Braj Bihari Singh Vs State of Bihar

Court: Patna High Court

Date of Decision: May 4, 2005

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 157, 161, 313
Penal Code, 1860 (IPC) â€" Section 300, 302, 304

Citation: (2005) 3 PLJR 241

Hon'ble Judges: I.P. Singh, J; Ghanshyam Prasad, J

Bench: Division Bench

Advocate: Jitendra Singh, Bindhyachal Singh and Uday Pratap Singh, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Ghanshyam Prasad, J.
The sole appellant has been convicted and sentenced to suffer imprisonment for life u/s 302 I.P.C. The informant

Asha Singh (P.W. 6) is the daughter-in-law of the accused-appellant Braj Bihari Singh and daughter of. the deceased Satya Narayan Singh.

2. The prosecution case in brief, is that the marriage of the informant Asha Singh was performed on 10th March, 1996 with Captain Anil Kumar

Singh, the son of the accused-appellant and immediately thereafter she came to her Sasurai. However, since thereafter, she was never allowed by

her father-in-law, the accused-appellant, to visit her Maika as his desire to get a piece of land at Patna had not yet been fulfilled by her father for

construction of house.

3. Further case of the prosecution is that on request of the informant through telephone, her father deceased Satya Narayan Singh, on 25.7.1999

at about 11.30 A.M. came to her Sasurai situated at Mohalla Gorachhani, Sasaram. At that time, the accused-appellant was in his bed room. As

soon as the deceased entered in the drawing room of the house, he called the informant upon which she came out from inside of the house to meet

her father. In the meantime, the accused-appellant also came in the drawing room from his bed room and asked the deceased to go out of the

house. The deceased expressed that he would leave the house immediately after meeting his daughter (informant) upon which the accused-

appellant brought khukhn from his bed room and gave a blow on the neck of Satya Narayan Singh and fled away alongwith khukhri.

4. The informant immediately brought her injured father to a nearby doctor, Dr. Prabhakar for medical aid who referred the injured to Sadar

Hospital, Sasaram. The informant anyhow managed to arrange an ambulance and brought her father to the hospital where the doctor declared him

as dead. In the meantime, the police also arrived at the spot. The Officer-in-charge, Sasaram P.S. recorded the fardbeyan (Ext. 3) of the informant

in the hospital. The police after making inquest report (Ext. 4) sent the dead body for post mortem.

5. In the meantime, the informant telephonically informed her mother and brothers about the murder of her father. They all immediately came at

hospital from their respective places where the informant narrated about the occurrence to them. After post mortem they all alongwith dead body

and police came to the P.O. house. The police seized cover of khukhn from the bed room of the accused-appellant and also two petticoats which

were suspected to be used to wipe out bloods from the floor of the house.

6. In course of the investigation, the prosecution filed protest petition before the court of C.J.M., Sasaram as it suspected that the police was in

collusion with the accused-appellant, who is retired Deputy Superintendent of Police. However, the police after investigation submitted chargesheet

against the accused-appellant. Accordingly, the learned C.J.M, after taking cognizance committed the case to the court of Sessions for trial.

7. In course of the trial, the prosecution examined as many as seven witnesses including the informant, who is PW. 6 Asha Singh, the doctor PW.

4 Binod Shankar Chauhan who held postmortem and the I.O. PW. 7 Bikramaditya . Prasad. Other witnesses are PW. 1 Shanti Devi, the mother

of the informant and widow of the deceased, PW. 2 Siya Ram Singh, PW. 3 Ram Pravesh Singh, two cousin brothers of the informant and PW. 5

Gyanendra Kumar, the own brother of the informant.

8. Apart from denial of the occurrence, the accused-appellant in his statement u/s 313 Cr. PC. as well as in cross-examination of prosecution

witnesses has taken specific plea of alibi. According to him, on the date and time of the alleged occurrence he was not in his house rather he was at

Dehri in connection with construction of his house as well as in connection with treatment of his heart ailment. Further defence is that actually the

victim was killed elsewhere but the prosecution party brought the dead body at his residence and falsely implicated him. In support of his defence,

he has also examined seven witnesses. They are D.W. 1 Srinath Prasad Singh, Advocate, D.W. 2 Chhotu Singh, D.W. 3 Chandra Hans Dubey,

D.W. 4 Jaineshwar Singh, D.W. 5 Anugrah Narayan Singh, A.S.I., D.W. 6 Janardhan Sharma, a constable and D.W. 7 Priti @ Bulbul Kumari,

the grand daughter (Natni) of the accused-appellant.

9. In course of the argument, the learned lawyer for the appellant challenged the judgment in question both in law as well as on facts. It is submitted

that the evidence of sole eye-witness does not inspire confidence as it is full of contradiction and embellishment but the court below has wrongly

placed implicit reliance upon it. It is further submitted that the court below has also not properly appreciated defence version of the occurrence as

well as his plea of alibi. Lastly, it is submitted that the case in hand is actually a case of culpable homicide not amounting to murder and falls under

exception 4 of Section 300 I.P.C. The injury was actually inflicted as a result of sudden provocation and without any premeditation.

10. For all practical purposes, this case is based on sole testimony of the informant who is PW. 6 Asha Singh. Other witnesses, who are mother

and brothers of the informant are hearsay witnesses who are PWs. 1, 2, 3 and 5.

11. There is no denial that on the alleged date of the occurrence the informant PW. 6, who is daughter-in-law of the accused-appellant, was in his

house situated in Mohalla Gorachhani, Town Sasaram. The important part of her testimony begins from para-3 of her examination-in-chief. She

has stated in her evidence that on 25th July, 1999 at about 11.30 A.M. her father i.e. deceased Satya Narayan Singh came to her sasurali house

and called her by name ""Asha Asha"". She has further stated that at that time, she was in her bed room and her father-in-law (accused-appellant)

was also in his bed room. On call of her father she as well as her father-in-law came out of their respective bed room to the drawing room. She

has further stated that her father-in-law asked her father to go out of his house as his presence was not required upon which her father told that he

would leave the house after meeting his daughter. She has further stated in paragraph-4 of her examination-in-chief that thereafter the accused-

appellant returned to his bed room, brought khukhri from the room and gave one blow of khukhri on neck of her father and thereafter, he fled

away alongwith khukhri. At that time, she was standing at a distance of 4-5 paces from her father and saw the incident from her naked eyes. In

paragraphs 6 and 8, she has detailed how she brought her father to the clinic of Dr. Prabhakar and from there to Sadar Hospital, Sasaram in an

ambulance where he was declared dead by the doctor. In paragraph-7, she has stated that her father had come on her call through telephone. In

paragraph-9, she has stated about the information given by her about the murder of her father to her mother and brothers through telephone who

came immediately at Sadar Hospital where she narrated about the occurrence to them. In paragraph-16 of the evidence, she has supported the

fact that the police seized a cover of khukhri from the bed room of the accused-appellant and two blood stained petticoats from bathroom. She

has also stated that as police was not impartial in investigation and hence a protest petition was filed before the court against the police. In

paragraph-19 of her evidence, she has stated that as land of Patna was not given in dowry, her father-in-law prevented her from going to her

Naihar.

12. There is no other eye-witness on the point of occurrence. However, it has come in the evidence of PW. 6 that she immediately after the death

of her father informed about his death to her mother and brothers through telephone who came in hospital where she again narrated about the

occurrence in details to them. These witnesses are PWs. 1, 2, 3 and 5.

13. PW. 1 Shanti Devi, is mother of the informant and widow of the deceased. On the date of the alleged occurrence, she was in Arrah. She has

stated that through telephone her daughter informed about murder of her husband by her father-in-law (accused-appellant). She alongwith her son

immediately rushed to Sasaram by bus and reached in hospital at about 4.00 P.M. where she found the informant weeping by the side of the dead

body. She has further stated that there her daughter again narrated about the occurrence and told that her father-in-law killed her father. Almost

similar is the evidence of P.Ws. 2, 3 and 5 who are cousin and full brother of the informant who also came in the hospital on receipt of telephonic

information. They all have stated that their sister, the informant, told that father-in-law committed murder of her father with khukhri while he had

come to meet her. They have also given account of other allied matters related with the episode.

14. The evidence of doctor, PW. 4 Binod Shankar Chauhan, who conducted post mortem, supports the ocular evidence. He has stated that he

conducted autopsy on the dead body of Satya Narayan Singh on 25.7.1999 at 4.25 P.M. and found following ante mortem injuries: One inside

wound over left side of neck 5"" x 1/2"" x vertibra deep cutting both major vessels on left side.

15. According to him the time elapsed since dead was 6 to 12 hours. The injury was sufficient to cause death in ordinary course of nature which

was inflicted by sharp cutting heavy weight instrument like khukhri.

Ext. 1 is the post mortem report.

16. The objective findings of the I.O. PW. 7 Bikramaditya Prasad also lend support to the prosecution story. He has proved fardbeyan as Ext. 3

and inquest report as Ext. 4. He has stated in paragraph-4 of examination-in-chief that he inspected the P.O. on the same day at about 4.15 P.M.,

which is triple storeyed house standing in name of Captain Anil Kumar Singh, the husband of the informant. He found blood stains at some places

in the sahan of the house. He seized a cover of khukhri from the bed room of the accused-appellant and also two petticoats in wet condition from

bathroom through seizure list (Ext. 5). It is alleged that bloods were wiped out by these petticoats.

17. From the above, it is quite apparent that there is solitary eye-witness of the occurrence who is informant and is also daughter of the deceased.

It is well settled law that in criminal cases it is the weight of the evidence not the number witnesses which matters and evidence of one credible eye

witness is sufficient to be acted upon. In other words, it is the quality of evidence which is required for proof of any fact and not the plurality of

witnesses. Therefore, a person can be held guilty even on the basis of testimony of single eye-witness provided it is found above suspicion.

18. The learned counsel for the accused-appellant in spite of best attempt failed to offer any meaningful criticism in order to impeach the testimony

of PW. 6. Apart from some stray minor inconsistent statements there is nothing in the evidence of PW. 6 which would discredit her testimony. Her

presence at the alleged P.O. is not under challenge. The manner and tenor in which she has testified the killing of her father leaves no room for

doubt or suspicion on her evidence. There is also no apparent reason as to why she would falsely implicate her own father-in-law taking the risk of

her married life being un-necessarily strained. Apart from it, evidence of PW. 6 on every material point has been fully corroborated by medical

evidence as well as objective findings of the I.O. Other witnesses who are mother and brothers of the informant have also lend support to the

prosecution story.

19. The learned counsel for the appellant raised some technical points in order to cast doubt on the prosecution story. However, he laid emphasis

on only one point which is delay in dispatching the F.I.R. to the court of C.J.M. It it submitted that the fardbeyan (Ext. 3) was lodged before the

police on 25.7.1999 at about 1.30 P.M. The case was registered on the same day at about 9.00 P.M. but it was received in the court of C.J.M,

on 27.7.1999. It is submitted that the delay of about 48 hours in reaching the F.I.R, in court is abnormal and it leaves much scope for suspicion

that the fardbeyan, which is Ext. 3, is not the real one rather it was prepared later on after due deliberation and concoction and therefore, the entire

prosecution story must be thrown out. In support of his submission, he has relied upon some decisions of apex court notably reported in Rajeevan

and Another Vs. State of Kerala, and Marudanal Augusti Vs. State of Kerala, .

20. It is needless to say that Section 157 Cr. P.C. mandates that the F.I.R. must be sent forthwith to the Magistrate concerned. Therefore, delay in

despatching the F.I.R. gives an ample scope to suspect that the fardbeyan is antedated ante-timed and the investigation is tainted one. However, it

is well settle that delay in every case does not necessarily lead to such conclusion. It depends upon facts and circumstances of each case. If the

fardbeyan is lodged promptly and the investigation also begins without delay, the delay in despatching the F.I.R. to the Magistrate does not lead to

any adverse inference and is of no consequence. In the present case in hand, the F.I.R. (Ext. 3) shows that the occurrence took place at about

11.30 A.M. and the fardbeyan was lodged by PW. 6 immediately after the death of the victim at about 1.30. P.M. Ext. 4, the inquest report,

shows that the police began investigation immediately thereafter and accordingly the inquest report of the dead body was prepared on the same

day at 15 "O" Clock. Ext. 1 the post mortem report also goes to show that the post mortem of the dead body was conducted on the same day at

about 4.25 P.M. In view of above, no adverse inference can be drawn for delay in despatching the F.I.R, to the court of C.J.M. In a decision of

the apex court reported in 1985 Supreme Court 131 State of U.P. vs. Gokaran & Others the similar matter came into consideration and ultimately

in paragraph-13 of the decision, it has been held as follows:

As regards the last circumstance, it is true that the special report was received by the District Magistrate on 29th March but it is not as if every

delay in sending such a delayed special report to the District Magistrate under S. 157 Cr.P.C. would necessarily lead to the inference that the

F.I.R, has not been lodged at the time stated or has been ante-timed or ante-dated or that the investigation is not fair and forthright. As has been

pointed out by this Court in Pala Singh and Another Vs. State of Punjab, the relevant provision contained in S. 157 Cr.P.C. is really designed to

keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give

appropriate direction under S.159 Cr. PC; but if in a case it is found that the F.I.R. was recorded without delay and the investigation started on

that F.I.R. then however improper or objectionable the delayed receipt of the report by the Magistrate concerned that cannot by itself justify the

conclusion that the investigation was tainted and the prosecution insupportable, in the instant case the material on record clearly shows that steps in

investigation by way of drawing inquest report and other Panchanamas had been taken in the early hours of the morning of 28th March and these

could only follow the handing over of F.I.R. Ex. Ka-1 by Ram Narain Singh to the Station Officer at about 2.15 a.m. In view of these facts the

delayed receipt of the special report by the District Magistrate on 29th March would not enable the Court to dub the investigation as tainted one

nor could Ex. Ka-1 be regarded as ante-timed or ante-dated. For the same reasons the delay in sending the necessary papers to the Medical

Officer which were received by him on 29th March will be of no significance.

21. Apart from it, it is also considered view that where evidence of witness is cogent, natural which does not admit any room for suspicion and the

case of prosecution also stands proved otherwise, any irregularity or lapse in the conduct of investigation does not go to the root of the prosecution

and is of no consequence (see paragraph-14 of the judgment reported in Bikau Pandey and Others Vs. State of Bihar,).

22. Thus from the above discussion, it is quite clear that there are sufficient evidence to prove that the occurrence as alleged by the prosecution

took place on the date and time mentioned in the fardbeyan. However, the accused-appellant has put forward specific defence. The main defence

is alibi. In statement u/s 313 Cr. P.C., he has simply stated that on the alleged date of occurrence, he was not in his house. However, in cross-

examination vide paragraph-63 of PW. 6 the detail of alibi has been disclosed inform of suggestion. It has been suggested that on that very date

and time he (accused-appellant) was at Dehri and was supervising construction of house. Further suggestion is that he was getting treatment there

of his heart ailment. Some witnesses have also been examined in support of the story of alibi. They are D.W. 1 Srinath Prasad. D.W. 2 Chhotu

Singh, D.W. 3 Chandra Hans Dubey, D.W. 4 Taneshwar Singh and D.W. 7 Priti @ Bulbul Kumari.

23. What is alib? and how it is to be established? have been answered in detail in a case reported in Binay Kumar Singh and others Vs. State of

Bihar, . In paragraph-23, it has been held as follows:

The Latin word alibi means ""elsewhere"" and that word is used for convenience when an accused takes recourse to a defence line that when the

occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the

crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the

prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere

fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been

discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who

adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the

presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the

court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence

adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at

the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it

would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that

strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions.

24. In the light of the above principle laid down by the apex court let us scrutinize the evidence of the defence in order to know whether the

defence -has been able to establish the plea of alibi in a manner laid down by the apex court. It is to be mentioned here that the Dehri where the

accused-appellant is said to be present on the date and time of the occurrence is about 10-15 Kms. away from the alleged place of occurrence,

the house of the appellant at Sasaram. The approximate time to cover such a distance normally does take not more than half an hour.

25. No document or prescription of any doctor has been filed on behalf of the defence to show that the accused-appellant was at Dehri on the

date and time of the alleged occurrence. Only oral evidence has been adduced on this point.

26. D.W. 1 Srinath Prasad Singh is an advocate practicing at Civil Court, Sasaram. He has stated in his evidence that on 25.7.1999 at 11.00

A.M. he met the accused-appellant at Dehri in a shop of saw mill where he was enquiring about the price of woods. However, paragraph-2 of his

evidence shows his character. He is advocate at Sasaram but is occupying factory quarter in Dehri since before 1984 without payment of any rent.

His presence at the saw mill is also doubtful as he has not disclosed the purpose of purchasing woods. There is no evidence that he is constructing

any house. Similarly, paragraph-5 of his evidence shows that the accused-appellant had also no occasion to purchase woods as the construction of

his house at that time was at initial stage.

27. D.W. 2 Chhotu Singh claims himself to be resident of Dehri. He contradicts the evidence of D.W. 1.'' According to paragraph-2 of his

evidence that accused-appellant on the date of alleged occurrence was present through out from 10.00 A.M. to 5.00 P.M. at the place where the

house was being constructed. Paragraph-3 of his evidence goes to show that he himself did not regularly visit the site where he was constructing

house. He has not given any reason why he is remembering the date of one single visit of accused. According to D.W. 3, the accused-appellant on

the alleged date of occurrence was present at the site from 8.00 A.M. to 5.00 P.M. He has not supported the version of D.W. 1. He has also not

given any reason why he is remembering the date of the alleged occurrence. He has a shop which is at a distance of about 1 km. from the site of

construction of house of the accused-appellant. D.W. 4 is the another witness. He was tenant in the house of the accused-appellant. He also claims

to be an advocate. He has given a general statement that on that very date the accused-appellant was in Dehri. This witness has his house in the

village situated at a short distance. The alleged date of occurrence was Sunday. Therefore, his presence on that very date at Sasaram is doubtful.

28. The most important defence witness is D.W. 7. Preeti @ Bulbul Kumari. Admittedly, she was present in the house of accused-appellant on the

date of the alleged occurrence. In F.I.R., the informant has given her name as an eye-witness. She is own Natnioi the accused-appellant. She in her

evidence has denied that on the date of the occurrence her Nana was in the house. She was so enthusiastic to defend her Nana that he stated in

her evidence that her Nana was in Detiri since last 3-4 days of the occurrence. It is to be mentioned here that there was no place to live at Dehri

for the accused-appellant. The house which was being constructed by the accused-appellant was under construction and was at initial stage, only

up to plinth had been constructed. The cross-examination at page-3 of her evidence goes to show that her claim that her Nana was at Dehri for

last 3-4 days is not correct. She has admitted in her evidence that on the very next day, her Nana was seen in the house at Sasaram. Perhaps it is

the date on which the occurrence took place. Other two witnesses are not on this point.

29. Thus, from the above discussion of oral evidence, it is quite apparent that the evidence of the defence is not enough to prove alibi. On the other

hand, the evidence of the prosecution is quite sufficient to prove the guilt of the accused-appellant. The court below has rightly rejected the defence

story and has held that the prosecution has been able to prove the guilt of the accused-appellant.

30. The last but most formidable submission of the learned counsel for the accused-appellant is that in the facts and circumstances the case in hand

actually falls under exception 4 of Section 300 I.P.C. i.e. a case of culpable homicide not amounting to murder, which is punishable u/s 304 Part-I

or Part-ll I.P.C. It is contended that the materials on record clearly suggest that there was no intention on the part of the accused to cause death of

the victim. The offence was committed without any pre-plan or premeditation in heat of passion upon sudden quarrel. It is further submitted that the

accused-appellant did not act in a cruel manner which is apparent from the fact that only single blow was inflicted with a khukhri though he had fire

arm in his possession. In support of his submission, he has relied upon a decision of apex court reported in 1993 Suppl. (1) SCC 639 (Surajmal

vs. State of Punjab).

31. Admitted fact is that it is a case of single blow and single injury. There was no repetition of blow. There is only one material witness in this

case, who is PW. 6, the informant, and daughter-in-law of the accused-appellant. The evidence of PW. 6 is sufficient to decide the nature of

offence that the accused-appellant had committed. The evidence of PW. 6 vide paragraphs 3, 4 and 5 of examination-in-chief, goes to show that

when the deceased entered in drawing room and called this witness, the accused-appellant also came out of his bed room and asked him to get out

of the house upon which the deceased told that he would leave the house after meeting the daughter. In other word, he did not comply the

direction of the accused-appellant. It further shows that as the deceased did not leave the house, the accused-appellant became angry and brought

khukhri from his bed room and gave one blow on his neck. It further goes to show that the accused-appellant seeing the blood coming out of the

injury inflicted by him, he fled away alongwith khukhri. He did not make second attempt in order to kill the injured.

32. Apart from the above, the cross-examination, vide paragraphs 20 to 25 as well as paragraph-19 of the examination-in-chief of PW. 6, go to

show that there is a vague allegation that the accused-appellant had estopped this witness from going to her Naihar. There is nothing in the

evidence of this witness to show that there was bad blood between the accused-appellant and the deceased who was his Samdhi. In other words,

there was no motive for causing death to his Samdhi. The cross-examination paragraph-32 goes to show that the accused-appellant had even no

prior knowledge about arrival of his Samdhi to his house. Paragraph-25 of cross-examination of PW. 6 further shows that the accused-appellant

had fire arm (gun) in-his possession but he brought a khukhri and inflicted one injury in heat of passion.

33. The decision cited by the learned counsel for the appellant (supra) almost fits in the present case. The relevant paragraphs of the decision are

paragraphs 8 and 9 which run as follows:

8. ""The next question that falls for our consideration is, what is the nature of the offence that the appellant has committed. Admittedly, the deceased

was drunk. In the dying declaration Ex. PL the deceased has stated that he and his brother quarrelled and only in the course of the quarrel his

brother stabbed him in his stomach. The prosecution apart from the document Ex. PL has also relied upon another document Ex. PU recorded on

September 29, 1977 by the Investigating Officer u/s 161 CrPC which statement is marked as a subsequent dying declaration by the deceased. In

this document the deceased has stated that he and his brother went to answer call of nature after taking alcohol together and on the way his brother

questioned as to why he had decided to sell his property to which the deceased replied that it was his property and that he could dispose the same

in any manner he liked and that this conversation led to a quarrel between the two and it was only during the quarrel that ensued between the

deceased and the appellant. the appellant stabbed the deceased once. A mere reading of Exs. PL and PU clearly shows that the appellant had

caused this single injury without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. The various circumstances attending

the case also indicate that the appellant cannot be said to have taken undue advantage or acted in a cruel manner when examined in the light of the

decision of this Court reported in Surinder Kumar vs. Union Territory, Chandigarh"".

9. ""The totality of the evidence in our considered opinion, leads to an irresistible conclusion that the offence that the appellant had committed is one

punishable u/s 304 Part I, IPC but not u/s 302 IPC (simpliciter), since Exception 4 is attracted to the facts of this case. In the result, we set aside

the conviction u/s 302 IPC (simpliciter) and the sentence of imprisonment for life imposed therefor, instead convict the appellant u/s 304 Part I,

IPC and sentence him to undergo rigorous imprisonment for a period of seven years. The appeal is disposed of subject to the modification of the

conviction and the sentence as indicated above.

34. Thus from evaluation and consideration of above evidence, facts and circumstances, it clearly emerges that there was no pre-plan or

premeditation on the part of accused-appellant to cause death. The injury was inflicted as a result of sudden provocation. It also goes to show that

the act committed by accused-appellant was not a cruel one. Only one blow was inflicted. Thus, the case in hand squarely falls under exception 4

of Section 300 I.P.C. which is punishable u/s 304 Part-I I.P.C. and not u/s 302 I.P.C.

35. In view of the above, the conviction of the appellant u/s 302 I.P.C, is hereby altered to one u/s 304 Part-I I.P.C. It is submitted on behalf of

the accused-appellant that he is suffering from advance stage of cancer. Therefore, the sentence of life awarded by the lower court is also hereby

modified and the accused-appellant is sentenced to suffer R.I. for seven years only. In the result, this appeal stands dismissed with the above

modification in conviction as well as in sentence.

I.P. Singh, J.

I agree.