State Of Rajasthan vs Shera Ram @ Vishnu Dutta on 1 December, 2011

Equivalent citations: AIR 2012 SUPREME COURT 1, (2012) 2 MH LJ (CRI) 22, (2012) 1 JCR 248 (SC), 2012 CRILR(SC&MP) 52, 2011 (13) SCALE 140, 2012 (1) SCC(CRI) 406, 2012 (1) SCC 602, (2012) 109 ALLINDCAS 189 (SC), 2012 (1) KER LT 38 SN, (2012) 2 RAJ LW 1144, (2012) 1 ALLCRIR 891, (2012) 76 ALLCRIC 302, (2011) 3 GUJ LH 802, (2011) 13 SCALE 140, 2012 CRILR(SC MAH GUJ) 52, (2011) 4 CRIMES 303, (2012) 1 RECCRIR 197, (2011) 4 CURCRIR 353, (2012) 1 UC 31, (2011) 4 DLT(CRL) 798, (2012) 1 CHANDCRIC 135

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Bench: Ranjana Prakash Desai, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1502 OF 2005

State of Rajasthan ...

Appellant

Versus

Shera Ram @ Vishnu Dutta ...

Respondent

J U D G M E N T

Swatanter Kumar, J.

1. Respondent Shera Ram @ Vishnu Dutta was charged for committing an offence under Sections 302, 295 and 449 of the Indian Penal Code, 1860 (for short `IPC') and was sentenced to undergo imprisonment for life by the Additional Sessions Judge-1, Jodhpur vide judgment dated 7th June, 2000. However, upon appeal, he came to be acquitted of all the offences by a Division Bench of the High Court of Rajasthan vide order dated 21st February, 2004 primarily on the ground that at the time of incident, he was a person of unsound mind within the meaning of Section 84 IPC and was directed to be detained in safe custody in an appropriate hospital or a place of custody of non-criminal lunatics as would be provided to him by the State Government under the direct supervision of the Jail Authorities till the time he was cured of his mental illness and infirmity.

2. Aggrieved from the said judgment, the State of Rajasthan has presented this appeal by way of a special leave petition.

3. Before we proceed to dwell upon the merits of the case and the legal issues involved in the present appeal, a reference to the case of the prosecution would be necessary. According to the prosecution, on 10th March, 1999 at about 7.15 a.m., while Pujari Tulsi Das (now deceased) was in the Raghunathji's temple, the respondent abruptly hurled a stone on his head resulting into his instantaneous death. The respondent also damaged the idol and other properties of the temple. This all was unprovoked. The incident was witnessed by the villagers including PW-6 Santosh, PW-11 Narsingh Ram and PW-16, Smt. Tiku Devi.

4. PW-2, Ghan Shyam Das Daga reported the matter to the police immediately. Upon receipt of the information, the police registered a case under Section 302 IPC and proceeded with the investigation. Besides recording statements of number of witnesses, the Investigating Officer also prepared the site plan and the inquest memo. The body of the deceased was sent for post-mortem which was performed by PW-20, Dr. C.P. Bhati, who prepared the post-mortem report Ext. P-37.

5. After investigation, the police filed the challan upon which, the respondent was committed to the appropriate Court of Sessions for trial. The charge-sheet was filed under Sections 302, 295 and 449 IPC, as already noticed. The respondent denied the charges leveled against him and claimed trial.

6. The prosecution examined as many as 23 witnesses to prove its case. The material piece of evidence appearing in the case of the prosecution against the respondent were put to him and his statement was recorded by the learned Trial Court under Section 313 of the Code of Criminal Procedure, 1973 (for short `Cr.PC'). According to the respondent, his mental condition right from the year 1992-1993 was not good and occasionally he suffered from fits of insanity. He had undergone treatment for the same. He has stated that in the jail also, he was receiving the

treatment. To put it simply, he claimed the defence of insanity under Section 84 IPC. The defence also examined DW-2, Dr. Vimal Kumar Razdan and DW-1, Bhanwar Lal, brother of the respondent who had produced records to show that the respondent was a person suffering from insanity of mind. The learned Trial Court rejected the plea of defence of insanity and convicted the respondent.

7. The respondent preferred an appeal against the judgment and order of conviction by the Trial Court which resulted in his acquittal vide order dated 21st February, 2004 with the afore-noticed directions to the State Government. Dissatisfied from the said judgment, the State has preferred the present appeal.

8. As is evident from the above-noted facts, it is an appeal against the judgment of acquittal. The plea of insanity raised by the respondent has been accepted by the High Court resulting in his acquittal.

9. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

10. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for. We may refer to a recent judgment of this Court in the case of State of Rajasthan, Through Secretary, Home Department v. Abdul Mannan [(2011) 8 SCC 65], wherein this Court discussed the limitation upon the powers of the appellate court to interfere with the judgment of acquittal and reverse the same.

11. This Court referred to its various judgments and held as under:-

"12. As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Articles 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court.

13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court.

However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In State of M.P. v. Bacchudas, the Court was concerned with a case where the accused had been found guilty of an offence punishable under Section 304 Part II read with Section 34 IPC by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp. 138-39, paras 9-10) "9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v.

State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials

have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra, Ramesh Babulal Doshi v. State of Gujarat, Jaswant Singh v. State of Haryana, Raj Kishore Jha v. State of Bihar, State of Punjab v. Karnail Singh, State of Punjab v. Phola Singh, Suchand Pal v. Phani Pal and Sachchey Lal Tiwari v.

State of U.P.

10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference."

16. In a very recent judgment, a Bench of this Court in State of Kerala v. C.P. Rao decided on 16-5-2011, discussed the scope of interference by this Court in an order of acquittal and while reiterating the view of a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan, the Court held as under:

> "13. In coming to this conclusion, we are reminded of the well-settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court in an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in Sanwat Singh v. State of Rajasthan 212. At SCR p. 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows:
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> `9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified'."

17. Reference can also be usefully made to the judgment of this Court in Suman Sood v. State of Rajasthan, where this Court reiterated with approval the principles stated by the Court in earlier cases, particularly, Chandrappa v. State of Karnataka. Emphasising that expressions like "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances",

"distorted conclusions", "glaring mistakes", etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal, the Court stated that such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with the acquittal. Thus, where it is possible to take only one view i.e. the prosecution evidence points to the guilt of the accused and the judgment is on the face of it perverse, then the Court may interfere with an order of acquittal."

12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

13. Also, this Court had the occasion to state the principles which may be taken into consideration by the appellate court while dealing with an appeal against acquittal. There is no absolute restriction in law to review and re-look the entire evidence on which the order of acquittal is founded. If, upon scrutiny, the appellate court finds that the lower court's decision is based on erroneous views and against the settled position of law then the said order of acquittal should be set aside. {See State (Delhi Administration) v. Laxman Kumar & Ors. [(1985) 4 SCC 476], Raj Kishore Jha v. State of Bihar & Ors. [AIR 2003 SC 4664], Inspector of Police, Tamil Nadu v. John David [JT 2011 (5) SC 1] }

14. To put it appropriately, we have to examine, with reference to the present case whether the impugned judgment of acquittal recorded by the High Court suffers from any legal infirmity or is based upon erroneous appreciation of evidence.

15. In our considered view, the impugned judgment does not suffer from any legal infirmity and, therefore, does not call for any interference. In the normal course of events, we are required not to interfere with a judgment of acquittal.

16. Having deliberated upon the above question of law, we may now proceed to discuss the merits of the case in hand. The High Court after consideration of the entire evidence produced by the prosecution, affirmed the finding that the incident as alleged by the prosecution had occurred and the respondent had hurled a stone on the head of Pujari Tulsi Das which resulted in his death. This being a finding of fact based upon proper appreciation of evidence, does not call for any interference by us.

17. The corollary that follows from the above is whether having committed the charged offence, the respondent is entitled to the benefit of the general exception contained in Section 84, Chapter IV of the IPC? Section 84 states that nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law.

18. It is obvious from a bare reading of this provision that what may be generally an offence would not be so if the ingredients of Section 84 IPC are satisfied. It is an exception to the general rule. Thus, a person who is proved to have committed an offence, would not be deemed guilty, if he falls in any of the general exceptions stated under this Chapter.

19. To commit a criminal offence, mens rea is generally taken to be an essential element of crime. It is said furiosus nulla voluntus est. In other words, a person who is suffering from a mental disorder cannot be said to have committed a crime as he does not know what he is doing. For committing a crime, the intention and act both are taken to be the constituents of the crime, actus non facit reum nisi mens sit rea. Every normal and sane human being is expected to possess some degree of reason to be responsible for his/her conduct and acts unless contrary is proved. But a person of unsound mind or a person suffering from mental disorder cannot be said to possess this basic norm of human behavior. In the case of Surendra Mishra v. State of Jharkhand [(2011) 3 SCC(Cri.) 232], the Court was dealing with a case where the accused was charged for an offence under Section 302 IPC and Section 27 of the Arms Act. While denying the protection of Section 84 of the IPC to the accused, the Court held as under:-

> "9. In our opinion, an accused who seeks exoneration from liability of an act under Section 84 of the Indian Penal Code is to prove legal insanity and not medical insanity. Expression "unsoundness of mind" has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code."

20. From the above-stated principles, it is clear that a person alleged to be suffering from any mental disorder cannot be exempted from criminal liability ipso facto. The onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act.

21. Once, a person is found to be suffering from mental disorder or mental deficiency, which takes within its ambit hallucinations, dementia, loss of memory and self-control, at all relevant times by way of appropriate documentary and oral evidence, the person concerned would be entitled to seek

resort to the general exceptions from criminal liability.

22. Epileptic Psychosis is a progressing disease and its effects have appropriately been described in the text book of Medical Jurisprudence and Toxicology by Modi, 24th Ed. 2011 where it states as follows:-

> "Epileptic Psychosis. - Epilepsy usually occurs from early infancy, though it may occur at any period of life. Individuals, who have had epileptic fits for years, do not necessarily show any mental aberration, but quite a few of them suffer from mental deterioration. Religiousity is a marked feature in the commencement, but the feeling is only superficial. Such patients are peevish, impulsive and suspicious, and are easily provoked to anger on the slightest cause.
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> The disease is generally characterized by short transitory fits of uncontrollable mania followed by complete recovery. The attacks, however, become more frequent. There is a general impairment of the mental faculties, with loss of memory and self- control. At the same time, hallucinations of sight and hearing occur and are followed by delusions of a persecuting nature. They are deprived of all moral sensibility, are given to the lowest forms of vice and sexual excesses, and are sometimes dangerous to themselves as well as to others. In many long- standing cases, there is a progressive dementia or mental deficiency.
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> True epileptic psychosis is that which is associated with epileptic fits. This may occur before or after the fits, or may replace them, and is known as pre- epileptic, post-epileptic and masked or psychic phases (psychomotor epilepsy) Post-Epileptic Mental Ill-health - In this condition, stupor following the epileptic fits is replaced by automatic acts of which the patient has no recollections. The patient is confused, fails to recognize his own relatives, and wanders aimlessly. He is terrified by visual and auditory hallucinations of a religious character and delusions of persecution, and consequently, may commit crimes of a horrible nature, such as thefts, incendiarism, sexual assaults and brutal murders. The patient never attempts to conceal them at the time of perpetration but on regaining consciousness may try to conceal them out of fear."

23. Similar features of Epilepsy have been recorded in the HWV COX Medical Jurisprudence and Toxicology (7th Edn) by PC Dikshit.

24. Reverting to the facts of the present case, it may be noted that no witness of the prosecution including the Investigating Officer stated anything with regard to the mental condition of the respondent. However, the respondent not only in his statement under Section 313 Cr.P.C. took up the defence of mental disorder seeking benefit of Section 84 IPC but even led evidence, both documentary as well as oral, in support of his claim. He examined Dr. Vimal Kumar Razdan, DW-2, who deposed that he had examined the respondent and had given him treatment. He, also, produced the examination report in regard to the treatment of the respondent, Ext.D-5, which was prepared in

his clinic.

25. According to the statement of this doctor and the prescription, the respondent was suffering from Epilepsy and while describing post epileptic insanity, this witness stated that after the epileptic attack, a patient behaves like an insane person and he is unable to recognise even the known persons and relatives. During this time, there is a memory loss and the patient can commit any offence. In the prescription, Ext. D-3, issued by Dr. Ashok Pangadiya, it was stated that the patient was suffering from the fits disease and symptoms of behavioral abnormality. Two types of medication on the basis of diagnosis of epileptic disease and other one for insanity were prescribed to the respondent who continued to take these medicines, post epileptic insanity.

26. Another witness who was produced by the defence was DW-1, Bhanwar Lal, the brother of the respondent. According to this witness, the respondent was suffering from mental disorder since 1993. He stated that when he gets the fits of insanity, he can fight with anybody, hit anybody and even throw articles lying around him. At the initial stage, Dr. Devraj Purohit had treated him. Then Dr. V.K. Razdan treated him and thereafter, in Jaipur, Dr. Ashok Pagadiya/Pandharia also treated him. Even when he was in jail, he was under

> treatment. He produced the prescription slips i.e. Exts. D3 and D4. This witness has also stated that on the date of occurrence at about 6.00 - 6.30 a.m., Shera Ram/respondent was not feeling well and, in fact, his condition was not good. Even at home he had broken the electricity meter and the bulbs. When the people at home including the witness tried to stop him, he had beaten DW-1 on his arm and after hitting him on the face he had run away.

27. This oral and documentary evidence clearly shows that the respondent was suffering from epileptic attacks just prior to the incident. Immediately prior to the occurrence, he had behaved violently and had caused injuries to his own family members. After committing the crime, he was arrested by the Police and even thereafter, he was treated for insanity, while in jail.

28. Thus, there is evidence to show continuous mental sickness of the respondent. He not only caused death of the deceased but also on the very same day injured and caused hurt to his family members including DW-1. His statement made under Section 313 Cr.PC is fully corroborated by oral and documentary evidence of DW-2 and Ext. D-3 and D-4. Though, the High Court has not discussed this evidence in great detail, but this being an admissible piece of evidence, can always be relied upon to substantiate the conclusion and findings recorded by the High Court.

29. In other words, the High Court on the basis of the documentary and oral evidence has a taken a view which was a possible and cannot be termed as perverse or being supported by no evidence. The finding of the High Court, being in consonance with the well settled principles of criminal jurisprudence, does not call for any interference. More so, the learned counsel appearing for the State has not brought to our notice any evidence, documentary or otherwise, which could persuade us to take a contrary view i.e. other than the view taken by the High Court.

30. Another aspect of this case which requires consideration by this Court is that the case of the prosecution suffers from legal infirmity. In fact, the prosecution has failed to prove beyond reasonable doubt that the injury inflicted by the respondent upon the deceased was sufficient in the ordinary course of nature to cause death. It is the case of the prosecution that the respondent had hurled a stone which had caused injury (lacerated wound on the left side of the forehead) whereupon the deceased fell on the ground and subsequently collapsed. The injury is said to be 2" x =" x upto bone, transversely Lt. side of forehead and another lacerated wound 2" x =" x <" near injury No.1 towards the forehead. These are the injuries which the deceased is stated to have suffered. In addition, abrasion of 1 cm x 1 cm on the left eyebrow was also present. According to the doctor, all these injuries were ante mortem in nature and the cause of death was shock and haemorrhage due to head injury.

31. In the statement of PW-20, Dr. C.P. Bhati, it is nowhere stated that the injuries caused by the respondent were sufficient in the ordinary course of nature to cause death. It is also not recorded in the post-mortem report, Ext. 37. This was a material piece of evidence which the prosecution was expected to prove in order to bring home the guilt of the respondent. This is a serious deficiency in the case of the prosecution. Absence of this material piece of evidence caused a dent in the case of the prosecution. The High Court has not taken note of this important aspect of the case.

32. The learned counsel appearing for the respondent placed reliance upon this evidence and strenuously contended that the respondent was entitled to acquittal on this basis alone. We should not be understood to have stated any absolute proposition of law, but in the facts and circumstances of the present case, it was expected of PW-20 to state before the Court as well as record the same in the post- mortem report prepared by him i.e. Ext. 37, that the injuries were sufficient in the ordinary course of nature to cause death of the deceased.

33. Ex-facie, injuries do not appear to be so vital that they could have resulted in the death of the deceased, but this fact was required to be proved by expert evidence. The counsel for the respondent relied upon a judgment of this Court in the case of Ram Jattan and Others v. State of U.P. [(1995) SCC (Cri) 169] where this Court held that it is not appropriate to interfere with the conclusion that the injuries are not sufficient to cause death unless they are so patent. The Court held as under:-

> "4. The learned counsel, however, further submitted that in any event the offence committed by the members of unlawful assembly cannot be held to be one of murder and therefore the common object of unlawful assembly was not one which attracts the provision of Section 302 read with Section 149 IPC. We find considerable force in this submission. Though, in general, right from the first report onwards the prosecution case is that all the 12 accused armed with sharp-edged weapons and lathis surrounded the three persons and inflicted the injuries but from the doctor's report we find that no injury was caused on the vital organs. So far as Patroo is concerned, who got the report written by PW 7 and gave it in the police station, we find 13 injuries but all of them were abrasions and lacerated injuries on the legs and hands. The doctor opined that all the injuries were simple. On Balli, PW 8, the doctor found 12 injuries and they were also on arms and legs. There was only one punctured

wound, injury No. 8 and it was not a serious injury and it was also a simple injury. Now, coming to the injuries on the deceased, the doctor who first examined him, when he was alive, found 11 injuries. Out of them, injuries Nos. 1 and 2 were punctured wounds. Injury No. 5 was an incised wound and injury No. 6 was a penetrating wound. All these injuries were on the upper part of the right forearm and outer and lower part of right upper arm. The remaining injuries were abrasions and contusions. The doctor opined that except injuries Nos. 7 and 9 all other injuries were simple. He did not say whether injuries Nos. 7 and 9 were grievous but simply stated that they were to be kept under observation. The deceased, however, died the next day i.e. 9-4-1974 and the post-mortem was conducted on the same day. In the post-mortem examination 11 external injuries were noted but on the internal examination the doctor did not find any injury to the vital organs. He, however, noted that 8th and 9th ribs were fractured. Now, coming to the cause of death, he opined that death was due to shock and haemorrhage. It is not noted that any of the injuries was sufficient to cause death in the ordinary course of nature. It could thus be seen that neither clause 1stly nor clause 3rdly of Section 300 are attracted to the facts of this case. This contention was also put forward before the High Court but the learned Judges rejected this contention observing that the fracture of 8th and 9th ribs must have resulted in causing death and therefore these injuries must be held to be sufficient in the ordinary course of nature to cause death. We are unable to agree with this reasoning. In the absence of proof by the prosecution in an objective manner that the injuries caused were sufficient in the ordinary course of nature to cause death, the same cannot be interfered with unless the injuries are so patent. As we have noted above except fracture of ribs there was no other injury to any of the vital organs. As a matter of fact internally the doctor did not notice any damage either to the heart or lungs. Even in respect of these two injuries resulting in fracture of the ribs, there were no corresponding external injuries. Again as already noted all the injuries were on the non-vital parts of the body. The learned counsel for the State, however, submitted that a forceful blow dealt on the arm might have in turn caused the fracture of the two ribs. Even assuming for a moment it to be so, it is difficult to hold that from that circumstance alone the common object of the unlawful assembly of 12 persons to cause the death of the deceased is established.

5. The common object has to be gathered or inferred from the various circumstances like nature of the weapons, the force used and the injuries that are caused. After carefully going through the medical evidence we find that it is difficult to conclude that the common object was to cause the death. The injuries on Patroo, PW 8 as well as on the deceased were more or less of the same nature except that in the case of deceased, there were few punctured wounds which were not serious but only simple. He died due to shock and haemorrhage the next day. In any event there is no indication anywhere in the evidence of the doctor or in the post-mortem certificate that any of the injuries was sufficient in the ordinary course of nature to cause death. No doubt in his deposition the doctor, PW 4 has stated in the general way that these injuries were sufficient to cause death in the ordinary course of nature. We have

> already held that there was no external injury which resulted in the fracture of the ribs. In such an event clause 3rdly of Section 300 IPC is not attracted. Likewise clause 1stly of Section 300 IPC is also not attracted i.e. intentionally causing death. If their intention was to cause death, they would have used the lethal weapons in a different way and would not have merely inflicted simple injuries on the non-vital parts like legs and hands.
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> 6. In the result we set aside the convictions of these eight appellants under Section 302 read with Section 149 IPC and the sentence for imprisonment for life. Instead we convict them under Section 304 Part II read with Section 149 IPC and sentence each of them to undergo rigorous imprisonment for five years. The sentences and convictions imposed on other counts are confirmed. The four other accused who were convicted by the trial court as well as by the High Court are not before us. However, we are of the view that they must also get the same benefit. They are Ram Chander (A-2), Dal Singhar (A-7), Barai (A-8) and Birju (A-11). Accordingly their convictions under Section 302 read with Section 149 IPC for imprisonment for life are set aside and instead they are also convicted under Section 304 Part II read with Section 149 IPC and are sentenced to undergo rigorous imprisonment for five years. The other convictions and sentences imposed on other counts are, however, confirmed.

34. Reliance was also placed upon the judgment of this Court in the case of State of Rajasthan v. Kalu [(1998) SCC (Cri.) 898], where in the post mortem examination of the deceased, the cause of death was noticed as "acute peritonitis"

> as a result of abdominal injuries. However, during the cross- examination, Dr. Prem Narayna admitted that "peritonitis"

could have set in due to surgical complications also. The Court took the view that the medical evidence, therefore, when analysed in its correct perspective shows that the evidence recorded by the High Court is correct to the effect that prosecution had not proved that the injuries were sufficient in the ordinary course of nature to cause death of the lady and had acquitted the respondent. The Supreme Court declined to interfere with the finding recorded by the High Court.

35. In the present case also, there is no documentary or oral evidence to prove the fact that the injuries caused by the respondent to the deceased were sufficient in the ordinary course of nature to cause death. This, however, cannot be stated as an absolute proposition of law and the question whether the particular injury was sufficient in the ordinary course of nature to cause death or not is a question of fact which will have to be determined in light of the facts, circumstances and evidence produced in a given case. (Ref. Halsbury's Laws of India 5(2) Criminal Law-II). There could be cases where injuries caused upon the body of the deceased per se can irresistibly lead to the conclusion that the injuries were sufficient to cause death in the ordinary course of nature, while there may be other cases where it is required to be proved by documentary and oral evidence. Resultantly, it will always depend on the facts of each case. Thus, in such cases, it may neither be permissible nor possible to state any absolute principle of law universally applicable to all such cases.

36. In view of our discussion above, we find no error in the judgment under appeal. Thus, we have no hesitation in dismissing the appeal and the same is hereby dismissed.

.....J. [Swatanter Kumar] .....J. [Ranjana Prakash Desai] New Delhi December 1, 2011