Rampal Singh vs State Of U.P on 24 July, 2012

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Bench: Fakkir Mohamed Ibrahim Kalifulla, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2114 of 2009

Rampal Singh … Appellant

Versus

State of UP … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeal is directed against the judgment of a Division Bench of the High Court of Judicature at Allahabad dated 15th May, 2007. Vide the impugned judgment, the High Court affirmed the judgment of conviction and order of sentence passed by the VIII Additional Sessions Judge, Mainpuri awarding life imprisonment to the appellant Rampal Singh for an offence punishable under Section 302 of the Indian Penal Code, 1860 (for short 'the Code').

2. Necessary facts, eschewing unnecessary details, can be stated at the very outset.

3. According to the prosecution, one Jograj Singh and Chhatar Singh were uterine brothers. Anurag Singh, Rajesh Singh and Amar Singh were sons of Jograj Singh. Ram Kumar Singh (deceased) was

the son of Rajesh Singh. Rampal Singh (the appellant) and Ram Saran Singh (DW1) are the grand sons of Chhatar Singh. Rampal Singh and the deceased both were serving in the Army as Lans Naik. Two months prior to the date of incident, the deceased had come to his village on leave from Agra where he was posted. He erected a Ladauri on his vacant land. After expiry of the term of leave, he went back to join his duty. Rampal Singh had also come on leave. He had broken the Ladauri constructed by the deceased and started throwing garbage on the vacant land. Five days prior to the date of occurrence, the deceased had again come to his village on leave. Upon expiry of the term of his leave on 13th February, 1978, he was returning to Agra on his duty. Meanwhile, Amar Singh, uncle of the deceased came to his house with another person of village Dhaniapur and they all were chatting. Rampal Singh, the appellant, also reached there. The deceased enquired from him about the reason for demolishing his Ladauri and throwing garbage on his land. Some altercation took place between them. They even grappled with each other. The deceased threw the appellant on the ground. Ram Saran also reached the spot and he, along with Amar Singh, separated the appellant and the deceased. Ram Saran, who was examined in the Court as DW1 also started talking to the deceased who was standing alongside a pillar on his verandah. The appellant went to his house and climbed on the roof of Muneshwar armed with a rifle and from there he asked his brother Ram Saran to keep away as he wanted to shoot the deceased. Consequently, the deceased remarked as to whether the appellant had the courage to shoot him. On this, the appellant shot at the deceased with his rifle and ran away. Ram Saran and others helped the injured and called a village compounder who filled the injury with dough (Aata). The deceased then was carried to Bewar and from there he was brought to Military Hospital in Fatehgarh where he got admitted at 9.00 p.m. on the same day.

4. In the hospital, he was examined by Major Dr. Laxmi Jhingaran, PW3, who prepared the medical report. She found the bullet wound in the right side in the abdomen of the deceased and prepared an injury report (Exhibit Ka-2). Upon inquiry, the deceased told her that the appellant had shot at him at 2.00 p.m. Resultantly, she prepared a report and sent it to the Station Officer, Kotwali Fatehgarh (Exhibit Ka-3) for taking necessary action. On receiving this information, Ram Sharwan Upadhyaya, PW4, SI of Kotwali Fatehgarh proceeded to the Military Hospital. He made inquiry from the deceased who told him that the appellant had fired at him with his rifle with the intention to kill him. In furtherance to this, PW4 made a report (Exhibit Ka-6) to the Station Officer giving result of his inquiry and asked him that a case under Section 307 of the Code needs to be registered. Upon this basis, the First Information Report (FIR) (Exhibit Ka-7) was prepared at 11.55 p.m. on that day by Constable Shiv Karan Singh who also registered the case as G.D. No.14 (Exhibit Ka-8).

5. On 13th February, 1978 itself, the deceased had made a dying declaration which was recorded by Lieutenant Colonel Basu (Exhibit Ka-4) wherein he stated that he had been shot at by the appellant with rifle at about 2.00 p.m. on 13th February 1978, when he was coming out of his house. Subsequently, on account of the said injury, the deceased developed infection and died on 17th February, 1978 at 7.00 a.m. An information was sent vide Exhibit Ka-5 to the Station Officer, Kotwali District Fatehgarh by Lieutenant Colonel Officer Commanding N. Basu to arrange for post mortem examination of the deceased in the district hospital. Upon receipt of the information, the body of the deceased was taken from the mortuary of the Military Hospital and sent for post mortem. Dr. A.K. Rastogi, PW2, conducted the post mortem on the body of the deceased and submitted his report vide Exhibit Ka-1. He had found the gun shot wound and was of the opinion

that the deceased died due to shock and toxemia as a result of ante- mortem injuries.

6. Thereafter, the investigation of the case was entrusted to Shri Vedi Singh, Sub-Inspector Police Station Bewar, PW6. He recorded the statement of various witnesses, inspected the site with the help of other persons and prepared a site plan (Exhibit Ka-17). After receiving the post mortem report on 1st March, 1978, he further recorded the statement of other witnesses which, amongst others, included the wife of the deceased, Smt. Sneh Lata, PW1, and her father, Virendra Singh, PW5. On 25th July, 1978 the Investigating Officer made a request to the Military Unit at Delhi to hand over custody of the appellant, who had surrendered there on 3rd May, 1978. The Investigating Officer also obtained leave certificate of the appellant Exhibit Ka-19, which shows that the appellant had proceeded on 60 days leave on from 2nd January 1978 and reported on duty on 3rd May, 1978. The appellant was handed over to the Investigating Officer, who then produced him before the Magistrate and submitted the charge sheet (Exhibit Ka-20). Upon committal, charge under Section 302 of the Code was framed against the appellant for which he was tried and finally convicted, as afore-noticed, to suffer imprisonment for life.

7. Learned counsel appearing for the appellant has not questioned before us the correctness of the concurrent findings of the courts holding him guilty of the said criminal offence. The only contention raised before us is that even as per the case of the prosecution, taken at its best, the only offence that the appellant could be said to have committed would be that under Part II of Section 304 of the Code and not under Section 302 of the Code. To substantiate this argument, learned counsel appearing for the appellant has taken us through the statements of PW1, PW2, PW3 and other circumstances besides arguing that the gun fire by the appellant was the result of a provocation which transpired suddenly at the spot and there was no pre-meditation on the part of the appellant to commit murder of his brother, the deceased.

8. In response, the learned counsel appearing for the State relied upon the findings returned by the High Court holding that once both the appellant and the deceased were separated, there was no reason for the appellant to climb on the roof and shoot the deceased. It clearly shows the intent to commit murder of the deceased and it was not a result of any sudden provocation covered under Section 304 of the Code. According to learned counsel, the concurrent judgments do not call for any interference.

9. Having completed narration of the facts and noticed the precise contentions raised before us in the present appeal, we may now refer to the law on the subject. We are of the opinion that elucidative discussion on the legal principles governing the distinction between Sections 300, 302 of the Code on the one hand and Section 304, Part I and Part II of the Code on the other, would be necessary to precisely answer the questions raised.

10. Sections 299 and 300 of the Code 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 (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it, emphasises on the expression ‘intention’ while the

latter upon 'knowledge'. Both these are positive mental attitudes, however, of different degrees. The mental element in 'culpable homicide', that is, the mental attitude towards the consequences of conduct is one 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' although there is no clear definition of 'murder' in Section 300 of the Code. As has been repeatedly held by this Court, 'culpable homicide' is the genus and 'murder' is its species and all 'murders' are 'culpable homicides' but all 'culpable homicides' are not 'murders'.

11. Another classification that emerges from this discussion is 'culpable homicide not amounting to murder', punishable under Section 304 of the Code. There is again a very fine line of distinction between the cases falling under Section 304, Part I and Part II, which we shall shortly discuss.

12. In the case of State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. (1976) 4 SCC 382, this Court while clarifying the distinction between these two terms and their consequences, held as under: -

> "12. In the scheme of the penal Code, 'culpable homicide' is genus and 'murder' its species. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called 'culpable homicide of the first degree'. This is the greatest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section
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> 304. Then, there is 'culpable homicide of the third degree'.

This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304."

13. Section 300 of the Code proceeds with reference to Section 299 of the Code. 'Culpable homicide' may or may not amount to 'murder', in terms of Section 300 of the Code. When a 'culpable homicide is murder', the punitive consequences shall follow in terms of Section 302 of the Code while in other cases, that is, where an offence is 'culpable homicide not amounting to murder', punishment would be dealt with under Section 304 of the Code. Various judgments of this Court have dealt with the cases which fall in various classes of firstly, secondly, thirdly and fourthly, respectively, stated under Section 300 of the Code. It would not be necessary for us to deal with that aspect of the case in any further detail. Of course, the principles that have been stated in various judgments like Abdul Waheed Khan @ Waheed and Others v. State of A.P. [(2002) 7 SCC 175], Virsa Singh v. State of Punjab [AIR 1958 SC 465] and Rajwant and Anr. v. State of Kerala [AIR 1966 SC 1874] are the broad guidelines and not cast-iron imperatives. These are the cases which would provide precepts for the courts to exercise their judicial discretion while considering the cases to determine as to which particular clause of Section 300 of the Code they fall in.

14. This Court has time and again deliberated upon the crucial question of distinction between Sections 299 and 300 of the Code, i.e., 'culpable homicide' and 'murder' respectively. In the case of Phulia Tudu & Anr. v. State of Bihar (now Jharkhand) [AIR 2007 SC 3215], the Court noticed that confusion is caused if courts, losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of these sections. The Court provided the following comparative table to help in appreciating the points of discussion between these two offences :

"Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done –
INTENTION	
(a) with the intention of causing	(1) with the intention of causing
death; or	death; or
(b) with the intention of causing	(2) with the intention of causing
such bodily injury as is likely to	such bodily injury as the offender
cause death; or	knows to be likely to cause the
	death of the person to whom the harm
	is caused; or
	(3) 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
KNOWLEDGE	(c) with the knowledge that the act
with the knowledge that the act	is likely to cause death.
is so imminently dangerous that it	
must in all probability cause death	
	or such bodily injury as is likely
	to cause death, and without any
	excuse or incurring the risk of
	causing death or such injury as is
	mentioned above."

15. Section 300 of the Code states what kind of acts, when done with the intention of causing death or bodily injury as the offender knows to be likely to cause death or causing bodily injury to any person, which is sufficient in the ordinary course of nature to cause death or the person causing injury knows that it is so imminently dangerous that it must in all probability cause death, would amount to 'murder'. It is also 'murder' when such an act is committed, without any excuse for incurring the risk of causing death or such bodily injury. The Section also prescribes the exceptions to 'culpable homicide amounting to murder'. The explanations spell out the elements which need to be satisfied for application of such exceptions, like an act done in the heat of passion and without pre- mediation. Where the offender whilst being deprived of the power of self- control by grave and sudden provocation causes the death of the person who has caused the provocation or causes the death of any other person by mistake or accident, provided such provocation was not at the behest of the offender himself, 'culpable homicide would not amount to murder'. This exception itself has three limitations. All these are questions of facts and would have to be determined in the facts and circumstances of a given case.

16. This Court in the case of Vineet Kumar Chauhan v. State of U.P. (2007) 14 SCC 660 noticed that academic distinction between 'murder' and 'culpable homicide not amounting to murder' had vividly been brought out by this Court in State of A.P. v. Rayavarapu Punnayya [(1976) 4 SCC 382],

where it was observed as under:

> ".....that the safest way of approach to the interpretation and application of Section 299 and 300 of the Code is to keep in focus the key words used in various clauses of the said sections. Minutely comparing each of the clauses of section 299 and 300 of the Code and the drawing support from the decisions of the court in Virsa Singh v. State of Punjab and Rajwant Singh v. State of Kerala, speaking for the court, Justice RS Sarkaria, neatly brought out the points of distinction between the two offences, which have been time and again reiterated. Having done so, the court said that wherever the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be that the accused has done an act by doing which he has caused the death of another. Two, if such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in section 299. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder, punishable under the First or Second part of Section 304, depending respectively, on whether this second or the third clause of Section 299 is applicable. If this question is found in the positive, but the cases come within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304 of the Code. It was, however, clarified that these were only broad guidelines to facilitate the task of the court and not cast-iron imperative."

17. Having noticed the distinction between 'murder' and 'culpable homicide not amounting to murder', now we are required to explain the distinction between the application of Section 302 of the Code on the one hand and Section 304 of the Code on the other.

18. In Ajit Singh v. State of Punjab [(2011) 9 SCC 462], the Court held that in order to hold whether an offence would fall under Section 302 or Section 304 Part I of the Code, the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code which states whether a culpable homicide is murder, or would it fall under its five exceptions which lay down when culpable homicide is not murder. In other words, Section 300 states both, what is murder and what is not. First finds place in Section 300 in its four stated categories, while the second finds detailed mention in the stated five exceptions to Section 300. The legislature in its wisdom, thus, covered the entire gamut of culpable homicide that 'amounting to murder' as well as that 'not amounting to murder' in a composite manner in Section 300 of the Code. Sections 302 and 304 of the Code are primarily the punitive provisions. They declare what punishment a person would be liable to be awarded, if he commits either of the offences.

19. An analysis of these two Sections must be done having regard to what is common to the offences and what is special to each one of them. The offence of culpable homicide is thus an offence which may or may not be murder. If it is murder, then it is culpable homicide amounting to murder, for

which punishment is prescribed in Section 302 of the Code. Section 304 deals with cases not covered by Section 302 and it divides the offence into two distinct classes, that is (a) those in which the death is intentionally caused; and (b) those in which the death is caused unintentionally but knowingly. In the former case the sentence of imprisonment is compulsory and the maximum sentence admissible is imprisonment for life. In the latter case, imprisonment is only optional, and the maximum sentence only extends to imprisonment for 10 years. The first clause of this section includes only those cases in which offence is really 'murder', but mitigated by the presence of circumstances recognized in the exceptions to section 300 of the Code, the second clause deals only with the cases in which the accused has no intention of injuring anyone in particular. In this regard, we may also refer to the judgment of this Court in the case of Fatta v. Emperor, 1151. C. 476 (Refer : Penal Law of India by Dr. Hari Singh Gour, Volume 3, 2009)

20. Thus, where the act committed is done with the clear intention to kill the other person, it will be a murder within the meaning of Section 300 of the Code and punishable under Section 302 of the Code but where the act is done on grave and sudden provocation which is not sought or voluntarily provoked by the offender himself, the offence would fall under the exceptions to Section 300 of the Code and is punishable under Section 304 of the Code. Another fine tool which would help in determining such matters is the extent of brutality or cruelty with which such an offence is committed.

21. An important corollary to this discussion is the marked distinction between the provisions of Section 304 Part I and Part II of the Code. Linguistic distinction between the two Parts of Section 304 is evident from the very language of this Section. There are two apparent distinctions, one in relation to the punishment while other is founded on the intention of causing that act, without any intention but with the knowledge that the act is likely to cause death. It is neither advisable nor possible to state any straight-jacket formula that would be universally applicable to all cases for such determination. Every case essentially must be decided on its own merits. The Court has to perform the very delicate function of applying the provisions of the Code to the facts of the case with a clear demarcation as to under what category of cases, the case at hand falls and accordingly punish the accused.

22. A Bench of this Court in the case of Mohinder Pal Jolly v. State of Punjab [1979 AIR SC 577], stating this distinction with some clarity, held as under :

> "11. A question arises whether the appellant was guilty under Part I of Section 304 or Part II. If the accused commits an act while exceeding the right of private defence by which the death is caused either with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death then he would be guilty under Part I. On the other hand if before the application of any of the Exceptions of Section 300 it is found that he was guilty of murder within the meaning of clause "4thly", then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injuries as was likely to cause death. There does not seem to be any

escape from the position, therefore, that the appellant could be convicted only under Part II of Section 304 and not Part I."

23. As we have already discussed, classification of an offence into either Part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of pre-meditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view, i.e., by applying the 'principle of exclusion'. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, 'culpable homicide amounting to murder'. Then secondly, it may proceed to examine if the case fell in any of the exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.

24. Having examined the principles of law applicable to the cases like the one in hand, now we would turn to the present case. We have already noticed that both the accused and the deceased were related to each other. Both were serving in the Indian Army. They had come on leave to their home and it was when the deceased was about to return to the place of his posting that the unfortunate incident occurred. The whole dispute was with regard to construction of ladauri by the deceased to prevent garbage from being thrown on his open land. However, the appellant had broken the ladauri and thrown garbage on the vacant land of the deceased. Rather than having a pleasant parting from their respective families and between themselves, they raised a dispute which led to death of one of them. When asked by the deceased as to why he had done so, the appellant entered into a heated exchange of words. They, in fact, grappled with each other and the deceased had thrown the appellant on the ground. It was with the intervention of DW1, Ram Saran and Amar Singh that they were separated and were required to maintain their cool. However, the appellant went to his house and climbed to the roof of Muneshwar with a rifle in his hands when others, including the deceased, were talking to each other. Before shooting at the deceased, the appellant had asked his brother to keep away from him. On this, the deceased provoked the appellant by asking him to shoot if he had the courage. Upon this, the appellant fired one shot which hit the deceased in his stomach. This version of the prosecution case is completely established by eye-witnesses, medical evidence and the recovery of the weapon of crime. The learned counsel appearing for the appellant has, thus, rightly confined his submissions with regard to alteration of the offence from that under Section 302 to the one under Section 304 Part II of the Code.

25. At this stage, it would be relevant to refer to the statement of one of the most material witnesses which will aid the Court in arriving at a definite conclusion. Smt. Snehlata, who was examined as PW1, is the wife of the deceased. After giving the introductory facts leading to the incident, she

stated as under :

> "In the meantime, Amar Singh, my uncle-in-law (Chachiya Sasur) came there and one man from Dhaniyapur also came there. My husband started talking with them and by that time the accused who is present in the court, came there. My husband told him that why's you have started using as your Goora in our land why you have demolished our ladauri which was constructed by us. On this issue, there was heated discussion in between my husband and Rampal Singh and my husband has thrown the accused on the ground. By that time, his son Ramsaran came there and thereafter he and Amar Singh have separated both of them. Ramsaran has made the accused understand and he started talking with him. My husband got down from the thatch and stood up by the help of pillar and he started talking with these people and in the meantime, Rampal had left for his house. Then one of people saw that the accused present in the court, has climbed on the roof of Munishwar and stood towards wall which is situated towards the southern side of my house and he further told that our land which is vacant land, in the Munder of the wall situated east side of the same, where he was standing, he told to his brother go aside, I will fire bullet. On this, his brother said that are you going mad. On this, my husband told that have you courage to shoot at me. On this the accused said that see his courage and saying this, the accused fired bullet which hit my husband. On the said bullet hit, my husband fell down and then the accused climbed down from the stairs and fled away. Thereafter, Ramsaran etc. have helped my husband and they called the compounder from village. The compounder had made wet Aata and sealed/filled the wound of my husband and he advised to immediately take him to some big hospital and thereafter, we took my husband to Bewar. My husband said the report will be lodged on some other day, first you take me to the Army Hospital, Fatehgarh. On the same very day at about quarter to nine O'clock, we had taken him to the Fatehgarh Hospital where after four-five days, he died."

26. From the above statement of this witness, it is clear that there was heated exchange of words between the deceased and the appellant. The deceased had thrown the appellant on the ground. They were separated by Amar Singh and Ram Saran. She also admits that her husband had told the appellant that he could shoot at him if he had the courage. It was upon this provocation that the appellant fired the shot which hit the deceased in his stomach and ultimately resulted in his death.

27. Another very important aspect is that it is not a case of previous animosity. There is nothing on record to show that the relation between the families of the deceased and the appellant was not cordial. On the contrary, there is evidence that the relations between them were cordial, as deposed by PW1. The dispute between the parties arose with a specific reference to the ladauri. It is clear that the appellant had not committed the crime with any pre-meditation. There was no intention on his part to kill. The entire incident happened within a very short span of time. The deceased and the appellant had had an altercation and the appellant was thrown on the ground by the deceased, his own relation. It was in that state of anger that the appellant went to his house, took out the rifle and from a distance, i.e., from the roof of Muneshwar, he shot at the deceased. But before shooting, he

expressed his intention to shoot by warning his brother to keep away. He actually fired in response to the challenge that was thrown at him by the deceased. It is true that there was knowledge on the part of the appellant that if he used the rifle and shot at the deceased, the possibility of the deceased being killed could not be ruled out. He was a person from the armed forces and was fully aware of consequences of use of fire arms. But this is not necessarily conclusive of the fact that there was intention on the part of the appellant to kill his brother, the deceased. The intention probably was to merely cause bodily injury. However, the Court cannot overlook the fact that the appellant had the knowledge that such injury could result in death of the deceased. He only fired one shot at the deceased and ran away. That shot was aimed at the lower part of the body, i.e. the stomach of the deceased. As per the statement of PW2, Dr. A.K. Rastogi, there was a stitched wound obliquely placed on the right iliac tossa which shows the part of the body the appellant aimed at.

28. This evidence, examined in its entirety, shows that without any pre- meditation, the appellant committed the offence. The same, however, was done with the intent to cause a bodily injury which could result in death of the deceased.

29. In the case of Vineet Kumar Chauhan v. State of Uttar Pradesh (supra), the Court noticed that concededly there was no enmity between the parties and there was no allegation of the prosecution that before the occurrence, the appellant had pre-meditated the crime of murder. Faced with the hostile attitude from the family of the deceased over the cable connection, a sudden quarrel took place between the appellant and the son of the deceased. On account of heat of passion, the appellant went home, took out his father's revolver and started firing indiscriminately and unfortunately one of the bullets hit the deceased on the chin. Appreciating these circumstances, the Court concluded :

> "Thus, in our opinion, the offence committed by the appellant was only culpable homicide not amounting to murder. Under these circumstances, we are inclined to bring down the offence from first degree murder to culpable homicide not amounting to murder, punishable under the second part of Section 304 IPC."

30. The above case is quite close on facts and law to the case in hand, except to the extent that the appellant was a person from the armed forces and knew the consequences of using a rifle. He had not fired indiscriminately but took a clear aim at his brother. Thus, the present is not a case of knowledge simplicitor but that of intention ex facie. In the case of Aradadi Ramudu @ Aggiramudu vs. State, through Inspector of Police [(2012) 5 SCC 134], this Court also took the view that for modification of sentence from Section 302 of the Code to Part II of Section 304 of the Code, not only should there be an absence of the intention to cause death but also an absence of intention to cause such bodily injury that in the ordinary course of things is likely to cause death.

31. In view of the above discussion, we partially accept this appeal and alter the offence that the appellant has been held guilty of, from that under Section 302 of the Code to the one under Section 304 Part I of the Code. Having held that the accused is guilty of the offence under Section 304 Part I, we award a sentence of ten years rigorous imprisonment and a fine of Rs.10,000/-, in default to undergo simple imprisonment for one month. The judgment under appeal is modified in the above

terms. The appeal is disposed of accordingly.

.....J. (Swatanter Kumar) .....J. (Fakkir Mohamed Ibrahim Kalifulla) New Delhi, July 24, 2012