
(2003) 01 RAJ CK 0060

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 357 of 1997

Babu Khan and
Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: Jan. 29, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 100, 300, 302, 304, 34

Citation: (2003) CriLJ 2654 : (2003) 3 RLW 1659 : (2003) 2 WLC 735

Hon'ble Judges: S.K. Keshote, J; F.C. Bansal, J

Bench: Division Bench

Advocate: Anil Kumar, Amicus Curiae and S.S. Rathore, Public Prosecutor, Sunil Tyagi, for the Appellant;

Judgement

Bansal, J.

This appeal is directed against the judgment dated July 25, 1997 passed by learned Addl. Sessions Judge, Dausa whereby the appellants-Babu Khan and Lallu Khan have been convicted and sentenced to undergo imprisonment for life and a fine of Rs. 2,000/-, and in default of payment of fine to further undergo three months" simple imprisonment u/s 302 IPC and to undergo imprisonment for life and a fine of Rs. 2,000/- in default of payment of fine to further undergo three months simple imprisonment u/s 302/34 IPC respectively.

2. The brief facts of the prosecution case are that PW-3 Yaseen Khan son of Khaju Khan Musalman resident of Ramgarh Pachwara submitted a written report Ex.P.4 to SHO Police Station Nangal Rajawatan District Dausa on April 4, 1996 at 11.45 PM. It was, interalia, stated in the written report that today at about 7.00 PM he and his brother Lallu Khan (appellant) sitting on "Chabutara" situated in their locality were having discussion about money transactions. Suddenly Babu Khan son of Lallu caught hold of his son Pappu and caused 2-3 injuries with a knife on his person. Pappu was also beaten by Lallu with kicks and fists. Salim Khan, his son Mazid Khan, Chauthya Keer and Sammi

Luhar were the eye- witnesses to this incident. When his wife Sahida intervened to save Pappu she was also caused injuries by both Lallu Khan and Babu Khan. They left the place of incident when Pappu was unconscious. In the last it was also mentioned in the report that the dead body of his son Pappu is lying in the hospital Ramgarh Pachwara. On the, basis of Ex.P4 a formal FIR Ex.P.18 was registered u/s 302/34 IPC by the Incharge Police Station Nangal Rajawatan and investigation commenced. The investigating Officer reached on the spot on April 5, 1996 and prepared site- plan Ex.P.5. Blood smeared soil and control soil were seized from the spot and seizure memo Ex.P.8 was prepared. On reaching at the hospital the Investigating Officer prepared inquest report Ex.P1 of the dead body. Autopsy on the dead body of Pappu was conducted by PW. 12 Dr. Rajendra Kumar Gothwal, Medical Officer Incharge, PHC, Ramgarh Pachwara and he prepared post-mortem report Ex.P.16. Baniyan and pent which the deceased was wearing at the lime of incident were seized and sealed by the Investigating Officer vide seizure memo Ex.P.3. The appellant Babu Khan was arrested on April 5, 1996 vide arrest memo Ex.P.19. He was also medically examined. His injury report is Ex.P.13. On his disclosure statement made before the Investigating Officer in police custody which is Ex.P.20, a "chhuri" was recovered at his instance from his house which was seized and sealed by the Investigating Officer vide recovery memo Ex.P.7. Smt. Sahida @ Sahidan was also medically examined by PW. 12 Dr. Rajendra Kumar Gothwal, Medical Officer Incharge, PHC, Ramgarh Pachawara, Her injury report is Ex.P.17. Bloodstained baniyan and pent belonging to the deceased, blood smeared soil and control soil and "chhuri" were sent to SFSL for Serological examination. On examination human blood was found on all the above articles except control soil but its origin could not be determined. The statements of the witnesses were recorded u/s 161 Cr.P.C. On completion of investigation a chargesheet was laid in the Court of Judicial Magistrate, Lalsot who committed the case to the Court. of learned Sessions Judge, Dausa. On transfer file was received by learned Addl. Sessions Judge, Dausa.

3. Learned Addl. Sessions Judge, Dausa framed charge u/s 302 IPC against the appellant Babu Khan and charges u/s 302/34 and 323 IPC against the appellant-Lallu Khan.

4. Both the appellants denied the charges and claimed trial. The prosecution examined as many as 14 witnesses. In their statements recorded u/s 313 Cr.P.C. the appellants stated that Razia who is sister of the deceased Pappu was having illicit relations with Jagdish Rana and because of that their families were being defamed. Therefore the appellant Babu Khan went to Mazid, brother of the deceased Pappu to ask him for telling Razia not to have illicit relations with Jagdish Rana but Mazid became angry and started abusing him. On hearing noise Pappu also came there. He was having two lathies in his hand and started beating him. His father Lallu Khan reached on the spot and snatched lathies from Pappu. Thereafter Pappu brought a knife and both he and Mazid made attempt to kill him. To save himself he (appellant Babu Khan) caught hold of Pappu, snatched knife from him and gave knife blows on the person of Pappu. Sahida was not there. Thereafter both the

appellants left the place of occurrence and reached at the Outpost Ramgarh. They submitted a report to the Incharge Police Outpost but no case was registered in defence. DI-Aseen Khan and D2-Mazid Khan were examined.

5. Learned Addl. Sessions Judge after hearing the final submissions, convicted and sentenced the appellants as indicated hereinabove.

6. We have heard the learned counsel for the appellants, learned Amicus Curiae, learned Public Prosecutor, scanned and scrutinized the material on record.

7. There is no dispute that the deceased Pappu met with homicidal death and this fact is established by medical evidence on record. PW.12 Dr. Rajendra Kumar Gothwal has stated that on April 5, 1996 he was Medical Officer Incharge, PHC, Ramgarh Pachawara and conducted post-mortem examination oh the dead body of deceased Pappu son of Yaseen Khan and found the following injuries :

1. Abrasion 5cm x 1/4 cm. on left side of neck.
2. Stab wound 2 cm. x 1 cm. x muscle deep below the chin.
3. Stab wound 5 cm. x 1 cm. x muscle deep on left side of neck.
4. Stab wound 4 cm. x 1-1/2 cm. x muscle deep on left side of neck.
5. Stab wound 5 cm. x 2 cm. x deep to thoratic cavity left side of chest at ant. auxiliary line at the level of left nipple.
6. Incised wound 5 cm. x 2 cm. x bone deep on left shoulder near head of humerus.
7. Incised wound 4 cm. x 1-1/2 cm. x bone deep on left scapula.
8. Stab wound 2-1/2 cm. x 1-1/2 cm. x bone deep on back of chest on post auxiliary line 10 cm. lateral to left nipple.
9. Stab wound 3 cm. x 1-1/2 cm. x bone deep 2 cm. below the left angle of scapula.
10. Stab wound 2 cm. x 1-1/2 cm. x bone deep on the chest at middle of 3rd rib.
11. Incised wound 10 cm. x 3 cm. x muscle deep on right abdomen 15 cm. below right nipple.
12. Incised wound 5 cm. x 1 cm. x muscle deep on abdomen 8 cm. lateral to umbilicus.
13. Stab wound 3 cm. x 1 cm. x bone deep on left ant. iliac crest."

8. Dr. Rajendra Kumar further stated that all the injuries were ante-mortem in nature. In his opinion the cause of death was haemorrhagic shock. All the injuries collectively were

sufficient to cause death in the ordinary course of nature. He prepared post-mortem report Ex.P. 16.

9. Learned counsel for the appellants has not challenged the veracity of Dr. Rajendra Kumar and in our opinion also his statement is trust-worthy and it proves that the deceased Pappu met with homicidal death. It may be observed here that all the injuries except injury No. 1 found on the dead body were caused by sharp weapon. Injury No. 1 was caused by blunt weapon.

10. The first contention of the learned counsel for the appellants is that no case is made out against the appellant Lallu Khan and he has wrongly been convicted by the trial court. He has submitted that in written report Ex.P.4, it was alleged that Pappu was beaten by Lallu Khan with fists and kicks whereas in his statement on oath recorded by the trial Court PW.3 Yaseen Khan stated that Lallu caught hold of Pappu. He did not state that Pappu was beaten by Lallu Khan also. Learned counsel has also contended that as per the version of PW.6 Mazid son of Yaseen. Lallu Khan gave lathi blow on the person of Pappu. In view of contradictory statements of PW.3 Yaseen Khan and PW.6 Mazid the prosecution has failed to prove the charge framed against the appellant Lallu Khan beyond reasonable doubt and therefore, he is entitled to be acquitted. Learned Public Prosecutor has supported the judgment of the trial Court.

11. We have given our thoughtful considerations to the aforesaid submissions made by learned counsel for the appellants. Having perused the written report Ex.P.4 wherein it was not alleged that the appellant Lallu had inflicted an injury with lathi on the person of Pappu or he caught hold of Pappu but it was stated that Pappu was beaten by the appellant Lallu Khan with kicks and fists, the aforesaid contradictory statements of PW.3 Yaseen and PW.6 Mazid who are father and brother of the deceased respectively, we have come to the conclusion that no case is made out against the appellant Lallu Khan and learned Addl. Sessions Judge has committed a mistake in convicting him u/s 302/34 IPC.

12. Learned counsel for the appellants has not challenged the conclusion arrived at by the trial court that the death of Pappu was caused by the appellant Babu Khan by inflicting injuries with a sharp weapon. His only contention is that in the alleged incident the appellant Babu Khan also had sustained three injuries of blunt weapon. Out of these injuries one was lacerated wound and On X-ray one injury was found to be of grievous injury as proximal phalanx of index finger was fractured but the prosecution has not explained these injuries. This fact proves that the prosecution has withheld true genesis and happening of the incident, He has further contended that as per the version of PW-4 Yaseen he and Lallu Khan were having discussions about money transactions and Mazid was also present there. During their discussions Babu Khan came on the spot and abused Mazid. Mazid asked Lallu Khan to take Babu Khan from that place. Thereafter PW-3 Yaseen deposed in his statement that when Lallu Khan and Babu Khan were leaving that place deceased Pappu came there from opposite side. The appellant Babu

Khan caught hold of Pappu and gave knife blows on his person. Learned counsel has submitted that from the version of PW-3 Yaseen it is clear that the appellant Babu Khan had no intention to cause injury to anybody. He was not having any weapon with him. In his statement u/s 313 Cr.P.C. the appellant Babu Khan stated that when Mazid was abusing him, on hearing noise Pappu came at the place of occurrence. He was having two lathies in his hand and started beating him. His father Lallu Khan also reached there and snatched lathies from Pappu. Thereafter Pappu brought a knife. He wanted to kill him and therefore, he caught hold of Pappu and after snatching knife from him he inflicted 2-3 injuries on his person. Learned counsel for the appellants has contended that in these circumstances the appellant Babu Khan committed no offence as in exercise of right of private defence of his body he had caused injuries on the person of Pappu. Assault made by the deceased Pappu caused apprehension in the mind of the appellant that if he did not inflict injuries on the person of Pappu, death or grievous hurt would be the consequence of that assault. The appellant had not inflicted more harm than what was necessary to inflict for the purpose of defence and therefore, no offence has been committed by the appellant. In the alternate learned counsel has submitted that at the most it is a case of exceeding of right of private defence and the appellant has committed an offence only u/s 304 Part I IPC. In support of his submissions learned counsel has cited Ratan Lal and Ors. v. State (1), Lakshmi Singh and Ors. v. State of Bihar (2) and Deo Narain v. The State of U.P. (3).

13. Learned Public Prosecutor has contended that the defence of the appellant is unbelievable. The appellant caused as many as 13 injuries on the person of deceased Pappu. Out of these injuries 12 were caused by sharp weapon. Most of the injuries were on the vital part of the body of the deceased. No suggestive question was put to any of the eye-witnesses of the occurrence that the deceased had brought a knife and it was snatched by the appellant when the deceased made attempt to inflict injury with it on the person of the appellant Babu Khan and thereafter the appellant caused injuries to the deceased. Therefore, it is not a case of right of private defence of the person and the appellant Babu Khan has rightly been convicted by learned Addl. Sessions Judge.

14. We have given our thoughtful consideration to the aforesaid rival submissions made by learned counsel for the appellants, learned Public Prosecutor and also perused the rulings cited by the learned counsel for the appellants. So far as causing death of Pappu by inflicting injuries on his person by the appellant Babu Khan is concerned, the prosecution has succeeded in proving this fact by its evidence consisting of PW.3 Yaseen and PW.6 Mazid. PW.11 Sahida also has stated that he had seen the incident and when he tried to rescue Pappu she was also inflicted injuries on the forehead and near eye by the appellant, Lallu with a lathi but the statement of Sahida is not trust-worthy and in our opinion she was not the eye-witness of the occurrence. As per the version of PW. 11 Sahida the appellant Lallu Khan was having a lathi in his hand but her husband PW.3 Yaseen has not stated that the appellant Lallu Khan also had inflicted injuries on the person of his wife Sahida. As per his statement the appellant Lallu Khan was

empty-handed. Apart from this she was examined after three days of the occurrence on 7.4.96 and 5 abrasions were found on her person. In the opinion of PW.12 Dr. Rajendra Kumar, the duration of these injuries was 24-48 hours. Duration of the injuries proves that Sahida sustained these injuries either on 5.4.96 or 6.4.96 and not on the date of alleged incident i.e. on 4.4.1996. Therefore, no reliance can be placed on the testimony of Sahida. She is the mother of the deceased and because of this relation she has deposed against the appellant.

15. As per the version of PW.3 Yaseen and PW.6 Mazid son of Yaseen, the deceased Pappu was caused injuries by the appellant Babu Khan with a knife. It is true that Yaseen and Mazid are father and brother of the deceased respectively but on this ground alone their testimony cannot be rejected.

16. The Apex Court in *Lehna v. State of Haryana* (4), held as under:

"We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

17. In *Dalip Singh v. State of Punjab* (5), it has been laid down as under :

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

18. The above decision has since been followed in *Guli Chand v. State of Rajasthan* (6), in which *Vadivelu Thevar v. State of Madras* (7), was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh Case* in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan* (8). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

19. Again in *Masalti v. State of U.P.* (9), this Court observed :

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses...The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated, Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

20. To the same effect is the decision in *State of Punjab v. Jagir Singh* (10)."

21. In *State of Punjab v. Jugraj Singh and Ors.* (11), while reiterating the same rule, the Apex Court indicated that the testimony of the witnesses could not be discarded only on the ground that they happened to be the relations of the deceased. To the same effect are the decisions in *Ashok Kumar Pandey v. State of Delhi* (12) and *Bhagwan Singh and Ors. v. State of M.P.* (13), *Hukum Singh and Ors. v. State of Rajasthan*, (14), *Dalveer Kaur v. State of Punjab* (15), *Sukhdeo v. State of Rajasthan* (16).

22. In view of the decisions of the Apex Court and this Court the evidence of PW.3 Yaseen and PW.6 Mazid cannot be discarded only on the ground that they happen to be the father and brother of the deceased Pappu.

23. In the case of *State of Haryana v. Ram Singh* (17), the Apex Court held as under:

24. "Admittedly all the supposed eyewitnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the court will be rather strict in its scrutiny as to the acceptability of such an evidence."

25. Keeping in view the aforesaid decision of the Apex Court the testimony of PW.3 Yasin and PW.6 Mazid have been scanned and scrutinized by us. On close and careful scrutiny of the testimony of Yaseen and Mazid we come to the conclusion that their testimony against the appellant Babu Khan is wholly trust-worthy. Their testimony gets

corroboration from the medical evidence of Dr. Rajendra Kumar and PW.3 Chauth Mal, an independent witness. PW.8 Chauth Mal has stated that Babu Khan inflicted 10-12 injuries with a knife on the person of Dablu @ Pappu son of Yaseen. Therefore, in our opinion both Yaseen and Mazid are reliable witnesses and their testimony can be relied upon. It is true that the prosecution has not explained the injuries found on the person of appellant Babu Khan on medical examination but on this ground alone it cannot be said that whole of the prosecution story is false and the appellant Babu Khan did not cause any injury to the deceased Pappu. Hence, the prosecution has succeeded in proving the fact that the appellant Babu Khan had caused death of deceased Pappu by inflicting injuries with a knife.

26. Now the question arises as to what offence has been committed by the appellant Babu Khan. The trial Court has found him guilty u/s 302 IPC. The appellant Lallu Khan and PW.3 Yasin are real brothers. The deceased Pappu was the son of PW.3 Yaseen and the appellant Babu Khan is the son of the appellant Lallu Khan. As per statement of PW.3 Yaseen there was no previous enmity between his family and that of the family of the appellants. The appellant Babu Khan was not present when verbal altercations took place between the appellants on one side and Mazid and Yaseen on the other side. When the appellants were leaving the place where they and Yaseen and Mazid were quarreling the appellant Babu Khan came from opposite side and thereafter he was caused injuries by Babu Khan. These facts show that the appellant Babu Khan had no intention to cause death of the deceased Pappu.

27. As per the version of PW.9 Dr. Hari Prasad Sharma, Babu Khan was medically examined by him on 5.4.1996 and three injuries caused by blunt weapon were found on his person, duration of injuries was within 24 hours. He has also stated that on X-ray proximal phalanx of index finger was found fractured. He prepared injury report Ex.P. 13. X-ray report is Ex.P. 14. Looking to the duration of the injuries sustained by the appellant Babu Khan we are of the opinion that the appellant also had sustained these injuries in the alleged incident. No explanation of these injuries has been given by the prosecution. In view of this fact and looking to the statement of PW.3 Yaseen we are also of the opinion that when the appellant Babu Khan was returning to his house the deceased Pappu came from his house and he caused injuries with a lathi on the person of Babu Khan and thereafter to defend himself the appellant Babu Khan gave knife blows to the deceased Pappu.

28. Sections 99, 100, 101 and 102 of the Indian Penal Code read as under :

"99. Acts against which there is no right of private defence-There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Explanation 1. A person is not deprived of the right of private defence against an act done, or attempted to be done by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2- A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he known, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded."

"100. When the right of private defence of body extends to causing death. The right of private defence of body extends, under the restrictions mentioned in last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :-

Firstly- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly- An assault with the Intention of committing rape; Fourthly- An assault with the intention of gratifying unnatural lust; Fifthly- An assault with the intention of kidnapping or abducting;

Sixthly-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

" 101. When such right extends to causing any harm other than death-If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extent, under the restrictions mentioned in Section 99, to the voluntary causing to the assailant of any harm other than death."

"102. Commencement and continuance of the right of private defence of the body:- The right of private ..defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues."

29. It has been held in *Deo Narain v. The State of U.P.* (18), that:

"According to that section the right of private defence of the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant danger. This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force is self defence. To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the, law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available.

30. The Division Bench of this Court in *Francis Alfred v. State of Rajasthan* (19), the Division Bench of this Court has held that:

"The right of private defence of property or person, where there is real apprehension that the aggressor might cause death or grievous hurt to the defender could extend even to the extent of causing death. A mere reasonable apprehension is enough to put the right of self defence into operation, but it is also settled position of law that a right of self defence is only right to defence oneself and not to retaliate. It is not a right to lake revenge."

31. In the instant case, of course the right of private defence of the body had accrued to the appellant as soon as he was caused injuries by the deceased Pappu and in exercise of this right he could have caused some injuries on the person of deceased but in our opinion the appellant caused as many as 12 injuries with a sharp weapon on the person of the deceased. Some of the injuries are on vital part of the body. The deceased was caused more harm than what was necessary to inflict for the purpose of defence by the appellant. In our view the case of the appellant comes under exception 2 of Section 300 IPC. Looking to the nature and number of injuries sustained by the deceased it can safely be held that the appellant Babu Khan had caused injuries to the deceased with the

intention to cause such injury which was likely to cause death and this act of the appellant comes within the mischief of Section 304 Part I of the IPC. Now remains the question of sentence, looking to the facts and circumstances of the case sentence of 10 years rigorous imprisonment and a Fine of Rs. 2,000/- is appropriate to meet the ends of justice.

32. In view of the above discussions the appeal of the appellant Lallu Khan deserves to be allowed and he is entitled to be acquitted. The appeal of the appellant Babu Khan deserves to be allowed in part as under.

Consequently the appeal of the appellant Lallu Khan is allowed. While setting aside his conviction and sentence he is acquitted of the charge u/s 302/34 IPC. He is on bail. His bail bonds stand cancelled. Amount of fine if deposited by him shall be refunded. The appeal of the appellant Babu Khan is partly allowed. He is acquitted of the charge u/s 302 IPC. Instead we convict him u/s 304 Part I IPC and sentence him to suffer 10 years rigorous imprisonment and a fine of Rs. 2,000/- in default of payment of fine to further undergo three months simple imprisonment. The judgment of the trial court stands modified accordingly.