(2024) 11 GUJ CK 0032

Gujarat High Court

Case No: Criminal Appeal (Against Conviction) No. 1345 of 2019

Imrail @ Ranu Isarkhan Pathan & Anr.	APPELLANT
Vs	
Vs State of Gujarat	RESPONDENT

Date of Decision: Nov. 29, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 207, 209, 313, 374(2)
- Indian Penal Code, 1860 - Section 114, 299, 300, 302, 304, 307, 324, 325, 326, 504
- Gujarat Police Act, 1951 - Section 135

Hon'ble Judges: Ilesh J. Vora, J; S.V. Pinto, J

Bench: Division Bench

Advocate: Madansingh O Barod, Jay Mehta

Final Decision: Partly Allowed

Judgement

S.V. Pinto, J

1. This appeal has been filed by the appellants under Section 374(2) of the Code of Criminal Procedure against the judgement and order dated

03.11.2018 passed by the learned 6th Additional (Adhoc) Sessions Judge, Panchmahals @ Godhra (hereinafter referred to as the â€œlearned Trial

Courtâ€) in Sessions Case No. 36 of 2017. The appellants were put on trial for the offence punishable under Sections 504, 324, 326, 302 and 114 of

the Indian Penal Code and Section 135 of the Gujarat Police Act and were convicted and sentenced to life imprisonment (simple imprisonment) and

fine of Rs 5000/- (Rs. Five Thousand only) and in default, simple imprisonment for ten days for the offence under Section 302 and 114 of the IPC and

to simple imprisonment for three years for the offence under Sections 324, 326, 114 of the IPC. The learned Trial Court was pleased to give benefit of

doubt to both the appellants for the offences under Sections 504 and 114 of the IPC and Section 135 of the Gujarat Police Act and further ordered

both the sentences to run concurrently and the period of detention of the appellants was to be given as a set off against the sentence.

The appellants are referred to as the accused as they stood in the rank and file in the original case for the sake of convenience, clarity and brevity.

2. FACTUAL MATRIX

2.1 From the evidence on record it appears that both the accused, the complainant - Ram Ramshankar Prahlad Yadav, the deceased Bhavsinh Thakor

and the child in conflict with law were working at Parvadi in Yamuna Proteins Mills and they were given a room by the Company to reside in. On

30.10.2016, they all were playing cards in the room of the Ram Ramshankar Yadav and while they were playing cards, they had a verbal altercation

and a quarrel and the accused and the child in conflict with law got agitated and at that time, both the accused took iron pipes in their hands and the

child in conflict with law took an iron strip and assaulted Bhavsinh Thakor with the intention of causing his death. Bhavsinh Thakor sustained serious

injuries on his head, hands and other parts of his body and when the complainant tried to intervene to save Bhavsinh Thakor, the accused assaulted

him and he too sustained injuries on his right hand. That all the assailants left Bhavsinh Thakor injured and bleeding in the room and ran away and as

the complainant shouted, Amit Bhatia who was working in the Company, brought the complainant for treatment to the hospital and as the injuries of

Bhavsinh Thakor were more serious he was taken to the hospital at Vadodara for further treatment where he succumbed to his injuries. The

complaint was filed by the injured witness - Ram Ramshankar Prahlad Yadav before the Godhra Taluka Police Station under Sections 302, 307, 325,

114 of the IPC and Section 135 of the GP Act which was registered at C. R. No. 222 of 2016 on 30.10.2016.

2.2 The Investigating Officer collected the evidence, drew the necessary panchnamas including the Inquest Panchnama and sent the dead body of the

deceased for postmortem, the statements of the connected witnesses were recorded and as the involvement of the accused was found in the offence,

the accused were arrested and after the FSL reports were received, a charge sheet came to be filed before the Court of the Judicial Magistrate First

Class, Panchmahals at Godhra and as the case was exclusively triable by the Session Court, Panchmahals at Godhra, a committal order under Section

209 of the Code of Criminal Procedure was passed and the case was registered as Sessions Case No. 36 of 2017. When the accused appeared

before the learned Trial Court, it was verified whether the provisions of Section 207 of the Code of Criminal Procedure was complied with and a

charge was framed against the accused at Exh. 11 and the statements of the accused were recorded at Exh. 12 and Exh. 13 respectively. The

accused denied all the contents of the charge and the evidence of the prosecution was taken on record. The prosecution examined 19 witnesses and

produced 24 documentary evidences in support of their case and after the learned APP filed the closing pursis at Exh. 102, the statements of the

accused under Section 313 of the Code of Criminal Procedure were recorded where the accused denied all the evidence of the prosecution produced

on record. The accused refused to step into the witness box or lead evidence and examine witnesses and after the arguments of the learned APP as

well as the learned Advocate for the accused were heard, the learned Trial Court was pleased to find both the accused guilty for the offence under

Sections 302, 324, 326 and 114 of the IPC and was pleased to give benefit of doubt to the accused for the offence under Sections 504 and 114 of the

IPC and Section 135 of the G.P. Act.

3. Being aggrieved and dissatisfied with the judgement and order of conviction, the appellants have filed the present appeal mainly stating that the

learned Trial Court has failed to appreciate that the prosecution has not proved the case beyond reasonable doubts and the learned Trial Court ought

to have appreciated that the case is of culpable homicide not amounting to murder. The defence of the appellants is that they are falsely implicated in

a serious offence of murder and the prosecution has not produced any legal, reliable, and unimpeachable evidence to support the original genesis of

occurrence as the incident in question has taken place. That the learned Trial Court has drawn inferences against the defence and in favour of the

prosecution and the learned Trial Court has failed to appreciate that the prosecution has failed to prove the recovery panchnama and also the

panchnama of the place of incident. The learned Trial Court has grossly erred and misread and misconstrued the intention of the appellants and has

not seen the facts of the case and there was no evidence of murder. Most of the witnesses have turned hostile and the impugned judgement and order

is erroneous, bad in law and is required to be quashed and set aside.

4. We have heard learned Advocate Mr. Madansingh O. Barod for the appellants and learned APP Mr. Jay Mehta for the respondent state. We have

also perused the impugned judgement and order and the evidence produced by the prosecution before the learned Trial Court.

5. Learned Advocate Mr. Madansingh O. Barod for the appellants has submitted that the learned Trial Court has not appreciated the evidence

properly and has not taken into consideration the defence of the appellant as one of the appellants received injuries and looking to the incident, the

same was not explained by the prosecution and no evidence was led in this behalf and this creates a doubt on the story of the genesis of the

prosecution case. The witnesses have identified the appellants as they were working together and there was no discovery or recovery from the

appellants as the so-called weapons that were used in the commission of the offence were found at the place of the incident. Learned advocate fairly

submits that looking to the evidence on record a case under Section 302 of the IPC would not be made out but it is a case of culpable homicide not

amounting to murder and the case would squarely fall under Section 304 Part II of the Indian Penal Code. That at the time of the incident, both the

appellants were of young age and about 19 years old and learned Advocate has urged this Court to consider the case of the appellant in that respect

and allow the appeal.

6. Learned APP Mr. Jay Mehta has taken this Court through the entire evidence of the prosecution on record and has submitted that the learned Trial

Court has appreciated each and every evidence on record and there are eye witnesses to the incident. The eye witness who was present at the place

of the incident and the complainant has clearly stated that the deceased and the appellants were in the same room and they suddenly had a quarrel and

he has seen the appellants and the child in conflict with law assaulting the deceased and while he tried to intervene, he was assaulted and he sustained

injuries. There is no reason to disbelieve the evidence of this witness and the other witness has also seen the appellants fleeing away from the place of

incident and their presence at the place of incident at the time of the offence is clearly proved by the prosecution. Learned APP has urged this Court

to reject the appeal of the appellants.

7. Before we proceed to decide the appeal, it would be appropriate to refer to the evidence led by the prosecution on record of the case.

7.1 PW-1 - Kalpitbhai Harshadbhai Shah has in his deposition at Exh. 15 deposed that he is the owner of Yamuna Proteins Mills and about 16 to 17

workers were working in his mill at the time of the incident. That he had provided quarters for the workers to reside in and he has Security Guards for

24 hours in the mill and on the day of the incident, it was a holiday due to the festival of Diwali, New Year and Bhai Beej. That his security guard

telephoned him and informed him about the incident and he advised him to take the injured to hospital. That when he went to New Life Hospital and

met Ramshankar who was working in his mill, he learnt about the incident and Ram Shankar too was injured in the incident. The witness being the

owner of Yamuna Proteins Mill and employer of the accused has identified both the accused during trial.

7.2 PW-2 - Samsubhai Vaghjibhai Damor who has been examined at Exh. 16 was working as a watchman in Yamuna Protein Mills and he has stated

that while he was on duty at the gate of Yamuna Mills, Ram Shankar came to him and told him about the quarrel between the accused and Bhavsinh

Thakor; and that Ramsinh, Noor Mohammed and Bhavsinh were injured but he does not know who had injured them. That he telephoned the owner

and went to call a rickshaw and Bhavsinh and Ramsinh were taken to the hospital. The witness has not supported the case of the prosecution and has

been declared hostile and in the cross examination, he has admitted that he is not an eye witness to the incident.

7.3 PW-3 - Jaswant Singh Chatrasinh Baria in his deposition at Exh. 19 has stated that he was working as a Chowkidar at Yamuna Proteins Mills and

at the time of the incident was on duty at the gate. The accused and Ramshankar came to him and Ram Shankar was bleeding and they told him that

they had a fight but he does not know who had injured Ram Shankar and he telephoned his owner. Kalpitbhai who told him to make arrangements to

take the injured to hospital and S. V. Damor went to bring a rickshaw and at that time, the accused ran away. Bhavsinh was also injured, and he was

taken to the hospital at Vadodara, where he succumbed to his injuries. The witness has not supported the case of the prosecution and has been

declared hostile and in the cross examination by the learned APP has admitted that he is not an eye witness to the incident.

7.4 PW-4 - Kantibhai Sabha Baria examined at Exh. 20 was working as a Clerk at Yamuna Proteins Mills and was maintaining the register of

workers. The witness is not an eye witness to the incident.

7.5 PW-5 - Prakashkumar Imrat Thakur in his deposition at Exh. 20 has stated that he was working in Yamuna Proteins Mills and on the date of the

incident, he had gone for a haircut and he was informed by the Security Guard that a quarrel had taken place at the company and when he went to the

room, he saw Bhavsinh and Ramsinh with injuries on their heads. The auto rickshaw was called and they were taken to the hospital and the witness

has identified the accused before the learned Trial Court.

7.6 PW-6 - Ram Shankar Prahlad Yadav is the complainant and in his deposition at Exh. 23 has stated that at the time of the incident, he was in his

room and is an eye witness to the accused assaulting Bhavsinh. The witness has identified the accused and has stated that all the three accused were

demanding money from Bhavsinh and they assaulted him with iron rods and all of them assaulted him also. That he was taken to Prakash Hospital and

he had filed the complaint which is produced at Exh. 25.

7.7 PW-13 â€" Dr. Sarvar Jainuddin Valli in her deposition at Exh. 61 has stated that she is a Medical Officer in Sunrise Hospital Critical Care and

Trauma Centre and on 30.10.2016, she had examined a patient named Ramshankar Ahir residing at Yamuna Mills, Dahod Road, Godhra who was

brought without police yadi and he had sustained head injuries namely CLW over right FTR 20 cm X 1 cm, CLW over frontal region 2 cm X 3 cm and

CLW over occipital region 2 cm X 40 cm. The injuries were grievous and caused by hard and blunt substance and the injury certificate is produced at

Exh. 62. On the same day, she had examined patient named Bhavsinhbhai Adivasi residing at Yamuna Mills, Dahod Road, Godhra and he had

sustained multiple large CLW over B/L front temporo parietal region 10 cm X 2 cm X 3 cm, multiple large CLW over occipital region, swelling over

right and left wrist, CLW over frontal region and on CT scan of the head, diffused subarachnoid haemorrhage was noted, extra hematonus (extra

axial) approximately 6 mm in right fronto temporo parietal region was found and a depressed fracture of the temporal bone involving interior, posterior

wall of right sinus, posterior wall of right spheroid sinus plus posterior clenoid process was found. The witness has produced the injury certificate of

Bhavsinh at Exh. 63 and has stated that the injuries were grievous and caused by hard and blunt substance and the patient was transferred to higher

centre for further management.

7.8 PW-19 â€" Dr. Dixit Shirishbhai Patel, the Medical Officer who has performed the postmortem on the body of the deceased Bhavsinh Sabulal

Thakur in his deposition at Exh. 101 has stated that the postmortem was performed on 31.10.2016 between 12:40 PM and 1:55 PM and during the

postmortem, the following injuries as mentioned in column number 17 of the PM note produced at Exh. 87 were found on the body of deceased.

1. Dark, red colour, abrasion of size 4 cm X 3 cm present over front of forehead in middle line 5 cm above nasion

2. Contused Lacerated Wound of size 6 cm X 1 cm X muscle deep vertically present over sagittal suture area, itâ€™s anterior end is 10 cm

from nasion of midline. Peripheral haematoma present.

3. Contused Lacerated Wound of size 8 cm X 2 cm X muscle deep obliquely, present over right parietal region of scalp, anterior end is 5 cm

right to posterior end of Injury No. 2. Peripheral haematoma present.

4. Contused Lacerated Wound of size 5 cm X 1 cm X muscle deep obliquely present over scalp, 2 cm above external occipital protuberance

5. Blueish Periorbital contusion, present over left eye

6. Red colour laceration of size 2 cm X 1 cm present over tip of nose.

7. Red colour, laceration of size 2 cm X 0.5 cm present over outer end of left eyebrow. Wound is approximated with two staples pins

8. Red colour, laceration of size 2 cm X 0.5 cm present over lobule of right external ear

9. Contused Lacerated Wound of size 2 cm X 1 cm X subcutaneous deep present over dorsum of right wrist

10. Contused Lacerated Wound of size 3 cm X 1 cm X subcutaneous, deep present over inner aspect of right ankle. Wound is closed by four

black colour stitches.

11. Red colour of size 3 cm X 1 cm present over outer aspect of left arm, 5 cm below shoulder

12. Red colour contusion of size 8 cm X 4 cm present over aspect of lower part of abdomen.

All the injuries were antemortem in nature and the cause of death was due to intracranial haemorrhage as a result of head injury.

7.9 The panchnama of the place of offence is produced at Exh. 35 and the iron rods and iron strip which were used by the accused and the child

conflict with law have been recovered from the place of offence itself.

8. Having heard learned advocates appearing for the parties and having gone through the materials on record, the only question that arises for

determination in this appeal is whether in the facts and circumstances of the present case, the learned Trial Court was justified in passing the order of

conviction under Sections 302 and 114 of the IPC or the offence falls under Section 304 of the IPC?

9. Learned Advocate Mr. Madansingh O. Barod for the appellants has submitted that considering the evidence of the prosecution on record the case

is not one of murder but a case of culpable homicide not amounting to murder and would be punishable under Section 304 Part II of the IPC. As per

the case of the prosecution, the incident has occurred when the appellants and the deceased along with others were playing cards as it was a holiday

in the Mills on account of Diwali and suddenly a quarrel took place and the incident has occurred. It is not the case of the prosecution that the

appellants and the child in conflict with law were armed with any deadly weapons and they had assaulted the deceased in a premeditated manner but

as per the evidence of the eye witness, the sudden quarrel took place and the incident has occurred. The appellants did not have any intention of

committing the murder of the deceased but without premeditation a sudden fight ensued and the appellants who were young boys aged about 19 years

got excited and took the iron rods lying there and assaulted the deceased. That in the evidence, injuries were found on the body of one of the

appellants and the deceased had also assaulted the appellants and the child in conflict with law. Learned Advocate for the appellants has argued to

consider the case of the appellants as culpable homicide not amounting to murder and under Section 304 Part II of the IPC.

10. We have minutely perused the impugned judgment and order and the entire evidence produced by the prosecution on record of the case and find

that as per the complaint produced at Exh. 25, the accused, deceased and child in conflict with law were playing cards and suddenly a quarrel took

place between them and the accused picked up the iron rods which were lying at the same place and assaulted the injured and the deceased, and the

unfortunate incident took place. The short question that is required to be decided by us is whether the offence falls under any of the exceptions under

section 300 and whether the accused have to be sentenced under section 302 of the IPC or 304 Part I or Part II of the IPC?

11. The Apex Court in Anbazhagan vs The State Represented By The Inspector Of Police in Criminal Appeal No. 2043 of 2023 (Arising out of

S.L.P. (Criminal) No. 9289 of 2019 has observed In Para 60, 61 and 62 as under :

60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:-

1. When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the

intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of

Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot.'B'

comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in

holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of

murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the

latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies

shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in

holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the

ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty

of the offence of murder although only single injury was caused.

2. Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused

which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions

enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not

amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of

Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the

IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted

but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder

under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it

would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

3. To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in

Section 299 of the IPC it is punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under

the second part of Section 304. In effect, therefore, the first part of this section would apply when there is â€˜guilty intention,â€™ whereas

the second part would apply when there is no such intention, but there is â€˜guilty knowledgeâ€™.

4. Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of

nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

5. Section 304 of the IPC will apply to the following classes of cases: (i) when the case falls under one or the other of the clauses of Section

300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is

covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is

generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the

act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is

first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part,

the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of the offence punishable under the

second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

6. The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not

happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the

accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

7. The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne

in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable

homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought

within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie

established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses

of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four

clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable

homicide not amounting to murder as described under Section 299 of the IPC.

8. The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant must intend the

particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference

to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of

the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and

attendant on the attack.

9. Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in

the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to

cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

10. When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the

accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused

had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

11. Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the

intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the

death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

12. In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted

by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a

sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple

injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.

61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their

agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a

lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal

altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of

the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with

the weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The

weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is

bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the

temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is â€

whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause

death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was

likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause

thirdly of Section 300 of the IPC.

12. in light of the observations of the Apex Court in the case of Anbazhagan (supra) and on perusal of the evidence of the case on hand we find that

as per the case of the prosecution, the incident has occurred in the premises of Yamuna Proteins Mills in the quarters provided for the workers to

reside in and the appellants, child in conflict with law, deceased and injured were all working in the same workplace. The Mill was closed due to the

festival of Diwali and the appellants, child in conflict with law and the deceased were playing cards and suddenly they had a quarrel and the appellants

and the child in conflict with law took the iron rods and iron strips which were lying at the same place and assaulted the deceased and the injured. The

sole eye witness to the incident is the complainant - Ram Shankar Prahlad Yadav and he has stated that a sudden quarrel had taken place. It is not the

case of the prosecution that the appellant were armed with weapons prior to the incident taking place and the appellant have used the iron rods which

were lying at the place of incident. From the evidence, it does not appear to be a premeditated act on the part of the appellants and considering the

manner in which the incident has occurred, it can be concluded that when the appellants assaulted the deceased with the iron rods, they intended to

cause such bodily injury as were sufficient in the ordinary course of nature to cause death. The injuries caused to the deceased, as per the postmortem

note, are injuries over the right parietal region and occipital region and the death has been caused due to the intracranial haemorrhage as a result of the

head injury and we are of the view that the appellant could only be attributed with the knowledge that the injuries were likely to cause death and we

are inclined to hold that the offence would not be sustainable under Section 302 of the IPC but would be one under Section 304 Part II of the IPC.

13. For the reasons recorded above, we have no hesitation to hold that in the facts of the present case, the ingredients of murder as defined under

Section 300 of the IPC are not established and the act of the appellants would fall under Section 304 Part II of the IPC. The conviction of the

appellants under section 302 and 114 of the IPC is set aside and they are convicted under Section 304 Part II of the IPC and sentenced to undergo

simple imprisonment for a period of eight years. Rest of the sentence remains unaltered and with this modification, the appeal is partly allowed.

Registry is directed to send the R & P back to the learned Trial Court.