

State vs Karna @ Bachkanda on 23 December, 2024

FIR NO. 511/2020
PS: SAGARPUR

IN THE COURT OF MS. KIRAN GUPTA: ADDITIONAL
SESSIONS JUDGE - 04 : NEW DELHI DISTRICT :
PATIALA HOUSE COURTS : NEW DELHI

DLND01-005382-2020

FIR NO. 511/2020
PS: SAGARPUR
u/s 302/34 IPC

STATE VS. KARAN @ BACHKANDA

(a) SC No. 231/2020
(b) Date of offence 27.05.2020

State Vs. Karan @ Bachkanda

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FIR NO. 511/2020
PS: SAGARPUR

(c) Accused

Karan @ Bachkanda
S/o Munna Lal
R/o RZ-22/234,
Dayal Park, Near Masjid West
Sagarpur, New Delhi

- | | | |
|-----|--|--|
| d) | Offence | u/s 302/34 IPC |
| (e) | Plea of accused | Pleaded not guilty |
| (f) | Final Order | The accused Karan @ Bachkanda
is convicted for the offence under
S. 304 Part II IPC. |
| (g) | Date of institution | 24.08.2020 |
| (h) | Date of conclusion
of final arguments | 19.12.2024 |
| (I) | Date of judgment | 23.12.2024 |

State Vs. Karan @ Bachkanda

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PS: SAGARPUR

JUDGMENT

1. The accused is facing trial for the offence u/s. 302/34 IPC. The co-accused is a CCL. He is facing trial before JJB.

BRIEF FACTS

2. The case of prosecution is that on 27.05.2020, DD no. 57A and 01A were received at PS Sagarpur. On receipt of the said DDs, SI Surender alongwith Ct. Prakash went to Shakuntala Hospital, where they collected MLC No. 532/2020 of patient Krishan Yadav. As per the MLC, he was brought dead. They met his relatives Kanhaiya Singh and neighbor Rahul, who informed that two boys namely

Karan and CCL 'D' had hit Krishan with brick on his face / head due to which he suffered injuries and expired. The police recorded the statement of Kanhaiya Singh and Rahul. The police also recorded statement of other witnesses. The accused Karan @ Bachkanda was arrested and the co-accused 'D' was found CCL. After investigation, chargesheet for Digitally signed by Kiran Kiran Gupta Date:

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the offence under s. 302/34 IPC was filed against accused Karan in the present court and against the CCL before the concerned JJB.

CHARGE

3. After hearing arguments on the point of charge and finding a prima facie case, charge for the offence u/s 302/34 IPC was framed against accused Karan to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE ADMITTED DOCUMENTS A). FIR No. 511/2020 dated 28.05.2020 as Ex.P1, Certificate under S. 65-B IEA as Ex.P2, B). MLC No. 3952 dated 28.05.2020 of DDU Hospital as Ex.P3, Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:42:21 2024.12.23 +0530 PS: SAGARPUR C). PM report of deceased as Ex.P4 and subsequent opinion as Ex.P5.

4. Prosecution in order to prove its case has examined following 18 witnesses. The witnesses so examined have been categorized as per their roles as follows:

POLICE WITNESSES:

A. PW-5 ASI Satpal being the incharge of Mobile Crime Team, proved his detailed report bearing No. 431/2020 as Ex.PW5/A. B. PW6 Ct. Prakash & PW18 SI Surender Kumar PW-6 Ct. Prakash deposed that he was posted at PS Sagarpur and was on night emergency duty from 08:00 pm to 08:00 am with PW18 SI Surender in the night of 27/28.05.2020. On that night, PW18 SI Surender received a call, on which they both reached at Shakuntala hospital, where they found patient Digitally signed by Kiran Kiran Gupta Date:

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Krishan Yadav was declared brought dead. In the hospital, they met Kanhiya Lal and Rahul. During inquiry, they told them that two boys namely Karan and JCL 'D' had caused injury on forehead of Krishan with a brick. Then the body was shifted to DDU hospital and after post-mortem body was handed over to family members.

PW-18 further deposed that he alongwith eye witness reached at the spot. He recorded the detailed statement of Kanhiya Singh Ex.PW1/A, prepared the tehrir Ex.PW18/A and got the FIR registered through PW-9 HC Kulwant. That at the instance of complainant, he seized from the spot, one brick piece which was used by the assailants to cause injury to deceased vide memo Ex.PW1/C alongwith other brick which was thrown by them on the house of the deceased vide memo Ex.PW1/D. C. PW-7 ASI Radhe Shyam deposed that on 28.05.2020 at 00:27 hours, he received information vide DD No. 1A and same was marked to SI Surrender. He proved certified copy of DD No. 1A as Ex.PW7/A. Digitally signed by Kiran Kiran Gupta
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D. PW-8 Ct. Mohit deposed that on 26.06.2020, he took

the exhibits from Malkhana to DDU hospital for subsequent opinion. Thereafter, doctor handed over him subsequent opinion alongwith sealed case property. He handed over the subsequent opinion to the IO and deposited the case property in the malkhana.

E. PW9 HC Kulwant deposed that on 28.05.2020, he alongwith SHO and ATO went to the place of incident. PW18 SI Surrender was present there who handed over him rukka for registration of FIR. Then he went to PS and got the FIR registered and he came back to the spot and handed over the same to the IO.

F. PW-10 ASI Jai Bhagwan, Asst. Draughtsman Mapping Section proved the scaled site plan of the spot as Ex.PW10/A. Digitally signed by Kiran Kiran Gupta Date:

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G. PW-11 HC Anil Photographer Mobile Crime Team

proved the photographs of the spot as Ex.PW11/A and Ex.PW11/B. He proved the CD of photographs as Ex.PW11/C and certificate u/s 65-B IEA as Ex.PW11/D. H. PW-12 W/Ct. Vinita deposed that on 27.05.2020, at 11:31 pm, a call was received from Shakuntala Nursing Home that one person aged 24 years was admitted by one Rahul and doctor declared him dead. The said information was entered by her in the PCR form. She proved the PCR form as Ex.PW12/A. I. PW13 SI Ashok Kumar deposed that on 28.05.2020, he joined the investigation with Inspector Joginder Singh. He went to Buddha Jayanti Park, Sagarpur, Delhi where he met Inspector Joginder Singh, SI Surender and JCL 'D'. He deposed that IO in his presence had recorded the version of JCL 'D'. He deposed that as per the version of JCL 'D', he had admitted the commission of offence on 27.05.2020 and disclosed that he had thrown stones towards the house of Krishan. When Krishan came out of his house, Karan hit him with broken brick on the Digitally signed by Kiran Kiran Gupta Date:

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head of Krishan. He proved the apprehension memo of CCL 'D' as Mark B. He deposed that CCL 'D' handed over light black color t-shirt to the IO which was seized by the IO. He produced CCL 'D' before JJB-2, Delhi.

J. PW-14 Sh. Kamlesh Singh, Asst. Ahlmad, JJB-2 proved the case file of FIR No. 101/2019, PS Sagarpur regarding age related order of JCL 'D' dated 01.05.2019. He proved the order dated 01.05.2019 as Ex.PW14/B. K. PW-15 Insp. Sube Singh deposed that on 04.07.2020, investigation of the present case was handed over to him. He prepared the charge-sheet and also sent the exhibits to FSL for forensic

examination. He proved the PCR forms and diary entries as Ex.PW15/A1 to Ex.PW15/A5. He further deposed that on receipt of FSL result, he prepared the supplementary charge- sheet on 08.03.2021 and filed the same in court. He proved supplementary charge-sheet as Ex.PW15/B. Digitally signed by Kiran Kiran Gupta
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L. PW16 Inspector Joginder Singh is the IO of the case.

He proved the entire investigation. He deposed that when he reached the spot, he found blood on the street and a piece of brick was lying near the blood stains. The brick was also having blood stains on it. The mother of the deceased was present at the spot and she informed him that two boys namely CCL 'D' and accused Karan @ Bachkanda had hit her son (deceased) with the brick at around 11 pm in the night. He further deposed that he got the crime scene photographed and got the FIR lodged. PW16 and PW18, lifted the various exhibits from the spot i.e. blood in gauze, brick and another piece of brick lying in the street near the house of deceased (it was informed that the said piece of brick was thrown on the door of the house of the deceased) vide memo Ex.PW1/B to Ex.PW1/D. They also seized the blood stained t-shirts of Kanhiya Lal and Rahul vide memos Ex.PW1/E and Ex.PW4/A. He proved the site plan Ex.PW16/A which was prepared at the instance of Kanhiya Lal; the letter Ex.PW16/B for conducting the postmortem of deceased; seizure memo containing the clothes of the deceased and blood in gauze as Ex.PW16/C. Digitally signed by Kiran Kiran Date:

Gupta Gupta 2024.12.23 12:43:05 +0530 PS: SAGARPUR PW-16 and PW18 deposed that they arrested accused Karan from Shivpuri, Kalhad, Sagarpur, where he was hiding vide arrest memo Ex.PW16/D; conducted his personal search vide memo Ex.PW16/E and recorded his disclosure statement Ex.PW16/F. They prepared the pointing out memo of the place of incident vide memo Ex.PW16/G. The blood stained t-shirt of the CCL was seized vide memo Ex.PW16/H. PW16 proved the application for subsequent opinion as Ex.PW16/I regarding the weapon of offence Ex.P5. He proved the case property as Ex.PW1/P1 to Ex.PW1/P6.

SCIENTIFIC AND MEDICAL EVIDENCE A. PW-3 Dr. B.P. Dhami, Medical Officer, Shakuntala Nursing Home, proved the MLC bearing No. 532/2020 of Krishan Yadav as Ex.PW3/A. He deposed that during examination, he found one large 6-7 cm deep injury on the forehead, nasal bleeding and depth was approximately 0.8 to 01 cm and

the nature of injury was opined as blunt.

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B. PW-17 Dr. Naresh Kumar, Sr. Scientific Officer

(Biology) proved his report as Ex.PW17/A. MATERIAL WITNESSES A. PW-1 Kanhiya Lal Yadav deposed that on 27.05.2020 at about 9 pm, he alongwith his wife and daughter had gone to his in-laws house at Durga Park, Gali No. 10, Dabri Extension. At around 11 pm, when they were having dinner, he and his brother-in-law Krishan Yadav (deceased) heard noise of someone hitting the main gate with brick (stone). His brother-in-

law Krishan Yadav went outside. After 5-10 minutes, he also came out and saw the accused Karan with one another person (JCL) were quarreling with his brother-in-law. He correctly identified accused Karan in the court. He further deposed that when he alongwith other public persons tried to pacify them all, they did not understand and in the meantime, another person caught hold of his brother-in-law and accused Karan hit a piece of brick (stone) on the forehead of his brother-in-law and blood started oozing out from his forehead. He further deposed that his Kiran by Kiran Gupta Gupta 12:43:17 +0530 PS: SAGARPUR brother-in-law had already called one of his friends namely Rahul, who also reached the spot on scooty. His brother-in-law also informed him about the name of accused persons. Thereafter, they took him on scooty of Rahul to Shakuntala Hospital where he was declared brought dead. Police reached the hospital and the body of deceased was sent to DDU mortuary. The police recorded his statement Ex.PW1/A. He further deposed that thereafter he was brought back to the spot by the police. IO prepared the site plan of the spot & lifted blood in gauze vide seizure memo Ex.PW1/B. The police also seized the piece of brick from the road side and one piece of brick from near the gate of the house vide memos Ex.PW1/C and Ex.PW1/D. The police seized his blood-stained t-shirt vide memo Ex.PW1/E and blood-stained t-shirt of Rahul was also seized by the IO. That on 28.05.2020, he alongwith his mother in law, Fulmati Devi identified the dead body of his brother-in-law Krishan Yadav before the postmortem vide identification statement Ex.PW1/F. He proved the statement of receiving the body as Ex.PW1/G. He identified the case

property i.e. the blood gauze of deceased Ex.PW1/P1; the brick / stone piece with which Digitally signed by Kiran Kiran Gupta Date:

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his brother-in-law was hit on his forehead as Ex.PW1/P2; piece of brick / stone lying in the street near the house as Ex.PW1/P3; his t-shirt as Ex.PW1/P4; t-shirt of Rahul as Ex.PW1/P5.

B. PW-2 Phoolmati Devi deposed that around two years back, she alongwith her family and her son-in-law Kanhiya was present in the house and they were having dinner. At about 11:00 pm, they heard the noise of pelting of stones on the gate upon which, her son Krishan went to open the door and he saw two boys were running in the street. Her son also chased them and apprehended them. In the meantime, her son-in-law also went there and while the said boys were quarreling with her son, her son-in-law tried to intervene between them. In the meantime, one of the boys, hit on the head of her son Krishan with a stone, due to which, her son sustained injury and he fell down. Her son-in-law alongwith one another person took her son Krishan to the hospital and thereafter they came to know that her son has expired. She further deposed that at the time of incident, she was also present in the street. She identified her signatures on the Digitally signed by Kiran Kiran Gupta Date:

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identification statement Ex.PW2/A and memo Ex.PW1/F, vide which the body of deceased was handed over to her.

C. PW-4 Sh. Rahul Chauhan deposed that around two and a half years ago, when he came out of his house, he saw few persons had gathered in the gali. He saw his neighbor namely Krishan Yadav was lying on the ground and blood was oozing from his forehead. He alongwith brother-in-law of Krishan took him to Shakuntala Hospital where doctor declared him brought dead. Thereafter, police met him and he handed over his blood- stained t-shirt to them. The same was seized by the IO vide seizure memo Ex.PW4/A. Since, he resiled from his earlier statement, he was cross examined in

detailed by ld. Addl. PP. He denied all the suggestions given by ld. Addl. PP for the State.

STATEMENT OF ACCUSED

5. After completion of prosecution evidence, all the incriminating material as appearing in the evidence was put to the accused under Section 313 Cr.PC. He pleaded innocence and Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:43:36 2024.12.23 +0530 PS: SAGARPUR stated he has been falsely implicated in this case. He stated that it was COVID times and he was going back to home with the grocery items. However, he had seen 4-5 people quarreling. He just took a glance of it and went back home. Lateron, he was falsely arrested by the IO and subsequently implicated in the present case. He did not lead any evidence in his defence ARGUMENTS ON BEHALF OF LD. ADDL PP FOR THE STATE

6. It is argued by Ld. Ld. Addl. PP for the State that the material witnesses of prosecution are PW1 and PW2. Both these witnesses have supported the case of prosecution and identified the accused as the person who had inflicted injury on the head of the deceased causing his death. It is submitted that both these witnesses have categorically deposed that the accused hit a piece of brick on the forehead of Krishan and he was declared brought dead by the hospital authorities. It is submitted that even as per the postmortem report, the cause of death is due to cranio cerebral injury caused by blunt forceful impact upon the head by Digitally signed by Kiran Kiran Gupta Date:

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throwing / hitting by heavy object like stone, bricks etc. and that the injury sustained on the head was sufficient to cause death in the ordinary course of nature. It is further submitted that the accused alongwith CCL 'D' has committed murder of Krishan. It is prayed that since the prosecution has proved the case beyond pales of reasonable doubt against the accused, he be convicted for the offence U/s.302/34 IPC.

ARGUMENTS ON BEHALF OF LD. DEFENCE COUNSEL

7. It is argued by Ld. Defence Counsel that the material witnesses of prosecution i.e. PW1 and PW2 are related witnesses, they are interested witnesses, hence, much reliance cannot be placed upon their testimony. It is further argued that as per the prosecution, a lot of public persons were present at the spot, however, no independent witness has been cited or examined by the prosecution to prove the offence. It is further submitted that the other public witness PW4 Rahul Chauhan has not

supported the case of the prosecution. As per the testimony of PW1, Krishan had called Rahul by calling him on his phone, however, Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:43:48 2024.12.23 +0530 PS: SAGARPUR no call record of Rahul has been filed by the prosecution to prove that he came to the spot after receiving the call from Krishan. It is further submitted that there are material inconsistencies in the testimony of PW1 and PW2 regarding the distance of the place of incident. It is further argued that PW2 has not identified the accused in the court. It is argued that the other witnesses are formal in nature. It is further argued that the prosecution has failed to prove that the accused had the intention or the motive to cause murder of Krishan. It is submitted that only one injury was caused on the forehead of the deceased. It is prayed that since the prosecution has failed to prove any offence against the accused, he be acquitted in the present case. He in support of his arguments has relied upon following judgments:

A. Ram Singh vs. State of Uttar Pradesh (2024) 4 SCC 208. B. Mallapa & Ors. vs. State of Karnataka Criminal Appeal C. Shishpal Alias Shishu vs. State (NCT of Delhi) (2022) 9 SCC 782 D. Ajmal vs. The State of Kerala MANU/SC/0872/2022 E. Rajaram vs. State of NCT of Delhi 2024 SCC Online Del F. State of Uttar Pradesh vs. Rajvir (2007) 15 SCC 545 Kiran by Kiran Gupta Gupta 12:43:54 +0530 PS: SAGARPUR G. Ankush Shivaji Gaikwad vs. State of Maharashtra (2013) 6 SCC 770
ANALYSIS AND FINDINGS

8. Heard arguments on behalf of Id. Addl. PP for the State, Id. Defence counsel and perused the complete record file. The accused is facing trial for the offence u/S. 302/34 IPC. The essential ingredients of the offence U/s. 302/34 IPC are as follows :

1. Death of a human being was caused;
2. Such death was caused by or in consequence of the act of the accused;
3. Such act was done;

a. with the intention of causing death, or b. that the accused knew it to be likely to cause death, or c. that the injury was sufficient in the ordinary course of nature to cause death.

9. The prosecution in order to prove the offence U/s.302 IPC against the accused has to prove :

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- A. The presence of accused on the spot at the time of incident.
- B. His identification by the eye witness.
- C. The injuries caused to the deceased and

medical opinion as regards cause of death. D. The motive of the accused in causing death of deceased.

CAUSE OF DEATH

10. Now, coming to the cause of death. The prosecution in order to prove the cause of death has relied upon the postmortem report of deceased as Ex.P4 and subsequent opinion as Ex.P5. Both these documents are not disputed by the accused. As per the Ex.P4 / postmortem report, the cause of death is due to cranio cerebral injury (head injury) caused by blunt forceful impact upon the head by throwing / hitting by heavy object like stone, bricks etc. The injury sustained on the head was sufficient to cause death in ordinary course of nature and the manner of death is homicide. As per the subsequent opinion Ex.P5, it is opined that the head injury (external injury no. 1) could have Digitally signed by Kiran Kiran Gupta Date:

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been inflicted by produced weapon of offence i.e. one piece of brick.

11. The cause of death is cranio cerebral damage consequent upon blunt force impact on the head. As per the subsequent opinion, the injuries could be possible with the produced weapon of offence i.e. one piece of brick. Thus, deceased Krishan expired due to cranio cerebral damage consequent upon blunt force impact on the head which is sufficient to cause death in the ordinary course of nature.

12. The case of prosecution is based on the ocular & scientific evidence. PW1 and PW2 are the eye witnesses of the incident. It had been argued by the Ld Defence Counsel that no reliance can be placed on the testimony of PW1 & PW2 as they are interested witnesses. It is relevant to discuss herein the term "interested witness". The term "interested" postulates that the person concerned has some direct or indirect interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:44:12 2024.12.23 +0530 PS: SAGARPUR oblique motive. It is settled position that an interested witness is not necessarily an unreliable witness and partisanship by itself is not a valid ground for outrightly discarding him or rejecting his testimony at the very threshold. It is also not an invariable rule of law that interested evidence can never form the basis of conviction, unless corroborated in material particulars, by independent evidence. However, it is necessary to subject the testimony of an interested witness to a careful scrutiny and analyze it with caution, considering the strained relations and animus between the parties. Merely because PW1 and PW2 are family members of deceased, they cannot be categorized as 'interested witnesses', as no earlier acquaintance between them and accused or previous enmity has been shown for false implication.

13. It is well settled law that while appreciating the evidence of witness, the approach must be whether the evidence of a witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in Digitally signed by Kiran Kiran Date:

Gupta Gupta 2024.12.23 12:44:17 +0530 PS: SAGARPUR view the deficiencies, draw backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter should not ordinarily permit rejection of the evidence as a whole (Reliance placed on the judgment of Hon'ble Supreme Court of India in State of UP vs Krishan Master & Ors, decided on 03/08/2010 in Cr Appeal No. 1180/2004).

14. Now coming to the testimony of material witnesses. PW1 has deposed that when he alongwith other public persons tried to pacify the accused and the JCL 'D' who were quarreling with his brother-in-law Krishan, they did not understand. In the meantime, another person caught hold of his brother-in-law and the accused hit a piece of brick (Stone) on his forehead and blood Digitally signed by Kiran Kiran Date:

Gupta Gupta 2024.12.23 12:44:23 +0530 PS: SAGARPUR started oozing. Before reaching, his brother-in-law had already made a call to one Rahul. PW4 Rahul has deposed that when he came out of the house he saw gathering of public persons in the gali. When he went there, he saw their neighbor Krishan was lying on the ground and blood was oozing out from his forehead. PW4 has not deposed anything about the incident. PW2 during her testimony deposed that when her son-in-law tried to intervene between the fight, in the meantime one of the boys hit on the head of her son with a stone, due to which her son sustained injury and he fell down. She during her cross examination identified the accused as the person who had caused the injury and deposed that she had seen the accused hitting her son. Even PW1 during his

cross examination has deposed that he had seen the crowd gathered and that his brother-in-law and the accused were fighting. He further volunteered that he had seen the accused cause injuries to his brother-in-law.

15. It is well known principle of law that reliance can be placed on the solitary statement of a witness, if the court comes to the conclusion that the said statement is true and correct Digitally signed by Kiran Kiran Gupta Date:

Gupta 2024.12.23 12:44:30 +0530 PS: SAGARPUR version of the case of the prosecution. The courts are concerned with the merits and statement of a particular witness and not with the number of witnesses examined by the prosecution. The time honoured rule of appreciating evidence is that it has to be weighed and not counted. PW1 has categorically deposed that it is the accused who had caused injury with the brick on the forehead of his brother-in-law, which caused his death. He has stood the test of cross-examination. Even PW2 during her cross- examination had identified accused as the person who had hit her son during the quarrel.

16. It had been argued by the Id. Defence Counsel that the prosecution has failed to prove that the accused had the intention or the motive to cause murder of Krishan. It is further argued that only single blow was inflicted to the injured. As per the MLC Ex.PW3/A, the victim Krishan Yadav was brought dead with history of assault. One large 6 x 7 cm deep cut injury was found on his forehead. Even as per the post mortem report Ex.P4, one incised appearing lacerated wound of size 5.5 cm x 1 cm x bone deep was found present on the mid part of the forehead. As Kiran Gupta PS: SAGARPUR per the external examination, compressed fracture of front bone of the skull with affected part of 6 cm x 4 cm with inward driving of piece of bone was found. From the MLC and postmortem report, it is evident that the deceased suffered one single external injury on his forehead which caused deep compressed fracture of his frontal bone of the skull, resulting in his death.

17. There is no straight jacket formula that a single blow on even vital part of the body would make the accused guilty of the offence culpable homicide not amounting to murder. Clause thirdly to S. 300 consists of two parts. The first part is that there was an intention to inflict the injury that is found to be present and second part that the said injury is sufficient to cause death in the ordinary course of nature. Under the first part, the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury. Whereas the second part, whether it was sufficient to caused death is a objective inquiry and it is matter of inference from the particulars of the injury. The 'intention' and 'knowledge' of the accused are subjective and invisible states of Digitally signed by Kiran Kiran Gupta Date:

Gupta 2024.12.23 12:44:53 +0530 PS: SAGARPUR mind and their existence has to be gathered from the circumstances such as the weapon used, the force used for attack, multiplicity of injuries and all other surrounding circumstances. When an act is done by a person, it is presumed that he must have been aware that certain specified harmful consequences would or could follow. But that knowledge is bare awareness and not the same thing as intention that such consequences should ensue.

As compared to 'knowledge', 'intention' requires something more than the foresight of the consequences, namely the purposeful doing of a thing to achieve a particular end.

18. In the present case, the single injury as per the postmortem report is sufficient in the ordinary course of nature to cause the death. The weapon of offence used is the stone / brick. No witness has been examined by the prosecution that the accused came to the spot with the preparation and was carrying brick or any other sharp object in his hand. As per PW1 and PW2, when they came out of the house, they saw accused and JCL 'D' were quarreling with the deceased. When PW1 alongwith other public persons tried to make them understand, Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:44:59 2024.12.23 +0530 PS: SAGARPUR accused inflicted injury with the brick on the forehead of Krishan. Despite the presence of other public persons, the prosecution has neither cited nor examined any such public person. No evidence has been lead by the prosecution to prove that the accused had any intention or motive to cause death of Krishan. The circumstances under which the accused happened to inflict the injury, it is felt that all his mental faculties could not have been roused as to form an intention to achieve the particular result.

19. In Mahesh Balmiki alias Munna Vs. State of M.P. 2000 (1) SCC 319, the Supreme Court observed as below:-

"Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. 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 used, the circumstances Digitally signed by Kiran Kiran Date:

Gupta Gupta 12:45:07 2024.12.23 +0530 PS: SAGARPUR 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."

20. The Supreme Court of India, in Criminal Appeal No. 2043 of 2023 Anbazhagan Vs. The State represented by the Inspector of Police, decided on 20.07.2023, differentiated between word 'intent' and 'knowledge' observing that intention which is a state of mind can never be precisely proved by direct evidence as a fact; it can only be deduced or inferred from other facts which are proved. The intention may be proved by res- gestae, by acts or events previous or subsequent to the incident or occurrence. The relevant consideration may include nature of weapon used, place where injury was inflicted, nature of injury, the opportunity available to the accused.

21. In Dayanand Vs. State of Haryana AIR 2008 SC 1823, it has been held as follows:

"10. The crucial question is as to which was the appropriate provision to be applied. In the scheme of the Digitally signed by Kiran Kiran Date:

Gupta Gupta 2024.12.23 12:45:14 +0530 PS: SAGARPUR IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

12. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

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13. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow

is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature to cause death" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause

(b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable"

result of the injury, having regard to the ordinary course of nature.

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14. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant and Anr. v. State of Kerala, (AIR 1966 SC 1874) is an apt illustration of this point."

22. In Ankush Shivaji Gaikwad vs. State of Maharashtra (2013) 6 SCC 770, wherein the death was caused by an iron pipe and due to exchange of hot words, the Supreme Court held that the murder would be punishable under S. 304 Part II IPC. The Court held that the nature of the injury inflicted, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted, do not suggest that the accused had the intention to kill the deceased. All that can be said is that the accused had the knowledge that the injury inflicted by him was likely to cause death of the deceased. The case would, therefore, more appropriately fall under S. 304 Part II IPC.

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23. In the present case, there is no evidence that the accused had come prepared with some object which may properly fall in category of a weapon. This is not a case where after the altercation, accused had come again with a plan in their mind. This is not a case where the accused alongwith JCL 'D' had brought some weapon.

24. In this case, the impact of the blow by piece of brick caused fracture of skull bones. The single injury was caused by a piece of brick, which is not a hand held weapon. The facts and circumstances exclude the proposition that the accused did the act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death. But the existence of injury on the vital part of the body i.e. the forehead by the accused is duly proved. Now, the question is whether circumstances warrant conclusion that he intended to cause such an injury which has actually been caused or whether he had the requisite knowledge that he will cause such an injury which may ultimately cause his death. Most fundamental formula which may be applied for deducing the requisite intention or knowledge, is Digitally signed by Kiran Kiran Date:

Gupta Gupta 2024.12.23 12:46:00 +0530 PS: SAGARPUR whether he was aware of the consequences which shall follow or likely to follow as a direct consequence of his act. As discussed above, the prosecution has failed to prove the requisite intention of the accused, however, the fact that the accused had hit with the brick on the forehead of the deceased which is the vital part of the body, it is presumed that he had the knowledge that certain specified harmful consequences would or could follow. In the present case, such an awareness of the direct consequences and the higher degree of probability can be attributed to the accused, hence, the offence does not fall under section 302 I.P.C. but falls under S. 304 Part II IPC. Accordingly, the accused Karan @ Bachkanda is convicted for the offence under S. 304 Part II IPC.

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ANNOUNCED IN THE OPEN
COURT ON 23.12.2024

(KIRAN GUPTA)
ADDL. SESSIONS JUDGE-04
NEW DELHI DISTRICT

State vs Karna @ Bachkanda on 23 December, 2024

PATIALA HOUSE COURTS
DELHI