
(2011) 3 GLT 580

Gauhati High Court (Agartala Bench)

Case No: Criminal Appeal No. 7 of 2003

Sri Manilal Sarkar and
Sri Manab Sarkar

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision: April 13, 2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 313, 428#Penal Code, 1860 (IPC) "
Section 148, 149, 302, 304, 323

Citation: (2011) 3 GLT 580

Hon'ble Judges: A.C. Upadhyay, J

Bench: Single Bench

Advocate: D.C. Kabir and S. Sarkar, for the Appellant; A. Ghosh, Additional P.P., for the Respondent

Final Decision: Allowed

Judgement

A.C. Upadhyay, J.

Appellants above named were put on trial for alleged commission of offence under Sections 148/149/323/302 of the

Indian Penal Code, in the Court of learned Additional Sessions Judge, North Tripura, Dharmanagar, in connection with Sessions Trial No. S.T. 70

(NT/ D) 2001. On conclusion of the trial, the learned Sessions Judge convicted the Appellant No. 1, Sri Manilal Sarkar u/s 304 (Part - II) IPC

and sentenced him to suffer imprisonment for 10 (ten) years and to pay a fine of Rs. 5,000/-, in default, to undergo imprisonment for one year and

further convicted the Appellant No. 2, Sri Manab Sarkar to suffer imprisonment, for 5 (five) years and also to pay a fine of Rs. 5,000/-, and in

default to suffer imprisonment for six months for commission of offence u/s 325 IPC.

2. The prosecution case, in brief is that, on 14.10.2000, at about 11:00 am in the morning Bidhan Sarkar(P.W.2), the younger brother of the

informant, Bimal Sarkar(P.W.1) was catching fish in a common pond belonging to their family. At that time accused Sri Manab Sarkar started

abusing Bidhan in filthy language. Soon thereafter Manilal Sarkar, Jayanta Sarkar, Anil Sarkar and Dakshina Sarkar came to the house of first

informant armed with dao(sharp cutting weapon), sword and lathi. On hearing abusive and filthy language uttered by the accused when Bhupal

Sarkar, aged about 70 years, i.e., father of the first informant, came out from his room, he was assaulted with spade blows by the accused persons

with a view to kill him. Bidhan Sarkar(PW.2), in his effort to save his father from being assaulted, also sustained severe injuries on his hand, and

one finger of his left hand got cut and his father's head was fractured/cut, and his father started vomiting blood. In the meantime, neighbours came

to the place of occurrence, and rescued the family members of the first informant. Injured father of the first informant was rushed to Pecharthal

Primary Health Centre, and then shifted to Dharmanagar Sub-Divisional Hospital. However, as his condition deteriorated he was taken to Silchar

Medical College Hospital, for better treatment. Unfortunately, Bhupal Sarkar succumbed to his injuries on his way to Silchar Medical College

Hospital.

3. On the basis of the information lodged by the informant immediately after the occurrence, a case was registered by the Police, for investigation.

Subsequently, after the death of Bhupal Sarkar, Section 302 IPC was added on the prayer of the Investigation Officer. On completion of the

investigation, the Investigating Officer submitted the chargesheet against the accused Appellants under Sections 148/149/323/302 of the IPC.

4. During trial, the learned trial Court framed formal charges against five accused persons under Sections 148/149/323/302 of the IPC and on

reading over and explaining the charges, aforementioned, the accused persons pleaded not guilty and claimed to be tried.

5. In the course of trial, the prosecution produced as many as 21 (twenty-one) witnesses. All the witnesses were thoroughly cross-examined on

behalf of the Appellants. Apart from the above, prosecution also proved certain documents in connection with the case. On conclusion of the

prosecution evidence, defence statements made by the accused persons were also recorded as per provisions of Section 313 Code of Criminal

Procedure The accused persons in their statements u/s 313 Code of Criminal Procedure took the stand of total denial. The accused persons also

took the plea during cross-examination of prosecution witnesses that the spade blow aimed by Bidhan Sarkar (P.W. 2) on the head of the accused

Manilal fell on the head of the deceased, which ultimately caused the death of the deceased. However, the accused persons in support of their

contentions adduced 2 (two) witnesses during trial, to establish that the informant had lodged a false case against them with a view to harass them

and also to prove that at the time of the incident, when the informant (PW.2) had tried to assault the accused-Appellant, accidentally the victim was

hit on his head, which caused the injury resulting on his death.

6. On conclusion of the trial, upon due consideration of the evidence on record, the learned trial Court convicted the Appellants above named,

however, acquitted the rest of the accused, namely, Anil Sarkar, Sri Jayanta Sarkar and Dakshina Ranjan Sarkar, who were facing trial together

with the Appellants. The convicted Appellants above named have preferred this appeal against the impugned judgment and Order by the learned

Sessions Judge as aforesaid.

7. I have heard the arguments advanced by Mr. D.C. Kabir, learned Counsel appearing for the Appellants, as well as Mr A Ghosh, learned

Additional Public Prosecutor, representing the State Respondents. In order to appreciate the arguments advanced by the learned Counsel for the

Appellants as well as the State Respondent, it would be appropriate to extract herein below the core of the evidence of the prosecution witnesses.

8. Death was due to injury caused on the head of the deceased Bhupal Sarkar, is not disputed by the defence. Dr. Anjan Das, P.W.21, who

carried out the postmortem examination of the deceased Bhupal Sarkar, found the following injuries on the dead body of the deceased, which is

not disputed by the defence:

1. Haematoma over the right eye.
2. cut injury over right parietal region.
3. cut injury over parietal region
4. Fracture over right parietal region bone.
5. Intensive internal haemorrhage in the right parietal region.

In my opinion the cause of death was cardio-respiratory failure due to head injury following grievous cut injury.

Apparently the deceased had several injuries on his head which was the cause of his death.

9. Shri Bimal Chandra Sarkar (P.W.1) is the son of the victim and informant of the instant case. In his deposition P.W.1 stated that the incident

had occurred on 14.10.2000, when there was hot altercation between the accused persons and his family members regarding catching of fish from

ejmali (common) pond. Accused Manab snatched the net from Bidhan(P.W.2) and abused him in filthy language. On hearing hue and cry

Bimal(P.W.1) rushed to the back side of the southern "vity hut" and rebuked accused Manab and also enquired what had happened. At that time

accused also rebuked him in filthy language and thereafter he went to his house. After a few minutes later, accused Manilal came out with a sword

and accused Manab followed him with a stick, they were rebuked by P.W.1 and his family members. In the mean time, wife of P.W.3 could

manage to persuade the accused persons and send them back to their houses. However, after a few minutes later, all the accused persons armed

with deadly weapons came to the house of P.W.1. At that time the father of P.W.1 on seeing the happenings came out from the kitchen. When his

father came out from the kitchen accused Manilal, Anil and Manab attacked him. At that time accused Manilal was carrying a spade and he had

assaulted Bhupal Sarkar (deceased) by the spade. On seeing this when P.W.1 rushed towards the accused persons, all the accused persons

started assaulting him by lathi and spade. P.W.1 in his examination in chief however, confided that he could not properly mark the weapons used

by the accused persons at that time. After committing the crime, all the accused persons left the place of occurrence.

10. In his cross-examination, P.W.1 stated that he had stated in the FIR that accused Manilal had assaulted his father by means of a spade.

However, although learned Appellant counsel pointed out that such a statement specifying the name of accused, who had assaulted the deceased

by the spade was made by P.W.1 in the FIR Exbt.P.6, but the FIR reveals that the statement was made specifying that the accused person had

caused injury by spade on the head of his father with a view to kill him. The contradictions as aforesaid sought to be projected by the defence is

not a major contradiction, warranting outright rejection of the statement made by the witnesses. After all F.I.R. can not contain every tit bits of the

prosecution case. Therefore, minor contradictions as shown by the defence do not have the potential to negate the prosecution story. PW.1 denied

the suggestion of the defence that his father Bhupal Sarkar had sustained injuries while trying to resist P.W.1, when latter had tried to assault

accused Manab by a spade.

11. P.W.2, Shri Bidhan Sarkar is the brother of P.W.1 and the victim Bhupal Sarkar was his father. P.W.2 stated that on the date of occurrence

the accused persons being armed with deadly weapons like sword, spade and lathi, had come to their house and accused Manilal was carrying a

spade in his hand. P.W.2 further stated that on hearing hue and cry, his father (deceased) had come out from the kitchen and at that time accused

Manilal dealt a spade blow on the head of his father and his father fell down on the ground with bleeding injuries on his person. P.W.2 further

confirmed that accused Manab and Anil had dealt with lathi blows on his father. He further clarified that while his elder brother P.W.1 had tried to

resist the accused persons, he was also assaulted by the accused persons. In his cross-examination P.W.2 stated that accused Anil and Manab

had dealt lathi blows on his father and brother and they had sustained bleeding injuries on their person. P.W.2 did not admit in his cross-

examination that Manilal had not dealt spade blow on the head of his father.

12. P.W.3, Shri Samarjit Sarkar, is a next door neighbour. He knew deceased Bhupal Sarkar. On the date of occurrence P.W.2 and he had gone

to catch fish from the fishery. At that time accused Manab had come there and rebuked P.W.2. This witness also found that both accused Manilal

and Manab had been altercating with the informant, however, P.W.3 did not go to the place of occurrence. After hearing hue and cry from the

place of occurrence, he came out and found that Bhupal Sarkar was lying on the ground with bleeding injuries on his person. P.W.3 helped the

family members to shift Bhupal Sarkar to Pecharthal PHC for treatment.

13. P.W.4, Sri Pradip Sarkar accompanied deceased Bhupal Sarkar from Pecharthal PHC to Silchar via Dharmanagar. However, P.W.4

confirmed that on the way to Silchar Medical College, Bhupal Sarkar succumbed to his injuries and, accordingly, dead body of the deceased was

brought to Pecharthal PHC, where the inquest report was prepared by the police officer in which P.W.4 had put his signature as a witness.

14. P.W.7, Smt. Rita Sarkar was in the house of her uncle Mihir Sarkar (P.W.19) at the time of occurrence. On hearing hue and cry she rushed to

the house of the informant and found that Bhupal Sarkar was lying on the ground in front of their kitchen in an injured condition.

15. P.W.8, Smt. Dulali Sarkar is the wife of P.W.1 and the deceased was her father-in-law. According to P.W.8, on the date of occurrence, there

was a hot altercation between the accused persons and her brother-in-law Bidhan Sarkar (P.W.2), relating to fishing in the common fishery.

Accused Manab took away the net from Bidhan(P.W.2). After a few minutes later, accused persons being armed with deadly weapons like lathi,

sword, spade etc. came to their house and tried to assault her husband P.W.1. P.W.8 came forward to resist the accused persons. On hearing hue

and cry, her father-in-law, who was inside, also came out from the kitchen and at that very moment accused Manilal dealt a spade blow on the

head of her father-in-law. Other two accused, i.e., Manab and Anil (since acquitted) had also dealt lathi blows on the deceased Bhupal Sarkar.

P.W.8 further stated that while trying to resist the accused persons, her husband had sustained injuries on his person. According to P.W.8,

immediately on sustaining injury, her father-in-law Bhupal Sarkar, fell down on the ground in front of the kitchen with bleeding injuries.

16. In her cross examination though P.W.8 stated that she had stated before the I/O that accused Manab had dealt lathi blow on the head of her

father-in-law, but no such statement was found to have been made by the witness before the police. However, since this fact of PW.8, making

such statement was not ascertained from the I/O, during the cross-examination of the I.O. therefore, I do not consider it relevant to discuss the

issue, since the fact of making such statement by PW.8 before the I.O. has not been established by the defence. P.W.8 did not admit that her

husband while trying to assault accused Manab by a spade, had hit her father-in-law accidentally on his head.

17. P.W.9, Golapi Sarkar, is not the eyewitness to the occurrence.

18. P.W.10, Smt. Sabita Chakma was a day labourer. She was present in the house of the informant at the time of occurrence to collect her

wages. P.W.10 affirmed that she was present at the time of occurrence. P.W.10 stated that there was a hot altercation between the accused

persons and the informant. On seeing the same deceased Bhupal Sarkar came out from the kitchen and at that very moment accused Manilal gave

a blow on his head by a spade. P.W.10 stated that accused Manilal had dealt a blow on the deceased by the reverse side of the spade and

accused Manab had dealt lathi blow on the deceased as a result of which, the deceased fell down on the ground with bleeding injuries. On seeing

the above incident, P.W.10 fled away from the place of occurrence. As a matter of fact, cross-examination of PW.10 did not reveal anything

substantial to support the defence stand. Apparently P.W.10 did not implicate any other accused in the incident except accused Manilal and

Manab.

19. P.W.11, Shri Prabir Sarkar in his deposition stated that on hearing hue and cry he rushed to the place of occurrence and found that victim

Bhupal Sarkar was lying on the ground with bleeding injuries in front of their kitchen.

20. P.W.12, Shri Alok Roy, is a seizure witness, who was present when the police seized one stick in his presence. However, P.W.12 did not

recollect from where the I/O had recovered the stick (Lathi). P.W.12 identified the Lathi(stick) seized by the police in his presence.

21. P.W.14, Sri Tapan Sarkar was declared hostile by the prosecution and he was accordingly cross-examined.

22. On conclusion of the evidence of the prosecution witnesses, the learned Sessions Judge recorded the defence statement of the accused

persons u/s 313 of Code of Criminal Procedure in which both the accused-Appellants denied all the specific incriminating evidence given by the

prosecution witnesses, however, desired to adduce defence witnesses.

23. In defence the accused Appellants examined two witnesses, namely, Sri Bangshi Sarkar (D.W.1) and Sri Satrugna Sarkar (D.W.2), in order

to substantiate the fact that the spade aimed on the accused by Manab (P.W. 2) had fallen accidentally on the head of his father i.e. Bhupal Sarkar,

the deceased.

24. D.W.1, Shri Bangshi Sarkar, who is a next door neighbor of the deceased, in his deposition narrated the incident which took place on

14.10.2000. D.W.1 stated that he was present at the place of occurrence when the incident had occurred. Initially D.W.1 heard that the informant

Bimal(P.W.1) and accused Manab (since acquitted) were altercating with each other. On hearing the same, D.W.1 came out from his house.

D.W.1 further stated that at the time when the hot altercation was going on, the informant took a spade from the sty of his house to hurt the

accused Manab. On seeing this, the deceased victim, the father of the first informant Bhupal Sarkar came out from the kitchen and tried to resist

the informant, but unfortunately the spade of the informant hit the head of the victim and he had fallen on the ground over a brick. On seeing the

same, D.W.1 raised hue and cry and upon hearing the same, Mridul and Hirendra had rushed to the place of occurrence. In his cross-examination,

however, the D.W.1 confided that he could not recollect exactly in what portion of the body of the victim the injuries were caused on account of

the blow of the spade. D.W.1 confirmed that he had reached the place of occurrence at first before all others, and thereafter Mridul and Hirendra

had come there. D.W.1 further stated in his cross-examination that except him no one was present at the place of occurrence. Apparently, D.W.1

though stated to have seen the first informant's spade blow had fallen on his father's head, but immediately in his cross-examination by the

prosecution he failed to recollect exactly on which part of the body of the victim the injuries were caused by spade. Learned Counsel for the

prosecution submitted that the entire defence story put forward by the accused is a after thought to conceal and camouflage the truth.

25. D.W.2, Sri Satrughna Sarkar is a relation of the accused as well as the victim, who appeared as witness to prove the defence stand. In his

deposition D.W.2 stated that on hearing the hot altercation, he came to the place of occurrence and found the informant and accused Manab had

been altercating. D.W.2 further stated that suddenly the informant taking a spade from his sty tried to assault accused Manab and at that time the

victim deceased, who was in his kitchen, came out and tried to resist Bidhan. While the deceased was trying to resist Bidhan, unfortunately the

blow of the spade hit the head of the victim. However, D.W.2 stated that he could not notice, which side the blow of the spade hit on the head of

the victim. In his cross-examination D.W.2 stated that he was 10/12 meters away from the place of occurrence and stated that the blow of the

spade of the informant had hit the head of the victim. D.W.2 further asserted that he had followed Bangshi Sarkar (D.W.1) to witness the

occurrence. In his cross-examination D.W.2 affirmed to have seen Smt. Sabita Chakma(P.W.10) in the place of occurrence.

When we appreciate the evidence of the defence witnesses, it appears that the sequence of events do not support and subscribe to their evidence.

The victim, who was admittedly in the kitchen situated just behind the place of occurrence, could not have reached in front of his son P.W.1, to get

hit by his spade. According to D.W.1 and 2, the victim, who was inside the kitchen, having seen his son, P.W.1, getting the spade, came to stop

his son. There is no indication in the evidence on record that the kitchen was an open air kitchen, from where the victim could see what was

happening outside.

26. Mr. DC Kabir, learned Counsel for the Appellant by meticulously by drawing up the contradictions in the statement of the witnesses has

submitted that though the incident took place in broad day light, but the accused persons, who have been convicted and sentenced by the learned

Trial Court deserve to be given the benefit of doubt, since the co-accused, who were implicated for the commission of same offence, have been

acquitted by the learned Trial Court. Learned Counsel for the Appellant further submitted that accused Joyanta and Dakshina Sarkar were

acquitted by disbelieving P.W.5 and accused Manab and Anil being on the same footing, if the evidence of the prosecution is disbelieved for

acquitting Anil, in that case Manab could not have been convicted. Learned Counsel further pointed out that the prosecution has miserably failed to

prove the participation by five persons in the commission of offence. So the ingredients of unlawful assembly are absent. In such a event, the

conviction of the accused-Appellant is not sustainable in law.

27. Learned Counsel for the Appellant submitted that it was wholly ridiculous for the Trial Court to convict the Appellant believing the evidence of

P.W.10, Smt. Sabita Chakma, who was a day labourer working with the accused and her presence was not ever mentioned by P.W.1, 2 and 8,

who happened to be the witnesses present at the time of incident. Learned Counsel for the Appellant pointed out that D.W.2 categorically stated

that P.W.10 had come to the place of occurrence subsequently. Therefore, the learned Trial Court could not have based the conviction of the

accused-Appellant solely on the testimony of P.W.10.

28. Learned Counsel for the Appellants drew the attention of the court to the findings of the learned Trial Court that the accused persons were

convicted solely relying on the testimony of the P.W.10, Smt. Sabita Chakma. Learned Counsel for the Appellants submitted that Smt. Sabita

Chakma was a day labourer of the first informant. Therefore, she could have been easily influenced by the first informant and his family members

for giving a statement against the accused.

29. On scrutiny of the evidence of P.W.10, Smt. Sabita Chakma, it appears that on the date of occurrence she had gone to the house of the victim

together with the victim after cultivation of the victim's land. She further clarified that she had gone there to take her wages from the victim. She

categorically stated at that time she saw that there was hot altercation going on among the first informant and the accused persons. On seeing that

victim Bhupal Sarkar had come out from the kitchen and at that moment he was assaulted by Manilal on his head by a spade. P.W.10 also

affirmed that the blow was made by accused Manilal by the reverse side of the spade. P.W.10 also affirmed that accused Manab also dealt lathi

blows on the victim. Having seen all these, P.W.10 fled away from the place of occurrence, which appears to be a normal reaction of a witness, in

the facts and circumstances of the case. Apparently, as has been rightly held by the learned Trial Court P.W. 10 is a witness, who is neither related

to the accused nor to the first informant. Though she was a day labourer, nothing could be discerned from in her her cross-examination by the

defence that she had any kind of biasness or animosity against the accused persons to tell a blatant lie. Therefore, there is no reason to disbelieve

this witness.

30. Though learned Counsel for the Appellant submitted that the accused persons have been prejudiced for having been convicted without framing

proper charge under appropriate sections of the penal code, however, the Appellants could not show any reason as to how prejudice was caused

to them. In Dinesh Seth Vs. State of N.C.T. of Delhi, Hon"ble Supreme Court held that in certain situations an accused can be convicted for an

offence with which he may not have been specifically charged and any such error, omission or irregularity in the framing of charge is, by itself not

sufficient for upsetting the conviction unless it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the

accused and consequent failure of justice has been occasioned.

31. In the instant case the accused Appellants along with the accused were charged under Sections 148/149/323/302 I.P.C. and consequently at

the end of the trial, the accused Appellant were found guilty of the offence and accordingly they were convicted as indicated in the impugned

judgment. Apparently, no prejudice was caused to the Appellants in defending their case during trial. Neither it was pointed out nor it is discernable

from the facts and circumstances, as to how the accused would have been prejudiced during trial, for so-called improper framing of charge.

32. The facts and circumstances leading to the incident clearly reveal that the accused persons as well as the first informant are near relatives and

the witnesses are also relatives of the first informant as well as the accused persons. Some of the witnesses of the prosecution stated facts in favour

of the accused and some others did not do so. The witnesses, who were produced in the court as defence witnesses, had projected the defence

case of accidental assault by the spade held by the first informant. From the evidence of the witnesses, both prosecution and defence, it can be

clearly discerned that there was an incident of assault and attack by the accused persons on the 1st informant and his family members for a trifling

matter. The prosecution witnesses have categorically stated to have seen the accused persons assaulting the deceased by a spade and lathi.

33. From the evidence of the prosecution as well as the defence witnesses, it unmistakably emerge out that the deceased had sustained injury by

means of a spade.. According to the defence version, the spade which was aimed at accused Manab by the first informant accidentally fell on the

head of the deceased and as a result of which the deceased sustained severe injury which caused his death.

34. When we look into the post-mortem report of the deceased and scan the injuries sustained by the deceased, it appears that the deceased

sustained the following injuries:

1. Hematoma over rt. eye 3x2x2 cm
2. Cut injury over rt. parietal region 5x3x3 cm
3. Cut injury over rt. parietal region 5x3x3 cm
4. Fracture of rt. parietal bone.

35. Multiple injuries of the victim do not speak of any accidental injury of the casualty as postulated by the defence. Apparently, the above injuries

tell us a different story of several assaults on the person of the deceased. So many injuries could not have been caused on the person of the

deceased by a single accidental assault. The injuries sustained by the deceased clearly spell out that the accused persons assaulted the deceased

repeatedly. Had it been an accidental injury on the deceased, there could have been only one injury on the deceased and not so many of them.

Therefore, the defence version of sustaining accidental injury as projected by D.W.1 and D.W.2 is nothing but after thought only to create confusion in the prosecution story.

36. Learned Counsel for the Appellant further submitted that though PW.1 and PW.2 are eyewitnesses, they did not confirm the presence of

PW.10. However, the sequence of events and the tension prevailing among the family members at the time of occurrence was apparently very

high. Therefore, witnesses P.W.1 and P.W.2, who were in middle of the battle ground, not noticing the presence of other persons around them at

the time of occurrence, may not have any adverse significance in the prosecution case, and is not fatal to the prosecution case. Learned Counsel

for the Appellant further pointed out that PW.3 in his deposition did not mention any weapons, such as, sword, lathi, etc. However, PW.3, who is

a neighbour of the deceased, although named Manilal and Manab altercating with each other but confided that he did not come to the place of

occurrence, therefore, there is no question of PW.3 witnessing the incident and mentioning the weapons carried by the accused.

37. Consequently, having analyzed the entire evidence on record by keeping in view the submission advanced by the Appellants" counsel as well

as the leaned Public Prosecutor, I find that forthright testimony of P.W. Nos. 1, 2, 8 and corroborated by P.W. 10, clearly spelt out beyond any

reasonable doubt that Manilal was carrying a spade to the place of occurrence and accused Manab was equipped with a lathi. Accused Manilal

assaulted on the head of the deceased by the spade and accused Manab followed the suit to assault the victim by lathi, as a result of which the

deceased sustained a fatal injuries on his person. However, I do not propose to discuss and analyze the question of common intention of the

convicted Appellants in carrying out the offence alleged, at this stage, since the state is not an Appellant. However, I am of the considered view

that both the Appellants are guilty of the offences charged and proved against them. Therefore, I do not find any reason to interfere with the

conviction as recorded by the learned trial court.

38. However, learned Counsel for the Appellants pointed out that whatever had happened appears to have happened between two close

relatives,, who are also living as neighbours in a remote village. The occurrence also took place at the spur of the moment, for a small reason,

which could have been very well be avoided. However, facts revealed by the witnesses spell out that there was altercations for fishing in the

common pond between the two otherwise peaceful neighbours, which led to the unfortunate death of the deceased. Apparently the altercation

took place without any premeditation. No amount of previous animosity is visible on the evidence on record. Some amount of provocation was

discernable in the evidence on record, however, it would not be possible to exactly measure as how an individual would react, in such situation, in

which the accused was placed. The offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel

and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner.

39. In the facts and circumstances discussed above this Court is of the considered view that the sentence of imprisonment of 10 years imposed on

the accused Manilal deserves to be reduced. Accordingly, the sentence of 10 years imprisonment imposed on Appellant Manilal is reduced to 7

years of rigorous imprisonment. However, the sentence of fine of 5000/- and in default of payment of fine to undergo rigorous imprisonment of

1(one) year as imposed by the trial Court is maintained. Further, upon due consideration it appears that the sentence of imprisonment imposed on

accused Manab does not warrant any interference by this Court.

40. It is also made it clear that if Appellants, who are on bail, shall surrender forthwith and shall undergo the remaining period of sentences

imposed on them. On their surrender, the bail bonds furnished by them will stand cancelled and the surety will also be discharged. Benefit of

Section 428 Code of Criminal Procedure be given to both the Appellants.

The appeal is partly allowed, as above.