

Magaram Bauri @ Dulal and Another Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: July 26, 2006

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 428

Evidence Act, 1872 â€” Section 114, 6

Penal Code, 1860 (IPC) â€” Section 149, 299, 300, 302, 304

Citation: (2006) 1 ILR (Cal) 561

Hon'ble Judges: P.S. Datta, J; P.N. Sinha, J

Bench: Division Bench

Advocate: Abhijit Basu and Subhrojit Basu, for the Appellant; Asimesh Goswami, Jayanta Narayan Chatterjee and Kalyan Moitra, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Sinha, J.

The Appellants being convicted u/s 302/34 of the Indian Penal Code (in short I.P.C.) and sentenced to suffer imprisonment

for life and to pay a fine of Rs. 2000/- in default to suffer further R. I. for two months have preferred this appeal assailing the judgment and order

of conviction passed by the learned Additional Sessions Judge, 1st Court, Bankura. The prosecution story was started on the basis of written

complaint (FIR) submitted by Haradhan Kundu (P. W. 3) at the Gangajalghati P.S. on 24.9.95 at 4.15 P.M. It was alleged in the FIR that, on

20.8.95 at 1.30 P.M. a few goats were damaging the paddy in the field of deceased Kinkar Kundu in village Radhamadhabpur. The deceased

Kinkar Kundu was able to catch two goats and he was returning back with the said goats along with Kalipada Kundu (P. W. 2), Mihir Mondal (P.

W. 1) and Ashok Mondal (P. W. 6). At that time, both the Appellants came before Kinkar Kundu and demanded release of the goats. As kinkar

Kundu was not willing to release the goats it resulted into altercation, and thereafter, both the Appellants struck on the head of Kinkar Kundu with

lathi and rod. Kinkar Kundu sustained bleeding injury on his head due to the assault and fell down there on the road. Hearing the1 scream raised

by Kinkar Kundu Some villagers came there and the informant P. W. 3 also came there, the accused persons in the meantime managed to escape^

from the place of occurrence. P."W. 3 with the assistance of villagers carried away Kinkar Kundu to the police station and thereafter he was

admitted at Amarkanan hospital and on next day he was transferred to Bankura Medical College and Hospital. Kinkar Kundu was discharged

from Bankura Medical College hospital on 29.8.95 and he was brought back to home. He felt pain at the place of his wound from the morning of

5.9.95 and he was again admitted at Bankura hospital on that day. Kinkar Kundu died at Bankura Medical College and Hospital on the night of

5.9.95. On the basis of the FIR lodged by P. W. 3 Gangajalghati P.S. Case No. 45 of 1995 dated 24.9.95 u/s 304/34 of the I.P.C. was started

against both the Appellants. After completion of investigation the Investigation Officer (in short I.O.) P. W. 13 Dilip Karmakar submitted charge-

sheet Section 304/34 of the I.P.C. against both the accused persons. In the trial the learned Additional Sessions Judge framed charge u/s 302/34

of I.P.C. against the Appellants and convicted them and sentenced them to suffer imprisonment for life as mentioned earlier.

2. The prosecution examined 13 witnesses in all in order to. prove it case namely, P. W. 1 Mihir Mondal, P. W. 2 Kalipada Kundu, P. W. 3

Haradhan Kundu (informant and son of deceased), P. W. 4 Radhamadhab Pal (post mortem surgeon), P.W. 5 Biswanath Ghosal, P. W. 6 Ashok

Mondal, P. W. 7 constable Alok Ranjan Bera, P. W. 8 Dilip Kundu, P.W. 9 Santosh Garai, P. W. 10 Dr. Sankar Brato Sarkar, P. W. 11 S.I. of

Police Pitadhar Mondal, P. W. 12 Dr. J. N. Dey and P. W. 13 S. I. of Police Dilip Karmakar (I.O.) Out of the aforesaid 13 witnesses P. W. 1,

P. W. 2 and P. W. 6 were accompanying the deceased Kinkar Kundu after catching two goats which belonged to the Appellants. P. W. 3 came

to the place of occurrence just after the incident of assault was over. Evidence of P. W. 7, P. W. 9 and P. W. 11 do not require any discussion as

they practically stated nothing. P. W. 11 only received the written complaint from P. W. 3 and registered the FIR starting the aforesaid

Gangajalghati P.S. case and directed P. W. 13 to start investigation. P. W. 5 were declared hostile witnesses as they did not support the

prosecution case in some material parts. After going through their evidence we find that though they were declared hostile witnesses their evidence

require discussion as we get some light into the alleged incident from their evidence.

3. Evidence of P. W. 1 reveals that on 20.8.95 at about 1.30 P.M. they went to the field to drive away the cattle which entered into their field.

Deceased Kinkar Kundu, Ashok Pal and Kalipada Kundu accompanied him and at field they caught two goats. Those two goats belonged to the

Appellants. When they were returning back to the village with those two goats kinkar Kundu was assaulted. He did not state as to who assaulted

Kinkar Kundu and thereafter he "was declared hostile witness by prosecution. Though he was declared. a hostile witness his evidence clearly

establishes the genesis of the prosecution case that goats of Appellants were damaging paddy of deceased when Kinkar Kundu accompanied by

P. W. 1 and others caught two goats and when they were coming back to village the deceased was assaulted. His evidence in cross examination

reveals that the incident took place on the pitch road in front of house of the Appellants. His evidence further establishes the prosecution case that

after admission into hospital Kinkar Kundu returned back to home but, thereafter again, he was admitted in the hospital. P. W. 2 stated that as

some goats were damaging and eating crops kinkar Kundu went to his field to drive out goats and he caught two goats and was returning back to

village with two goats. At that time both the Appellants asked him to release the goats as the goats belonged to them but Kinkar Kundu refused to

give the goats to the Appellants. Thereafter, both the Appellants assaulted Kinkar Kundu on his head with lathi. Kinkar Kundu was injured and

was taken to the police station and he lodged a diary and thereafter he was sent to Amarkanan PHC for treatment. He supported the prosecution

case by stating that he, P. W. 1 and P. W. 6 were with deceased Kinkar Kundu at the time of incident. His cross examination reveals that the field

in which the goats were damaging crops was about 100 cubits from the end of the village. The incident of assault lasted for only 1½ minutes.

Villagers rushed to the spot immediately after the incident and he stated that villagers means the persons who were residents near the place of

occurrence, it further appears from his evidence that Kinkar Kundu came back to village from hospital seven days after and remained in village for

two days. P. W. 3, P. W. 6 and P. W. 8 fully corroborated the prosecution case relating to assault on the head of deceased Kinkar Kundu by the

Appellants. Their evidence reveals that when the deceased was returning back with two goats accompanied by P. W. 1, P. W. 2 and P. W. 6 the

Appellants demanded release of the goods. Kinkar Kundu refused to handover the goats to the Appellants and it resulted into an altercation

between them and thereafter both the Appellants assaulted the deceased with lathi. The deceased fell down on the road receiving the lathi blow

and there was bleeding from his place of injury. All these witnesses stated that thereafter the victim was taken to Gangajalghati P.S. where Kinkar

Kundu himself narrated the incident to police officer and the police officer reduced the said information into the generally diary (ext. 3). Their

evidence further discloses that from police station the victim was sent to Amarkanan PHC, and next day, he was sent to Bankura Medical

College and Hospital where he was admitted till 29.8.95. After discharge Kinkar Kundu came back to his home but, on 5.9.95 he felt pain from

the place of his old injury on head and he was again admitted at Bankura Medical College and Hospital and died on the same night. Evidence of P.

W. 3 reveals that after completing the "sradh" ceremony and rituals he lodged the FIR (ext. 1) on 24.9.95. He explained the cause of delay of the

lodging FIR in this manner and further stated that he expected police action on the basis of diary lodged by his father on 20.8.95, but as the police

did nothing he lodged the FIR.

4. The evidence of the above witnesses also reveals that the field writ the goats were damaging crops was tot he southern side of the pitch road

and the house of the Appellants were to the northern side of the pitch road and the incident of assault on victim took place in front of house of the

Appellants. P. W. 6 was an eye witness to the incident and was accompanying the deceased Kinkar Kundu while he was coming back to village

after catching the goats. P.W. 3 and P. W. 8 came to the place of occurrence immediately after the incident hearing the scream "raised by Kinkar

Kundu and heard about the incident from Kinkar Kundu and other eye witnesses and their evidence is admissible as res gestae u/s 6 of the

Evidence Act. During cross examination at the suggestion of defence P. W. 8 at one place stated that none came to place of occurrence at the time

of incident which in our opinion is the result of failure to understand the defence suggestion. This part of evidence of P. W. 8 does not render any

help tot he Appellants nor this peace of evidence is acceptable when we find that P.W. 1, P. W. 2 and. P. W. 6 are very categorical in their

evidence by stating that they were accompanying the deceased when the incident took place. It establishes that P. W. 1, P. W. 2 and P. W. 6

were present at the time of incident and they were the eye witnesses of the incident.

5. Evidence of P. W. 5 supports the prosecution case though he was declared a hostile witness. It is well-known that evidence of a hostile witness

can be acted upon, if the Court finds that some material parts of evidence of hostile witness is acceptable. In this case, evidence of P. W. 5 reveals

that kinkar Kundu was returning to the village with two goats and someone assaulted him. Reaching the spot he found bleeding from head of

Kinkar Kundu and on being asked Kinkar Kundu disclosed that the Appellants assaulted him. He corroborated the other part of prosecution case

relating to place of occurrence near the house of Appellants on pitch road and also admission of Kinkar Kundu into hospital and his coming back

to village after some days and again feeling of pain on his head and his re-admission into hospital.

6. P. W. 10 is the Medical Officer of Bankura Medical College and Hospital who in his evidence stated that on 5.9.95 Kinkar Kundu of village

Radhamadhabpur came to him with complain of fever of 3/4 days, pain in throat and inability to move left lower and upper limb. On examination of

patient Kinkar Kundu he found one old scar over scalp right side 3 cm. in length. He stated that there was history of assault on 20.8.95 over scalp

and the patient had remained admitted at Bankura Medical College and Hospital from 21.8.95 to 29.8.95. Considering the complains of the

injured he arranged admission of the patient at that hospital. His cross examination reveals that he did not consult the earlier report of admission of

the patient. He considered the discharge certificate of the patient when he was admitted earlier. He did not open the injured position which he

found on his scalp. He also stated that he cannot say the age of the injury which he found on the scalp of Kinkar Kundu. He of course stated that it

was a healed up injury since it was a scar. P. W. 4, the post mortem surgeon in his evidence stated that on 6.9.95 he held post mortem

examination over the dead body of Kinkar Kundu. The post mortem report prepared by him was marked as ext. 2. On examination he found one

injury measuring 2" x 2 1/4" stitched up situated over posterior aspect of brain. On dissection he found chronic subdural haemorrhage 2" x 2" over

posterior cranial fossa at the base of brain encapsulated with evidence of fresh haemorrhage. The injury was ante mortem and homicidal in nature

and he opined that both the injuries were sufficient to cause death in the ordinary course of nature. He also stated that such injuries could be

caused by lathi. His cross examination reveals that the stitched up injuries can be caused by fall on the ground or on rough surface. We do not find

any evidence either from prosecution or from defence to prove that the deceased fell down on the ground or on the rough substance on that day

anywhere before the assault and sustained that injury. In our view this part of evidence in cross examination does not impair the value of his

evidence and this evidence is ignorable. On the other hand, we find from prosecution witnesses consistent and coherent evidence that the deceased

sustained injury on his head due to the assault by the Appellants with lathi.

7. Evidence for P. W. 12 reveals that on 6.9.95 he was Professor and Head of the department of Forensic and State Medicine, Bankura Medical

College and Hospital. On that date at 3.30 P.M. Dr. Debasish Pal (P. W. 4) held post mortem examination on the dead body of Kinkar Kundu

under his direction. There was stitched up wound 2" x 2 1/4" and it was almost healed up on posterior aspect. On dissection there was chronic

subdural haemorrhage 2" x 2" over posterior cranial fossa at the base of brain encapsulated with evidence of fresh haemorrhage. He opined that the

cause of death was due to the effect of the injuries described above and ante mortem in nature. The injuries might be caused by moderately heavy

blunt weapon like lathi or rod and the injuries were sufficient to cause death. It was homicidal in nature. In cross examination he stated that post

mortem examination was done under his supervision but he himself did not hold it. He stated that wound was old and injuries were sustained 10/15

days ago on the person of the deceased. Evidence of the I.O. reveals that on 20.8.95 at 2.15 P.M. Kinkar Kundu of Radhamadhabpur came to

the Gangajalghati P.S; and reported that on that day at about 1.30 P.M. goats of Magaram Bauri and Fatik Bauri were grazing in his field and

when he prevented the goats the accused persons assaulted him by lathi on his head. He recorded the statement made by Kinkar Kundu in G. D.

Entry No. 537 dated 20.8.95 (ext. 3). He sent Kinkar Kundu to Amarkanan PHC for treatment. His evidence reveals that on the basis of that G.

D. entry he went to village Radhamadhabpur and during enquiry the accused Fatik Bauri showed his defiant attitude and in presence of police he

tried to assault Haradhan Kundu (P. W. 3). He tried to stop the accused persons but they did not pay any heed and thereafter he arrested the

accused persons. His evidence in cross examination reveals that he did not collect the injury report of Kinkar Kundu from Amarkanan PHC. when

he was enquiring into the matter in village P. W. 3 Haradhan Kundu could not state anything to him as the accused persons were about to assault

him in his presence. His cross examination reveals that Haradhan Kundu came to the place of occurrence after hearing the scream of his father.

8. Mr. Basu, learned advocate for the Appellant submitted that there was provocation by the deceased as the goats of the Appellants were caught

by him. From evidence it transpires that before assault there was altercation, abusing and exchange of hot words, it establishes that some remark of

the deceased clearly provoked the Appellants and thereafter the incident occurred. Even if it is taken into consideration for the sake of argument,

though not admitted, the Appellants had no intention of murdering Kinkar Kundu. There was no suggestion by the Public Prosecutor to the post

mortem surgeon relating to cause of fresh haemorrhage and no suggestion was also put to the post mortem surgeon that the fresh haemorrhage was

the effect of assault on deceased caused on 20.8.95. Mr. Basu accordingly contended that elements of Section 302 of the I.P.C. is totally lacking

and there cannot be conviction of the Appellants u/s 302 of the I.P.C. Mr. Basu further submitted that the witnesses stated that the Appellants

gave a lathi blow on the head of deceased. The evidence led by the witnesses cannot be believed as it is not possible for both the Appellants

jointly to assault the deceased by one lathi. There was no medical report before the trial Court regarding injury dated 20.8.95 when the deceased

first was admitted at Amarkanan PHC. the prosecution did not examine doctor of Amarkanan PHC and a very vital witness was withheld by the

prosecution and for this adverse presumption u/s 114 (g) of the Evidence Act should be drawn against the prosecution. Mr. Basu further

contended that the offending weapon namely, the lathi was not seized. The place of occurrence was also shifted as it appears from the contents of

the general diary lodged by Kinkar Kundu.

9. Mr. Jayanta Narayan Chatterjee, learned advocate for the State submitted that there is no ground to disbelieve the evidence of the prosecution

witnesses as there is full corroboration relating to the incident, in evidence it transpired that the deceased Kinkar Kundu was assaulted by lathi.

Evidence of the doctors fully corroborates the ocular version of the eye witnesses. Evidence of P. W. 10 clearly proves the symptoms or effects

after injury. There was no evidence from defence to show that after return to home the deceased sustained fresh injury. The evidence of the

doctors as well as evidence of P. W. 3 and other witnesses clearly prove that the deceased was feeling pain from his old injury caused by the lathi

blow of accused persons. There was internal haemorrhage inside his brain and that was described by Doctors as fresh haemorrhage and it was the

cause of death which was the outcome of effect of injury caused by the Appellants on the head of deceased on 20.8.95. P. W. 4 clearly stated that

the injuries were sufficient to cause death in the ordinary course of nature. Therefore, it is a clear case of murder coupled with common intention of

both the Appellants. It is not a case u/s 299 of the I.P.C. and the trial Court rightly convicted the Appellants u/s 302/34 of the I.P.C.

10. We have considered the submissions made by the learned advocates for the parties and also carefully perused the materials on record as well

as the evidence which we have already discussed. We find no ground at all to disbelieve the ocular version of the prosecution witnesses. P. W. 2

and P. W. 6 are the eye witnesses of the incident and P. W. 3 and P. W. 8 came to the place of occurrence just after the incident hearing the hue

and cry and their evidence is admissible as res gestae u/s 6 of the Evidence Act. Even evidence of P. W. 1 and P. W. 5, who were declared

hostile witnesses, supports the prosecution case and their evidence also proves that Kinkar Kundu was assaulted and sustained bleeding injury on

his head. On the same date Kinkar Kundu came to the Gangajalghati P.S. and lodged general diary No. 537 dated 20.8.95 (ext. 3). In the ext. 3 it

was mentioned by the deceased Kinkar Kundu that while he was returning back with the goats of Appellants which were damaging his crops the

Appellants assaulted on his head with lathi. The ocular version of the witnesses and the medical evidence clearly proves that Kinkar Kundu was

assaulted on head by blunt weapon i.e. lathi and evidence of the eye witnesses proves that the Appellants assaulted the deceased by lathi on his

head. The evidence of the witnesses including evidence of hostile witnesses (P. W. 1 and P. W. 5) do not throw any slightest indication of

provocation from Kinkar Kundu as the cause of assault, and as such we reject the contention of Mr. Basu that provocation of Kinkar Kundu

resulted into assault on him.

11. We find no substance in the submission of Mr. Basu relating to non-examination of doctor of Amarkanan PHC. It is admitted fact that on

20.8.95 victim Kinkar Kundu was sent to Amarkanan hospital and on 21.8.95 he was sent to Bankura Medical College and Hospital and he was

released from the said hospital on 29.8.95. Evidence of P. W. 4, P. W. 10 and P. W. 12 proves that thereafter again on 5.9.95 Kinkar Kundu

was admitted into Bankura Medical College and Hospital with complain of fever, pain in throat and inability to move left lower and upper limb.

Evidence of the doctors clearly reveal that there was one old scar over scalp with history of assault on 20.8.95 over scalp and the patient was

admitted at Bankura Medical College and Hospital under M.S. Dawn from 21.8.95 to 29.8.95. P. VV. 10 stated that due to the old injury he was

attacked with fever. The post mortem surgeon stated that he found one injury stitched up over posterior aspect of brain and on dissection he found

chronic subdural haemorrhage over posterior cranial fossa at the base of brain encapsulated with evidence of fresh haemorrhage. The injury was

sufficient to cause death in the ordinary course of nature and the injury could be caused with lathi and it was ante mortem and homicidal in nature.

When we find such convincing medical evidence which supports and old injury dated 20.8.95 non-examination of doctor of Amarkanan PHC

cannot be a ground to draw adverse presumption u/s 114(g) of the Evidence Act against prosecution. Even ext. 3, the general diary reveals that

patient was sent to Amarkanan PHC cannot be a ground to draw adverse presumption u/s 114(g) of the Evidence Act against prosecution. Even

ext. 3, the general diary reveals that patient was sent to Amarkanan PHC for treatment and P. W. 13, the I.O. stated that he sent Kinkar Kundu to

Amarkanan PHC for treatment. Non-examination of medical officer of Amarkanan PHC and non-production of injury report of the said PHC

cannot throw the prosecution case out of the Court and this omission on the part of prosecution is not fatal at all.

12. Non-production of lathi in Court or failure to seize the lathi cannot be a ground to disbelieve the prosecution case. There are evidence of eye

witnesses before us coupled with medical evidence which establishes the prosecution case, when there is such convincing evidence non-production

of the offending weapon namely, the lathi, cannot be a ground to suspect the prosecution case and to throw the prosecution case out of Court.

There was no evidence that the deceased fell down on hard substance and sustained such injury and on the other hand, evidence convincingly

proves that it was the assault by the Appellants with lathi on head of Kinkar Kundu which caused such injury as a result of which he died 16 days

after the incident. Failure of I.O. to seize injury report from Amarkanan PHC and the offending weapon "lathi" are defects of investigation. These

defects are of trivial nature and do not make the prosecution case unreliable. There are sufficient evidence before the Court including ocular version

of eye witnesses, corroborative evidence of persons who came to place of occurrence just after incident and heard the fact of assault from

deceased himself and also the medical evidence to establish the prosecution case beyond all reasonable doubts. There was sufficient evidence to

base the conviction and defective investigation cannot be ground of acquittal (See Dhanraj Singh v. State of Punjab 2004 (3) All India CLR SC

353 and Karnel Singh Vs. State of M.P., We admit that it was not possible for both the Appellants to assault the deceased by one lathi holding

jointly the said lathi. In our opinion, this feature will not go in favour of the Appellants to make the prosecution case unreliable. From evidence of

the eye witnesses and the other witnesses it did not transpire as to out of the said two Appellants who actually gave lathi blow on the head of the

deceased. But the evidence of the eye witnesses convincingly prove that both the Appellants in concert of their action and common intention

caused the incident of assault on head of deceased by lathi. In this connection we like to explain the essential features of Section 34 of the I.P.C.

which deals with common intention and it is different from common object as defined in Section 149 of the I.P.C.

13. The dominant feature of Section 34 of the I.P.C. is the participation in actions. Here we find the Appellants participated jointly in their action to

prevent Kinkar Kundu from proceeding with their goats and when they failed to take back the goats from Kinkar Kundu they jointly in furtherance

of their common intention assaulted Kinkar Kundu by a lathi. It is immaterial whether the Appellant No. 1 Magaram Bauri assaulted him. by lathi

or the Appellant No. 2 Fatik Bauri assaulted him with lathi. In this connection we place our reliance on a decision of the Supreme Court in Krishna

v. State reported AIR 2003 SCW 3688 In this decision the Supreme Court held that, the dominant feature of Section 34 is the element of

participation in actions. This participation need not in all cases by physical presence. Common intention implies acting in a concert. There is a pre-

arranged plan which is proved either from conduct or from circumstances or from incriminating facts. The principle of joint liability in the doing of

criminal act is embodied in Section 34 of the I.P.C. The existence of common intention is to be the basis of liability. That is why the prior concert

and the prearranged plan is the foundation of common intention to establish liability and built.

In this case from evidence, materials on record and circumstances it is clear that when Kinkar Kundu was returning back after catching two goats

of the Appellants as the said goats were damaging his crops, the Appellants in front of their house over pitch road told Kinkar Kundu to release

the goats. When Kinkar Kundu did not release the goats both the Appellants in furtherance of their action in a concert attacked him and assaulted

him with lathi. We clearly find prior concert and pre-arranged plan to assault Kinkar Kundu by the Appellants and as they acted in a concert in

furtherance of their common intention Section 34 of the I.P.C. is applicable against the Appellants in this case.

14. Now we like to discuss as to whether in this case elements of Section 302 of I.P.C. has been established, or it would come within definition of

culpable -homicide not amounting to murder. Here it has been established from evidence that the Appellants assaulted the deceased on his head on

20.8.95 and he was admitted in hospital and was discharged on 29.8.95 and he came back to home. Thereafter, the deceased again felt pain at

the place where the wound was caused by the lathi blow and on 5.9.95 he was again admitted in the hospital and died on the same night. In this

connection we like to refer a decision of the Supreme Court in Kishore Singh and Another Vs. The State of Madhya Pradesh, In that matter the

deceased died one month after the date of occurrence and in that matter the Supreme Court observed that, the distinction between the expression

"likely to cause death" and "sufficient in the ordinary course of nature to cause death" is significant, although rather fine and sometimes deceptive.

The Supreme Court held that, the offence would fall u/s 299 of the I.P.C. and not u/s 300 of the I.P.C. In the instant case before us fact is almost

identical with the facts of the reported decision mentioned above except the time of death from date of occurrence and offending weapon and in

the present case the deceased died 16 days after the incident. The post mortem surgeon opined that the injury was sufficient to cause death in the

ordinary course of nature. In spite of that, considering the totality of evidence including the medical evidence we are of opinion that it was not a

case of murder. In our opinion this case would come under third part of Section 299 of the I.P.C. Section 299 of the I.P.C. runs as follows:

299. Whoever causes death 1by doing an act with the intention of causing death, 2or with the intention of causing such bodily injury as is likely to

cause death, 3or with the knowledge that he is likely by such act to cause death, 4commits the offence of culpable homicide." From evidence and

circumstances we find that the Appellants had no intention to cause murder but they had the knowledge that the injury caused by them on the head

of Kinkar Kundu was likely to cause his death.

15. We like to refer to another decision of the Supreme Court in Karam Singh v. State of Punjab 1993 Cri. L. J. 3673 In that reported case the

accused gave two blows on the chest of a man with stick who died on the spot. Opinion of the doctor was that fracture of ribs could have ruptured

his spleen and liver which proved fatal. The Court observed that under the circumstances it was difficult to hold that the accused intended to cause

injuries to the liver and spleen. But he had knowledge that such injury could cause death. The Supreme Court in that case converted his conviction

u/s 302 of the I.P.C. into one u/s 304 part II of the I.P.C. Considering the entire facts and circumstances and the evidence in the instant case we

find elements of 304 part II/34 of the I.P.C. against the Appellants and elements of Section 302/34 of I.P.C. against them are lacking. For the

reasons stated above, we alter the conviction of the Appellants from Section 302/34 of the I.P.C. to Section 304 part II/34 of the I.P.C. and

reduce the sentence from imprisonment for life to rigorous imprisonment for eight years each. We do not alter the conviction relating to the amount

of fine and we maintain the order of fine of Rs. 2000/- each in default to suffer R. I. for two months each. The period of detention of Appellants in

custody as under trial accused shall be set off u/s 428 of the Code of Criminal Procedure from the term of imprisonment imposed on them. With

this modification, the appeal is dismissed. The amount of fine shall be paid or deposited in the trial Court within four months from the date of this

order. Criminal Section is directed to send down the lower Court records along with a copy of this judgment and order to the learned trial Court

for information and necessary action.

P.S. Datta, J.

16. I agree