The State Of Rajasthan vs Leela Ram @ Leela Dhar on 13 December, 2018

Equivalent citations: AIRONLINE 2018 SC 956, 2019 (13) SCC 131, (2019) 196 ALLINDCAS 265, (2019) 1 ALD(CRL) 607, (2019) 1 SCALE 544, (2019) 2 ALLCRILR 505, (2019) 73 OCR 801

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Bench: M R Shah, Dhananjaya Y Chandrachud

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1441 OF 2013

STATE OF RAJASTHAN ... APPELLANT(S)

VS.

LEELA RAM @ LEELA DHAR ... RESPONDENT(S)

JUDGMENT

DR DHANANJAYA Y CHANDRACHUD, J.

1 This appeal arises from a judgment of a Division Bench of the High Court of Judicature for Rajasthan dated 13 August 2008. The High Court, while allowing the appeal filed by the respondent, convicted him under Section 304 Part-II of the Indian Penal Code ('Penal Code') instead of Section 302. The High Court sentenced the respondent to the period which was already undergone, stated to have been approximately five years and five months. The State is in appeal against the decision. 2 A First Information Report was lodged by Satya Narayan Swami (PW-2) at Singhana (Rajasthan), that at about 6.30 p.m. on 27 February 2003, the deceased-Ram Kumwar Swami - was proceeding for

some work at a chakki. While he was passing by the hand pump near the house of Sriram Swami, three persons - Rajesh, Jagdish and Leela Ram (the respondent herein) attacked the deceased and caused serious injuries to him. The case of the prosecution is that the respondent inflicted an axe injury on the skull of the deceased which was the cause of death. Rajesh, Jagdish and the respondent were tried for offences under Sections 341, 323, 336 and 302, read with Section 34 of the Penal Code. The case of the prosecution rested principally on the evidence of PW-1 Basanti Devi, the complainant PW-2 Satya Narayan Swami, PW-3 Nathu Ram and PW-4 Gyarsi Lal. PW-1, PW-2, PW-3 and PW-4 were all eye- witnesses to the incident. PW-4 is also an injured witness. 3 The cause of death, as deposed to by PW-5 Dr. Hari Singh Gothwal, was the injury which was sustained on the skull by the deceased. While conducting the post- mortem, PW-5 observed the following injury on the body of the deceased:

> "Injury No.1 :- Crush injury 10 cm x 0.5 cm x depth of bone in the middle of the skull. The left eye was closed as an impact of this injury. The injury was caused with the help of sharp edged weapon. The injury was caused within the duration of six hours."

4 PW-4 Gyarsi Lal had also sustained the following injuries :

> "(1) Contusion 5x3 cm in the lower region of left thigh.
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> (2) Abrasion and deformity 1x0.5 cm in the lower region of the right forearm."

5 The Trial Court believed the depositions of PW-1, PW-2, PW-3 and PW-4. Adverting to the evidence of PW-2, the Trial Court held that the accused had launched an assault on his brother with an intention to grab the possession of his land. All the above eye-witnesses stated that the respondent-Leela Ram had attacked the deceased with an axe on the skull. PW-5 stated that the injury on the skull was the cause of death and was sufficient to cause death in the ordinary course. Besides the ocular evidence of PW-1 to PW-4, the medical evidence and the deposition of PW-5, the prosecution relied on the recovery of a blood stained axe at the behest of the respondent. The axe was recovered vide seizure memo Exh. P-18. The Trial Court convicted Leela Ram for the offences under Sections 341, 323 and 302 of the Penal Code. He was, however, acquitted of the offence under Section 336. Rajesh and Jagdish were acquitted by the Trial Court.

6 Criminal Appeal No.580/2005 was filed by the respondent against the judgment of conviction. A criminal revision, being Criminal Revision Petition No.958/2005, was filed by the complainant against the acquittal of the two co-accused. 7 The High Court by its judgment dated 13 August 2008, allowed the appeal of the respondent in part and convicted him of an offence under Section 304 Part-II of the Penal Code. In coming to this conclusion, the High Court adverted to the following circumstances, which in its view emerged from the evidence adduced by the prosecution:

> “(i) Prosecution is able to establish that appellant inflicted injury with blunt object on the head of the deceased.

(ii) Injury on head attributed to appellant gets corroboration from the post mortem report.

(iii) The death was caused without premeditation and the appellant did not act in a cruel or unusual manner. Incident appears to have occurred on a spur of moment. Something sparked suddenly and appellant inflicted single blow on the head of Ram Kumar.

(iv) There is no trustworthy evidence on record to prove that co-accused Rajesh Kumar and Jagdish Prasad had shared common intention with the appellant."

8 The revision filed by the complainant was dismissed. 9 Assailing the judgment of the High Court, learned counsel appearing on behalf of the State of Rajasthan submits that :

(i) The consistent account of four eye-witnesses - PW-1, PW-2, PW-3 and PW-4 indicates that it was the respondent who had inflicted an injury with an axe on a vital part of the body of the deceased, namely, his skull;

(ii) The medical evidence in the form of the post-mortem report and the deposition of PW-5 establishes beyond doubt that the death was caused as a result of the injury sustained because of a sharp-edged weapon; and

(iii) The fact that the injury was caused by the axe is also corroborated by its recovery vide seizure memo Exh.P-18 and by the FSL report which reported blood stains on the axe.

Learned counsel submits that the finding of the High Court that an incident took place without pre-meditation, so as to bring the case within the Exception 4 of Section 300 of the Penal Code, is based on no evidence whatsoever. On the contrary, the evidence clearly establishes that the respondent was armed with a lethal weapon which was used to inflict a serious injury on a vital part of the body of the deceased. Learned counsel submits that the mere fact that there was a single blow, is not a circumstance which would warrant the conviction under Section 302 being altered to one under Section 304 Part-II. On the contrary, learned counsel submitted that the case would fall under Section 300 (Fourthly) since the act of the respondent was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

10 On the other hand, learned counsel appearing on behalf of the respondent submitted that the case of the prosecution has been disbelieved by the Trial Court in regard to the two co-accused - Rajesh and Jagdish. According to this submission, the prosecution had sought to adduce evidence to the effect that a lathi had been used in the course of the incident by the two co-accused. This was not accepted by the Trial Court. Hence, emphasis was placed on the evidence of PW-5 that the injury could have been caused due to a blunt object. The judgment of the High Court convicting the respondent under 304 Part-II, it was urged, ought not to be disturbed. 11 In assessing the rival submissions, it would be necessary to advert to the evidence of the four eye-witnesses who have

been believed, both by the Trial Court and by the High Court, insofar as the complicity of the respondent is concerned. PW-2, who is the complainant, has deposed to the genesis of the incident. According to him, when the deceased was passing by the house of Sri Ram Swamy, he was seized upon by the respondent (together with the two co-accused). Leela Ram, the respondent, inflicted an axe blow on the skull of the deceased. The evidence of PW-2 on the involvement of the respondent finds abundant corroboration in the deposition of PW-1 Basanti Devi, the complainant PW-2 Satya Narayan Swami, PW-3 Nathu Ram and PW-4 Gyarsi Lal. PW-4, is an injured eye-witness. His presence is hence established in any event beyond all reasonable doubt. From the evidence of these witnesses coupled with the medical evidence, it has emerged that the respondent inflicted an axe blow in the centre of the skull of the deceased. The evidence of PW-5 was clear in indicating that the injury was caused with the help of a sharp edged weapon. PW-5 also stated that the cranium and spinal cord and the parietal bone had been fractured. The injury on the skull, lead to coma and was the cause of death. Coupled with these circumstances is the recovery of the weapon of offence which was found to be blood stained. On the basis of this unimpeachable evidence, it is clear that : (i) death was caused as a result of the injury inflicted upon the skull of the deceased by the use of the axe; and (ii) the respondent was the author of the injury and wielded the axe, as a result of which death was the immediate and natural cause.

12 In Mahesh Balmiki v State of M P1, this Court while deciding the question of whether a single blow with a knife on the chest of the deceased would attract Section 302, held thus:

> "9. ... there is no principle that in all cases of a single blow Section 302 IPC is not attracted. A single blow may, in some cases, entail conviction under Section 302 IPC, in some cases under Section 304 IPC and in some other cases under Section 326 IPC. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon (2000) 1 SCC 319 used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him.

In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had the intention to kill the deceased. In any event, he can safely be attributed the knowledge that the knife-blow given by him was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death." In Hukam Chand v State of Haryana2, this Court while dealing with the question of whether a blow on the skull with a pharsa would attract a conviction under Section 302, held thus :

> "15. Coming back to the issue raised as regards the invocation of Section 304 Part II IPC, strong reliance was placed on a decision of this Court in Pularu v. State of M.P.[1993 SCC (Cri) 1023 : AIR 1993 SC 1487] , wherein K. Jayachandra Reddy, J., as His Lordship then was, speaking for the Bench in para 7 of the Report stated: [SCC (Cri) p. 1025, para 7] "7. That takes us to the nature of the offence. All the three

> eyewitnesses have spoken that the appellant dealt only one blow with the agricultural implement. Having regard to the time and the surrounding circumstances it is difficult to hold that he intended to cause the death of the deceased particularly, when he was not armed with any deadly weapon as such. As an agriculturist he must have been having a tabbal in his hands and if in those circumstances he dealt a single blow it is difficult to convict him by invoking clause 1stly or 3rdly of Section 300 IPC. It cannot be said that he intended to cause that particular injury which unfortunately resulted in the fracture of bones. Therefore, the offence committed by him would be one amounting to culpable homicide punishable under Section 304 Part II IPC...
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> 16. While it is true that there was only one blow but the medical evidence on record definitely indicates that the severity of the blow was such that it was sufficient for causing (2002) 8 SCC 421 death. In Pularu [1993 SCC (Cri) 1023 : AIR 1993 SC 1487] the appellant dealt only one blow with an agricultural implement. This Court having regard to the fact that Pularu was an agriculturist came to a conclusion that question of there being any intent to cause death of the deceased would not arise since he was not armed with any deadly weapon as such. Presently, however, the situation is slightly different.

Hukam Chand was in the house. He was called in and he arrived at the scene and place of occurrence with a pharsa which by all means is a deadly weapon and it is this pharsa which was used to hit the deceased at his head resulting in his immediate collapse and subsequent death. The story set up by the appellant, as noticed hereinbefore belies the incident and cannot but be ascribed to be a totally fabricated one. Injuries suffered by Udai Chand, the deceased, cannot be said to be inflicted as a matter of chance while grappling with each other. The nature of the injuries, as noticed hereinbefore, depicts it otherwise. If that be the case which stands to reason that there was in fact a deliberate pharsa- blow on the deceased, then and in that event, a simple question by itself would negate the plea of the accused, namely, as to the reason why Hukam Chand arrived at the place of occurrence with a pharsa in his hand. The factum of bringing in the pharsa at the place of occurrence from his house when he was sent for cannot be ignored. It definitely indicates the intent to use it and thereby cause death." In Dhirajbhai Gorakhbhai Nayak v State of Gujarat3, this Court while discussing the ingredients of the Exception 4 of Section 300 IPC, held thus:

> "11. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding (2003) 9 SCC 322 that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may

have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"." In Pulicherla Nagaraju v State of A P4, this Court while deciding whether a case falls under Section 302 or 304 Part I of 304 Part II, held thus :

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a (2006) 11 SCC 444 fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention.

There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i)

nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may." In Singapagu Anjaiah v State of A P5, this Court while deciding the question of whether a blow on the skull of the deceased with a crowbar would attract Section 302, held thus :

> "16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which (2010) 9 SCC 799 had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased." In Som Raj v State of H P6, this Court while deciding the question of whether a single blow on the skull with a darat would attract conviction under Section 302, held thus :
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> "16.2. From the statements of Dr Suman Saxena (PW 4) and Dr B.M. Gupta (PW 5), the nature of injuries caused to the deceased has been brought out. A perusal thereof would leave no room for doubt that the appellant-accused had chosen the sharp side of the darat and not the blunt side. The ferocity with which the aforesaid blow was struck clearly emerges from the fact that the blow resulted in cutting through the skull of the deceased and caused a hole therein, resulting in exposing the brain tissue. When a blow with a deadly weapon is struck with ferocity, it is apparent that the assailant intends to cause bodily injury of a nature which he knows is so imminently dangerous, that it must in all probability cause death.
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> 16.3. The place where the blow was struck (at the back of the head of the deceased) by the appellant-accused, also leads to the same inference.
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> 16.4. It is not the case of the appellant-accused that the occurrence arose out of a sudden quarrel. It is also not his case that the blow was struck in the heat of the moment. It is not even his case that he had retaliated as a consequence of provocation at the hands of the deceased. He has therefore no excuse for such an extreme act.

> 16.5. Another material fact is the relationship between the parties. The appellant-accused was an uncle to the deceased. In such circumstances, there is hardly any cause to doubt the intent and knowledge of the appellant-accused.
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> 16.6. Besides the aforesaid factual position, it would be incorrect to treat the instant incident as one wherein a single blow had been inflicted by the accused. As many as five witnesses of the occurrence have stated in unison, that the appellant-accused was in the process of inflicting a second blow on the deceased, when they caught hold of him, (2013) 14 SCC 246 whereupon one of them (Mohinder Singh, PW 6) snatched the darat from the appellant-accused, and threw it away. In such a situation, it would be improper to treat/determine the culpability of the appellant-accused by assuming that he had inflicted only one injury on the deceased.

16.7. Keeping in mind the parameters of the judgments referred to by the learned counsel for the rival parties (which have been extracted above), we have no doubt in our mind that the appellant-accused must be deemed to have committed the offence of "culpable homicide amounting to murder" under Section 302 of the Penal Code, as the appellant-accused Som Raj had struck the darat-blow with the intention of causing such bodily injury, which he knew was so imminently dangerous, that it would in all probability cause the death of Sardari Lal. Having recorded the aforesaid conclusion, we are satisfied, that the appellant-accused was justifiably convicted for the offence under Section 302 of the Penal Code and sentenced to undergo rigorous imprisonment for life, as also, to pay a fine of Rs 10,000 (and in default, to undergo further simple imprisonment for a period of one year).

17. In view of our aforesaid conclusions, the instant appeal being devoid of merit, is dismissed." 13 The High Court has, in our view, proceeded entirely on the basis of surmise in opining that the death was caused without pre-meditation and on the spur of the moment. In arriving at that inference, the High Court has evidently ignored the evidence, bearing upon the nature of the incident, the consistent account that it was the respondent who had inflicted the blow, the weapon of offence and the vital part of the body on which the injury was inflicted. The fact that the co-accused, Rajesh and Jagdish, have been acquitted by the Trial Court, is in our view no reason to doubt the testimony of all the eye-witnesses which implicated the respondent. The death was attributable to the assault by the respondent on the deceased, during the course of the incident. Having regard to the above facts and circumstances of the case, it is evident that the injury which was caused to the deceased was [within the meaning of Section 300 (Fourthly)] of a nature that the person committing the act knew that it was so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death.

14 In seeking to place the facts of the present case within the Exception 4, the High Court has dwelt on whether the incident took place without pre-meditation. Exception 4 is extracted below :

> "Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual

manner."

15 Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are : (i) that the act was committed without pre- meditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner.

16 While learned counsel appearing on behalf of the respondent sought to place reliance on the statement of the respondent under Section 313 of the Code of Criminal Procedure, 1973, that it was the deceased who came to their house and started pelting stones, it is evident that this defence has no basis in the evidence. Above all, the deceased was unarmed when he was seized upon and assaulted by the respondent. 17 In the above circumstances, we are affirmatively of the view that the judgment of the High Court is manifestly perverse and is totally contrary to the evidence on the record. The interference of this Court is warranted to obviate a complete failure or miscarriage of justice.

18 We allow the appeal and while setting aside the judgment of the High Court, restore the conviction of the respondent by the Trial Court under Section 302 of the Penal Code. The respondent is sentenced to suffer imprisonment for life. The respondent shall forthwith surrender to his sentence. A copy of this order shall be forwarded by the Registry to the Chief Judicial Magistrate of the area concerned to secure compliance.

19 Pending application, if any, shall stand disposed of.

……..……..……J. [DR DHANANJAYA Y CHANDRACHUD]
.....J. [M R SHAH] New Delhi;

13th December, 2018.