Atmaram & Ors vs State Of M.P on 10 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1956, 2012 AIR SCW 2972, AIR 2012 SC (CRIMINAL) 992, (2012) 3 DLT(CRL) 226.2, (2012) 3 CRILR(RAJ) 610, 2012 (2) SCC(CRI) 752, 2012 (5) SCALE 300, 2012 CRILR(SC MAH GUJ) 610, (2012) 115 ALLINDCAS 92 (SC), 2012 ALL MR(CRI) 2091, (2012) 2 RECCRIR 258, (2012) 2 CURCRIR 315, (2012) 2 ALLCRIR 2330, (2012) 3 ALLCRILR 237, (2012) 3 MAD LJ(CRI) 117, (2012) 52 OCR 400, (2012) 4 RAJ LW 3019, (2012) 3 RECCRIR 861, (2012) 5 SCALE 300, (2012) 2 DLT(CRL) 520, (2012) 78 ALLCRIC 124, (2012) 2 CRIMES 271, 2012 (4) KCCR SN 231 (SC)

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Bench: Ranjan Gogoi, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2003 OF 2008

Atmaram & Ors. … Appellants

Versus

State of Madhya Pradesh … Respondent

J U D G M E N T

Swatanter Kumar, J.

1. This appeal is directed against the judgment of the High Court of Madhya Pradesh, Bench at Indore dated 23rd January, 2008. We may notice the necessary facts giving rise to the present appeal. According to the prosecution, Udayram, PW-1 along with his younger brother namely Gokul (the deceased) and sister Rajubai, PW-2 had gone to the village Lod for pilgrimage. After they reached the said village, they came to know that the Pujari who was to perform the puja was not available. Resultantly, all the said three persons decided to return back to their village Dhuvakhedi,

Tehsil Tarana, District Ujjain.

2. At about 4-4.30 p.m., when they reached near the said village, all of a sudden the accused persons namely Atmaram, Gokul, Vikram, Ramchandran and Umrao emerged from the fields having soyabean crop. They shouted that the deceased and his relatives had set their soyabean crop afire and therefore, they should be taught a lesson. The accused Ramachandra was armed with farsi, Gokul was carrying dharia and other three accused were having lathis. All these accused persons started assaulting Udayram (PW1) causing injury on his head, left hand and legs. Gokul (the deceased) and PW2 tried to intervene and protect Udayram. In this process, both these witnesses sustained a number of injuries caused by the accused with the help of the same weapons. The other witnesses present at the site, Gajrajsingh, Sardarsingh and Gokul did not interfere in the assault because of fear and silently slipped away.

3. Another witness, Pannalal, PW8, was working in the fields nearby. Upon being called by Rajubai, PW2, Pannalal came to the place of occurrence and seeing the deceased and witnesses in injured condition, Pannalal and one Prem brought the bullock cart of one Kanhaiya Balai. Thereafter, one Umrao Bai also joined them. They finally found a jeep on the road in which Pannalal, Prem and Umrao Bai took the injured persons to the Tarana Hospital where they were admitted. From the hospital, information was sent to the Police Station, Makdon on which basis, the Head Constable Chedilal Yadav, PW23, reached Tarana Hospital. On the basis of the statement of Udayram, PW1, Dehati Nalishi (Ex.P1) was recorded at about 6.20 p.m. on 6th November, 1993.

4. A case under Section 307 read with Sections 147, 148 and 149 of the Indian Penal Code, 1860 (for short 'IPC') was registered. All the three injured persons were subjected to medical examination by Dr. Anil Kumar Dubey, PW4, who issued their MLC reports, Ex.P2-A to P.4-A. Udayram and Rajubai were treated by the doctors. At about 7 p.m., the statement of Gokul was also recorded in the presence of the witnesses. Keeping in view the serious condition of Gokul, he was required to be transferred from Tarana Hospital to Civil Hospital, Ujjain for treatment. However, he died on the way at about 11.30 p.m. on 6th November, 1993 and his dead body was kept in the Civil Hospital, Ujjain. Information was sent to the Police Station, Makdon, whereafter an offence of Section 302 read with Section 149 IPC was added to the charges.

5. Inquest proceedings were completed. The dead body of the deceased was subjected to post mortem and post mortem report Ext. P30 was prepared by Dr. Ajay Nigam (PW14).

6. After registration of the offence, the investigating officer, PW26, Sohan Pal Singh Choudhary visited the spot of occurrence on 7th November, 1993, from where the blood stained earth, cycle and sandal of the deceased were seized and the spot map was prepared. On 8th November, 1993, all the accused persons were arrested. Upon their interrogation and in furtherance to their statements, the arms involved in the commission of crime were recovered and seized. These seized weapons were sent to forensic science laboratory for examination on 3rd December, 1993. The examination report was received on 8th December, 1993 and in terms of the Report, no blood stain was found, either in the soil or in the sealed farsi. The Investigating Officer submitted the charge sheet to the Court of competent jurisdiction. Upon committal, the accused were tried by the Court of Sessions.

7. The learned Trial Court vide its detailed judgment dated 13th April, 1999 held that the prosecution had succeeded in proving the charges, while finding all the accused guilty of the offences with which they were charged. It sentenced them as follows:-

> "46. On the point of punishment, on behalf of accused evidence were not produced on conviction. The counsel for accused produced oral argument and prayed for least punishment to accused whereas Assistant Public Prosecutor have prayed for harder conviction.
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> 47. In any opinion from the case, it is clear that this is the first offence of accused. Looking into the circumstances under which crime is committed and nature of crime, it does not seem proper to convict with life imprisonment under Section 302 I.P.C. and it seems proper to convict accused for life imprisonment and fine. Therefore, all the five accused shall be convicted under Section 148 I.P.C. with rigorous imprisonment of two years. Accused Ramchandra No. 4 is held guilty under Section 307 I.P.C. and Section 307/149 I.P.C. for both the offences prescribed punished is same, therefore, it is proper to convict accused Ramchandra only under Section 307/149 I.P.C. and accused Atmaram No. 1 for charges under Section 307 I.P.C. and accused Gokul No. 2, Vikram No. 3, Ramchandra No. 4, Umrao No. 5 for Section 307 read with 149 I.P.C. shall be convicted respectively with rigorous imprisonment for 5 year each and fine of Rs. 500/- (Rs. five hundred) each. In default of payment of fine accused shall be imprisoned for another term of 2 month each.
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> 48. Similarly, accused Gokul No. 2 charged under Section 302 I.P.C. and Section 302/149 I.P.C. and accused Vikram No. 3 was held guilty under Section 302 or Section 302 read with Section 149 I.P.C., whereas punishment prescribed for both the offences is same, both the accused are held guilty under Section 307/149 I.P.C. and accused Atmaram No. 1 is found guilty for charges under Section 302, I.P.C. and accused No. 2, Gokul, No. 3 Vikram, No. 4 Ramchandra, No. 5 Umrao are found guilty under Section 302 read with Section 149 I.P.C. and convicted accordingly, and all the accused for such charges are convicted with life imprisonment and in addition all the accused are also punished with fine of Rs. 2000 (Two Thousand Rupees) each. In default of payment of fine all the accused shall be imprisoned for another term of 4 month each. Similarly, accused No. 5, Umrao, is charged under Section 323 I.P.C. and accused Atmaram No. 1 Gokul No. 2, Vikram No. 3, and Ramchandra No. 4 are found guilty under Section 323 read with Section 149 I.P.C. and all the accused are convicted with 6 month rigorous imprisonment and fine of Rs. 200 each (Two Hundred Rupees). In default of payment of fine all the accused shall be imprisoned for another term of 1 month rigorous imprisonment each. All the punishment shall run concurrently.
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> 49. During prosecution, accused No. 1 Atmaram from 8.11.93 to 3.3.94, accused No. 2 Gokul from 8.11.93 to 24.6.94, accused No. 3 Vikram from 8.11.93 to 3.3.94 and accused No. 4 Ramchandra from 11.1.93 to 6.1.94 and accused No. 5 Umrao from

> 11.11.93 to 6.1.94, were in judicial custody. Such duration shall be adjusted towards punishment.
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> 50. On payment of fine from accused and after the expiration of the period of limitation Rs. 8000/- from the amount of fine shall be paid to widowed mother of Gokul, Umraobai w/o Lalji r/o village Dhaukhedi, Thana Makdone, as compensation and from the said fine Rs. 5000 (Five Thousand Rupees) shall be paid to applicant Udairam s/o Lalji r/o Village Dhaukhedi, Thana Makdone.
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> 51. After the expiration of period of appeal, blood mixed soil, simple soil, Sandel, cloths of Gokul, cloths of Udairam, and Farsi, Dharia, Lathi, seized from accused shall be discarded being available."

8. The Trial Court also punished them on other counts.

9. Being aggrieved from the judgment of conviction and order of sentence passed by the Trial Court, the accused preferred an appeal before the High Court, which by its judgment dated 23rd January, 2008, confirmed the judgment of the Trial Court and also did not interfere with the order of sentence.

10. Feeling aggrieved therefrom, all the five accused have preferred the present appeal before this Court.

11. While raising a challenge to the impugned judgment, the learned counsel appearing for the appellants argued that there are serious contradictions between the statements of PW1 and PW2. These two witnesses being the eye-witnesses, such serious contradictions in their statements make the conviction of the appellants unsustainable on that basis. To substantiate his plea, the learned counsel for the appellants has relied upon the paragraph 2 of the deposition of PW2, Rajubai and paragraph 3 of the statement of PW1, Udayram. In order to properly appreciate the merit or otherwise of this contention, it would be appropriate to refer to the relevant paragraphs of deposition of these two witnesses. They, respectively, read as under :

> "2. Ramchandra hit Udairam with Farsi which hit on his head and both hands. My brother Gokul was hit by accused Gokul with Dhariya due to which he got injuries on his head, both hands, above the eye and on the waist. Umrao hit me with two ladhi blows which hit me on my hand and foot. The accused hit a lot.
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> XXX XXX XXX
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> 3. Accused Ramchand had hit farsi on my head, Atmaram had hit lathi which hit me near the joint of my left hand thumb.

Accused Gokul hit my brother Gokul on the head with Dharia. Ramchand had hit after me, my brother Gokul with farsi on his head. The other accused started hitting my brother with lathi due to

which my brother fell down and I was also attached with lathi. My sister Rajubai was also hit with lathi by accused Umrao. She had received injury on her hand and Rajubai also received injury on her foot."

12. From a bare reading of the statements of these witnesses, it is clear that according to PW1, not only Gokul, the accused, had caused injury on the head of the deceased by farsi but accused persons had also caused injuries to him with lathis etc. However, according to PW2, Gokul, the accused, had caused injuries on the head of the deceased, both hands, above the eyes and on the wrist while other accused hit her. This cannot be termed as a material contradiction in the statements of these two witnesses. These are two eye-witnesses who themselves were injured by the accused. Every variation is incapable of being termed as a serious contradiction that may prove fatal to the case of prosecution. It is a settled cannon of criminal jurisprudence that every statement of the witness must be examined in its entirety and the Court may not rely or reject the entire statement of a witness merely by reading one sentence from the deposition in isolation and out of context. In the present case, it has been completely established that both PW1 and PW2 are injured eye- witnesses and their presence at the place of occurrence cannot be doubted. If one reads the statements of PW1 and PW2 in their entirety, it will be difficult to trace any element of serious contradiction in their statements which may prove fatal to the case of the prosecution. PW2, even in the paragraph extracted above has said that accused 'hit a lot'. However, the language in which her statement was recorded states 'abhiyukton ne khoob mara' which obviously means that all the accused had hit the deceased and other victims including herself, because this sentence immediately precedes the part of the statement where she gives details of all the accused persons as well as the injuries inflicted on the deceased and herself by each of the accused. The very first paragraph of her statement clearly indicates the essence of her statement. She has categorically stated that all the accused persons had come to the site, abused her brother Gokul and clearly claimed that he had burnt their soyabean crop and that they shall kill him. Whereafter, they started hitting her brothers, Gokul and Udayram. In face of this specific statement and the medical evidence which shows presence of as many as ten injuries on the body of the deceased Gokul, it is difficult to believe that in the given situation, one accused could have caused so many injuries on the body of deceased, especially when all accused persons are stated to have caused injuries to the deceased as well as to the witnesses. It seems appropriate her to refer to a recent judgment of this Court in the case of Ashok Kumar v. State of Haryana [(2010) 12 SCC 350] wherein this Court, while dealing with the discrepancies in the statement of the witnesses, held as under :

> "41. The above statement of this witness (DW 3) in cross- examination, in fact, is clinching evidence and the accused can hardly get out of this statement. The defence would be bound by the statement of the witness, who has been produced by the accused, whatever be its worth. In the present case, DW 3 has clearly stated that there was cruelty and harassment inflicted upon the deceased by her husband and in-laws and also that a sum of Rs. 5000 was demanded. The statement of this witness has to be read in conjunction with the statement of PW 1 to PW 3 to establish the case of the prosecution. There are certain variations or improvements in the statements of PWs but all of them are of minor nature. Even if, for the sake of argument, they are taken to be as some contradictions or variations in substance, they are so insignificant and

mild that they would in no way be fatal to the case of the prosecution.

42. This Court has to keep in mind the fact that the incident had occurred on 16-5-1988 while the witnesses were examined after some time. Thus, it may not be possible for the witnesses to make statements which would be absolute reproduction of their earlier statement or line to line or minute to minute correct reproduction of the occurrence/events. The Court has to adopt a reasonable and practicable approach and it is only the material or serious contradictions/variations which can be of some consequence to create a dent in the case of the prosecution.

Another aspect is that the statements of the witnesses have to be read in their entirety to examine their truthfulness and the veracity or otherwise. It will neither be just nor fair to pick up just a line from the entire statement and appreciate that evidence out of context and without reference to the preceding lines and lines appearing after that particular sentence. It is always better and in the interest of both the parties that the statements of the witnesses are appreciated and dealt with by the Court upon their cumulative reading."

13. In light of the above judgment, it is clear that every variation or discrepancy in the statement of a witness cannot belie the case of the prosecution per se. It is true that in the present case, some other witnesses have turned hostile and have not fully supported the case of the prosecution, but that by itself would not be a circumstance for the Court to reject the statements of PW1 and PW2, who are reliable and worthy of credence and more particularly, when their presence at the place of occurrence has been established beyond reasonable doubt.

14. The other contention which has been raised on behalf of the appellants is that the medical evidence does not support the statements of PW1 and PW2. This is equally devoid of any merit. As per the statement of PW14, who had prepared the post mortem report, Ext. P30, there were as many as ten injuries on the body of the deceased and they were as follows :

"Similarly on the said date itself, Gokul S/o. Laljiram @ Lalchand was brought by Head Constable Chedilal for which he had brought Ex.P-3 letter. I examined him at 6.35 p.m. and found the following injuries :

(i) Incised wound 5½ x scalp thick on left central region.

(ii) Incised superficial (skin deep) 1 x ¼ cm. on right temple near eye. Both these injuries appear to have been caused by sharp edged seapon. It was not possible to understand injury No.1 therefore, X-ray advice was written and injury No.2 was simple and caused within 0-6 hrs.

(iii) One contusion 12 x 8 cm on right forearm.

(iv) Swelling on left forearm ½ lower portion and ½ right portion on left side.

The aforesaid injuries appeared to have been caused with hard and blunt object and X-ray was advised to ascertain seriousness.

(v) One lacerated wound with fracture 2 x 1 x ½ on right leg in front on middle portion which appear to have been caused with hard and blunt weapon and was serious within 0- 6 hrs. and X-ray was advised for the same.

(vi) Lacerated wound 1 x ½ x ¼ on lower portion of left leg.

(vii) Swelling on left hand in full back portion.

(viii) Swelling and contusion 13 x 4 cm. on left forearm out and front portions. Injuries Nos.6, 7 and 8 appear to have been caused with hard and blunt weapon and simple caused within 0-6 hrs.

(ix) One contusion with parallel margin on left forearm which appear to have been caused with hard and blunt weapon like lathi and X-ray was advised for this injury.

(x) One contusion of parallel margin of 28 x 1 cm. in front portion of the chest laterally. It appeared to have been caused with hard and blunt weapon like lathi which was simple caused within 6 hrs."

15. All that PW1 and PW2 have stated is that the accused had inflicted the injury on the head of the deceased with a farsi and even on other parts of the body of the deceased. According to them, even other accused had inflicted injuries upon the body of the deceased with lathis. The accused were carrying farsi, dharia and lathis, as per the statements of these witnesses. The medical evidence clearly shows that there were incised wounds, contusions, lacerated wounds and swelling found in the various injuries on the body of the deceased. The Investigating Officer, PW26, has clearly proved the case of the prosecution with the assistance of the corroborating evidence. We see no reason to accept this contention raised on behalf of the appellants.

16. Before dealing with the last contention raised on behalf of the appellants, we may usefully refer to some pertinent aspects of the case of the prosecution. In this case, the incident had occurred at about 4.30 p.m. on 6th November, 1993 and the FIR itself was registered at 6.30 p.m. on the statement of PW1 recorded in the hospital. In the hospital itself, the doctor had also recorded the dying declaration Ext. P-6 of the deceased. The relevant part of the declaration reads as under :

"My First question was : What is your name?

Ans : Gokulsingh S/o Laljiram Lalsingh.

Q: Where do you live?

Ans: Dhuankheri.

> I again asked what happened to you when he replied that the well of Kanhaiya, myself, my brother Udayram and sister were hit by 5 brothers Ramchand, Umrao, Vikram, Gokul and Atmaram sons of Devaji of Balai caste. He stated so. Thereafter I asked where all have you received injuries whereupon he replied that on head, hands and legs. Thereafter I again asked who saw you being beaten up then he replied that we were seen by Udaysingh, Gokulsingh, Gajrajsingh, Ramchandra etc. I again asked what did you do thereupon he replied, what could we do, we were un-armed, we kept shouting. Our sister had tried to rescue us."

17. After recording of the FIR, Ext. P-37 the investigation was started immediately and on the second day, the accused were taken into custody. Names of all the accused were duly shown in Column No.7 of the FIR. Two witnesses, PW1 and PW2, have given the eye witness version of the occurrence. All the accused persons were hiding themselves in the field and had a clear intention to kill the deceased. The motive for commission of the offence which, of course, is not an essential but is a relevant consideration, has also been brought out in the case of the prosecution that the deceased had allegedly burnt their soyabean crops and, therefore, the accused wanted to do away with the deceased Gokul and his brother. These factors have been clearly brought out in the statement of PW1 and PW2. The fact that these injuries were inflicted by a collective offence upon the deceased and the injured witnesses is duly demonstrated not only by the medical report, but also by the statements of the doctors, PW4 and PW14. Thus, the prosecution has been able to establish its case.

18. The contention lastly raised on behalf of the appellants is that no single injury has been found to be sufficient in the ordinary course of nature to cause death as per the medical evidence. There was no intention on the part of the accused to cause death of the deceased. At best, they have only caused an injury which was likely to cause death. Therefore, no case for an offence under Section 302 IPC is made out and, at best, it could be a case under Section 304 Part II and/or even Section 326 IPC. Reliance has been placed upon the judgments of this Court in the case of Molu & Ors. v. State of Haryana [(1976) 4 SCC 362] and Rattan Singh & Ors. v. State of Punjab [1988 Supp. SCC 456]. In any case and in the alternative, it is also contended that as per the statement of PW2, accused Gokul alone had caused injuries to the deceased and therefore, all the other accused persons are entitled to acquittal or at best, are liable to be convicted under Section 326 IPC for causing injuries to the eye-witnesses, PW1 and PW2 or even to the deceased. This argument, at the first blush, appears to be have substance, but when examined in its proper perspective and in light of the settled law, we find it untenable, for the reason that even in the case of Molu (supra), this Court had noticed that none of the injuries was on any vital part of the bodies of the two deceased persons and even injuries upon the skull appeared to be very superficial. There was nothing to show that the accused intended to cause murder of the deceased persons deliberately and there was no evidence to show that any of the accused ordered the killing of the deceased persons or indicated or in any way expressed a desire to kill the deceased persons on the spot. It was upon returning this finding on appreciation of evidence that the Court found that there was only a common intention to assault the deceased, with the knowledge that the injuries caused to them were likely to cause death of the deceased and, therefore, the Court permitted alteration of the offence from that under Section 302 to one under Section 304 Part II, IPC. Also in the case of Rattan Singh (supra), this Court had found that as per the case of the

prosecution, the injuries on the person of the deceased which could be attributed to the accused were either on the hands or feet and at best could have resulted in fractures. None of the appellants could be convicted for causing such injuries individually which could make out an offence under Section 302 and, thus, the Court altered the offence.

19. We are unable to see as to what assistance the appellants seek to derive from these two judgments. They were judgments on their own facts and in the case of Molu (supra), as discussed above, the Court had clearly returned a finding that the accused had no intention to kill the accused, which is not the circumstance in the case at hand. If there is an intention to kill and with that intent, injury is caused which is sufficient to cause death in the ordinary course of nature, then the offence would clearly fall within the ambit of para Thirdly of Section 300 IPC and, therefore, would be culpable homicide amounting to murder. In the present case, the intention on the part of the accused persons to kill Gokul was manifest as is evident from the statements of PW1 and PW2. The cause for having such an intent is also proved by the prosecution that according to the accused, Gokul and PW1 had burnt their soyabean crops. The manner in which all the accused assaulted the deceased even after he fell to the ground and the act of continuously inflicting blows on the body of the deceased, clearly shows that they had a pre-determined mind to kill the deceased at any cost, which they did. In the case of State of Haryana v. Shakuntala & Ors. [2012 (4) SCALE 526], this Court held :

> "...Reverting back to the present case, it is clear that, as per the case of the prosecution, there were more than five persons assembled at the incident. All these nine persons were also convicted by the Trial Court and the conviction and sentence of six of them has been affirmed by the High Court. The members of this assembly had acted in furtherance to the common object and the same object was made absolutely clear by the words of accused Matadin, when he exhorted all the others to 'finish' the deceased persons.
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> 27. In other words, the intention and object on the part of this group was clear. They had come with the express object of killing Manohar Lal and his family members. It might have been possible for one to say that they had come there not with the intention to commit murder, but only with the object of beating and abusing Manohar Lal and others, but in view of the manner in which Matadin exhorted all the others and the manner in which they acted thereafter, clearly establishes that their intention was not to inflict injuries simplicitor. Manohar Lal, admittedly, had fallen on the ground. However, the accused still continued inflicting heavy blows on him and kept on doing so till he breathed his last. They did not even spare his wife Sushila and inflicted as many as 33 injuries on her body. Where a person has the intention to cause injuries simplicitor to another, he/she would certainly not inflict 30/33 injuries on the different parts of the body of the victim, including the spine. The spine is a very delicate and vital part of the human body. It, along with the ribs protects all the vital organs of the body, the heart and lungs, etc. Powerful blows on these parts of the body can, in normal course, result in the death of a person, as has happened in the case before us. The way in which the crime has been committed reflects nothing but

> sheer brutality. The members of the assembly, therefore, were aware that their acts were going to result in the death of the deceased. Therefore, we find no merit in this contention of the accused also."

20. They even caused injuries to the vital parts of the body of the deceased, i.e., the skull. As per the medical evidence, there was incised wound of 5½"x skull thick on left skull region, which shows the brutality with which the said head injury was caused to the deceased.

21. We may usefully refer to the judgment of this Court in the case of State of Andhra Pradesh v. Rayavarapu Punnayya & Anr. [(1976) 4 SCC 382] wherein the Court was concerned with somewhat similar circumstances, where a number of accused had caused multiple bodily injuries to the deceased and it was contended that since none of the injuries was caused upon any vital part of the body of the deceased, the offence was, therefore, at best to be altered to an offence under Section 304, Part II. This contention of the accused had been accepted by the High Court. While disturbing this finding, this Court held as under :

> "38. Question arose whether in such a case when no significant injury had been inflicted on a vital part of the body, and the weapons used were ordinary lathis, and the accused could not be said to have the intention of causing death, the offence would be "murder" or merely "culpable homicide not amounting to murder". This Court, speaking through Hidayatullah, J. (as he then was) after explaining the comparative scope of and the distinction between Sections 299 and 300, answered the question in these terms:
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> "The injuries were not on a vital part of the body and no weapon was used which can be described as specially dangerous. Only lathis were used. It cannot, therefore, be said safely that there was an intention to cause the death of Bherun within the first clause of Section 300. At the same time, it is obvious that his hands and legs were smashed and numerous bruises and lacerated wounds were caused. The number of injuries shows that everyone joined in beating him. It is also clear that the assailants aimed at breaking his arms and legs. Looking at the injuries caused to Bherun in furtherance of the common intention of all it is clear that the injuries intended to be caused were sufficient to cause death in the ordinary course of nature even if it cannot be said that his death was intended. This is sufficient to bring the case within thirdly of Section 300."
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> 39. The ratio of Anda v. State of Rajasthan applies in full force to the facts of the present case. Here, a direct causal connection between the act of the accused and the death was established. The injuries were the direct cause of the death. No secondary factor such as gangrene, tetanus etc., supervened.

There was no doubt whatever that the beating was premeditated and calculated. Just as in Anda case, here also, the aim of the assailants was to smash the arms and legs of the deceased, and they succeeded in that design, causing no less than 19 injuries, including fractures of most of the bones of

the legs and the arms While in Anda case, the sticks used by the assailants were not specially dangerous, in the instant case they were unusually heavy, lethal weapons. All these acts of the accused were preplanned and intentional, which, considered objectively in the light of the medical evidence, were sufficient in the ordinary course of nature to cause death. The mere fact that the beating was designedly confined by the assailants to the legs and arms, or that none of the multiple injuries inflicted was individually sufficient in the ordinary course of nature to cause death, will not exclude the application of clause thirdly of Section 300. The expression "bodily injury" in clause thirdly includes also its plural, so that the clause would cover a case where all the injuries intentionally caused by the accused are cumulatively sufficient to cause the death in the ordinary course of nature, even if none of those injuries individually measures upto such sufficiency. The sufficiency spoken of in this clause, as already noticed, is the high probability of death in the ordinary course of nature, and if such sufficiency exists and death is caused and the injury causing it is intentional, the case would fall under clause thirdly of Section 300. All the conditions which are a prerequisite for the applicability of this clause have been established and the offence committed by the accused, in the instant case was "murder".

40. For all the foregoing reasons, we are of opinion that the High Court was in error in altering the conviction of the accused-respondent from one under Sections 302, 302/34, to that under Section 304, Part II of the of the Penal Code.

Accordingly, we allow this appeal and restore the order of the trial court convicting the accused (Respondent 2 herein) for the offence of murder, with a sentence of imprisonment for life. Respondent 2, if he is not already in jail, shall be arrested and committed to prison to serve out the sentence inflicted on him." Reference can also be made to Anda & Ors. v. State of Rajasthan [AIR 1996 SC 148].

22. The case before us is quite similar to the case of Rayavarapu Punnayya (supra). The cumulative effect of all the injuries was obviously known to each of the accused, i.e., all the injuries inflicted were bound to result in the death of the deceased which, in fact, they intended. Furthermore, the doctor, PW14, had opined that the deceased had died because of multiple injuries and fracture on the vital organs, due to shock and haemorrhage. In other words, even as per the medical evidence, the injuries were caused on the vital parts of the body of the deceased.

23. For these reasons, we are unable to accept the contention raised on behalf of the appellants that this is a case where the Court should exercise its discretion to alter the offence to one under Section 304 Part II or Section 326 IPC from that under Section 302 IPC. We also find the submission of the learned counsel for the appellants to be without merit that accused Gokul alone is liable to be convicted, if at all, under Section 302 IPC and all other accused should be acquitted. We reject this contention in light of the discussion above and the fact that all these accused have been specifically implicated by PW1 and PW2, the Investigating Officer, PW26 and the medical evidence.

24. Having found no substance in the pleas raised by the learned counsel for the appellants, we hereby dismiss the appeal.

.....J. [Swatanter Kumar] .....J. [Ranjan Gogoi] New Delhi May 10, 2012