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LITTA SINGH & ANR.

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 805 of 2009)

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APRIL 26, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

PENAL CODE, 1860:

C

s.304 (part II)/34 - Accused causing injuries to victim - Death of victim the following day - Conviction u/s 302/34 and sentence of life imprisonment, affirmed by High Court - Held: The instant case falls u/s 304 (part II) - Although appellants had no intention to cause death but it can safely be inferred that they knew that such bodily injury was likely to cause death

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- Therefore, appellants are guilty of culpable homicide not amounting to murder - Accordingly judgments of courts below are modified and conviction u/s 302 is converted to 304(part-II) - Appellants are sentenced to ten years' imprisonment.

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WORDS AND PHRASES:

Expression, 'maro maro' - Connotation of.

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The appellants along with their father were prosecuted for causing death of the brother of PW1. The prosecution case was that two days prior to the incident a quarrel took place between the deceased and the father of the appellants. On the date of incident at about 7 p.m. the appellants and their father assaulted the deceased with sticks and 'gandasi'. He succumbed to his injuries the following day in the hospital. The trial court convicted both the appellants u/s 302/34 IPC and sentenced them to imprisonment for life. Their father was acquitted giving him benefit of doubt. The High Court affirmed the conviction and the sentence.

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Disposing of the appeal, the Court

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HELD: 1.1 There is no evidence from the side of the prosecution that the accused persons pre-planned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him. The trial court noticed the evidence of PWs 1, 2 and 3 who alleged to have heard the noise "MARO MARO", which can only mean to beat or to cause assault and not 'to kill'. The High Court has wrongly mentioned the term as 'kill'. However, considering the nature of the injury caused to the deceased and the weapons i.e. 'lathi' and 'gandasi' (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the injury may cause death. [paras 13 and 16 -17] [1129-C; 1131-A-B, D-E]

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1.2 It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with intent to kill the deceased. [para 18] [1131-F-G]

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Gurdip Singh & Anr. vs. State of Punjab, (1987) 2 SCC 14 relied on.

1.3 In the instant case, after analyzing the entire evidence, it becomes evidently clear that the occurrence

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A took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted deceased in such a manner
 B that the deceased suffered grievous injuries which was sufficient to cause death, but this Court is convinced that the injury was not intended by the appellants to kill the deceased. [para 20] [1133-C-E]

C 1.4 In the considered opinion of the Court the instant case falls u/s 304 (part II) IPC. Although the appellants had no intention to cause death but it can safely be inferred that they knew that such bodily injury was likely to cause death. Therefore, the appellants are guilty of culpable homicide not amounting to murder.
 D Accordingly, the judgments of the courts below are modified and the conviction u/s 302 is converted to 304 (part-II) IPC. The appellants are sentenced to ten years' imprisonment. [paras 21-22] [1133-E-G]

E *Ishwar Singh vs. State of U.P.*, (1976) 4 SCC 355 and *State of U.P. vs. Madan Mohan & Ors.*, AIR 1989 SC 1519 - cited.

Case Law Reference:

F	(1976) 4 SCC 355	cited	para 10
	1989 AIR 1519	cited	para 10
	1987 (2) SCC 14	referred to	para 19

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 805 of 2009.

From the Judgment and order dated 08.05.2008 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 239 of 2002.

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Sushil Kr. Jain, Puneet Jain, Anurag Gohil, Pratibha Jain for the Appellants. A

Dr. Manish Singhvi, AAG, Amit Lubhaya, Milind Kumar for the Respondent.

The Judgment of the Court was delivered by B

M.Y. EQBAL, J. 1. The present appeal by special leave arises out of the judgment and order dated 8th May, 2008 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 239 of 2002 whereby the appeal of the appellants herein was dismissed upholding the judgment and order dated 23rd January, 2002 of the Additional Sessions Judge in Sessions Case No. 16 of 2001 whereby the appellants were convicted under Section 302/34 IPC and sentenced to imprisonment for life and a fine of rupees one thousand each and in default in payment of fine to further undergo rigorous imprisonment for one month each in addition. C D

2. During the pendency of this appeal, appellant No.2 Kalla Singh was granted bail by this Court on 3rd February, 2010. E

3. The case of the prosecution in brief is that complainant Baltej Singh (PW-1) submitted a written report on 7th February, 2001 (Ex.P/1) in the police station Sadulshahar upon which FIR (Ex. P/17) was drawn and a case under Section 307, 341, 323/34 was registered. It is alleged in the said report Ex.P/1 that to pass time the villagers and complainant and his family members used to sit near the fire during the time of winter and cold in front of house of Mukund Singh. Boga Singh, co-accused was not liking sitting of brother of complainant Hansraj Singh and, therefore, two days before the date of incident quarrel took place between Hansraj Singh and Boga Singh. On 7th February, 2001 at about 7.00 p.m., hearing the voice MARO MARO coming from the side of lane in front of the house of Mukund Singh, the complainant, Yadvinder Singh, Mukund Singh and Gurjant Singh ran towards the place from H

A where the voice was coming. There they saw that accused
Boga Singh and his two sons Litta Singh and Kalla Singh
(appellants herein) were beating Hansraj Singh with *lathis* and
gandasi. Kalla Singh had *gandasi* with him who inflicted injury
by *gandasi* on the head of Hansraj Singh and others gave
B beating by *lathis*. The complainant, Mukund Singh, Yadvinder
Singh and Gurjant Singh shouted upon which the accused ran
away. The complainant took the victim to the hospital and got
him admitted. He lodged report Ex. P/1 in the police station
Sadulshahar at 10.00 p.m. on the basis of which FIR No. 29/
C 2001 (Ex.P/17) was registered under Sections 307, 341, 323/
34 IPC. The victim died on 8th February, 2001 during treatment
in the hospital on which Section 302 IPC was added. During
investigation, site was inspected on 8th February, 2001 and
blood soil and sample soil were collected. All the three
D accused were arrested. The weapons of offence were also
recovered. The seized articles were sent to Forensic Science
Laboratory (FSL) for report. After recording the statements of
the witnesses and obtaining opinion of the FSL (report Ex.P/
24) and post mortem report (Ex.P/14), the challan was filed
E against the accused persons under Section 302/34 IPC. The
accused denied the charges and sought trial. In support of its
case, the prosecution examined as many as nine witnesses out
of whom PW-1 Baljet Singh, PW-2 Yadvinder Singh and PW-
3 Mukund Singh are stated to be eye-witnesses, PW-6 Dr. B.B.
Gupta & PW-7 Dr. Manish Ahuja are witnesses regarding
F treatment of the deceased and post mortem report, PW-8
Chandra Prakash Parick as Investigating Officer and the other
witnesses i.e. PW-4 Sewa Singh, PW-5 Lakharam & PW-9
Haranarayan are witnesses to prove the recovery/seizure of the
articles and sending them to the FSL. Each of the accused
G denied the incriminating circumstances put to them and stated
that they have been falsely implicated. The accused Boga
Singh took further stand that the deceased Hansraj Singh had
illicit relation with wife of Gurjant Singh and the same being
objected by him he has been wrongly implicated in the case of

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murder. However, none of the accused led any evidence in defence. A

4. The following injuries were found on the body of the deceased on performing post mortem:

1. Incised wound 4 cm x 1/5 cm x bone deep was on left forearm. The bones of lower side were fractured. B

2. Incised wound 20 cm x 1/4 cm x skin deep was on the right forearm.

3. Abrasion 5 cm x 1/8 cm on right shoulder. C

4. Abrasion 5 cm x 1/8 cm on right shoulder.

5. Abrasion 7 cm x 1/2 cm was present on the waist.

6. Abrasion 7 cm x 1/2 cm was present on the waist. D

7. Cyanosed mark with swelling. There was 8 cm abrasion within the injury on left temple which 1 cm x 1 cm on central part.

8. Cyanosed and swelled 7 cm x 7 cm on right temple 1 cm x 1 cm abrasion was present inside the same injury. E

9. Cyanosed and swelled 6 cm x 8 cm clotted blood was present under the skin on cutting back side of head which was extending from injury No. 7 upto the lower part of injury No. 9. On cutting the bone blood had coagulated which duramatter was in the brain which was in the left parietal region, occipital region and right tempo-parietal region. F

10. Cyanosed 10 cm x 1 cm on right knee. G

5. According to the doctor (PW-6), all the injuries were ante mortem and the deceased died due to shock and coma arising out of head injury Nos. 7, 8 and 9. Injury Nos. 7 and 8 was the cause of death in ordinary course of nature. H

A 6. The trial court on the basis of statement of PW-6 made
on the basis of post mortem report (Ex.P/14) held that the death
of deceased Hansraj Singh was homicidal. As regards
credibility of the testimony of eye-witnesses (PW-1, PW-2 and
PW-3), the trial court observed (in para 18) that it may be true
B that the place where all these three witnesses were standing
seeing the accused directly from there is not at all possible but
their statement is that they heard the call MARO MARO and
then they rushed there; there may be exaggeration in the
statements of PW-1 and PW-2 regarding seeing the accused
C because both of them are close relatives of the deceased and
they have made statement of seeing the accused directly that
they wanted to give conclusive evidence on this point that they
saw accused while assaulting from the very beginning but on
the basis of their statement that they have seen the accused
D from that place where they were standing, on this basis it cannot
be agreed that they did not hear the call MARO MARO; and
since there was a call of MARO MARO, therefore all these
three witnesses rushed there and they saw that the accused
were assaulting the deceased Hansraj Singh, cannot be
disbelieved. As regards discrepancies and shortcomings in
E the statements, the trial court held (in para 19) that on this
ground the entire prosecution case cannot be treated untrue
because there is no such case in which such discrepancies of
general nature do not exist and the court has to see that how
much prosecution evidence is reliable in respect of chief
F statement of the occurrence. On the argument that PW-1 and
PW-2 being close relatives of the deceased their statements
cannot be believed, the trial court did not accept the same
observing that their arrival at the spot of occurrence was natural
because they made statement of reaching the place of
G occurrence on hearing the call of MARO MARO and the place
of occurrence is not very far from their house. On the argument
that Gurjant Singh being the eye-witness has not been examined
by the prosecution, the trial court held that it is for the
prosecution as to which witnesses are to be examined and
H when the same fact is proved through reliable witness then for

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corroboration of it on the same point by getting examined more than one witnesses is not required. A

7. Ultimately, the trial court held that the accused Litta Singh and Kalla Singh caused fatal injuries to the deceased Hansraj Singh by assaulting him with sickle (gandasi) and lathi with the motive of causing his death as a result of which he died but the fact of any participation of accused Boga Singh in the said offence is not found to be proved beyond reasonable doubt and therefore, giving benefit of the doubt accused Boga Singh was acquitted. The appellants herein were convicted under Section 302/34 IPC and sentenced as stated above. B C

8. Aggrieved by the judgment of the trial court, the appellants preferred an appeal before the High Court. The High Court after analyzing the facts of the case and re-appreciating the testimonies of the witnesses, affirmed the findings recorded by the trial court and dismissed the appeal. Hence, this appeal by special leave. D

9. Mr. Sushil Kumar Jain, learned counsel for the appellants assailed the impugned judgment and order of conviction as being contrary to the facts and evidence on record. Learned counsel firstly submitted that the courts below have erred in placing reliance on the statements of the PW-1 Baltej Singh, PW-2 Yadvinder Singh, PW-3 Mukund Singh, who were ex facie interested witnesses inasmuch as PW-1 and PW-2 are brother and son of the deceased and Mukund Singh was inimical towards the appellants. Learned counsel submitted that since the statements of these witnesses had been disbelieved qua Boga Singh, the High Court has gravely erred in placing reliance on the statements of these witnesses without any corroboration by independent witnesses. Learned counsel drew our attention to the judgment of the trial court and submitted that the High Court ought to have considered the findings recorded by the trial court in para 22 of the judgment. Para 22 of the trial court judgment reads as under:- E F G

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A "As far as there is the question of the accused Boga Singh
though statements are also against him similar to PW.1,
PW.2 and PW.3 that he also beat the deceased with lathi
but our opinion in this regard is that PW.1 and PW.2 have
made statements regarding the accused Boga Singh that
B accused Boga Singh raised the call of MARO MARO but
in the statement under Section 161 Cr.P.C. of all these
three there is no such statement that who gave a call of
MARO MARO was the accused Boga Singh. It is revealed
C from this that the statement made by PW.1 and PW.2
regarding giving a call of MARO MARO by accused Boga
Singh has been made for ensuring that accused Boga
Singh be also fully included in this case. PW.3 Mukand
Singh does not make such statement in his statement in
the court that accused Boga Singh raised a call of MARO
D MARO and it was natural for him that he only heard the call
did not see the accused because at that time he was
feeding bread to the dogs in front of his house. PW.1 and
PW.2 have made this excess statement in the court
regarding Boga Singh due to which doubt is created that
whether in fact call of MARO MARO was made by Boga
E Singh only because the place where these people were
standing and in the time of occurrence it was not possible
to see for them that the call was given by him. In addition
to this there was no blood on the lathi which accused Boga
Singh got recovered on his information. Therefore, this
F also creates doubt that the lathi which was seized was
used in causing injuries to the deceased. There is one
more practical fact that when his two young sons in which
the age of accused Kala Singh is 20 years and accused
Leeta Singh is 25 years old as has been told by them in
G their statements under Section 313 Cr.P.C, and both have
sufficient capacity of causing injuries to the deceased then
this accused was having the necessity that he also cause
injuries to the deceased. His presence may be at the spot
of occurrence because the manner in which PW.1, PW.2
H and PW.3 came on hearing MARO MARO then he may

have also come there but neither he gave a call of MARO MARO and instigated both his sons in any manner and nor he took any part in causing injuries to the deceased. Therefore, the statements of PW.1, PW.2 and PW.3 concerning him cannot be believed and giving benefit of doubt to him is justified."

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10. Learned counsel submitted that the allegation in the FIR made against all the three accused persons and the evidence adduced by the prosecution cannot be segregated. Since one of the accused Boga Singh has been acquitted, then there is no reason why the appellants may not be acquitted from the charges. Learned counsel further submitted that the genesis of the incident has not been established as to which injuries were fatal. Learned counsel referred the decisions of this Court in the case of *Ishwar Singh vs. State of U.P.*, (1976) 4 SCC 355 and *State of U.P. vs. Madan Mohan & Ors.*, AIR 1989 SC 1519. Learned counsel submitted that the non-examination of Gurjant Singh and the persons of the locality is fatal in the instant case as no explanation has been given for their non-examination. Lastly, learned counsel made an alternative argument and submitted that there was no common intention of the appellants to kill the victim. It may be that because of some dispute and quarrel between the appellants and the victim, the appellants might have tried to teach lesson to the victim and in that they have allegedly inflicted injuries which have caused the death of the victim. And in the said premises, the conviction of the appellant may be altered from Section 302 IPC to Section 304 Part II IPC or at the most under Section 304 Part-I IPC.

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11. On the other hand, Dr. Manish Singhvi, learned counsel appearing for the prosecution side submitted that there are direct evidence in the form of eye-witnesses, namely, PW-2 and PW-3. Learned counsel submitted that the weapons used by the appellants were recovered and blood found on the said weapons. Learned counsel submitted that the head injuries i.e.

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- A injury Nos. 7, 8 and 9 are independently sufficient to cause the death. Learned counsel submitted that Gurjant Singh may not be called as best witness but one of the witnesses. Since the evidence of PWs 1, 2 and 3 was sufficient to establish the case, non-examination of Gurjant Singh is not in any way fatal to the prosecution side.
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12. We have carefully examined the evidence adduced by the prosecution and also the complaint lodged by the complainant on the basis of which the case was registered against the appellant Boga Singh who has been acquitted in the case. Much stress and emphasis has been given to the word "MARO MARO" coming from the side of lane in front of the house of Mukund Singh. Hearing the voice, the accused person alleged to have run towards the place and saw that the accused Boga Singh and his two sons Litta Singh and Kalla Singh were beating the deceased with lathi and gandasi. In the FIR (English translation of the same has been annexed as Annexure P-1), it appears that the informant alleged that when he along with two others ran in front of the house of Mukund Singh, a loud voice "MARO MARO" was heard. On hearing the turmoil, the complainant and PWs 2 and 3 rushed and saw that the accused persons were assaulting the deceased. When the complainant and PWs 2 and 3 raised commotion, then the accused persons ran away. PW-1, who is the complainant, in his evidence, has deposed otherwise. According to his evidence, there was hue and cry, Boga Singh was saying "KILL KILL". Hearing the hue and cry, he went running there and saw that the accused persons were beating the deceased. PW-2 Yadvinder Singh in his deposition has said that on hearing the sound of "MARO MARO" he saw that Boga Singh was saying "MARO MARO", then they went there and saw that three accused persons were beating his father. When they reached nearby, then these persons fled away. PW-3 Mukund Singh has said that the incident was of about six months before. While he was feeding bread to the dogs, then sound of "MARO

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MARO" reached. He reached there running and saw that the accused persons were beating Hansraj Singh. A

13. The trial court proceeded on the basis of written report (Ex. P/1) submitted in the police station wherein the allegation was that the deceased while coming home from the field at about 7 O'clock and when he reached in the lane in front of the house of Mukund Singh a loud voice "MARO MARO" was heard. In the judgment, the word "MARO MARO" was described as "MAR DO MAR DO". The trial court further noticed the evidence of PWs 1, 2 and 3 who alleged to have heard the noise "MARO MARO". The trial court recorded its opinion which is quoted hereinbelow:- B C

"..... My opinion in this regard is that it may be true the place where all these three witnesses were standing seeing the accused from there is not at all possible because the occurrence is about quarter to seven - seven O'clock evening on 7th February 2001 and on this day sun sets at almost 6½ O'clock and the dark after half an hour after sun set is that much in which it is not possible to see the accused directly but their statement is that they heard the call MARO MARO then they rushed there. There may be exaggeration in the statements of PW-1 and PW-2 regarding seeing the accused because both of them are close relatives of the deceased and they have made statement of seeing the accused directly that they wanted to give conclusive evidence on this point that they saw accused while assaulting from the very beginning but on the basis of their statement that they have seen the accused from that place where they were standing, on this basis it cannot be agreed that they did not hear the call of MARO MARO. The statement of PW.1, PW.2 and PW.3 that they had gone there on hearing MARO MARO and among them the statement of PW.1 and PW.2 is certain that Banga Singh was giving a call of MARO MARO but in it their evidence may be doubtful that in fact Bonga Singh D E F G H

A made a call of MARO MARO but since there was a call of
MARO MARO therefore all these three witnesses rushed
there and they saw that the accused were assaulting
deceased Hansraj Singh. The place of all these witnesses
is though not very far from the place of occurrence hence,
B their going to the place of occurrence on hearing the
sound of MARO MARO and having gone there evidence
of seeing the accused assaulting Hansraj Singh cannot be
disbelieved. Though the Advocate for the accused have
given the argument in their arguments that the
C Investigation Officer has not shown that place wherefrom
they were seeing the accused by standing but it does not
have any adverse effect because it was necessary for the
Investigation Officer that he would show the spot of
occurrence and the place in the vicinity not that place
D wherefrom any witness may have seen occurrence. Had
all the three witnesses would have made the statement of
not going at the place of occurrence on hearing the sound
of MARO MARO and would have made the statement of
seeing the occurrence standing only at that place then this
argument was having the importance that how they had
E seen the occurrence while standing at the place where they
were standing. When they reached the place of
occurrence on hearing the call then the state of their being
standing or place becomes secondary. Therefore, the
argument given by the learned Advocate for the accused
F does not have any force."

14. However, with regard to the accused Boga Singh, the trial court recorded the reasoning in para 22 of the judgment while acquitting him.

G 15. Curiously enough, the High Court while narrating the
incident as contained in Ex. P/1, has wrongly mentioned that
the witnesses have heard the voice "KILL KILL" and hearing
the shout, the witnesses reached the spot and saw the accused
H persons beating the deceased.

16. The word "MARO MARO" can never mean "KILL KILL". The word "KILL" means to cause the death of a person or animal. It also means to put some one to death, to murder, to slaughter. On the other hand, the word "MARO MARO" means to beat, to cause assault. Here the thin line of distinction lies between the two words. If the voice is "KILL KILL", it means to cause death of the person and to finish him. Had the intention of the person been to make such call or voice "KILL KILL" and on the basis of such call the accused persons had assaulted the deceased, then the intention would have been clearly to kill and murder the deceased. Here on hearing the call "MARO MARO", the accused persons with Boga Singh started beating the deceased.

17. Considering the nature of the injury caused to the deceased and the weapons i.e. lathi and gandasi (sickle) used by them, it cannot be ruled out that they assaulted the deceased with the knowledge that the injury may cause death of the person. Moreover, there is no evidence from the side of the prosecution that the accused persons pre-planned to cause death and with that intention they were waiting for the deceased coming from the field and then with an intention to kill the deceased they assaulted him.

18. It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with intent to kill the deceased.

19. In the case of *Gurdip Singh & Anr. vs. State of Punjab*,

A (1987) 2 SCC 14, this Court came across a similar type of
 incident, where the prosecution case was that one Maya Bai
 had two sons and two brothers. She was the mother of accused
 Nos. 1 and 2 and sister of accused Nos. 3 and 4. The
 deceased was one Kishore Singh. The accused suspected
 B that Mayabai had illicit relations with the deceased. Hence one
 day when the deceased was returning from village and when
 he reached the field of Kashmiri Lal, the accused came out of
 the wheat field. The first appellant had a kirpan and the second
 appellant had kappa. It was alleged that the four accused took
 C deceased on wheat field and threw him on the ground. One
 of the acquitted accused Jit Singh caught hold of arms of the
 deceased and the two appellants caused injuries with the
 weapons in their hands. There was an alarm created by
 D Lachhman Singh, PW-3, which had attracted PW-4 and
 Mohinder Singh. When they reached the spot, the accused ran
 away with their weapons. The deceased had seven injuries on
 his body. Injury No.7 was fatal according to the doctor, who
 examined him. It was argued that the prosecution had not come
 forward with true case as to how the incident happened. The
 trial Judge found two accused Jit Singh and Teja Singh not
 E guilty, since the case against them was not proved beyond the
 reasonable doubt. The appellants were convicted because they
 had weapons with them unlike the acquitted accused. This
 Court on consideration of the entire evidence did not interfere
 with the findings that the appellants were responsible for the
 F death of the deceased by attacking him with the weapons in
 their hands, but on reappraisal of the entire evidence, the Court
 found it difficult to agree with the trial court that the appellants
 were guilty of the offence under Section 302 IPC. Hence,
 converting the offence under Section 304 Part I, this Court
 G observed:-

"6. The trial Judge was not wholly justified in
 observing that there was no evidence about the so-called
 illicit relationship between Maya Bai and Kishore Singh,
 the deceased. The materials available create
 H considerable doubt in our mind as to whether the

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appellants really intended to kill Kishore Singh or whether his misconduct pushed them to wreak revenge against the deceased and in this pursuit attacked him. We are not unmindful of the fact that the 7th injury noted in the post-mortem certificate is in the ordinary course sufficient to cause the death of the deceased. But we are not fully satisfied that the appellants intended to kill the deceased. The correct approach on the evidence and other circumstances in this case, would according to us, be to find the accused guilty under Section 304 Part I, and to sentence them under that section."

20. After analyzing the entire evidence, it is evidently clear that the occurrence took place suddenly and there was no premeditation on the part of the appellants. There is no evidence that the appellants made special preparation for assaulting the deceased with the intent to kill him. There is no dispute that the appellants assaulted deceased in such a manner that the deceased suffered grievous injuries which was sufficient to cause death, but we are convinced that the injury was not intended by the appellants to kill the deceased.

21. In the facts and circumstances of the case, in our considered opinion, the instant case falls under Section 304 Part II IPC as stated above. Although the appellants had no intention to cause death but it can safely be inferred that the appellants knew that such bodily injury was likely to cause death, hence the appellants are guilty of culpable homicide not amounting to murder and are liable to be punished under Section 304 Part II IPC.

22. Accordingly, we modify the judgment of the trial court and the High Court and convert the conviction under Section 302 to 304 Part II IPC, and sentence the appellants to ten years' imprisonment. The appeal is, therefore, disposed of with the modification in the conviction and sentence as indicated above.

R.P.

Appeal disposed of.