[2023] 14 S.C.R. 85 : 2023 INSC 957

CASE DETAILS

BIRBAL NATH

v.

THE STATE OF RAJASTHAN & ORS

(Criminal Appeal No. 1587 of 2008)

OCTOBER 30, 2023

[SANJAY KISHAN KAUL AND SUDHANSHU DHULIA, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in acquitting the accused for the major offences u/ss. 302 and 307 IPC, and convicting them only for the offences u/ss. 147, 148, 323, 324, 325/149 and reducing their sentences to the period already undergone by them; and whether contractions in the two statements of the injured eye witness, one given to police u/s.161 Cr.PC., and the other given before the court, would be sufficient to discredit a witness.

Penal Code, 1870 – ss. 304 Part I, 308, 147, 148, 323, 324, 325/149 – Culpable homicide not amounting to murder – First Information Report by the complainant that seven armed men assaulted his uncle and aunt while they were working in their agricultural field, causing them grievous injuries, resulting in the death of the uncle – Incident witnessed by several relatives who tried to intervene but failed – Conviction and sentence for the offences u/ss. 302, 307, 323, 324, 325, 447, 147/148 read with s. 149 – However, the High Court acquitted them for the major offences u/ss. 302 and 307, and were convicted only for the offences u/ss. 147, 148, 323, 324, 325/149 – Correctness:

Held: This case is of culpable homicide not amounting to murder, and not of murder – Injuries sustained by the assailants could not be proved in the trial, defence witness stood thoroughly discredited – There were contradictions in the two statements of an injured eye witness – These contradictions, however, are not enough to completely discredit this witness, she is a reliable witness – Some discrepancies invariably occur in such

cases taking into account her rural back ground – Reasons assigned for disbelieving the statement of the eye witness by the High Court not correct – Apart from this eye-witness, there were other eyewitnesses as well – Also recovery of the weapons and the blood-stained cloth of the accused – In view of these contradictions, benefit of doubt given to the accused – As regards premeditated attack, the attack would come u/s.300 Exception 4, the attack not being premeditated, but was, "in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner" – Thus, the approach of the High Court was not correct – Order of the High Court set aside and quashed – Conviction u/s. 302 converted to that of s. 304 Part I and that of s.307 to s. 308 and are sentenced accordingly – Case abates against the accused who expired. [Para 27-32]

Witness – Contractions in the two statements, one given to police u/s.161 Cr.PC., and the other given before the court – Credibility:

Held: Contractions in the two statements may or may not be sufficient to discredit a witness – s. 145/155 of the 1872 Act, have to be carefully applied in a given case – Purpose of the cross examination of a witness is to bring contradictions in the two statements of the witness – Rural setting, the degree of articulation of such a witness in a court of law are relevant considerations while evaluating the credibility of such witness – Lengthy cross-examination of witness may invariably result in contradictions – However, these contradictions not always sufficient to discredit a witness – Evidence Act, 1872 – ss. 145/155. [Paras 20 and 22]

Witness – Injured eye-witness – Evidentiary value:

Held: Statement of an injured eye-witness is an important piece of evidence which cannot be easily discarded by a Court – Minor discrepancies do not matter. [Para 26]

Code of Criminal Procedure, 1963 – s. 161 – Statement given to police during investigation under – Evidentiary value:

Held: Cannot be read as an "evidence" – It has limited applicability in a court of law as prescribed u/s. 162 – No doubt statement given before police during investigation u/s. 161 are previous statements u/s 145 of the Evidence Act and thus can be used to cross examine a witness – But only

for limited purpose, to "contradict" such witness – Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in the two statements would result in totally discrediting the witness. [Paras 18 and 19]

LISTS OF CITATIONS AND OTHER REFERENCES

Rammi v. State of M.P. (1999) 8 SCC 649: [1999] 3 Suppl. SCR 1; *Tahsildar Singh v. State of U.P.* AIR 1959 SC 1012: [1959] Suppl. SCR 875; *State of M.P. vs. Mansingh and Others* (2003) 10 SCC 414: [2003] 2 Suppl. SCR 460 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1587 of 2008.

From the Judgment and Order dated 08.08.2007 of the High Court of Rajasthan at Jodhpur in DBCA No.976 of 2002.

With

Criminal Appeal No.1588 of 2008.

Appearances:

Dr. Manish Singhvi, Ramakrishan Veeraraghvan Sr. Advs., Ms. Shubhangi Agarwal, Apurv S., Milind Kumar, Dr. Charu Mathur, P. D. Sharma, H. D. Thanvi, Nikhil Kumar Singh, Achal Singh Bule, Mahendra Singh, Rishi Matoliya, Advs. for the appearing parties.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SUDHANSHU DHULIA, J.

1. Both the above appeals arise out of the judgment and order dated 08.08.2007 passed by the Rajasthan High Court in Criminal Appeal No.976 of 2002, whereby all the accused who stood convicted by the Trial Court for the offences under Sections 302, 307, 323, 324, 325, 447, 147 /148 read

with Section 149 of Indian Penal Code, were acquitted for the major offences under Sections 302 and 307, and were convicted only for the offences under Sections 147, 148, 323, 324, 325/149. Their sentences were also reduced to the period already undergone by them, which roughly varied from two to five years.

2. The complainant as well as the State have approached this Court by way of the above two appeals, which were admitted and leave was granted on 26.09.2008.

3. We have heard learned counsel for the appellant, Dr. Charu Mathur for the victims and Dr. Manish Singhvi, learned senior advocate for State of Rajasthan respectively, as well as senior advocate Mr. Ramakrishan Veeraraghavan on behalf of the accused-respondents.

4. An FIR was lodged on 22.05.2001 at about 3.00 PM by complainant-Birbal Nath at Police Station, Pachori, District Nagaur, Rajasthan which disclosed that at about 1:00 o'clock that afternoon, while the informant's uncle 'Chandernath' and his aunt 'Rami' were working in their agricultural field, seven men, armed with weapons approached their field. They were as follows :-

(1) Jethnath having an 'axe'

(2) Dhurnath having a 'dang'

(3) Meghnath having a 'farsi'

(4) Rughnath having Favda (Shovel)

(5) Babunath having a 'dang'

(6) Malanath having an 'axe' and

(7) Devnath having a 'dang'

All the above named accused, who were armed, started assaulting the aunt and uncle of the complainant-Birbalnath, in which both were grievously injured. Jethnath was the first to assault Chandernath with his axe and the rest joined the attack. Rami was also attacked, by these assailants. This incident was also witnessed by Pratapnath, Ramunath, Dhurnath, their sister-in-law Rampyari, Cheni Devi and Ruparam as they had reached the spot in a few minutes, who tried to intervene in the matter and save their

relatives, but in vain. Chandernath died in the ambulance while being taken to the hospital at Jodhpur. Meanwhile the police started its investigation, and filed its chargesheet against all the accused except Devnath in the case. The case was later committed to the Sessions Court where charges were framed under Sections 147, 148, 302, 323/149, 324/149, 325/149, 447, 307/149 of the Indian Penal Code against all the six accused, named in the chargesheet.

5. There were in all 24 witnesses who were examined by the prosecution. The star eye witness being Rami (PW-2) who is the wife of the deceased and was herself grievously hurt in the incident. Apart from her there were other eye witnesses as well such as PW-3, PW-6 and PW-7 i.e., Rampyari, Mohannath, Birbalnath respectively. There was also recovery of clothes and weapons which was made on the disclosure of the accused.

6. In their statement under Section 313 of CrPC, all the accused denied the charges and the evidence against them and also presented defence witnesses in the form of – Birmaram (DW-1), Hanutaram (DW-2), Khemaram (DW-3), Dr. Devkaran (DW-4) and Hukmaram (DW-5).

7. Out of all the prosecution witnesses which were examined by the prosecution, Rami (PW-2) is the most important witness, as she was the wife of the deceased and at the relevant point of time was working in the field, along with her husband. In addition, this witness had sustained grievous injuries in the incident, including a near fatal injury on her head and therefore the testimony of this particular witness is the most credible evidence produced by the prosecution before the Trial Court. The examination-in-chief and cross examination of Rami was done before the Trial Court on 27.11.2001. She was cross examined at length by the defence, but nothing has come out in the cross examination, except minor discrepancies. These discrepancies as we shall be examining later do not discredit the witness as has been held by the High Court. The social background and the overall surrounding circumstances of the case are important considerations for the court while examining a witness, which has not been done. The High Court, as we shall see, has relied on these discrepancies, while acquitting the accused of the charges under Sections 302 & 307.

8. In her examination-in-chief PW-2 consistently held the position that she and her husband were working on their field, and each of the accused was armed with either ‘axe’, ‘farsi’ or other weapon and that they were

seven in number, who assaulted her and her husband. It was Jethnath who attacked on head with axe, Meghnath with 'fawda', Dhurnath with 'dang' on the head of her husband, Raghunath assaulted him with 'fawda'[1], Malanath attacked her husband with an axe, as did Raghunath and Babunath. All of them had attacked her as well, and as a result she sustained injuries on her head, left hand, right hand, joints and legs. Her husband too had injuries on his head, hands and legs. His hand and legs were fractured. When she raised an alarm, Pratapnath, Rampyari, Cheni, Ramnath, Birbalnath, Dudhnath, Purkharam and Ruparam came running to the spot and tried to save them. Chandernath her husband died on the way to the hospital at Jodhpur. She (PW-2) was given medical treatment and was examined by a doctor.

9. Rampyari (PW-3) who is again a witness to the incident states that on the fateful day at about 1.00 o'clock in the afternoon she heard someone crying for help. She recognised the voice of Rami and Chandernath and then she immediately ran towards the field. Chena, Birbalnath, Dudhnath and Purkharam were also with her. They saw Jethnath, Dhumnath, Meghnath, Rughnath, Babunath, Malanath and Devnath, all armed with either axe, farsi, dang and "fawda". They were all attacking Chandernath. On seeing them the accused ran away from the spot. They saw Chandernath lying on his belly and was bleeding, and so was Rami. There were injuries on her head and ear.

10. Dr. Ramvilas who was examined as (PW-4) confirmed that the deceased died due to injuries particularly the injuries sustained on his head. Apart from Rami (PW-2) and Rampyari (PW-3) there are other eye witnesses as well (PW-6 and PW-7), who had reached the spot after they heard an alarm raised by Rami. The 'site plan' shows that the "chapper" of these witnesses is nearby and hence the fact that these witnesses were in the neighbourhood was rightly held by the Trial Court, and their presence seemed natural.

11. PW-6 and PW-7 had again made similar depositions as PW-3, being in the neighbourhood at the time of the incident. Though it may be doubtful whether they had witnessed the entire sequence of events, yet they had definitely seen the assailants fleeing from the place of occurrence.

---

1 Shovel

These are also important witnesses though the High Court has said nothing on their deposition.

12. The post mortem of the body was conducted on 23.05.2001. The post mortem report shows the following ante mortem injuries:

"(i): Lacerated wound in the size of 1 ½" X ½" bone deep over the left parietal region of scalp. There is depressed podium of left parietal bone.

(ii): Lacerated wound in the size of 1" X ¼" bone deep over right parietal region of scalp. There is puncture/fracture of right parietal bone.

Pupils = Dilated, haggy.

(iii): Lacerated wound in the size of ¾" X ¼" bone deep over occipital region of scalp. There is puncture of occipital bone on skull.

(iv): Lacerated wound in the size of ½" X 1/8" bone deep, huge contusion over upper part of left leg. There is fracture of upper 1/4th portion of tibia and fibula bone.

(v): Lacerated wound in the size of ½" X ¼" deep to bone and quitesome swelling had developed near at the wound. This wound was in the lower left leg. There was fracture in lower end of tibia and fibula bones.

(vi): Swelling in medium size had developed towards the upper side of the right hand and therein there was fracture of first meta-carpal bone.

…..

…..

In my opinion, cause of death of Chander Nath s/o Gopunath is Head-Injury and brian haemorrhage."

13. The injuries sustained by Rami as per her injury report dated 22.05.2001 is as follows:

1. Incised wound in the size of 2 ½" x ½" x bone deep, deep/over anterior portion of scalp trans-vertically placed, simple in nature; Advised for X-Ray Report, by Sharp weapon.

2. As defined swelling on right arm upto shoulder; advised for X-ray, simple in nature, by blunt object.

3. Bruise in the size of 1 ½" x ½" over lower part of left thigh, lower side, simple in nature, by blunt object.

4. Bruise in the size of 1 ½" x ½" on middle of left arm laterally, simple in nature, by blunt object.

5. Bruise in the size of 4" x 1" over lower back, simple in nature, by blunt object.

14. The Trial Court convicted all the accused under Sections 302, 323, 324, 325, 147, 148, 447 read with Section 149 of Indian Penal Code, and sentenced them *inter alia* for rigorous imprisonment for life. Jethnath, Dhurnath and Meghnath in addition were also convicted under Section 307 of IPC.

15. The accused filed an appeal before the High Court which was partly allowed, as discussed above.

16. The statement given by PW-2 before the Police under Section 161 Cr.PC, during investigation were relied by the defence in order to contradict the witness as to her statement in her examination-in-chief. The witness in her earlier statement before the police, had said that the accused Jethnath was working on his adjacent field and he had some altercation with the deceased regarding their boundary in which heated arguments were exchanged between the two. Jethnath, then, raised an alarm which resulted in his sons and relatives coming to the spot, who were all armed with weapons. It is true that this fact of Jethnath working in the field and the altercation she did not state in her examination-in-chief. The High Court thus finds a discrepancy in the statement of PW-2 made under section 161 Cr.PC and her examination-in-chief, which it believes to be sufficient to discredit this witness.

17. As we have already stated this particular witness i.e. PW-2 is an injured witness and wife of the deceased, who has given her clear and unambiguous statement in her examination-in-chief and though she was cross-examined at length this witness stood her ground. Moreover, it is her husband who has been killed by the assailants. Why should she be accusing

wrong persons? The High Court discredits the star witness of the prosecution due to her so called discrepancies between her statement under Section 161 Cr.PC and in her examination-in-chief. It then holds that it was not a pre-meditated attack at all and therefore no case of common intention or common object of unlawful assembly is made out nor will it be a case for Section 302 or 307. This is what was said :--

> "First and foremost , the question which we require to look into is whether the beginning of the story, as given by the prosecution, is reliable or not. According to the eye witness' account the accused arrived at the scene of occurrence and they assaulted the deceased on his head and he fell down by the head injuries caused by Jeth Nath and then the other accused persons caused injuries. Jeth Nath having been assigned an axe and there being no axe injury, the beginning of the story as given by the prosecution witness, PW/2 Rami injured eye witness, does not appear to be correct.
>
> In that view or the matter, if we consider the contradiction in her statement that in her police statement she has stated that things started with the handling or the thorn fencing on the boundary wall, it was a case where both the parties got enraged on the spur of the moment and there was no pre-meditation . If there was no pre-meditation, then there was no pre-motive to kill the deceased before the incident started, then it is difficult to conclude that there was a common object to eliminate the deceased. If there was no common object then conviction under sections 302/149 IPC is not made out and in that view of the matter, the conviction and sentence of accused persons deserves to be set aside."

18. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a Court of Law as prescribed under Section 162[2] of the Code of Criminal Procedure (Cr.P.C.).

---

2 Section 162. Statements to police not to be signed: Use of statements in evidence.

(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

19. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.

20. The contractions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In ***Rammi v. State of M.P. (1999) 8 SCC 649,*** this Court had held as under:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act , 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

"24. *When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."*

In the same case, how far a contradiction in the two statements can be used to discredit a witness has also been discussed.

"25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

"155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—

*(1)-(2)****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness

the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness."

21. In ***Tahsildar Singh v. State of U.P., AIR 1959 SC 1012,*** it was held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including ***Rammi*** (supra). Moreover, in this case the High Court lost sight of other more relevant factors such as the witness being an injured eye witness.

22. The purpose of the cross examination of a witness in terms of Section 145 and 155 of the Evidence Act is to bring contradictions in the two statements of the witness, in the case at hand, one given to police under Section 161 Cr.PC., and the other given before the court. Even assuming for the sake of argument that there is a difference in the two statements of PW-2 as she evidently does not disclose in her examination-in-chief that Jethnath was also working in the adjacent field and there was altercation between the two, this may discredit the witness only so far as the beginning of the incident; how it started. The fact that the incident happened is not in doubt. The offenders were the accused is also not in doubt. There is no doubt that the incident took place, which resulted in one death and grievous injuries to another. It may not have happened exactly as narrated by PW-2, yet for this discrepancy the entire testimony of PW-2 cannot be discarded.

23. The so called injuries sustained by two of the assailants, Meghnath and Jethnath, were again relied upon by the High Court to reach a finding that this case could be the case of free fight between the two parties which was not pre-meditated particularly where both sides had sustained injuries!

24. In our opinion, the High Court has given undeserved credit to the evidence placed by the defence in this regard. The Trial Court on the other hand had examined this aspect in detail and ultimately did not find the evidence placed by defence as credible. It is not very difficult for us to appreciate why this was done. To prove that the accused too had sustained injuries in the incident, the defence had produced DW-4 Dr. Devkaran as their

witness. This witness is a Government Doctor, and was under suspension at the time of his deposition, and from his own statement before the Trial Court this was so because he was charged of giving a post mortem report, though he had not conducted any post mortem. So much for the credibility of this witness. He was cross examined by the prosecution as to the overwriting and mistakes in his medical report. He denies having made the changes in the report. The Trial Court held that the medical report of this witness (DW-4) to be "suspicious", for the reasons that there was no explanation as to how the two accused had sustained these injuries. The only proof of injuries suffered by Jethnath was that there was a mention of these injuries in his arrest memo, when it was mentioned as 'abrasion on hand'. This the Trial Court rightly held could be caused due to the force this assailant had exerted in attacking the deceased. Moreover, the injuries were in any case simple in nature.

25. The High Court, though examines this aspect in a totally different perspective. It has magnified simple, doubtful and totally unexplained injuries of the accused and has belittled the brutal and murderous attack on PW-2 and her deceased husband, and most importantly expressed serious doubt on the testimony of an injured witness, i.e., PW-2. This approach of the High Court in our considered opinion was not correct.

26. The High Court has gone wrong in its appreciation of the case, both on facts as well as on law. The statement of an injured eye-witness is an important piece of evidence which cannot be easily discarded by a Court. Minor discrepancies do not matter. In ***State of M.P. vs. Mansingh and Others (2003) 10 SCC 414*** where conviction of the accused by the trial court, *inter alia*, under Section 302, was set aside by the High Court on the so called discrepancies of an injured witness this court while allowing the State's appeal against the acquittal said this :

> *"9. The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report, that does not wash away the effect of the evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode the credibility of an otherwise acceptable evidence. The circumstances highlighted by the High Court to attach*

vulnerability to the evidence of the injured witnesses are clearly inconsequential."

27. The reasons assigned for disbelieving the statement of PW-2 by the High Court are not correct. The High Court discredits the statement of PW-2 because of the discrepancies in her earlier statement given under Section 161 Cr.P.C., and the one given in her examination-in-chief. This as we have already discussed was not sufficient to totally discredit an injured eye witness. Apart from this eye-witness, there were other eye-witnesses as well, which we have referred above. Further, there is also the recovery made of the weapons and the blood-stained cloth of the accused. There is nothing to doubt either the recovery or the manner in which the recovery has been made. The conclusion derived by the High Court that the assailants were not having common intention or common object of killing deceased Chandernath is not entirely correct.

28. The grounds for acquitting the accused under Section 302 & Section 307 of IPC were mainly based on the presumption that it was not a pre meditated attack, rather it was a clash between two groups, where both were somewhat armed, which resulted in injuries on both sides, though somewhat larger injuries and a death, on the side of the complainant. This determination of the High Court is based on primarily on two aspects, first that the assailants too had sustained injuries and secondly the discrepancies in the evidence of PW-2.

29. As far as the injuries sustained by some of the accused is concerned this could never be proved in the trial. DW-4 who was produced as a witness stood thoroughly discredited and rightly so, as we have discussed in the preceding paragraphs. As to the so-called discrepancies in the statement of PW-2 we are again of the view that this witness is an injured eye witness and therefore her evidence cannot be completely disregarded.

30. Having said this, however, we are also of the opinion that the possibility of the incident not being premeditated, cannot be totally disregarded, considering the overall 'circumstances' of the case, as urged before us and even considering the contradictions in the two statements of PW-2. We do not discredit the evidence of PW-2. She is a reliable witness. But only to the extent of what led to the incident, we are inclined to grant a limited benefit to the accused but not like the one given by the High

Court. We are of the opinion that this case is of culpable homicide not amounting to murder, and not of murder. There were contradictions in the two statements of PW-2 as we have discussed in the preceding paragraphs. These contradictions, however, are not enough to completely discredit this witness. All the same, these contradictions, in the given fact of the case, do give a benefit of doubt to the accused as to the case of premeditated attack of the prosecution. In our opinion, therefore the attack would come under Exception 4 to Section 300, the attack not being premeditated, but was, "in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

31. Both the appeals are allowed and the order of the High Court dated 08.08.2007 is liable to be set aside and is hereby quashed. As far as the order of the Trial Court is concerned, we convert the findings of Section 302 to that of Section 304 part I IPC, and that of Section 307 to Section 308 IPC. We sentence each of the accused for seven years of rigorous imprisonment (R.I.) under Section 304 part I IPC and three years of rigorous imprisonment under Section 308 IPC. The remaining findings and sentences awarded by the Trial Court shall remain.

32. Out of the six accused, we have been informed that Jethnath has passed away. The case against him therefore stands abated. The remaining accused shall surrender before the Court concerned within four weeks from today, from where they shall be sent to prison to carry out the remaining sentence. Bail bonds, if any, shall stand discharged. The period of sentence already undergone by the accused shall be adjusted from the sentences presently awarded. All sentences will run concurrently. Let a copy of this order be sent to the concerned court for onward compliance of our orders.

Headnotes prepared by:
Nidhi Jain

Appeals allowed.