Shubhi Gupta

Final Decision : Partly Allowed

Judgement

Manoj Kumar Ohri, J

CRL.M.(BAIL) 1559/2025 and CRL.M.(BAIL) 1620/2025

1. With the consent of parties, the appeal itself is taken up for hearing.
2. The present applications are disposed of as infructuous.

CRL.A. 1044/2023

1. By way of the present appeal, the appellants seek to assail the judgement of conviction dated 07.08.2023 vide which they have been convicted for offences punishable under Sections 304 (Part-1)/323/341/34 IPC and order on sentence dated 09.11.2023 vide which they were directed to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Sections 304 (part-I)/34 IPC along with payment of fine of Rs.7,000/-, in default whereof they were directed to further undergo simple imprisonment for a period of 6 months; rigorous imprisonment for a period of 1 year for the offence punishable under Sections 323/34 IPC and rigorous imprisonment for a period of 1 month

for the offence punishable under Sections 341/34 IPC. The benefit of Section 428 Cr.P.C. was also provided to the appellants and the sentences were directed to run concurrently.

2. As per the prosecution case, the investigation commenced on receipt of an information on 08.04.2017 at 12.10 AM registered as DD No.3A at P.S. Begampur (Ex.6/A). The information was routed through PCR call made from mobile No.9818294838 stating that at D-Z/203 Sector-20 Rohini near NDPL office, there has been a quarrel and the injured has been hit on the head with a danda. The name of the informer was noted as Lakhan Singh. At the same time, another information also came to be recorded as DD No.3A (later on re-numbered as DD No.4A and time changed to 12:20 AM) at the aforesaid Police Station (Ex.DW-2/B). As per the information, the caller informed that he has been beaten badly and injured near Sector-20, Rohini at Plot No.G2/96 near Sunday Bazar Chowk. The information was provided through mobile No.9250660642.

3. Before proceeding further, this Court deems it apposite to note that as per the admitted case of the parties, both the parties were living in the same neighbourhood, their houses being on the opposite side of the park. As would be evident from the record, while the first information (DD No. 3A) was given through mobile phone of the injured Hoshiyar Singh - the caller being his wife Usha, the second information (DD No. 4A) was recorded at the instance of the accused party.

4. DD No.3A was assigned for enquiry to SI Aadesh Kumar (PW-8), who alongwith HC Rakesh Kumar (PW-12) reached the spot and came to know that a quarrel had taken place between the two parties and the injured was taken to the hospital. He reached the BSA hospital and found two injured persons namely Hoshiyar Singh and Bhim Sen (brother of Hoshiyar Singh), admitted. He visited the hospital again on 08.04.2017 and recorded the statement (EX.PW8/A) of Usha, the wife of the injured Hoshiyar Singh on which the subject FIR came to be registered. At the instance of the complainant, the site plan of the spot was prepared (Ex.PW8/B). He also received the blood stained clothes of injured Hoshiyar Singh worn at the time of the incident from Bhim Sen. The same were seized vide seizure memo Ex.PW8/C. SI Aadesh Kumar also recorded the statement of Bhim Sen under Section 161 CrPC. Both the appellants came to be arrested on 11.04.2017 vide arrest memos Ex.PW8/D and Ex.PW8/E respectively. On the disclosure of appellant/Rohit, the weapon of offence i.e., the danda with which injuries were inflicted to the injured, was recovered from a park situated at Pocket-16, Sector-20, Rohini and the same was seized vide seizure memo Ex.PW8/K.

In the meantime, injured- Hoshiyar Singh was referred to Maharaja Agrasen Hospital, where on 12.04.2017 he expired. The samples were sent to FSL and the biological report (EX.PW21/A) and the report of serology (Ex.PW21/B) were collected. The post-mortem was conducted and the subsequent opinion was

taken if the injuries were possible with the recovered weapon of offence. On filing of chargesheet, the charges were framed under Sections 302//323/341/34 IPC against both the appellants who pleaded not guilty and claimed trial.

5. The prosecution examined Usha, wife of Hoshiyar Singh as PW-10 and Bhim Sen, the injured brother of the deceased as PW-11. The MLC of the deceased was exhibited through Dr. Chandra Shekhar, In-charge Neuro Surgeon, BSA Hospital (PW-22). The MLC of Bhim Sen was exhibited through Dr. Deepti Bhalla, CMO, BSA Hospital (PW-23). The post-mortem report of the deceased as well as the subsequent opinion was proved through Dr. Sandeep Garg, SR Department of Forensic Medicine, BJRM Hospital, Delhi (PW-13).

6. The appellants claimed false implication at the behest of the family members of the deceased and rather claimed that the injuries to the deceased were caused by a cow horn and suspecting the said cow belonging to the family of the appellants, the injured Bhim Sen came to their house and caused injuries to the appellants, resulting in recording of the DD No.4A. The appellants further claimed that the appellant/Sheru was admitted to BSA Hospital on the same day and his MLC was exhibited as Ex. DW-I/A. The MLC of appellant/Sheru was exhibited through Dr. Monika Aggarwal, Statistical Assistant of BSA Hospital, Sector-6, Rohini, Delhi (DW1) and the DD No.4A through ASI Dharam Pal (DW2). The appellants further examined other witnesses in support of the fact that the incident had occurred nearer to their house and not as stated by the prosecution witnesses.

7. The prosecution's star witness, i.e., the complainant-Usha (wife of the deceased Hoshiyar Singh) deposed that on 07.04.2017 at about 11.30 pm, after taking dinner, she and the deceased came out of the house and saw that cow of Jeet Pal (father of the appellants) was eating the banana plant which was planted by the deceased near the temple in front of their house. The deceased chased away the cow. Infuriated by this, Jeet Pal and his son Sheru came there. The deceased made a complaint to them on which Jeetpal and both his sons i.e. Rohit and Sheru (appellants herein) uttered 'ghar ke andar baitho, verna anjam bura hoga'. She further deposed that thereafter Jeet Pal and the appellants started quarrelling with her husband and on Jeet Pal's exhortation that 'Maaro saale ko, aaj iska kaam tamam kar do', both the appellants went to their house and came back with Rajesh, Bunty and Sachin. The appellant/Sheru was carrying phawra (spade), Rohit was having danda (stick) , Rajesh was having iron rod and Bunty as well as Sachin were having dandas (sticks) in their hand. They all started giving beatings to Hoshiyar Singh. On hearing hue and cry, her brother-in-law, Bhim Sen (brother of deceased Hoshiyar Singh) also reached there. In the meantime, her daughter Jyoti also came out. Both, Bhim Sen and Jyoti tried to save Hoshiyar Singh, however, in the process Bhim Sen also received beatings and one danda blow was given to Jyoti. She further deposed that while Rohit gave a danda blow on the head of Hoshiyar Singh, Sheru hit on his right shoulder and ribs with the blunt back side of spade. She saw her husband bleeding from

the injuries , whereafter he fell down on the ground. All the accused persons fled away. Appellant/Rohit while fleeing away, also gave a danda blow on the chest of the witness. She heard the accused persons saying 'maar diya saale ko' whereafter her daughter made a call at number 100. She further deposed that with the help of Bhim Sen, Hoshiyar Singh was removed to BSA hospital.

8. She exhibited her statement that was recorded on 08.04.2017 (Ex.PW10/A). In her testimony, she further deposed that she alongwith her husband used to look after the plantation done in the park that was located in front of their house and when her husband had asked the accused to ensure up-keep of the park and protect the plants, they extended threats to him.

9. She further claimed that while she was at BSA Hospital on the intervening night of 7-8.04.2017, Jeetpal with his son Bunty reached at her residence and threatened her daughter Jyoti by saying 'Jo haal tore baap ka kiya hai, wahi haal tera bhi karenge'. At that time, besides her two daughters and one son, her mother-in-law was also present in their house. The intruders further said to her mother-in-law 'bacha sakti hai to bacha le apne bete ko'. During her deposition, a leading suggestion was given by learned APP that at the time of the incident, the deceased Hoshiyar Singh was repeatedly telling the accused persons that he had not given poison to their cows, which was admitted to be correct by the witness.

She identified both the appellants as well as the clothes of the deceased i.e., one jean pant and shirt which were exhibited as EX. P2 and P3 respectively.

10. In cross-examination, PW10 was confronted with some improvements in her testimony over her previous statements, such as previous dispute with appellant's side over the upkeep of the park, the deceased removing the cow, exhortations by Jeetpal and subsequent threats by him at her home when she was at hospital, presence of Rajesh, Bunty and Sachin with weapons, presence of Jyoti and her being given beatings, the specific acts attributed to appellants, i.e. Rohit giving danda blow on head and Sheru hitting right shoulder and ribs to deceased. She resiled from her earlier deposition that the deceased was mentioning about not poisoning cows at the time of quarrel. She stated that the quarrel had taken place in front of house of one Madan which was situated next to the house of Jeetpal. She deposed that Bhim Sen's house was not on the street and he had come upon hearing noises. To the MLC recording the name of one Krishan Gopal, who was her brother-in-law, she deposed that he reached the hospital after they had already reached. She denied the suggestion that after knowing that the deceased was injured by cows, Bhim Sen had gone to the appellant's house and caused injuries to Sheru.

11. The next material witness examined by the prosecution was the injured eye witness-Bhim Sen (PW11). He deposed on similar lines as PW10. He stated that on 07.04.2017 at about 11.30 PM, after hearing noises, he came out of his house and saw that Sheru, Rohit, Rajesh, Sachin and Bunty were giving beatings to his brother Hoshiar Singh, with Jeet Pal exhorting them. He said that while Sheru

had Fawra (spade), Rohit had danda. He tried to rescue Hoshiar Singh, however, the accused persons also attacked him. He received injuries on his right eye and his brother Hoshiar Singh sustained injuries on head and fell down. Even after his brother fell down after sustaining injuries on his head, the accused persons continued to give beatings. Usha, wife of Hoshiar Singh was also present at the spot. After the incident, he alongwith Usha took Hoshiar Singh to the hospital in an E-rickshaw. His medical examination and x-ray of his right eye was also done. He identified the appellants, however, when the recovered weapon of offence i.e., danda was shown to him, he stated that it was not the same danda which was seized by the police and this danda was not used by the accused persons. The danda, however, was exhibited as EX. P1. He also identified the clothes of the deceased i.e., Jean Pant and shirt which are exhibited as EX.P2 and P3 respectively.

He was cross-examined by learned APP, in which he admitted it to be correct that when Usha tried to rescue Hoshiar Singh at that time, Sheru was saying to Rohit 'Isi Ki Wajah Se Hamari Gay Mari Hain aur Hamara roj nuksan ho raha hai, aaj ise jan se mar De' and Hoshiar Singh was saying 'Tumari Gay ko marne mein uska koi hath nahi hain' after which Sheru and Rohit gave danda blow on the head of Hoshiar Singh with intention to kill. He volunteered, danda was the part of Fawra and while the Fawra fell down, the danda remained in the hand of Sheru.

12. In cross-examination carried out on behalf of the appellants, he claimed that he had not made any separate statement to the police and put his signatures on a paper on which there was already something written. He also stated that the quarrel had taken place near the house of Madan. He claimed that the house of Madan was 3-4 house away from the house of Hoshiar Singh and 7-8 houses away from the house of the appellants. He said he did not give his blood stained clothes as the police never asked for them. He admitted that though he got admitted his brother at BSA Hospital at 12:30 AM, he had not given any alleged history at the time of admission. He volunteered that the Doctor had not asked him about these facts. He claimed ignorance of admission of Sheru in the hospital. Further suggestion was given that the injuries received by Hoshiar Singh were from a cow, which he denied. He further denied that he suspected the cow belonged to Jeetpal and his family or that he went to their house and gave beatings to Sheru and in retaliation, Sheru had given him fist blows. He denied that in connivance with his Bhabhi Usha, he had falsely implicated the appellants.

13. The appellants' case before the trial court as well as in the present appeal is that both the aforesaid witnesses had not seen any incident leading to death of Hoshiar Singh and as such were rather planted witnesses. It is further the case of the appellants that only the incident that has taken place with the appellants is when Bhim Sen was the aggressor who had come to the house of appellants and quarrelled, suspecting that the injuries to Hoshiar Singh were caused by cows of Jeetpal and his family. In this regard, learned counsel for the appellants have

laboured on taking court through not only unscaled and scaled site plan but also the portion of testimony of the aforesaid two witnesses wherein they had admitted that the quarrel had taken place near the house of Madan. It was contended that as per the scaled site plan, the house of Madan is next to the house of the appellants. It was next contended that the suggestions were given to the Dr. Sandeep Garg who had conducted the post-mortem that injuries received by the deceased were possible by a cow, to which he had answered that injury No.1 which was individually sufficient in the ordinary course of nature to cause death, might be caused by the horn of a cow. The appellants have also doubted the recovery of danda by contending that the same was from a open place and accessible to public. It was contended that the prosecution has deliberately not disclosed the injuries of the appellants which cast a doubt on the prosecution case. Learned counsel for the appellant also contended that the information recorded at the instance of the appellants was prior in point of time and initially shown to be DD No.3A registered at 12:10 A.M. In this regard, he has referred to Rojnamcha Register where at Sl. No.4, the said information has been renumbered as DD No.4A and time changed to 12:20 AM.

In the alternative, it is submitted that even if the appellants are presumed to be guilty, considering that it was a spur of the moment incident with no-premeditation and there was only a single blow, it is a case fit for conviction under Section 304 Part II and not Part I.

14. Proceeding to deal with the aforesaid contentions, it is noted that in the initial complaint, Usha, the wife of the deceased, had stated that on the night of 07.04.2017, around 11.30 PM, when the cow of Jeetpal was removed by the deceased, Jeetpal and Sheru quarrelled with the deceased and when he started going home, they stopped him and started giving beatings. Rohit also came and joined in giving beatings. Bhim Sen, who had come to the spot after hearing noises, was also beaten. Usha also stated that her husband was given injuries on the head by a danda. Though her testimony had some improvements , mostly with respect to other persons, however, the above stated version has remained consistent across her various statements as well as her deposition. This version is also corroborated by the testimony of Bhim Sen, who was an injured eyewitness. The MLC of Bhim Sen (Ex. PW15/A), prepared on 08.04.2017 at 01.00 A.M., records right periorbital swelling and redness in right eye which injuries were opined to be simple in nature.

15. Coming to the place of incident, the appellants have contended they were actually the victims who were attacked at their home by Bhim Sen and had relied on statements of both Usha as well as Bhim Sen who had deposed that the incident took place in front of the house of Madan. It was sought to be contended that since Madan is their neighbour, it was actually the complainant's side which came to their home. A perusal of the scaled site plan (Ex. PW2/A) would show that the houses of the appellants and the complainant are on the opposite side of the park and the blood spots have been found in the gali adjoining the park, with

some near the entrance to the park which is nearly midway between the two houses, and some spots slightly closer to the appellant's house. However, no blood has been found in front of either of the houses. This evidence is insufficient to show that the prosecution case is false or that the complainant's side was actually the aggressor.

16. Dr. Sandeep Garg, (PW13) who conducted the post mortem of the deceased, deposed that the cause of death was cranio cerebral damage consequent to injury to the head. All injuries were ante-mortem in nature, recent in duration prior to death and caused by blunt force impact/weapon. He also stated that the injury to the head was individually sufficient in the ordinary course of nature to cause death. Though he stated that the injury to the head of the deceased, which was the cause of his death, might be caused by a cow horn, he had also stated that a horn of a cow and a danda both have impact of a blunt object. The prosecution had produced two ocular witnesses to prove that the deceased was given danda blow to the head. The testimony of the two witnesses are supportive of each other and corroborating on material particulars. Merely because it was opined that the injury could have been caused by a cow horn, the same is only a remote probability considering that the injury is on head of the deceased. In light of the testimony of the two eye witnesses, the contention is meritless and rejected.

17. Similarly, in view of the clear and consistent deposition of two eyewitnesses that the appellants hit the deceased on the head with a danda, even if the recovery of the danda is doubted because of non-identification by Bhim Sen and not showing it to Usha, the same would not materially affect the prosecution case as it is not necessary for there to be effective recovery of weapon of crime in every case. The prosecution has proved beyond reasonable doubt that the appellants are guilty of hitting the deceased with danda on head which resulted in his death.

18. The prosecution case is that the dispute arose when the deceased chased the cow of the father of the appellant's away. Both sides had informed the police soon after the incident. DD No.3A on 08.04.2017 was made from a mobile phone belonging to the deceased Hoshiar Singh. Another information about the incident was received from appellant/sheru, though initially also recorded as DD No.3A, however later changed to 4A. The appellant/sheru also has suffered laceration of 1x 0.5 x 0.3 cm present on left temporal region and abrasion of around 4x4 cm, as is reflected from his MLC, exhibited as DW1/A. The death of the deceased did not take place instantly but after four days, on 12.04.2017. The overall view of the facts and circumstances would show that the death was caused without premeditation, in a sudden fight in the heat of passion, without the appellants having taken any undue advantage or acting in a cruel or unusual manner. The Trial Court has rightly held that the appellants are covered by Exception 4 to Section 300 IPC and hence the act would be culpable homicide not amounting to murder.

19. However, the Trial Court has held that the act of the appellants was covered by Part I of Section 304A and not Part II. The appellants have contended that they are actually covered by Part II of Section 304A. Section 304 IPC reads as follows:-

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.

To attract culpability under Part I, the act by which death is caused has to be accompanied by the intention of causing death or such bodily injury as is likely to cause death. However, if the act is not accompanied by either of these intentions, but with a knowledge that the act was likely to cause death, then it would be falling within part II of the definition. The difference is not merely academic but has real world consequences, as while Part I is punishable with life imprisonment, Part II is not.

20. The Supreme Court in the decision of *Camilo Vaz v. State of Goa* MANU/SC/0263/2000, while dealing with a case wherein the death was caused due to a stick blow to the head, explained the difference between the two parts of Section 304 IPC in the following manner:-

"4. This section is in two parts. If analysed the section provides for two kinds of punishment to two different situations. (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here important ingredient is the "intention"; (2) if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury ,as is likely to cause death. When a person hits another with a danda on vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304 IPC."

21. The difference between 'intention' and 'knowledge' has been discussed by the Supreme Court in *Kesar Singh and Ors. vs. State of Haryana* (2008) 15 SCC 753 in the following manner:-

"27.The 'intention' and 'knowledge' of the accused are subjective and invisible states of mind and their existence has to be gathered from the circumstances, such as the weapon used, the ferocity of attack, multiplicity of injuries and all other surrounding circumstances. The framers of the Code designedly used the words 'intention' and 'knowledge' and it is accepted that

the knowledge of the consequences which may result in doing an act is not the same thing as the intention that such consequences should ensue. Firstly, when an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue. As compared to 'knowledge', 'intention' requires something more than the mere foresight of the consequences, namely, the purposeful doing of a thing to achieve a particular end."

Thus, while knowledge is bare awareness and foresight of the consequences, intention is doing a thing with the purpose of ensuing the consequences.

22. The Supreme Court discussed the factors which can be employed to gather the existence of the intention to cause death in the case of *Pulicherla Nagaraju v. State of A.P.*, (2006) 11 SCC 444 in the following manner:-

"29. Therefore, 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 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 premeditation. 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 premeditation; (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. Be that as it may."

23. Coming to the present case, as per the prosecution case, a danda blow was

given to the head of the deceased, whereafter he started bleeding and fell to the ground and the appellants fled. The eyewitness Usha had admitted that the various exhortations attributed to Jeetpal, like him saying "Maaro saale ko, aaj iska kaam tamam kar do" or Rohit saying 'maar diya saale ko' while running, or subsequent threats by Jeetpal were not stated in the initial complaint. Indisputably, there was only a single blow on head of the deceased with a danda and that the death of the deceased occurred four days later. It cannot be said that the appellants possessed the requisite intention of causing death or such bodily injury as is likely to cause death. However, they certainly had the knowledge that giving danda blow to the head was likely to cause death. Hence, on an overall view of the facts and circumstances, the conviction of the appellants is altered from that under Section 304 Part I to 304 Part II IPC.

24. Considering the aspect of sentencing, the Court deems it apposite to allude to the catena of decisions of the Supreme Court such as Uggarsain v. The State of Haryana & Ors, decided on 03.07.2023 in Criminal Appeal Nos. 1378-79 of 2019 Shahajan Ali and Ors v. State of Maharashtra (2017) 13 SCC 481, Pop Singh & Ors v. State of Madhya Pradesh decided on 29.11.2023 in Criminal Appeal Nos. 1846 of 2010, Vijay @ Vijayakumar v. State represented by inspector of police decided on 16.01.2025 in Criminal Appeal Nos. 1049 of 2021 in which the Court has modified the sentence under Section 304 part II IPC to rigorous imprisonment of 5 years or less. A perusal of the latest nominal rolls placed on record shows that while the appellant/Rohit has undergone about 5 years, the appellant/Sheru has undergone almost 5 years and 2 months of incarceration, including remission. They have faced trial since 2017 and no other criminal antecedents have been brought on record. Considering the aforesaid, in the peculiar facts of the case, the appellants' sentence is modified to the extent that subject to payment of fine, the appellants are directed to be released on the period already undergone by them in custody, if not required in any other case.

25. The appeal is partly allowed and disposed of in the above terms.

26. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

27. Copy of this judgment be also uploaded on the website forthwith.