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DHAN SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 488 of 2009)

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JULY 22, 2010

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Penal Code, 1860: *ss.148, 149, 323, 506, 452 and 304 (Part II) – Dispute over property between deceased and his* C *brother – Accused persons including the brother of deceased and the appellant attacked the deceased – Appellant inflicted blow on the head of the deceased with an iron rod – Other accused also inflicted injuries on deceased and his wife – Doctor recorded endorsement that the deceased was fit to* D *make a statement – Statement recorded by Head Constable – Case registered u/s.323 –Deceased died in hospital after few days – Case converted into one u/s.302 – Statement of deceased treated as dying declaration – Conviction under s.302 based on the declaration – Challenged – Held: Dying* E *declaration was clear and satisfactory and was fully corroborated by medical evidence – Although the wife and the daughter of the deceased were declared hostile, but, that by itself, would not demolish the case of prosecution – There was no reason for the deceased to falsely implicate his brother* F *and the appellant – Thus, prosecution was able to bring home the guilt of appellant – However, the collective analysis and examination of the evidence showed that appellant had no intention to kill the deceased and did not give him a blow with the intention to kill or with the knowledge that it was likely to* G *cause death – In the circumstances, conviction altered from s.302 to s.304 (Part II) – Evidence Act, 1872 – s.32 – Witness – Hostile witness.*

Evidence Act, 1872: *s.32 – Dying declaration – Statement of victim recorded by Head Constable – Victim*

H

died within few days – Admissibility of the statement as dying declaration – Held: In terms of s.32(1), the statement made by a person as to the cause of his death or such circumstances is admissible – Provisions of s.32 do not mandatorily require that dying declaration has to be recorded by any designated or particular person – Doctor declared that victim was fit to make the statement – Statement endorsed by closest relation of the victim – Such statement admissible in the facts and circumstances of the case – Penal Code, 1860 – ss.148, 149, 323, 506, 452 and 304 (Part-II) – Code of Criminal Procedure, 1973 – s.162(2).

The prosecution case was that the deceased had dispute with his brother over a residential house. On the date of incident, the deceased, his wife (PW-3) and his daughters were present in the house. The accused persons including the brother of the deceased and the appellant entered the house. The appellant was holding an iron rod and he inflicted a blow with the same on the head of the deceased. The brother of the deceased gave a lathi blow on the other parts of the body of the deceased. The other accused also gave lathi blows on his back. Injuries were also inflicted on PW-3. Thereafter the accused persons ran away. The injured were taken to hospital. PW-8, the Head Constable was intimated about the incident. PW-8 reached the hospital and recorded statement (Ex.PE 1) of the deceased. On the basis of the statement, an FIR was recorded under Sections 148, 452, 323, 506 r.w. Section 149 IPC. After about a week, the deceased died in the hospital. The case was converted into one under Section 302 IPC. The trial court recorded a finding that the head injury which was attributed to the appellant was sufficient to cause the death of the deceased and the case fell under clause "thirdly" of Section 300 and accordingly convicted the appellant under Sections 148, 149, 323, 506, 452 and 302

A IPC. The High Court refused to interfere with the order of trial Court.

In the instant appeal, it was contended for the appellant that the statement recorded by the Head Constable was not reliable as a dying declaration, as the B same ought to have been recorded by a Magistrate; that the son and the daughter of the deceased were not examined as witnesses and the findings were based on no evidence and were perverse; and that in the alternate, the conviction ought to have been under Section 304 C (Part II) IPC and not under Section 302 IPC.

Partly allowing the appeal, the Court

HELD: 1.1. The doctor, PW-1 had recorded an D endorsement on the Ex.PE 1, that the deceased was fit to make a statement and that the statement was read over to him and after he found the statement as correct, his signature were obtained on the statement which were duly signed even by the children of the deceased. Mere fact that the doctor had declared the deceased fit to make E a statement would not mean that there was no eminent danger of death to his life. In fact, he died within few days. The trial court also noticed those facts as well as the fact that the deceased had specifically stated the role that was attributable to different accused persons. His statement, F in the form of dying declaration, was clear and unambiguous about the role of the appellant and was fully corroborated by medical evidence. [Para 7] [804-D-E; G-H; 805-A]

G 1.2. The provisions of Section 32 of the Evidence Act, by themselves, do not mandatorily require that dying declaration has to be recorded by any designated or particular person. The investigating agency has to keep in mind the provisions of Section 32 of the Act read with H Section 162 (2), Cr.P.C. as well as the settled principle of

law and act in accordance with the established practice while recording the dying declaration. It is normally accepted that such declaration would be recorded by a Magistrate or by a doctor to eliminate the chances of any doubt or false implication by the prosecution during investigation. In terms of Section 32 (1) of the Act, the statement made by a person as to the cause of his death or to such circumstances is admissible. There is no doubt on the facts of the instant case that the statement of the deceased was recorded only after he was declared fit to make the statement by the doctor. The dying declaration was endorsed by none other than the closest relation of the deceased present at the relevant time. The FIR itself was registered on the statement of the deceased, which was recorded by the Head Constable, who was competent to do so at the relevant time. Thus, there is no legal infirmity in the admissibility of such statement *per se* in the facts and circumstances of the present case. [Para 7] [805-C-H; 806-A]

Dalip Singh v. State of Punjab (1979) 4 SCC 332 – relied on.

Cherlopalli Cheliminabi Sahed v. State of A.P. (2003) 2 SCC 571; *Kanti Lal v. State of Rajasthan* (2004) 10 SCC 113 – distinguished.

State (Delhi Administration) v. Laxman Kumar (1985) 4 SCC 476 – referred to.

2.1. There was dispute between the deceased and his brother. After the death of the deceased, the family seemed to have resolved their dispute. The prosecution gave a satisfactory explanation that the son and the daughter of the deceased were not examined by the prosecution as they were won over by the accused. PW 3 and PW 4, the wife and the daughter of the deceased did not support the case of the prosecution and were

A declared hostile. But, that by itself, would not demolish the case of the prosecution. The Court has also to keep in mind that no such persons are permitted to defeat the course of justice and if sufficient evidence exists and the prosecution was able to establish its case beyond any B reasonable doubt, the Court should punish the guilty irrespective of the fact that some witnesses had turned hostile. [Para 8] [806-H; 807-A-D]

2.2. There was no reason for the deceased to make a false statement. Despite the fact that he was seriously C injured with a very strong blow on his head by the iron rod, he was able to specify role of each accused in the occurrence. It was a case where head injury proved to be fatal leading to the death of the deceased. The injuries suffered by the wife and the daughter of the deceased, D as per the statement of other witnesses including the Investigating Officer, were received during the course of occurrence and in the house of the deceased. There was no occasion for the deceased to falsely implicate any person, particularly, his brothers and the appellant. The E injuries suffered by the deceased were fully corroborated by the statement of PW 1. There was no reason to not believe these witnesses and the medico legal report. Merely, because the members of the family of the deceased wanted to state incorrectly before the Court, it F would not give any advantage to the appellant, as prosecution was able to bring home the guilt of the accused with cogent and proper evidence. Thus, there was no merit in the challenge to the findings recorded in the impugned judgment. [Para 9] [808-E-H; 809-A-B]

G *Jagriti Devi v. State of H.P.* (2009) 14 SCC 771; *Gurmukh Singh v. State of Haryana* (2009) 15 SCC 635 – referred to.

3. There was no evidence to show that the appellant H and the other persons had gone to the house of the

deceased with the intention to kill him. In fact, it was a family dispute with regard to the property. Appellant gave one blow on the head of the deceased. There was no intention to kill the deceased which was obvious from the fact that a case under Section 323 of the IPC was registered at the very outset and the Head Constable had consulted PW 1, the doctor who had declared the condition of the deceased to be stable as well as certified that he was in a fit state of mind to make statement, which ultimately became the dying declaration. The collective analysis and examination of the evidence on record shows that the appellant had no intention to kill the deceased and did not give him a blow with the intention to kill or with the knowledge that it was likely to cause death. In the circumstances, the offence of the appellant is altered from Section 302 to Section 304 (Part II) of the IPC, with a sentence of rigorous imprisonment for a period of 10 years and fine of Rs. 20,000/-.[Paras 10, 11] [809-F-H; 810-A-D]

Case Law Reference:

(2003) 2 SCC 571	**distinguished**	**Paras 6, 7**
(2004) 10 SCC 113	**distinguished**	**Paras 6, 7**
(1979) 4 SCC 332	**relied on**	**Para 6**
(1985) 4 SCC 476	**referred to**	**Para 6**
(2009) 14 SCC 771	**referred to**	**Para 10**
(2009) 15 SCC 635	**referred to**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 488 of 2009.

From the Judgment & Order dated 30.04.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 324/DB/1999.

A Biswajit Swain (for Rajesh Prasad Singh) for the Appellant.

B.S. Mor (for T.V. George) for the Respondent.

The Judgment of the Court was delivered by

B **SWATANTER KUMAR, J.** 1. The present appeal is directed against the judgment of conviction and order of sentence of the High Court of Punjab and Haryana at Chandigarh dated 30th of April, 2008, wherein the High Court confirmed the judgment of the Trial Court dated 17th of May C 1999, punishing the appellant in accordance with law by awarding him sentence of rigorous imprisonment for a period of one year for the offence under Section 148 Indian Penal Code (hereinafter referred to as 'IPC'), rigorous imprisonment of two years and fine in the sum of Rs.1000/- for the offence D under Section 452 IPC and rigorous imprisonment for a period of six month for the offence under Section 323 IPC and life imprisonment and fine of Rs. 2000/- for the offence under Section 302 IPC and also awarded punishments in default of payment of fines for these offences.

E 2. We may refer to the facts of the case giving rise to the present appeal. On 15.07.1997, Head Constable, Ram Rattan (PW 8) was performing his petrol duty at Sohna Road, Palwal, when at about 5 PM he received intimation (Ex.PE) from Government Hospital, Palwal that three persons, namely, Shiv F Ram, Bimla and Jai Kishan were lying injured in the casualty ward of the said hospital. Upon receiving this information he reached the hospital and met Dr. B.L. Chimpa (PW-1) and asked him whether the injured were in a fit state to make statements. After the doctor declared the injured fit to make G statement at about 6.20 PM vide medical opinion Ex.PE/1, he recorded the statement of Shiv Ram being Ex. PF. In his statement, Shiv Ram stated that he had a dispute with his brother Khem Chand over a residential house. Though, Khem Chand only had a share in the property but he had maintained H his residence in the entire house. At about 2.00 PM, on the date

of occurrence, his wife Omkali (PW 3) and daughters, Bimla (PW 4) and Rachna were present in the house and at that time the accused Khem Chand, Jai Kishan, Jai Parkash, Jagdish, Jai Bhagwan, sons of Khem Chand, his wife Raj Bala alongwith Dhan Singh, Devinder and Rajakali, entered their house and opened attack upon him and on his family members. Accused Dhan Singh was holding an Iron Rod and he inflicted a blow with the same on the head and left ear of Shiv Ram. Accused Jai Kishan gave lathi blows on his back and accused Jai Parkash also inflicted a lathi blow on fingers of his right hand. Lathi blows were also given by Khem Chand and Rajkali on his hips and other parts of the body. Injuries were also inflicted by lathi blows on Bimla, who was later examined as PW 4. The injured persons raised hue and cry and people from nearby started gathering, but by that time, the accused persons ran away from the spot and while leaving, they also threatened the injured persons that they would kill them on the next available opportunity. After collecting the medico-legal reports of Shiv Ram, his wife Omkali and daughter Bimla, the Investigating Officer also took the endorsement and signatures of Omkali and Bimla on the statement of Shiv Ram being Ex. PF/1. On the basis of this statement, FIR No. 573 under Section 148, 452, 323 and 506 read with Section 149 IPC was registered at about 6.15 PM on 15.07.1997 at Police Station City, Palwal by Virender Singh, ASI (PW2). The FIR was exhibited as PF/2.

3. The accused persons had caused injuries on the body of the deceased as well as the injured by blunt weapons. Shiv Ram was kept under observance in the hospital. The Investigating Officer prepared the rough site plan of the place of occurrence and recorded the statement of witnesses under Section 161 of the Criminal Procedure Code (hereinafter refer to as 'Cr.PC'.) and the accused persons were taken into custody. However, in the meanwhile, the condition of Shiv Ram became serious and he was referred to Safdarjung Hospital, New Delhi, where he ultimately expired on 22nd of July, 1997

A at about 7:30 AM. ASI Sri Niwas (PW 11), who was then posted in Police Post, Safdarjung Hospital, New Delhi, conducted the inquest proceedings vide Ex. PJ. Thereafter, the body was sent for post-mortem, which was conducted by Dr. Chandra Kant (PW 5) on 23rd July, 1997. After the death of Shiv Ram, his B son Praveen Kumar gave information at Police Station City, Palwal about his death and Head Constable Jagdish Chand (PW 7) converted the case into one under Section 302 IPC and a special report Ex.PK was sent to the Area Magistrate. After the case was registered under Section 302, the investigation C of the case was taken over from Head Constable by SI/SHO Puran Chand, PW 9 and all the accused except Dhan Singh were re-arrested. Then the Investigating Officer recorded the statement of various witnesses. The disclosure statements Ex.PM to Ex.PU were also made by accused persons, which D led to the recoveries of 7 lathis and 2 dandas and seizure memo Ex. PV was prepared. After completion of the investigation, the chargsheet was filed under sections 148, 149, 323, 506, 452 and 302 IPC. Since an offence under Section 302 IPC is triable exclusively by the Court of Sessions, the case was committed E to that court. All the nine accused were then chargsheeted. Accused Dhan Singh was declared as a proclaimed offender. He was taken into custody on 18.12.1997. Whereafter the supplementary challan was filed in the Court and both these cases, having arisen out of the same incident, were clubbed together for trial. Upon completion of prosecution evidence, the F statement of the accused under Section 313 of Cr.P.C. was recorded. All the accused declined to lead any evidence in their defence. The learned Sessions Judge, by a detailed judgment dated 17th of May 1999, recorded a finding that the head injury, which has been attributed to accused Dhan Singh, was found G sufficient to cause death of Shiv Ram and his case falls under clause 'thirdly' of Section 300 IPC. The Trial Court recorded its findings on the question of guilt as follows:

> "As a result of my aforesaid discussion , I conclude that H the accused Rajkali, Jai Kishan, Jagdish, Khem Chand,

Jai Bhagwan, Devender, Raj Bala, Jai Prakash and Balram have committed offences under sections 148, 452, 325 and 323 read with Section 149 IPC whereas the accused Dhan Singh has committed offences under sections 148, 452, 323 read with section 149 IPC and section 302 IPC. I hold them guilty accordingly. Now for hearing these accused on the quantum of sentence to come up on 17.5.1999."

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4. The judgment of the Court of Session was only questioned by Dhan Singh unsuccessfully before the High Court. The High Court vide its judgment dated 30th of April, 2008 held that the death was a direct result of the impact of injuries attributable to the appellant by relying upon the statement of PW 5 and declined to interfere with the conviction and sentence of the appellant, thus giving rise to the filing of the present appeal. The appeal has been preferred only by accused Dhan Singh. Other accused did not challenge the judgment of the Trial Court.

5. Having noticed the complete facts necessary for determining the question raised in the present appeal, now we shall proceed to discuss the different legal and factual submissions made by the appellants before this Court.

6. **Dying declaration**:- The learned Counsel appearing for the appellant has vehemently argued that the statement in question (Ex.PF/1) cannot be relied upon as dying declaration of deceased Shiv Ram in the facts of the case. In any case, Head Constable Ram Rattan could not have recorded the dying declaration and as per established practice it has to be recorded by a competent Magistrate and the prosecution having failed to place any explanation on record as to why the statement was recorded by Head Constable Ram Rattan, therefore, the said statement would be inadmissible in evidence and it could not be made the basis of conviction of the appellant.

A The counsel has also placed reliance upon the judgments of this Court in *Dalip Singh v. State of Punjab* [(1979) 4 SCC 332)], *Cherlopalli Cheliminabi Sahed v. State of A.P.* [(2003) 2 SCC 571)], *State (Delhi Administration) v. Laxman Kumar* [(1985) 4 SCC 476)] and *Kanti Lal v. State of Rajasthan* B [(2004) 10 SCC 113). It is obvious from the above narrated facts that this was not a case which, to begin with, has been registered under Section 302 IPC. The FIR was registered under Sections 148, 452, 323 and 506 read with Section 149 IPC, which could not be investigated by a Police Officer of the C rank of Head Constable. This fact is not in dispute before us.

7. The Head Constable had received intimation from the hospital and had gone to the hospital where he came to know about the kind of injuries which have been inflicted upon the three injured persons. Dr. B.L. Chimpa (PW 1) had recorded D an endorsement on Ex. PE 1 that in his opinion, Shiv Ram was fit to make a statement and that the statement of the injured was read over to him and after he found the statement as correct, his signatures were obtained on the statement which were duly signed even by the children of the deceased. After E his death on 22nd of July 1997, the FIR was converted to that under Section 302 IPC amongst other sections and the investigation was conducted accordingly by the officer competent in accordance with law to conduct such an investigation. It is not a case where no explanation whatsoever F has been rendered by the prosecution. It is in evidence that the condition of the deceased was worsening at Government Hospital, Palwal, therefore, he was shifted to Safdarjung Hopsital, New Delhi, where he died. The information of the death of deceased was given by his son Praveen Kumar at the G Police Station City, Palwal. Mere fact that the doctor had declared Shiv Ram fit to make a statement does not mean that there was no eminent danger of death to his life. In fact, he died within couple of days. The learned Trial Court had also noticed these facts as well as the fact that Shiv Ram had specifically H stated the role that was attributable to different accused

persons. His statement, in the form of dying declaration, was clear and unambiguous about the role of Dhan Singh. His statement was fully corroborated by medical evidence. In these circumstances, the appellant can hardly take any advantage in this regard. In the case of *Dalip Singh* (supra), this Court held that the dying declaration recorded by Police Officer during course of investigation is admissible under Section 32 of the Indian Evidence Act (for short the 'Act'). In view of the exception provided in sub-section 2 of Section 162 Cr.P.C., it is better to leave such dying declaration out of consideration, until and unless the prosecution satisfies the Court, as to why it was not recorded by the Magistrate or by a doctor. We may note that the provisions of Section 32 of the Act, by themselves, do not mandatorily require that dying declaration has to be recorded by any designated or particular person. The investigating agency has to keep in mind the provisions of Section 32 of the Act read with Section 162 (2) of the Cr.P.C. as well as the settled principle of law and act in accordance with the established practice while recording the dying declaration. It is more because of development of law through pronouncement of Court's judgement that guidelines for recording of dying declarations have been settled. Despite their being no mandate, it is normally accepted that such declaration would be recorded by a Magistrate or by a Doctor to eliminate the chances of any doubt or false implication by the prosecution during investigation. In terms of Section 32 (1) of the Act, the statement made by the person as to the cause of his death or to such circumstances, are admissible. There is no doubt on facts of the present case that statement of Shiv Ram, deceased was recorded only after he was declared fit to make the statement by the concerned doctor. The dying declaration was endorsed by none other than the closest relation of the deceased person present at the relevant time. The FIR itself was registered on the statement of Shiv Ram, which was recorded by the Head Constable, who was competent to do so at the relevant time. We are unable to find any legal infirmity in the admissibility of such statement *per se* in the facts and

A circumstances of the present case. In the case of *Cherlopalli Cheliminabi Sahed* (supra), this Court clearly stated that it is not absolutely mandatory that in every case, dying declaration ought to be recorded only by a Magistrate and it depends on the facts and circumstances of the case. When there was no
B eminent danger to life of the deceased, preferably the statement should be recorded by the Magistrate. The judgment of that case cannot be of much assistance to the appellant. In the case of *Kantilal* (supra), the other judgment relied upon by appellant, this Court was, primarily concerned with the facts
C where the condition of the deceased to make a statement was not satisfactorily recorded by the concerned persons. In that case, the Court held that admissibility of dying deciaration as to any of the circumstances which resulted in death must have some close and proximate relation with the actual occurrence
D and such proximity would depend upon the circumstances of each case. The dying declaration should be voluntary and should not be a prompted one. The physical as well as mental fitness of the maker has to be proved by the prosecution to the satisfaction of the Court. In that case, the doctor had neither made any endorsement nor had issued any certificate that the
E deceased was fit to make a statement. It is certainly not the case here. Here the Doctor had not only issued a certificate but also had expressed his opinion as is clear from Ex. PF1. Thus, this case also has no application to the facts of the case in hand.

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8. **Appreciation of evidence**:- It is argued that the judgments of the Courts under appeal are liable to be set aside as their findings are based on no evidence and are perverse. The son of the deceased and his daughter Rachna have not
G been examined as a witness. No independent witness was examined and no definite role has been attributed to any of the accused and, as such, the accused were entitled to acquittal. This contention, to say the least, is without any merit and substance. Firstly, it is clear from the record that there was a
H dispute between two brothers. After the death of Shiv Ram, it

appears that the family had resolved their dispute and the prosecution gave a satisfactory explanation on record that Praveen and Rachna were not examined by the prosecution as they were won over by the accused. Both the family members of the deceased did not support the case of prosecution and were declared hostile. Keeping in view the statement of family members, other witnesses, doctor's statement and medico-legal report as relevant, it was felt by the Investigating Officer not to examine the other two family members. The statement of Shiv Ram was clear and satisfactory. PW 3 and PW 4 did not support the case of the prosecution and were declared hostile. But, that by itself, would not demolish the case of the prosecution. The Court has also to keep in mind that no such persons are permitted to defeat the course of justice and if sufficient evidence exists and the prosecution has been able to establish its case beyond any reasonable doubt, the Court should punish the guilty irrespective of the fact that some witnesses have turned hostile. The dying declaration of Shiv Ram clinches the entire issue when read with the statement of the doctor and his medico-legal report Ex. PA where injuries upon the deceased have been detailed as under:

1. A lacerated wound on the right parietal region 5 x 2.5 cm into skin deep with irregular margins and fresh bleeding.

2. A lacerated would on the left eye-brow 0.5 x 0.25 cm into skin deep with irregular margins and fresh bleeding.

3. A lacerated would on the anterior side of the left pinna 0.50 x 0.25 cm into skin deep with irregular margins and fresh bleeding.

4. A contusion on the left side of the face 1 cm anterior to the left ear 5 x 4 cm and reddish in colour.

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5. A lacerated would on the dorsal surface of right ring finger 2 x 0.25 cm into skin deep with fresh bleeding.

6. A contusion over the left scapular region measuring 6 x 2 cm in size and red in colour.

B

7. A contusion over the right scapular region measuring 5 x 2 cm in size and red in colour.

8. A contusion on the posterior side of the chest

C

1 cm below the scapular margins. It measures 5 x 2 cm and was in red colour.

9. A contusion over the posterior side of the left wrist joint measuring 4 x 3 cm and reddish in colour.

D

10. A contusion over the anterior side of the left thigh in its lower third measuring 4 x 2 cm and reddish in colour."

E

9. There was no reason for Shiv Ram to make a false statement, on the contrary. Despite the fact that he was seriously injured with a very strong blow on his head by the iron rod, he was able to specify role of each accused in the occurrence. As per the statement of PW1, wife and daughter of deceased Shiv Ram namely, Omkali and Bimla had received

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injuries, which fully supported the case of the prosecution. It was a case where head injury proved to be fatal leading to the death of Shiv Ram. The injuries suffered by Omkali and Bimla, as per the statement of other witnesses including the Investigating Officer, have been received during the course of occurrence

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and in the house of Shiv Ram. There was no occasion for Shiv Ram to falsely implicate any person, particularly, his brothers and Dhan Singh, in the present case. The injuries suffered by the deceased are fully corroborated by the statement of PW 1. There was no reason or justification before the Court, not to

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believe these witnesses and the medico legal report. Merely, because the members of the family of the deceased wanted to state incorrectly before the Court, it would not give any advantage to the appellant, as prosecution has been able to bring home the guilt of the accused with cogent and proper evidence. Thus, for these reasons, we do not find any merit in the challenge to the findings recorded in the impugned judgment.

The conviction ought to be under Section 304 Part II of IPC and not under Section 302 of IPC

10. The counsel for the appellants has placed reliance upon the case of *Jagriti Devi v. State of H.P.* [(2009) 14 SCC 771], where this Court had permitted to alter the offence of 302 IPC to 304 Part II IPC while recording the finding that the khukri used in the commission of offence was kept by the deceased under her pillow, while she was sleeping in the veranda outside the house. Clearly, there was no intention on the part of the accused to kill the deceased. In the Case of *Gurmukh Singh v. State of Haryana* [(2009) 15 SCC 635], there was a single lathi blow on the spur of the moment resulting in death of the deceased and Court permitted altering of the offence. There cannot be any dispute to the principles stated in the judgments relied upon on behalf of the appellant. But equally true is that there cannot be any straightjacket formula which can be universally applied to all cases of this kind. It will always depend upon the facts and circumstances of each case. In the present case, there is no evidence to show that the appellant and other persons had gone to the house of Shiv Ram with the intention to kill him. In fact, it was a family dispute with regard to property. They had gone equipped with lathi and Dhan Singh was carrying an iron rod. He had given one blow on the head of the deceased and there was no intention to kill the deceased which is obvious from the fact that a case under Section 323 of the IPC was registered at the very outset and Head Constable, Ram Rattan had consulted PW 1 who had declared the condition of the

A deceased to be stable as well as certified that he was in a fit state of mind to make statement, which ultimately became the dying declaration. From the collective analysis and examination of the evidence on record, it appears that the appellant had no intention to kill the deceased and did not give him a blow with
B the intention to kill or with the knowledge that it was likely to cause death.

11. For these circumstances and in line with the judgments afore referred, we are of the considered view that the offence of the appellant could be altered from Section 302 to Section
C 304 Part II of the IPC. Consequently, we hold the appellant guilty of offence under Section 304 Part II and award him rigorous imprisonment for a period of 10 years with fine of Rs. 20,000/-. In default of payment of fine the accused shall undergo rigorous imprisonment for a period of six months.
D

12. The appeal stands disposed off in the above terms.

D.G. Appeal partly allowed.