HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) No.26 of 2015

Shri Madhusudhan Debbarma,
son of late Khirode Debbarma
of Jamtilla, Khowai,
P.S. Khowai, District- West Tripura

----Appellant (s)

Versus

State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. S. Ghosh, Advocate
For Respondent(s)	:	Mr. B. Choudhury, P.P.
Date of Delivery of Judgment	:	28.03.2019
Whether fit for reporting or not	:	**YES**

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

Heard Mr. S. Ghosh, learned counsel appearing for the appellant as well as Mr. B. Choudhury, learned P.P. appearing for the state.

[2] This appeal under Section 374(2) of the Cr.P.C. is directed against the judgment and order of conviction and sentence dated 12.05.2015 delivered in case No.S.T.32(WT/K) of 2010 by the Additional Sessions Judge, West Tripura, Khowai, as he then was.

[3] By the said judgment the appellant has been convicted under Sections 449 and 302 of the IPC and pursuant to the finding of conviction as stated he has been sentenced to suffer rigorous imprisonment for life and fine of Rs.1000/- with default stipulation. But no separate sentence has been imposed for committing offence under Section 449 of the IPC in view of the sentence imposed for committing the offence punishable under Section 302 of the IPC.

[4] The genesis of the prosecution can be located in the complaint (Exbt.2) filed by Tarun Debbarma, PW11 disclosing to the Officer-in-Charge, Khowai Police Station that on 24.01.2007 at 9.45 pm when he met the police officer he had informed that on the same day at around 6.30 pm his brother (the 'brother' in the religious brotherhood) namely Madhusudan Debbarma, the appellant herein, entered his father's bed room and gave a hacking blows by one sharp dao from behind on his head and killed him. After killing his father he fled away from the place by taking that dao along with him. Based on the said complaint, Khowai P.S. Case No.07 of 2007 was registered under Section 302 of the IPC and taken up for investigation.

[5] On completion of the investigation, the police report under Section 173(2) was filed sending up the appellant for facing the trial under Sections 302 and 449 of the IPC. Since the offence of murder is exclusively triable by the Sessions Judge, the police papers were committed to the court of the Additional

Sessions Judge, West Tripura, Khowai. The said Judge, hereinafter referred to the Trial Judge, having taken cognizance of the offence framed the charge under Sections 302 and 449 of the IPC separately, to which the appellant pleaded innocence and claimed to be tried.

[6] In order to substantiate the charge, the prosecution has adduced as many as 13 (thirteen) witnesses including the informant (PW11). The prosecution introduced 8 (eight) documentary evidence including the post mortem report and the hand sketch map prepared for identifying the place of occurrence. Thereafter, to have the response on the incriminating materials surfaced in the evidence from the appellant he was examined under Section 313 of the Cr.P.C. The appellant reiterated his plea of innocence and stated that the incriminating evidence are all false to frame him malafide. On appreciation of the evidence recorded by the impugned judgment dated 12.05.2015, the trial judge returned the finding of conviction on observing that the evidence of solitary eye witness (PW11) is found trustworthy credible and believable and his evidence is corroborated by medical evidence, post mortem report (Exbt.8) and also by other circumstance as established. His testimony has inspired the confidence of the trial court and thus, the trial court has observed that the prosecution has succeeded to prove the charge beyond reasonable doubt. The said finding is under challenge in this appeal.

[7] Mr. Ghosh, learned counsel appearing for the appellant has submitted that the finding of the trial judge is perverse inasmuch as PW11 did not witness the occurrence. If the testimony of PW11 is revisited, it would be on the surface that he had registered "a precarious sound" from inside the hut which was his father's bed room when he was before a fire stake for warming up along with his mother. He and his mother immediately rushed to the direction of the bed room of his father and when they were about to enter the bed room, the appellant pushed them to find his way away from that place and at that time in his hand there was a dao. After entering into the bed room of his father, he found his father was lying on the bed having a deep cut injury on his neck. Immediately, the police was informed and that information was lodged orally to the police officer.

[8] According to Mr. Ghosh, learned counsel this cannot be treated as the eye witness account. He may be a witness of a very significant circumstance, admissible under Section 6 of Indian Evidence Act.

Mr. Ghosh, learned counsel has made some extreme observations that the time of death as recorded by the post mortem report, (Exbt.8) is very vital as in the post mortem report it has been observed that time the of death is between 12 to 24 hours back from commencement of the post-mortem examination. The postmortem examination had indisputably

commenced at 1.15 pm on 25.01.2007, whereas the occurrence, according to the report, took place on 6.30 pm on 24.01.2007. According to Mr. Ghosh, learned counsel, it is a quite wide range of time and as such it cannot be stated that the death took place 3/4 hours prior to the reported time of death. This circumstance has not been considered by the trial judge.

[9] That apart, Mr. Ghosh, learned counsel has submitted that the case has been sought to be proved on the basis of circumstances. According to the trial judge, he could not return the finding of conviction as the episodes of circumstances did not form a chain, rather the trial court observed that PW 11 is the eye witness, who saw the appellant killing his father.

Mr. Ghosh, learned counsel has submitted that the very testimony of PW11 is the solitary basis of the said finding of the trial court. In the alternative, Mr. Ghosh, learned counsel for the appellant has submitted that even if it is assumed that the appellant gave the blow on the deceased namely Hemanta Debbarma, there is no diverse opinion that was the singular anti-mortem injury on behind the neck. According to that post mortem doctor, the said injury was deep to the bone and the spinal cord. Mr. Ghosh, learned counsel did not contradict the observation of the post mortem doctor where he opined that the death was caused by the said injury located in the right side of neck, dealt by a sharp weapon. The opinion is very clear that the injury was homicidal in nature. In that context, Mr. Ghosh,

learned counsel has further submitted that there is no evidence of motive /intention of killing the deceased (Hematha Debbarma) by the appellant. There is no evidence in this respect. Whether there was any intention to kill Hemanta Debbamra cannot be a paramount question in the circumstances.

[10] Mr. Ghosh, learned counsel has submitted that there might have ensued some altercation, but he has immediately submitted that however, there is no such evidence. But on the basis of the single blow, Mr. Ghosh, learned counsel has submitted that if there was an intention to ensure the death there could have been the multiple injuries. We are, however, constrained to observe in this juncture that the multiple injuries may are not indicate the intention of killing someone. Whether there was intention or not, can only be found from the circumstances and from nature of transaction that was carried out, and from the other materials which unfolds the fact in respect of their relation.

[11] Mr. Ghosh, learned counsel has, however, submitted that the singular blow might have been caused by the appellant, but when he had entered in the hut, that part of the transaction has not been supported any evidence led by the prosecution. Whether he was inside the hut for a long time or just had dealt the blow on entering the hut or not is totally absent in the records. Proceeding has been taken forward on assumption that there was no intention of killing, Hemanta Debbarma and the

appellant without having an intention as such, hacked by the single blow, which was turned out to be fatal.

[12] Mr. Ghosh, learned counsel in order to buttress his contentions has referred a few decisions of the apex court. The reference has been made to ***Balbir Singh vs. State of Punjab*** reported in ***1995 SEPP (3) SCC 472*** where the apex court has observed that when there is no pre-mediation and the deceased fell to only one blow, unless there is evidence that there was provocation from the side of the deceased, it is not possible to say with certainty, under which circumstances the accused gave a 'kirpan' [in that case] blow to the deceased. No attempt was made by the accused to deal with another blow. The injury caused on the head did not appear to the apex court to have caused intentionally. Thus, the conviction under Section 302 of the IPC was interfered with and it was converted to conviction under Section 304 (Part-I) of the IPC and the sentence was revised.

[13] Mr. Ghosh, learned counsel has placed his reliance on ***State of Punjab Vs. Bakhshish Singh and Others*** reported in ***(2008) 17 SCC 411*** where the apex court had occasion to observe how to come to the conclusion that the role of the accused attracts Section 34 of the IPC. Thus, so far the alteration of conviction is concerned in all cases it cannot be said as Euclid's rule that when only a single blow is given, it cannot inferred that the offence under Section 302 IPC is made out. It would depend

upon the perspective fact relating to transaction of offence. In other words, it would depend on the nature of the offence, the background facts, the place where the injury is inflicted and particularly, the circumstances which led to assault. In the case of **Bakhshish Singh (supra**), the apex court found from the prosecutions version that there were altercations. That is the reason why the apex court affirmed the finding of the High Court of alternation of conviction from Section 302 to Section 304 Part-I of the IPC.

[14] Mr. Ghosh, learned counsel has also referred to the decision of the apex court in ***Pannayar Vs. State of Tamil Nadu*** reported in ***(2009) 9 SCC 152*** where the apex court has dwelled upon motive as a component of the essential evidence, in a case, based on the circumstantial evidence. In para 28, the apex court has observed as under:

> ***"It has also come in evidence of Subbiah that the accused was a known person to his family members. One wonders as to why would the accused whom the deceased knew would venture to rob her. Motive of robbery does not seem to be present in the present case. <u>The absence of motive in a case which depended on circumstantial evidence is more favourable to the defence</u>."***
>
> [Emphasis added]

Based on this said observation Mr. Ghosh, learned counsel has submitted that according to the defence, the prosecution case is completely structured on the circumstantial evidence and for absence any evidence in respect of motive, the benefit should go to the accused person. Mr. Ghosh has also referred to a decision of the apex court in ***Randhir Singh Alias Dhire vs.***

State of Punjab reported in ***(1981) 4 SCC 484*** where it has been observed as follows:

> ***"8.The contention is that Para III of Section 300, I.P.C. would be attracted in that the appellant not only intended to cause that particular injury which is alleged to have been inflicted and the injury alleged to have been inflicted was sufficient in the ordinary course of nature to cause death. In a small village upon a minor quarrel, the appellant a young boy aged 18 ½ years, studying in the engineering college and not shown to have been armed, gave one blow by kassi brought by his father; could it be said that he intended to cause that particular injury? Merely because the blow landed on a particular spot on the body divorced from the circumstances in which the blow was given it would be hazardous to say that the accused intended to cause that particular injury. The weapon was not handy. He did not possess one. Altercation took place between his father and the deceased and he gave blow with a kassi. In our opinion in these circumstances it would be difficult to say that the accused intended to cause that particular injury. True it is that the injury proved fatal and was opined in the ordinary course of nature to be sufficient to cause death. We need not dilate upon this subject in view of a very recent decision of this Court in Jagurp Singh v. The State of Haryana. Decided on May, 7 1981 Sen, J. speaking for the Court, after referring to various previous decisions on the subject including the one relied upon in this case. Virsa Singh v. State of Punjab 1958 S.C.R. 1495 observed that in order to bring the case within Para III of Section 300, I.P.C., it must be proved that that was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. We find it difficult to hold in the circumstances herein set out that such was the intention of the appellant."***
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> [Emphasis added]

It is apparent from the said passage that it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course was sufficient to cause death. In other words, it is difficult to hold in the circumstances that such was the intention of the appellant meaning, the appellant had intention to murder the victim.

[15] Mr. Ghosh, learned counsel has also relied on a decision of the apex court in ***Laxman Kalu Nikalje vs. The State of Maharashtra*** reported in ***1968 AIR 1968 SC 1390***. In that case, the apex court has elaborately dwelled upon Section 300 of the Indian Penal Code and observed as follows:

> ***"Therefore the question is whether the offence can be said to be covered by thirdly of s.300 of the Indian Penal Code. That section requires that that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective, one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found ont eh person of Ramrao. But the second part in our opinion is not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery but to wound Ramrao in the neighbourhood of the clavicle. Therefore, we are of opinion that he thirdly of s. 300 does not cover the case . Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, S.299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Laxman did not in-ten causing death and the first part of S.299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not intention of Laxman. The matter therefore comes within the third part. The act which was done was done with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of s. 299 and will be punishable under the second part of s.304 of the Indian Penal Code as culpable homicide not amounting to murder. We accordingly alter the conviction of Laxman from s.302 to s.304 of the Indian Penal Code and in lieu of the sentence of Imprisonment for life imposed on him, we impose a sentence of rigorous Imprisonment for 7 years."***
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> [Emphasis added]

To repel the submission made by Mr. Ghosh, learned counsel for the appellant. Mr. B. Choudhury, learned counsel has urged this court to revisit the testimony of PW11. According to him, the intention is manifest in the act of the appellant. If he had no intention, he could not have pushed his way out from the place of occurrence when PW11 and his mother were about to enter the said place.

[16] That apart, Mr. Choudhury, learned counsel has submitted that there is no inflexible rule that there shall invariably be the evidence in respect of the motive or the mens

rea. If the murder is committed and on evidence the nexus of the accused in committing the said offence is proved beyond reasonable doubt, then he can be convicted under Section 302 of the IPC even if the motive or mens rea is not established.

Mr. Choudhury, learned counsel has further submitted that the prosecution case is direct that there was none, but only the appellant in the bed room of the deceased and he was found coming out of that room with one dao in his hand without any word with PW11 or his mother. When PW11 and his mother entered the bed room of Hemanta Debbarma (the deceased) they found Hemanta lying dead on his bed with a big cut injury on the neck in the right side.

[17] According to Mr. Choudhury, learned P.P. the post mortem report carries the definite observation that grave cut injury was the cause of death. Therefore, there cannot be any hesitation for this court to affirm the finding returned by the trial court. He has repeated that no interference is called for in the judgment.

[18] For appreciating the submission made by the learned counsel for the parties, it would be appropriate to revisit the evidence that has been recorded in the trial.

[19] P.W.11 is a headmaster of the primary school who had vouched in the trial that the appellant did not attend his duty w.e.f. 24.01.2007, as the appellant (Madhusudhan Debbarma) was serving as the assistant teacher in the same school where he

was the headmaster at the relevant point of time. The other part of the evidence is inadmissible and therefore this court refrains from recording those statements elaborately.

[20] P.W.2, Sunil Debbarma has been declared hostile and he has not stated anything of material importance in the trial.

[21] P.W.3, Badal Dey is a photographer who took the visual of the dead and, in the trial, he has identified that the plain-print of photograph. No cross-examination of his was carried out by the defence.

[22] P.W.4, Amal Chakraborty, Sub-Inspector of Police who registered the case on the basis of the complaint by P.W.11 being Khowai P.S. No.07 of 2007. He has submitted that the ejahar, lodged by the informant, was recorded at the place of occurrence by one Shyamal Mura Singh, Sub-Inspector of Police on 24.01.2007 at about 6 p.m. P.W.4 has admitted that he filled up the FIR form and thereafter the officer-in-charge endorse the case to one Sub-Inspector namely Shyamal Mura Singh for investigation.

[23] P.W.5, Utpal Majumder, another Sub-Inspector of police, was posted in the Khowai Police Station. After transfer of Shyamal Mura Singh, P.W.5 took up the investigation as he could not carry out or complete the investigation, the case-record was handed over to the Officer-in-Charge.

[24] P.W.6, Shyamal Debbarma has categorically stated that he did not investigate the case and he had simply handed over the case docket to the Officer-in-Charge namely Shashi Mohan Debbarma on 08.09.2009.

[25] P.W.7, Shyamal Mura Singh who had substantively investigated the case has stated in brief how he had investigated the case and how he recorded the ejahar or examined the witnesses in phases.

[26] From the case diary, he had asserted that the appellant had confessed to him that he had committed the murder, but this piece of evidence is clearly inadmissible. We are really surprised, how this evidence has been recorded as the evidence by the trial judge. PW7 has, however, stated that he prepared the hand-sketch map and corrected the reports. Even he had seized the weapon of the assault (Exbt.1). In the cross-examination, he has not stated anything which can dent his testimony.

[27] P.W.8, Ratan Debnath submitted the charge-sheet in the form, after the substantive part of the investigation was completed. PW8 has stated that the accused person was found absconding for a long time from the day of occurrence. Finally, he filed the charge-sheet being Khowai P.S. case C/S No.13 of 2010 against the appellant on 28.04.2010 under Section 302 of IPC.

[28] P.W.9, Sri Prabir Debbarma was a heresay witness and as such this court is not inclined to extract any part of his statement.

[29] P.W.10, Sri Samprai Debbarma is another hearsay witness and as such he did not state anything, which may support the prosecution case substantively.

[30] P.W.11, Sri Tarun Debbarma, the most important witness in the prosecution case. He has stated in the cross examination as follows :

> ***"On 24/1/07 in the evening I myself and my mother were receiving heat of flame outside the hut in our house. At that time on hearing a precarious sound from the hut of my father Hemanta Debbarma, I myself being accompanied by my mother rushed towards the hut of my father. On going there I found my father in his bed room dead caused by sharp dao in the back side of the head of my father and Madhu Sudhan Debbarma pushing us absconding with a dao after causing death of my father Hemanta Debbarma. On the night when police went to our house I narrated the incident to the police and police recorded my ejahar and took my signature in the ejahar which is marked as Ext.2/2. Accused Madhu Sudhan Debbarma is present today. My mother is not alive now."***

[31] Madhu Sudhan Debbarma was identified by him in the trial but at the same time he has given a very crucial information in the trial that his mother was not alive when the trial commenced. In the cross-examination he has stated that his grandmother and his wife were present in the house at the time of the alleged offence. He has denied the suggestion made to him, to stand by what he has stated in the examination-in-chief. Thus, the defence could not dent his testimony.

[32] PW.12, Swapan Kumar Deb is a constable, who was present in the course of the post-mortem examination at Khowai

Sub-Divisional Hospital. After the post-mortem examination was complete, he had handed over the dead body of Hemanta Debbarma to P.W.11.

[33] P.W.13, Dr. Goutam Debbarma who conducted the post-mortem examination deposed in the trial. Dr. Debbarma, (P.W.13) has stated that he found lacerated cut injury behind the neck extending from the spinal column to the right side of neck. The spinal cord was partially cut and the cut-injury measuring 12 cm length was found over the neck. The death was homicidal in nature and caused by sharp cutting weapon. In his opinion, after conducting post mortem examination, the cause of death of the deceased was assessed to be due to excessive blood loss. Time of the death was 12 to 24 hours from the time of the post-mortem examination. He has identified this report (Exbt.8) and no cross-examination was carried out except giving a suggestion that the report was concocted. The suggestion was squarely denied. There was an attempt to show the evidence of Sunil Debbarma who turned hostile, but since the evidence is inadmissible and will not form part of the evidence, even though it evinces from Exbt. 1 that the witness has stated that the appellant had shown the police, the weapon of assault and on his such showing, the police recovered weapon and as such since this part of the evidence is inadmissible evidence it be treated as discarded. The recovery of the weapon of assault cannot ipso facto be accepted under Section 27 of the Evidence Act merely establishing a link of the appellant with the recovered dao.

[34] Having appreciated the evidence and the submission made by the learned counsel, this court does confront an ounce of confusion which may exculpate the appellant from the the charge of murder. The question which is still to be searched out is that whether the act, a murder or it was a culpable homicide not amounting to murder?

[35] In ***Phulia Tudu and Another Vs. State of Bihar*** reported in ***(2009) 3 SCC (Cri) 221*** the apex court has made an attempt to distinguish 'murder' and 'the culpable homicide not amounting to murder'. According to the apex court, element of intention is the indicator.

Section 299 and Section 300 of the IPC deal with the definition of culpable homicide and murder respectively. In terms of Section 299, culpable homicide is described as an act of causing death. That can be with intention of causing death or with intention of causing such bodily injury as is likely to cause death or with the knowledge that such an act which likely to cause death. It is thus clear from the reading of those provisions that the former part of it exercising the expression "intention" while the latter is upon the "knowledge". Both these are the positive mental attitudes, however, variant in the degrees. The mental element is culpable homicide i.e. the mental attitude towards the consequence of the conduct is of intention and knowledge. Once an offence is caused, in any of the three stated manners noted above, it would be culpable homicide. Section

300 however deals with murder. There is clear definition of murder in Section 300 of the IPC.

[36] As has been reiterated by the apex court, "the culpable homicide" is the genus and the murder is its specis and thus all murders are culpable homicide but all culpable homicides are not murders. Section 300 of the IPC proceeds with reference to Section 299 of the IPC to state that the culpable homicide may or may not amount to murder in terms of Section 300 of the IPC. When the culpable homicide is murder, the punitive consequence shall follow in terms of Section 302 of the IPC, while in other category of cases punishment would be dealt with under Section 304 of the court. There is a catena of decision of the apex court in this regard holding that the cases fall in various classes viz. firstly, secondly, thirdly, fourthly in the manner as stated under Section 300 of the IPC.

[37] So exception has been curved out by Section 304 of the IPC. Some cases in this regard are catalogued for ready reference - ***Rampal Singh Vs. State of Uttar Pradesh*** reported in ***(2012) 3 SCC (Cri) 860 : (2012) 8 SCC 289, Abdul Waheed Khan alias Waheed And Others Vs. State* of *A.P. (2002) 7 SCC 175 and Virsa Singh Vs. State of Punjab*** reported in ***AIR 1985 SC 465***.

[38] At this juncture, this court is would like to refer to a decision of the apex court, as relied by Mr. Choudhury, learned P.P. in ***Badam Singh Vs. State of Madhya Pradesh*** reported in

AIR 2004 SC 26 where the apex court has observed that there was no motive for the accused to kill the deceased, even though existence of motive loses significance when there is reliable testimony, in a case where the opponent testimony is to be suspect. Existence or absence of motive acquires some significance regarding probability of the prosecution case. In that case, the driver of the deceased (P.W.7) had stated that even though there was some disputes between the appellant and the deceased 3 years before the occurrence, that dispute was amicably settled and the disputed land was shared, half and half, by them. Thereafter, they continued to cultivate their respective plots of land and there had been no untoward incident thereafter. The apex court held in that perspective, that the prosecution has failed to establish a motive for offence. The fact that the deceased met a violent death is not surprising as he has committed a variety of criminal offences including robbery, abduction, kidnapping, attempt to murder etc. Possibility of his having killed by one of his detractors cannot be ruled out. The apex court however did not stop there, in the following passage (para 21) it has been observed as under :

> ***"The eye witnesses have categorically stated that the deceased fell down after running some distance, the appellant then sat on his body and pressed his neck and strangulated him to death. No mark of injury has been found on the neck of the deceased by the doctor, PW10."***

The apex court while coming to interfere the finding of conviction, which was not proper had found that the motive was conspicuously absent. It was a clear and simple case of motive by direct evidence.

[39] According to us, it is an admitted fact that there is no evidence relating to motive or mens rea. Even there is no evidence of grievous animosity. Circumstances do not suggest that there was provocation and altercation between the deceased and the appellant. That area is completely unexplored in the evidence. However, this cannot be lost right of, that P.W. 11 collided with the appellant, who was in the place of occurrence with a dao in his hand and by the medical evidence it has been clearly distinguished that the death has been caused by the deep cut-injury which was caused by the sharp cutting weapon. The dao is one of such weapons which can cause such deep injuries.

[40] The next point therefore, is to decide whether on the basis of the prosecution evidence it can be stated, that there was an intention to kill. Particularly, when there is solitary injury on the vital part of the appellant.

[41] The prosecution has miserably failed to prove the 'motive' how and for what reasons the appellant has caused the death or what can be the probable reason of the causing death. In such circumstances, the benefit must go to the appellant. Therefore, we hold that for whatever reason, the appellant, struck the blow on the vital part of body. But we cannot gather intention to causing death or such bodily injury likely to cause death in the ordinary course. Moreover, there is no history of animosity. Thus, giving benefit in the circumstances, we hold that it is a culpable homicide not amounting to murder, in the

absence of evidence as stated, we cannot affirm the conviction returned by the trial court. Thus, we set aside the conviction for commission of the offence of murder punishable under Section 302 of the IPC. But we convict the appellant for committing culpable homicide not amounting to murder punishable under Section 304 Part-I of the IPC in exercise of power provided by Section 222 of the Cr.P.C.

[42] Thus, we revise the sentence. The appellant is sentenced to suffer rigorous imprisonment for 10(ten) years with a fine of Rs.5000/- and in default of payment, he shall suffer two months simple imprisonment. We affirm the decision of the trial court of not imposing separate sentence for committing offence punishable under Section 449 of the IPC.

[43] In terms of the above, this appeal is partly allowed.

Send down the records forthwith.

JUDGE **JUDGE**

Amrita