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VINOD KUMAR

v.

AMRITPAL @ CHHOTU & ORS.

(Criminal Appeal No. 1519 of 2021)

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NOVEMBER 30, 2021

[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Penal Code, 1860: s.300 thirdly – Prosecution case was that respondent 1 to 5-accused were guilty of killing victim-deceased – Trial court convicted respondents-accused inter alia for offence punishable u/ss.302/149 – High Court altered conviction u/s.302 to one u/s.304 Part II holding that the injuries caused to deceased were on non-vital parts of the body and, therefore, there was no intention on part of accused to kill the deceased – High Court further observed that the accused took deceased to a doctor which showed that there was no intention on their part to kill the deceased – Appeal by informant (brother of victim) – Held: The factum of bodily injuries and its nature was duly established – Apart from the injuries on non-vital parts, there were fractured ribs on the right side and the right lung was ruptured – Even the wind pipe and food pipe were ruptured – There was an injury to liver – The cause of death as certified by the medical board was excessive bleeding due to injuries on vital parts like right lung as well as liver and the resultant shock – Deposition of eye witness that one of the accused held deceased who was lying flat on the ground and at least three accused persons assaulted him – Therefore, injuries on the chest which resulted into fracture of five ribs and rupture of right lung cannot be said to be accidental or unintentional – Therefore, even the third element in s.300 was established – Once prosecution established existence of three ingredients forming a part of “thirdly” in s. 300, it is irrelevant whether there was an intention on the part of the accused to cause death – Even the knowledge that an act of that kind is likely to cause death is not necessary to attract “thirdly” – Clause “thirdly” of s.300 applies in this case – High Court committed gross error in applying s.304 Part II – Judgment of trial court is restored.

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Allowing the appeal, the Court

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HELD: 1. In this case, none of the exceptions to Section 300 are applicable. The issue which is required to be examined is whether the case will be covered by “thirdly” in Section 300. The case of *Virsa Singh v. The State of Punjab* has stood the test of time. Paragraphs 12 and 13 of the said decision: “...the prosecution must prove the following facts before it can bring a case under S. 300, “Thirdly”; first, it must establish, quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved; these are purely objective investigations; thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.” [Para 16][964-B-F]

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Virsa Singh v. The State of Punjab AIR 1958 SC 4654
: [1958] SCR 1495 – relied on.

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1.2 The first two elements laid down in paragraph 12 have been established in this case as the factum of bodily injuries and its nature have been duly established. The question is whether the third element of intention to inflict the particular bodily injuries was present. As narrated by PW2, he along with deceased were forcibly taken in a vehicle. When the vehicle reached unmetalled road, it was stopped. Thereafter, the accused banged the deceased flat on the ground. While the accused no.1 was holding the deceased, accused nos.4 and 5 started assaulting deceased. There was no scope for the deceased to resist. Thereafter, the accused started assaulting him. Apart from the injuries on non-vital parts, there was a fracture of 6th to 10th ribs on the right side and the right lung was ruptured. Even the wind pipe and food pipe were ruptured. There was an injury to liver. The cause of death as certified by the Board was excessive bleeding due to injuries on vital parts like right lung as well as liver and the resultant shock. Therefore, it is impossible to say that the injuries on the chest which resulted into fracture of 5 ribs and rupture of right lung were accidental or unintentional. Therefore, even the third element was established. Once the prosecution establishes the existence of the three ingredients forming a part of “thirdly” in Section 300, it is irrelevant whether there was an intention on

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- A the part of the accused to cause death. The absence of intention to kill is not relevant in the facts of the case, the injuries found by PW3 on the face of the deceased which were not the ante mortem injuries establish that before throwing the body of the deceased in a canal, his face was completely smashed by the accused. The fact that accused after killing deceased went to a common relative will not be of any assistance to the accused. The view taken by High Court that the offence under Section 300 was not made out is not even a possible view which could have been taken on the basis of the evidence on record. The judgment and order of the Sessions Court will have to be restored. [Paras 17, 18, 20, 21][965-D-H; 966-A, B, E-G]

Case Law Reference

[1958] SCR 1495 relied on. Para 16

- D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1519 of 2021.

From the Judgment and Order dated 18.07.2016 of the High Court of Judicature for Rajasthan at Jodhpur in D. B. Criminal Appeal No. 886 of 2011.

- E Manish K. Bishnoi, Ms. Pallavi Singh, Advs. for the Appellant.
Dr. Manish Singhvi, Sr. Adv., Gp. Capt. Karan Singh Bhati, Ms. Chitrangda Rastravara, Manvendra Singh Rathore, Dashrath Singh Rathore, Aditya Chauhan, Arpit Parkash, Milind Kumar, Advs. for the Respondents.

- F The Judgment of the Court was delivered by
ABHAY S. OKA, J.

Leave granted.

FACTUAL ASPECTS

- G 1. The respondent nos.1 to 5 are the accused who were prosecuted for the offences punishable under Sections 147, 364, 302/149, 201 and 323/149 of the Indian Penal Code (for short "IPC").
- H 2. The Sessions Court convicted the respondent nos.1 to 5 (the accused) for all the aforesaid offences. They were sentenced to undergo imprisonment for life for the offence punishable under Sections 302 read

with 149 of IPC. For the other offences, lesser punishments were imposed. All the sentences were ordered to run concurrently. For the offence punishable under Sections 302, the accused were directed to pay a fine of Rs.10,000/- each. They were also directed to pay fine for other offences. Out of the fine amount, a sum of Rs.70,000/- was directed to be paid to the widow of the deceased.

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3. Being aggrieved by the Judgment and order of the Sessions Court, the accused preferred an appeal before the High Court of Rajasthan. By the impugned Judgment and order dated 18th July 2016, while maintaining the conviction of the accused for the offences punishable under Sections 147, 364, 201 and 329/149 of IPC, the conviction of the accused for the offence punishable under Sections 302 of IPC was brought down to the offence punishable under Section 304 Part II of IPC and the accused were sentenced to undergo rigorous imprisonment for 8 years. The fine amount was not disturbed.

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4. The appellant, who is the first informant, has taken an exception to the impugned Judgment and order of the High Court. He is the brother of a victim of the offence Vijay Singh (PW1). The allegation against the accused is also of committing murder of Balveer Singh. Vijay Singh (PW1) was injured in the incident.

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5. From the impugned Judgment and order, it appears that the learned counsel for the accused while arguing the appeal challenged only the conviction of the accused for the offence punishable under Section 302 of IPC. The learned counsel appearing for accused without challenging the incident and participation of the accused in the incident, made a submission before the High Court that the offence established against the accused was the one punishable under Section 304 Part II of IPC. The accused did not challenge the conviction for the other offences.

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SUBMISSIONS

6. Mr. Manish K. Bishnoi, the learned counsel appearing for the appellant has taken us through the impugned Judgment and order of the High Court. His submission is that the injuries on the person of the deceased were on vital parts of his body. He pointed out that 6th to 10th ribs of the deceased were found to be fractured and right lung was ruptured. Moreover, there was an injury to his liver. He pointed out the opinion of the medical board that injuries to the vital parts like right lung and liver led to excessive bleeding and shock, which was the cause of

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- A death. He submitted that the High Court proceeded on erroneous footing that there were no injuries on the vital parts of the body of the deceased. He further submitted that none of the exceptions to Section 300 of IPC were applicable. He also pointed out that before throwing the body of the deceased into a canal, his face was completely smashed by the accused. He submitted that “thirdly” in Section 300 of IPC was applicable.
- B Dr. Manish Singhvi, the learned Senior Counsel appearing for the State of Rajasthan, supported the appellant.

7. Gp. Capt. Karan Singh Bhati, the learned counsel representing the accused pointed out that there is no evidence on record to show that objects like iron rod and sticks were used to assault the deceased as even PW1 Vijay Singh has not deposed to that effect in his examination-in-chief. He submitted that no weapons were used to attack the deceased. He submitted that the fact that there was no intention on the part of the accused to kill deceased Balveer Singh is clear from the fact that the accused took Balveer Singh to a doctor. Moreover, the accused took
- C PW1 Vijay Singh to a common relative and they had tea in the house of the common relative. He would, therefore, submit that correct view has been taken by the High Court that the offence punishable under Section 302 of culpable homicide amounting to murder was not made out.
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8. Before we deal with the submissions, we may note here that when the petition was heard on 11th November 2021, we found that before the High Court, the accused had not challenged their participation in the incident and the submissions were confined to bringing down the offence punishable under Section 302 to Section 304 Part II. Therefore, we made a query to the learned counsel appearing for the respondents-accused to ascertain whether the respondents-accused want to argue on merits for acquittal. On 16th November 2021, the learned counsel Gp. Capt. Karan Singh Bhati, on instructions, stated that the accused wanted to take the same stand which was urged before the High Court.
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CONSIDERATION OF SUBMISSIONS

9. Though the incident has been admitted by the accused, for the sake of completion, we are referring to the prosecution case which can be gathered from the deposition of Vijay Singh (PW1), the injured witness. On 5th October 2005, PW1 along with deceased Balveer Singh had been to Hanumangarh. In the evening, they took a train for returning to their village Sherekan. While they were walking towards their house from the railway station, they found that the accused nos. 1, 2, 3 and 5 were
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standing near the railway crossing and they started walking with the deceased Balveer Singh and PW1. On the way, a Tata Sumo vehicle was parked in which the accused no.4 was sitting. The accused no.4 pulled hair of Vijay Singh and the accused no.5 pushed him into the vehicle. The accused nos.1 to 3 pushed Balveer Singh into the said vehicle. Thereafter, the vehicle proceeded towards Hanumangarh. The accused nos. 2 and 3 had put hands on the mouth of Balveer Singh and PW1 respectively. In the vehicle, the accused nos.4 and 5 started beating the deceased and PW1. The vehicle was taken to Hanumangarh. The vehicle reached near Saim nullah. Thereafter, the vehicle was taken on an unmetalled road and was stopped in an open field. After the vehicle stopped, the accused banged Balveer Singh flat on the ground and they started assaulting Balveer Singh. The accused no.1 had put hand on the mouth of PW1 and the accused no.5 started assaulting him. PW1 begged before the accused to spare him. They continued to beat Balveer Singh. When the accused noticed a light of a vehicle approaching the place, they put both the deceased as well as PW1 in the vehicle. By that time, Balveer Singh had become unconscious. They took Balveer Singh to the house of a doctor at Salemgarh Masani. After noticing serious condition of deceased Balveer Singh, the doctor advised that Balveer Singh should be taken to Hanumangarh. Thereafter, the vehicle was taken to residence of uncle of the accused no.4 where the tank of the vehicle was filled in. The accused thereafter took the vehicle near a canal and stopped the vehicle as the wheel got punctured. By that time, Balveer Singh had died. The accused took out the body of Balveer Singh from the vehicle and by using pieces of bricks lying nearby, they smashed the face of body so that it could not be identified. Thereafter, they threw the body of the deceased to the canal and the clothes were also thrown into the canal by attaching bricks to it. The accused moved with PW1 to the residence of one Kanwar Sain who was related to the parties. As the said relative was not aware about the incident, he offered tea to them. After the accused disclosed the incident, the said relative asked them to leave his house.

10. The accused had threatened PW1 not to disclose the incident to any one. They told him that if he discloses the incident, he would suffer the same fate which was suffered by the deceased. When they left the place of Kanwar Sain, the accused nos.1 to 3 were in the vehicle. On the way, the accused nos.2 and 3 boarded a bus and the accused no.1 took PW1 to Hanumangarh Town Police Station. The police

- A admitted PW1 to hospital. Thereafter, the police prepared a report and signatures of PW1 were taken.

11. It is necessary to note the injuries found on the body of the deceased. Dr. Jaspal Badappa, PW3 deposed that there was a medical board comprising of him and Dr. Brijesh Gaur, who was working as a medical officer in a Government Hospital in Hanumangarh town. Both of them conducted autopsy on the body of the deceased. It is necessary to reproduce the relevant part of the deposition of PW3 Dr. Jaspal Badappa. He described the injuries on the person of the deceased as under:

- C “1. There were multiple blue colour bruise marks over the lower part of right hip to the back and front side of right thigh and 3/4th part of the back and side portion of the right leg.
2. There were multiple blue colour bruise marks over the lower part of left hip to the back and front side of left thigh and 3/4th part of the back and inner side portion of the left leg and skin was also ruptured.
- D 3. There were multiple blue colour bruise marks on the front side of left thigh and skin, was also ruptured on many parts.
4. There were multiple blue colour bruise marks at the 1/2th lower part of the chest and also on the back side along with waist.
- E 5. There was a wounded cut which crosses through sternal notch of both sides of the neck to mastoid part of the back side of ear. The muscles of neck, food pipe and lungs were also ruptured. Both the arteries, veins and ears and muscles were ruptured and on the parts of temporal bone, frontal bone and forehead, skin were ruptured to the extent of visibility of bones. The bones of upper and lower jaw, nose and face were visible as it was not covered by skin. The back side of neck is attached with one piece of skin and cervical bones of neck are clearly visible.
- F 6. Mashed wound admeasuring 2 X 1 inch and bones are visible on the part of left palm.
- G 7. Mashed wound admeasuring 1.1/2 X 1/2 inch X deep to the muscles, inner part bones are visible on the part of left palm.
- H 8. Mashed wound admeasuring 1 X 1/4 inch X deep wound to the side portion of the left leg.

9. There were multiple marks of scar over dorsal part of left hand. A

During the internal examination of head and throat there was hair on the head, ruptured wound running from sternal notch on both sides of neck were visible and ruptured veins, arteries, windpipe, food pipe, and muscles going from front and back side along with the mastoid part of the back side of ear where bone can be seen due to flayed skin. The frontal bone, temporal bone, face, upper jaw, nose bone and mandible bone of jaw are clearly visible. The right eye was popped out whereas left eye was closed. The cervical bones of neck are clearly visible and the back side of neck is attached with a piece of skin. The brain and its membrane are in healthy state. B C

During the examination of chest, hematoma was found in the muscles of injured part and sixth to tenth bone from the right side were found to be fractured and multiple of right lung with its membrane was also ruptured. The wind pipe and food pipe were ruptured and both sides of chambers of heart were empty. D

Blood clotting was found during the examination of stomach. There was rupture mark in the stomach and liver admeasuring 1/2 inch X 1/2 inch X 1/2 inch.

During the examination of genitals, testicles were in swollen condition and penis was not injured. E

During the examination, there was no skin over the face of deceased as bones were visible and food pipe and wind pipe were ruptured."

(underlines added) F

12. He deposed that according to the Board, the cause of death was the infliction of injuries on the vital parts like lungs and liver which resulted into excessive bleeding and shock. The witness stated that injuries at Item no. 5 were not *ante mortem*.

13. PW3 Dr.Jaspal Badappa was cross-examined by the advocate for the accused. A suggestion was put to him that the injuries at Item nos.1 to 4 may have been caused by collusion with a vehicle. He denied the correctness of the said suggestion. He stated that the fracture the ribs does result into death of a person if any damage is caused to internal organs. G H

A 14. Though, the PW1 has not specifically stated that the injuries on the deceased were inflicted by using iron rod or stick, there is no dispute that the accused have caused the injuries.

B 15. Now the only question to be decided is whether the offence of culpable homicide not amounting to murder is made out. In the impugned Judgment and order, the High Court has proceeded on the footing that the injuries caused to the deceased were on non-vital parts of the body and therefore, there was no intention on the part of the accused to kill the deceased. The High Court further observed that the accused took deceased to a doctor also shows that there was no intention on the part of the accused to kill the deceased.

C 16. The Offence of culpable homicide is defined under Section 299 of IPC. Culpable homicide is the genus and the offence of murder as defined under Section 300 of IPC is its species.

Sections 299 and 300 of IPC reads thus :-

D **“299. Culpable homicide.** - Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

E **300. Murder.** - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

F *Secondly* —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

G *Fourthly* —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

H *Exception 1.*—**When culpable homicide is not murder.**—Culpable homicide is not murder if the offender, whilst deprived

of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. A

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. B

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant. C

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. D

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. E

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. F

Exception 4.—Culpable homicide is not murder if it is committed without premeditation 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. G

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault. H

A *Exception 5.*—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

(*underline supplied*)

B Now, the question is whether in the present case, the offence of culpable homicide not amounting to murder is made out. Obviously in this case, none of the exceptions to Section 300 are applicable. The issue which is required to be examined is whether the case will be covered by “thirdly” in Section 300. On this aspect, we will make a reference to a decision of this Court in the case of **Virsa Singh v. The State of Punjab**¹ which has stood the test of time.

Paragraphs 12 and 13 of the said decision which are *locus classicus* read thus: -

D “12. To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300, ”Thirdly”;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

E Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

F Once these three elements are proved to be present, the enquiry proceeds further and,

G Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S. 300, ”Thirdly. It does not matter that

H ¹ AIR 1958 SC 465 = 1958 SCR 1495

there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional.”

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17. The first two elements laid down in paragraph 12 have been established in this case as the factum of bodily injuries and its nature have been duly established. The question is whether the third element of intention to inflict the particular bodily injuries was present. As narrated by PW2, he along with deceased Balveer Singh were forcibly taken in a vehicle. When the vehicle reached unmetalled road, it was stopped. Thereafter, the accused banged deceased Balveer Singh flat on the ground. While the accused no.1 was holding Balveer Singh, the accused nos.4 and 5 started assaulting deceased Balveer Singh. There was no scope for Balveer Singh to resist. Thus, he was taken out of the vehicle and was forced to lie down on the ground. Thereafter, the accused started assaulting him. Apart from the injuries on non-vital parts, there was a fracture of 6th to 10th ribs on the right side and the right lung was ruptured. Even the wind pipe and food pipe were ruptured. There was an injury to liver. The cause of death as certified by the Board was excessive bleeding due to injuries on vital parts like right lung as well as liver and the resultant shock. Going by the version of PW2, one of the accused held deceased Balveer Singh who was lying flat on the ground and at least three accused persons assaulted him. Therefore, it is impossible to say that the injuries on the chest which resulted into fracture of 5 ribs and rupture of right lung were accidental or un-intentional. Therefore, even the third element

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A was established. From the evidence of PW3 Dr. Jaspal Badappa, it can be gathered that the injuries on the vital parts like right lung and liver which resulted into bleeding and shock were sufficient to cause the death in the ordinary cause of nature.

18. Once the prosecution establishes the existence of the three ingredients forming a part of “thirdly” in Section 300, it is irrelevant whether there was an intention on the part of the accused to cause death. As held by this Court in the case of **Virsa Singh** (supra), it does not matter that there was no intention even to cause the injury of a kind that is sufficient to cause death in ordinary course of nature. Even the knowledge that an act of that kind is likely to cause death is not necessary to attract “thirdly”. Hence, it follows that clause “thirdly” of Section 300 will apply in this case.

19. We are constrained to observe that the High Court adopted an easy method of accepting the only contention canvassed that the offence made out was culpable homicide not amounting to murder. As noticed earlier, the High Court ignored that there were injuries on the vital parts of the body of the deceased. The High Court did not notice that all the elements of “thirdly” in Section 300 were established.

20. It was argued that the accused took the deceased to a doctor which shows the absence of intention to kill him. Apart from the fact that for the reasons recorded above, the absence of intention to kill is not relevant in the facts of the case, the injuries found by PW3 on the face of the deceased which were not the *ante mortem* injuries establish that before throwing the body of the deceased in a canal, his face was completely smashed by the accused. The fact that accused after killing deceased Balveer Singh went to a common relative will not be of any assistance to the accused.

21. The view taken by High Court in the impugned Judgment and order that the offence under Section 300 was not made out is not even a possible view which could have been taken on the basis of the evidence on record. As we are of the view that the High Court has committed a gross error by applying Section 304 Part II of IPC, the Judgment and order of the High Court will have to be set aside and the judgment and order of the Sessions Court will have to be restored.

22. We hold that the learned Additional District and Session Judge was right in convicting the accused for the offence punishable under

Section 302/149 of IPC. Accordingly, the appeal is allowed by setting aside the impugned Judgment of the High Court dated 18th July 2016. We restore the Judgment and order dated 26th September 2011 in Session Case No.04/2006 passed by the learned Additional District and Session Judge (Fast Track) No. 1 Hanumangarh, Rajasthan. Therefore, the substantive sentence and the fine imposed by the Court of Sessions for the offence punishable under Section 302/149 of IPC is restored.

23. We direct the accused to surrender before the Trial Court within a period of six weeks from today. If they fail to surrender within six weeks from today, action be taken by the Trial Court for arresting them in accordance with law. They shall undergo remaining period of sentence in terms of the judgment of the Trial Court dated 26th September 2011.

Devika Gujral

Appeal allowed.