

Nathu Lal & Others vs State Of U.P. on 18 May, 2018

Bench: Pradeep Kumar Singh Baghel, Harsh Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved

Court No. - 5

Case :- CRIMINAL APPEAL No. - 335 of 1983

Appellant :- Nathu Lal & Others

Respondent :- State Of U.P.

Counsel for Appellant :- Mohan Chand,A.Mishra,A.N.Mishra,Amar Nath Vishwakarma,Kuldeep J

Counsel for Respondent :- Govt. Advocate

Hon'ble Pradeep Kumar Singh Baghel,J.

Hon'ble Harsh Kumar,J.

(Delivered by: Hon'ble Pradeep Kumar Singh Baghel,J.) This appeal is preferred by three appellants, Nathu Lal, Chhatrapal and Tauley Ram against their conviction and sentence under Section 302 I.P.C. and Section 324 I.P.C. by the Special Additional Sessions Judge, Pilibhit. They have been sentenced and convicted under Section 302 I.P.C. to life imprisonment and for two years R.I. under Section 324 I.P.C.. The appeal was entertained on 15.2.1983 and all of them were enlarged on bail by this Court. During the pendency of the appeal two appellants, namely, Chhatrapal and Tauley Ram died. This Court vide its order dated 16.5.2012 abated the appeal in respect of the aforesaid two accused appellants.

The accused appellants and complainant are from the rural background. They are small farmers and none of them have any criminal history. The incident in which one person was killed by gunshot injury by one of the accused appellants Nathu Lal occurred due to the dispute of irrigation of their fields.

The material facts are briefly stated as under:

The P.W.-1 Nathu Lal son of Chheda Lal submitted a written complaint on 10.7.1979 at the Police Station Bisalpur on the basis of which a chik first information report was prepared and the first information report was registered at 10:20 A.M.. The written complaint is Exh. Ka-1. In his complaint he has mentioned that he has a compact chak of 19 bigha land towards western side of railway line. Towards south of his field Jhanjhan Lal's 58 bighas of land is situated adjacent to his field. The agricultural field of Jhanjhan Lal is at slightly lower level than the land of the complainant.

In front of field of Jhanjhan Lal there is a culvert under the railway line from which the rainwater flows from west to east. The railway line runs towards North-South. The agricultural field of the complainant and the Jhanjhan Lal is parallel to the railway line hence the water flowing from culvert makes it way over the agricultural field of Jhanjhan Lal. This flow of the rainwater damages the crop of Jhanjhan Lal. Jhanjhan Lal wanted that this water may be diverted by constructing a small water channel between the boundary of the complainant and Jhanjhan Lal's field.

In this respect Jhanjhan Lal has made a request to father of the complainant to part with his some land for the construction of water channel so damage to his crop may be minimized but father of Nathu Lal whose land was at the higher level and was unaffected with rainwater flow from the culvert, refused to oblige him. It was stated in the F.I.R. that due to the said reason Jhanjhan Lal was nursing grudges against the complainant. It is stated that due to the said reason Jhanjhan Lal in order to harm the complainant's field, filled the earth in the small water canal which runs from south to north parallel to their field with a view to damage his paddy crop.

On the date of the incident in the morning the first informant, his father Chheda Lal and two uncles Ramcharan and Chiraunji Lal went to their field and they cut the water canal so that the water was diverted on the railways land which was lying between the railway line and their field so they may divert this water to their field. At that time Jhanjhan Lal and his son Chhatra Pal were irrigating their field from the water channel. When the complainant's father cut the water channel to divert it on railway land so that they may utilize the water after their paddy field, Chhatra Pal got agitated and he uttered loudly that how you have mustered courage to divert the water from his field to railway field and he will face consequence. After threatening them he went to village. In the meantime the complainant moved from the field and sat near the railway line and was talking to Jhanjhan Lal. At about 9:00 A.M. Chhatra Pal returned on the spot along with Nathu Lal who was armed with rifle, Tauley

armed with lathi, Chhatra Pal was also carrying a lathi. When they reached about 25-30 paces Chhatra Pal and Taule Ram shouted that Chheda Lal has lost his senses and he had gone forcibly from the field of Jhanjhan Lal to railway line so he has to be taught lesson. He exhorted Natthu Lal to fire his rifle. It was stated that before the complainant could be alerted suddenly Nathu Lal fired his rifle at his father Chheda Lal. He was hit by bullet in his chest. He succumbed to his injuries on the spot. When the first informant Natthu Lal and his uncles Chironji Lal, Ramcharan rushed towards the accused Natthu Lal to catch hold on him, he shot two more shots towards the first informant and his uncle Chironji Lal.

Hearing some of the gunshots Mewa Ram, Ramesh rushed to the spot, Tauley Ram and Chhatra Pal who were armed with lathi inflicted the lathi blow on them which caused injuries to them but they succeeded in snatching the rifle from Natthu Lal. In this scuffle some injury was caused to Natthu Lal also. They deposited the rifle of Natthu Lal in the police station.

After registering the first information report, the PW-8 started the investigation. In his deposition the P.W.-8 stated that the first information report was registered at 10:20 A.M. in his presence and after preparation of chik (Exh.-1) he had signed it and immediately he took the investigation in his hand after necessary entry in the case diary and G.D.. He recorded the statements of Natthu Lal, Ramcharan and Chironji at the police station itself and after recording their statements, he reached on the spot where he found the dead body of Chheda Lal. He appointed the panch and conducted the inquest Exh.-13. The inquest was conducted and he prepared Naksha Laash (Exh.-14), Chalan Naash (Exh.-15) and the body was sent for postmortem. A letter addressed to the Chief Medical Officer (Exh.-16). The body was carried by civil constable Ram Swarup and Jograj Singh to Pilibhit for autopsy.

He has deposed that he collected the bloodstained earth and simple earth and prepared its fard (Exh.-7 & 8). He had recorded the statements of inquest witnesses Mewa Ram and others and after the spot inspection, prepared a site plan with the help of the complainant (Exh.-18). The investigating officer found two empty cartridges (Exh.-4 & 5) and one spade (fawda) (Exh.-6). A separate fard was prepared. The accused appellant was arrested on 11.7.1979. His injuries were medically examined on 11.7.1979 by P.W.-5 Dr. R.R. Dwivedi.

The I.O. arrested the accused-appellant Nathu on 11.7.1979 when he went to Police Station to lodge the F.I.R. (Ext. Ka-4). A cross case was then registered. The other two appellants were arrested on 16.7.1979.

After completion of investigation the I.O. submitted the charge sheet on 10.8.1979 (Exh.-19). He has deposed that the fard of blood stained earth was misplaced in the office of the Superintendent of Police hence it could not be sent to the court, however, from the noting of the Circle Officer and the C.D. indicates it was evident that fard of

bloodstained earth was prepared. There is a G.D. entry also in this regard. He has further deposed that from the injury report of the accused appellant Natthu Lal he came to know that he had also received two injuries in his head and there were other five injuries on his body, but he did not make any enquiry from the prosecution witnesses regarding those injuries. He had also stated that Natthu Lal had given the statement under Section 161 Cr.P.C. that he and two uncles had surrounded Natthu Lal and had given him lathi-blows and snatched his rifle. The said statement was read by the Investigating Officer in the court and filed a true copy of the statement as Exh. Kha-1. He has also contradicted the statement of PW-2 Mewa Ram that in his statement under Section 161 Cr.P.C. he has mentioned that he had caught hold Natthu Lal by his waist from behind and he had also not mentioned in his statement that Balak Ram had inflicted the lathi blow.

The P.W.-8 in his statement had stated that he has submitted the charge sheet on 10.8.1979. The Magistrate committed the matter to the Session. The Sessions Court framed the charges on 12.4.1982 under Section 302 read with Section 34 and 307 IPC read with Section 34 against Nathu Lal, Chhatra Pal and Tauley Ram.

The prosecution in its support has examined P.W.-1 Natthu Lal who is son of the deceased Chheda Lal, he is also an injured witness P.W.-2 Mewa Ram who also reached on the spot at the time of incident, P.W.-3 Ramcharan Lal is the uncle of Natthu Lal and was present at the time of incident. He had also received injuries. P.W.-5 Dr. R.R. Dwivedi had examined the injuries of the accused appellant. P.W.-6 Dr. Amrendra Singh who conducted the autopsy on the deceased Chhedalal. P.W.-7 Ramm Das Sharma is a formal witness, P.W.-8 Randhir Singh was I.O. who conducted the investigation.

Following documentary evidences were filed by the prosecution:

Ext. Ka-1 F.I.R.

Ext.2 & 3 Bloodstained vest of Natthu Lal and Ramcharan Ext. 4 & 5 Empty cartridges Ext. 6 Spade (Fawda) Ext. 7 Bloodstained earth Ext. 8 Normal earth Ext. Ka-9 Formal chik report Ext. Ka-10 General Diary Ext. Ka-11 Recovery memo of rifle Ext. Ka-12 Recovery memo of blood stained Banian Ext. Ka-13 Inquest Report Ext. Ka-14 Diagram of the dead body Ext. Ka-15 Challan Nash Ext. Ka-16 Letter sent by I.O. to C.M.O. Ext. Ka-17 Sample of seal Ext. Ka-18 Site Plan Ext. Ka-19 Chargesheet The defence has produced Dr. M.K. Arya as a D.W.-1 and Prasadi Lal as D.W.-2. The accused-appellant submitted a written statement under Section 313, wherein he took the defence that on 10.7.1979 while he was irrigating his field with Tauley Ram, Chhatrapal and Jhanjhan Lal at about 9.00 A.M. Chheda Lal, Natthu Lal, Chironji Lal and Ramcharan came to his field and diverted water of his field. They were armed with spade, countrymade pistol and lathi. Chheda Lal had spade in his hand. When the accused asked him not to disturb his irrigation a scuffle took place. He was hit by

spade on his head and fire was also shot from countrymade pistol. The complainant tried to snatch the rifle of the accused which accidentally went off and it hit Chheda Lal. The accused-appellant also sustained several injuries on his person.

The trial court after considering the evidence on record found that the charges against all the accused appellants were established and it convicted all the three accused appellants for life imprisonment with the aid of Section-34 but it found that the offence under Section 307 was not proved against the accused appellants.

Learned counsel for the appellants submitted that the prosecution has not come with clean version as the injuries sustained by the accused Nathu Lal was not explained. He further submits that the motive attributed for the murder was not real. Admittedly, they had diverted the water through which deceased and his son Nathu Lal were irrigating their field and it was forcibly diverted towards the railway line thus the irrigation of the agricultural field of the complainant was abruptly diverted. Nathu Lal the accused appellant when tried to stop the deceased Chheda Lal from diverting the water flow he hit Nathu Lal with a spade which caused injury no. 2 on his head and one of the complainants inflicted lathi blow on him which ensued a scuffle and accidentally the rifle went off and hit Chhatra Pal who died on spot. In support of his submissions he has placed the injury report and statement of the P.W.-5 Dr. R.R. Dwivedi to demonstrate that the prosecution has not explained injuries sustained by the accused-appellant and the statements of the eye-witnesses P.W.-1, P.W.-2 and P.W.-3 are not true version of the incident as the scuffle which has taken place has not been mentioned in their statement hence their statement does not reflect the true version of the incident and cannot be relied upon. He further submitted that the trial court has not considered the defence evidence in proper perspective and has brushed aside it on flimsy ground.

Learned counsel for the appellants has pointed out several material contradictions in Section-161 statement and in their statement in the Court. He has submitted that these contradictions clearly goes to show that the statement of P.W.-1, P.W.-2 and P.W.-3 are not safe to rely. All the three had made a false statements as they have not mentioned the true version of the incident that a scuffle took place between the deceased and Nathu Lal and the complainant was the aggressor. In the cross case, a first informant has also been lodged by the accused appellants and they were medically examined. The P.W.-5 who was the prosecution witnesses has clearly stated that Nathu Lal has sustained injury no. 2 by a sharp weapon which can be spade. He further submitted that all the prosecution witnesses have admitted that the deceased had diverted the water drain by fawada thus from the prosecution witnesses itself it is clear that the deceased had a fawda in his hand and the injury no. 2 which has been sustained by the accused appellant on his head was not explained by the prosecution at all thus the evidence of the prosecution does not have ring of truth and they have set up a false case on the basis of concocted story regarding the proposed water channel as a motive for murder.

Learned A.G.A. submitted that there are three eye witnesses. Their statement is truthful.

We have heard learned counsel for the parties and carefully perused the material on record.

Before analyzing the ocular evidence of the prosecution and defence it would be useful to state some admitted facts regarding the topography of the place of incident and the facts which led to the incident.

There are three eye-witnesses who claimed to remain present on the spot at the relevant time. The first eye-witness P.W.-1 is the son of the deceased Chheda Lal. From the F.I.R. the statement of the P.W.-1, P.W.-2 & P.W.-3 and the site plan it emerges that a railway line goes from Pilibhit to Shahjahanpur from north to south near the place of incident, there is a culvert under this railway line. The water flows under the culvert from east to west. Adjacent to railway line towards west there is a vacant land of railway line about 25 feet wide. Adjoining to this vacant railway land the agricultural field of the complainant and the accused persons lies. At the north end the deceased's land lies which is slightly on higher surface. The total holdings of the complainant and the accused-appellant are 19 and 58 bighas of the land adjoining to each other.

Adjacent to Jhanjhan Lal's field there lies the field of Chetram, Dayaram and Natthu Lal. A water channel which irrigate all three fields runs north to south parallel to the railway line. The field of the complainant, Jhamman Lal, Chetram, Dayaram etc. received the water from this water channel.

The dispute arose as the water channel which runs north-south was blocked by accused persons at the place G. & H. about 60 paces (about 150 feet) showing the place G & H in the site plan and about 15 paces (37 feet) was blocked at J & K and G & H. It is stated that Jhanjhan Lal deliberately blocked the water path so the water would not reach to the field of the deceased Chheda Lal as his land is towards north to the field of the Jhanjhan Lal. Prosecution case is that on the date of incident at 9.00 A.M. Chheda Lal accompanied with his son Nathu Lal, came to place of occurrence with a spade and diverted the water flow to vacant land of Railway. At that time the accused appellants were irrigating their field from the same water channel, when Chheda Lal stopped the water flow to the field of the accused appellant the course of water started flowing towards west side on the vacant land of railway. His intention was to irrigate his land from the water which flows to his field through the railway land. This action of Chheda Lal enraged the accused appellants.

The P.W.-1 is the son of the deceased Chheda Lal. He has deposed that Jhanjhan Lal had asked his father to contribute some land to construct a common water channel for the flow of the rainwater from the culvert which extensively and exclusively

damages the crop of Jhajhan Lal as the culvert was in front of his holding. His father had refused to accept his suggestion because their field was not affected. He submitted that due to the said reason Jhajhan Lal was unhappy with them and to cause loss to their crop they blocked the common water channel which is used for irrigation by all the farmers near their plot. To avoid the confrontation his father on the date of incident went to the field at 7:00 A.M. in the morning, at that time Jhanjhan Lal and his son Chhatra Pal were irrigating their field from the water of the common channel. His father Chheda Lal had cut the water channel and diverted the water towards the vacant railway land which was about 20 feet wide. When he cut the water channel Chhatra Pal asked him that he was irrigating his field from the water channel and how you dared to interfere in irrigation of his field. He threatened them of dire consequences and went to his village.

The P.W.-1's uncle Ram Charan and Chironji Lal were talking to Jhanjhan Lal. They were sitting near the railway line and in the meantime his father continued to intercept the water channel towards the railway line. At about 9:00 A.M. in the morning the accused appellant Nathu Lal armed with his rifle, Tauley Ram and Chhatra Pal having lathi came on the spot. When Nathu Lal, Tauley Ram and Chhatra Pal were about 25-30 paces from them, Tauley Ram and Chhatra Pal uttered loudly that Chhotey Lal due to self pride is not in his senses and we will teach him lesson. Nathu Lal thereafter exhorted them to open fire. Before the complainant could be alerted in their defence, the accused Nathu Lal shot him by his rifle which hit his father Chhedlal. On his chest he instantly died on the spot.

Thereafter the first informant and his two uncles namely Ram Charan Lal and Chironji Lal ran towards Nathu Lal who was armed with rifle. Nathu Lal fired two shots more towards them. One of the bullets hit his uncle Chironji Lal in his left hand and the second fire was missed. Hearing noise of a gunshot Balak Ram and Mewa Ram who were working in their field also rushed to the spot. The first informant and the other witnesses tried to overpower accused Nathu Lal, then Tauley Ram and Chhatra Pal inflicted lathi blow causing injuries on them. But they succeeded in snatching the rifle from Nathu Lal and in the scuffle Nathu Lal also sustained simple injuries.

After snatching the rifle the first informant went to the police station along with his uncle Ramcharan and Chironji Lal for lodging the first information report and deposited the rifle of accused Nathu Lal in the police station.

In his cross examination the P.W.-1 stated that the accused and his father had made request on several occasions for making an arrangement of the flow of culvert's water towards the west but his father did not accede to his request. It is also stated that due to culvert's water which flows over the plot of the accused person their crop of about 20 bighas of land get damaged every year.

He admitted that the spade which was produced in the court was of his father and it was in his hand at the time when he received bullet injury. He has also admitted that the accused persons were irrigating their land for the last 3-4 days. At the time of occurrence of incident his father was having a fawda and P.W.-1 and his two uncles were unarmed. He had given detailed description of the scuffle. After firing when they snatched the rifle from Nathu Lal, he had stated that they knew that after making three fires, the rifle was empty and the accused was trying to load the rifle as he had extra cartridges with him. He has also deposed that accused Nathu Lal had received injury in his head and it was bleeding. Mewa Ram and Balakram had inflicted 2-3 lathi blows on the head of Nathu Lal. He has denied the suggestion that his father had hit Nathu Lal by his fawda.

He has denied that Balakram is his relative. He has explained that in the F.I.R. he has not mentioned that Balakram had inflicted a lathi blow on Nathu Lal and he was injured. He had denied his 161 Statement in which he has stated that he and his two uncles had surrounded the accused and after inflicting lathi blow they snatched the rifle from his hand.

The P.W.-2 Mewa Ram is an independent witness who has his holdings near the holdings of the accused and the deceased. In his deposition he has stated that when he was going from his house to his field he met Balakram and both of them were chatting near the culvert when they saw that the accused Nathu Lal, Chhatra Pal and Tauley were coming towards them armed with rifle and lathi respectively and they passed near them after crossing railway line towards north. When Nathu Lal opened fire they witnessed the said incident. After the firing he and Balakram rushed towards the accused. He was unarmed and Balakram had a lathi. Nathu Lal again shot the second fire, which missed but the third fire hit Chironji Lal in his hand. Therefore, they succumbed accused Natthu Lal son of Duja along with Balak Ram and Mewa Ram (there are two Natthu Lal; one is the first informant son of the deceased Chhedalal and the accused appellant Nathu Lal son of Duja Ram) rushed towards the accused appellant Natthu Lal. Mewa Ram caught hold the accused Nathu Lal from behind and Natthu Lal son of the deceased Chheda Lal and Ramcharan snatched the rifle from him. At that time Chhatra Pal and Tauley Ram inflicted lathi blow on Nathu Lal and Ramcharan. Balakram also inflicted lathi blow on the accused Nathu Lal and they left the rifle and fled away from the spot.

Chheda Lal received a bullet injury and died instantly on the spot and Chironji Lal also suffered injuries. He has stated that Nathu Lal accused appellant fired on Chhedalal from about 30 paces. He had also stated that he himself had seen firing Nathu Lal. He had told this fact to the investigating officer. He had also told the I.O. that Chhedalal was using his spade in water channel and when the accused exhorted he stood staring and on that moment he was hit by the bullet. This witness has also admitted that accused Natthu Lal had sustained some injuries in the head and he was bleeding.

The P.W.-3 Ramcharan Lal in his statement has stated that on the date of incident when he along with his brother Chheda Lal, Chironji and his cousin Natthu son of Chheda Lal, reached at their fields they found that Jhanjhan Lal and his son Chhatrapal were irrigating their field. Brother of P.W.-3 Chheda Lal had cut the water channel from which the accused-appellant was irrigating his field. Chhatrapal protested his action and he was agitated. This witness has also reiterated the facts deposed by P.W.-1. He has stated that Jhanjhan Lal was irrigating his holding for the last several days and since he has large holding it would have taken 10-12 more days to get it irrigated. He has denied in his statement under Section 161 Cr.P.C. that he rushed towards the accused appellant with their lathi. He had admitted the fact that he had seen the bleeding from the head of accused Natthu Lal. It was stated by him that the scuffle which ensued for snatching the rifle went on for 2-3 minutes.

The Investigating Officer in his statement stated that on the spot he recovered two empty cartridges and one spade. He was aware about the injury of accused Natthu Lal. He had sustained two injuries on his head and there were other five injuries also on his body. He has stated that Natthu Lal P.W.-1 had told him that he and his two uncles had surrounded the accused and had also given him blow of lathi and snatched the rifle.

The I.O. denied the fact that Mewa Ram - P.W.-2 had told him that P.W.- 1 had caught hold the accused from behind and he had also told him that Balakram had given lathi blow to the accused. The defence has examined Dr. M.K. Arya and Prasadi Lal.

Dr. M.K. Arya, Medical Officer who had examined the accused appellant had deposed that there were total seven injuries on the person of the accused appellant. The injury no. 1 was 8 cm. x 1/2 cm. on the right side of his skull near the right ear. It was a lacerated wound with clean cut edges. The injury no. 2 was 5 cm. x 1/2 cm. also on his left side of skull and it was also a lacerated wound. He has categorically stated that injury nos. 1 and 2 were caused by some sharp-edged weapon and it could be spade also. Rest of the injuries, namely, injury nos. 3 to 6 were caused by a blunt weapon.

The D.W.-2 Prasadi Lal is the resident of the same village. He has stated that in the morning at 8.00 A.M. when he was irrigating his field, at that time the accused appellants were also irrigating their field. The D.W.-2's field is towards south of the field of the accused-appellant. At about 9.00 A.M. he saw that Chheda Lal, his son Natthu Lal (complainant), Chironji, Ramcharan came to the accused appellants' field and they cut the water channel from which the accused appellants were irrigating their field. The accused appellant told them that they are irrigating their field and when the irrigation is over then they could take water to their field. Suddenly, the complainant - Natthu Lal son of Chheda Lal fired from his country made rifle which hit the accused-appellant Nathu Lal. At the same time Chheda Lal hit the accused appellant by his spade and Ramcharan and Chironji Lal hit him with their lathi. The

complainant Nathu tried to snatch the rifle from the accused appellant Nathu Lal and accidentally rifle went off which hit Chheda Lal who died on the spot.

In his cross examination he has stated that the incident started when the complainant diverted the water to Railway's land. According to this witness the complainant / informant were aggressor of the incident.

We have considered the evidence on record and submissions of the learned counsel for both the parties.

From the evidence on record it is established that on the date of occurrence of the incident the accused appellants were irrigating their field. The accused appellants had blocked water channel which was going to the field of the deceased to cause loss to their crop. In the morning when the complainant reached on the spot they found that the accused appellants were irrigating their field. Admittedly, the deceased Chheda Lal cut and diverted the water flow from which the accused appellants were irrigating their field. Their action interrupted the irrigation of the accused appellants' field. Water started flowing towards west on the vacant railway land thus the quarrel ensued between the parties.

According to the defence when the accused-appellant Natthu Lal stopped Chheda Lal from cutting the water channel, he was hit by Chheda Lal using his spade. The injuries sustained by the appellant Natthu Lal has been caused by a sharp-edged weapon.

Dr. M.K. Arya - D.W. 1 who had examined the accused appellant Natthu Lal in his deposition has clearly stated that injury nos. 1 & 2 were caused by a sharp-edged weapon. The prosecution has not explained the injuries received by the accused-appellant on his head properly. In the F.I.R. the injuries of Natthu Lal was said to be simple injuries. But in their evidence in the court, P.W.-1, P.W.-2 and P.W.-3 have tried to make improvement.

The P.W.-1 in his statement in paragraph-14 has stated that when he caught the rifle of the accused appellant, he sustained some injury in his head which was caused by lathi blow given by Balakram. There was bleeding from his injuries. He has further stated that except Balakram no one had hit Natthu Lal. Significantly Balakram was not examined by the prosecution.

The P.W.-2 has also stated in Paragraph-10 of his statement that he had mentioned the fact in his statement under Section 161 Cr.P.C. that Balakram had hit accused appellant by lathi but the same was not recorded by the Investigating Officer. The P.W. - 3 in his statement in paragraph-13 has stated that he did not tell the I.O. that Balakram had hit the accused Natthu Lal by lathi.

The D.W.-1 was cross examined by the prosecution but his statement that the injury was caused by a sharp-edged weapon was not challenged. Thus it is an admitted case that the appellant had actually sustained injuries on his head by a sharp edged weapon.

The evidence discussed above goes to show that the prosecution's version regarding the incident does not reflect the correct version of the incident. The prosecution has failed to explain the injuries sustained by the accused appellant hence the origin and genesis of the occurrence as presented by the prosecution does not inspire confidence.

Insofar as submissions of learned counsel for the appellant had no intention to kill the deceased. The accused-appellant acted under grave and sudden provocation by the complainant. The trial court has not considered this aspect. He urged that at the worst it was a case of culpable homicide not the murder.

The Supreme Court in a long line of decisions has considered the distinction between culpable homicide and the murder. It is trite that 'culpable homicide' is a genus and 'murder' is its species. All the murder is culpable homicide but all the culpable homicide is not a murder.

To establish that the accused is guilty of murder, the prosecution has to establish that the accused intended to inflict serious injury that is proved to be present. The prosecution must prove the facts before the case can be brought under Section 300. The Court has to take into consideration the attendant circumstances. The most important factor is premeditation to kill and the injury caused by the accused was sufficient to cause death in ordinary course of nature. In the case of State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 the Supreme Court observed as under:

"12. In the scheme of the Penal Code, '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 this generic offence, the Code practically recognises three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gratest 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."

In the case of Jagriti Devi v. State of H.P., (2009) 14 SCC 771 the Court has considered the definition of 'culpable homicide' and 'murder' in the following terms:

"26. Section 299 and Section 300 IPC deal with the definition of "culpable homicide" and "murder" respectively. Section 299 defines culpable homicide as the act of causing death;

(i) with the intention of causing death, or

(ii) with the intention of causing such bodily injury as is likely to cause death, or

(iii) with the knowledge that such act is likely to cause death.

A bare reading of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

27. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa.

28. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge, then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court."

In the case of Budhi Singh v. State of Himachal Pradesh, (2012) 13 SCC 663 the Court has considered the result of very grave and sudden provocation and has held as under:

"18. The doctrine of sudden and grave provocation is incapable of rigid construction leading to or stating any principle of universal application. This will always have to depend on the facts of a given case. While applying this principle, the primary obligation of the court is to examine from the point of view of a person of reasonable prudence if there was such grave and sudden provocation so as to reasonably conclude that it was possible to commit the offence of culpable homicide, and as per the facts, was not a culpable homicide amounting to murder. An offence resulting from grave and sudden provocation would normally mean that a person placed in such circumstances could lose self-control but only temporarily and that too, in proximity to the time of provocation. The provocation could be an act or series of acts

done by the deceased to the accused resulting in inflicting of injury."

In the case of Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217 the Supreme Court has held thus:

"7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly..."

In somewhat similar facts of this case the Supreme Court in the case of Jasbir Singh v. State of Punjab, 1993 Supp (2) SCC 760 has found that the accused would be liable to be convicted under Section 304 Part-I and not under Section 302. In the said case also the dispute arose in respect of the irrigation of the field and the complainant had not allowed them to take water to the field of the accused on the ground that it was his turn, thereafter he diverted the flow of water towards his own paddy field. The accused-appellant in that case protested and left the place leaving his son with instruction not to pick up quarrel with the appellant till he returns. Thereafter, after sometime they returned to the field and they found that the appellant was irrigating his field. The deceased diverted the flow of water towards his paddy field thereby blocking the course of water to the field of appellant. The appellant went to his house and came back armed with a licensed gun. He opened fire with his single barrel gun and hit the deceased. The Supreme Court also held that it was the case where the accused is liable to be convicted under Section 304 Part-I and not under Section 302. Relevant part of the judgment reads as under:

"10. The case of the appellant as disclosed from his statement is that on the night of September 6, 1974 about 11 p.m. while he and his brother were taking water from the tubewell to irrigate their paddy field the deceased came there during the midnight and declared that he would irrigate his land and would not allow the appellant to take water to his land. The deceased during the course of his insistence to take water to his land abused the appellant which led to a quarrel. According to him, when he and the deceased grappled with each other, the appellant's brother separated both of them. The deceased left the spot threatening that he would teach a lesson to the appellant. Therefore, the appellant fearing imminent danger to his life loaded his gun and sat there. Half an hour thereafter the deceased came with a gandasi and attacked the appellant. Apprehending danger to his life, the appellant fired a shot in the air to scare away the deceased and others but it did not have any effect. When the deceased again attacked with a gandasi, the appellant reloaded the gun and fired at the

abdomen of the deceased for self defence.

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14. Considering all the facts and circumstance of the case, we feel that the appellant has fired the shot in the exercise of his right of private defence but has exceeded his right in putting an end to the life of the deceased. On the strength of the above findings, we hold that the appellant would be liable to be convicted under Section 304 Part I and not under Section 302 IPC. In the result, we set aside the conviction under Section 302 and the sentence of imprisonment for life instead convict him under Section 304 Part I IPC and sentence for 7 years' RI. The fine of Rs. 3,000 as imposed by the Courts below is still retained with the default clause. The sentence of one year RI awarded for the offence under Section 25 of the Arms Act is confirmed with the direction that the substantive sentences shall run concurrently. The fine amount, if realised, the whole of it shall be paid to the heirs of the deceased as directed by the courts below."

The Supreme Court in the case of Sompal Singh and another v. State of Uttar Pradesh, (2014) 7 SCC 316 while considering the quantum of sentence has reduced the sentence to seven years. In the said case also the incident occurred about 34 years ago. Relevant part of the judgment reads as under:

"17. ...In such a fact situation, the conviction of the appellant as recorded by the High Court under Section 304 Part I IPC is upheld. However, in the facts of the case as the incident occurred about thirty-four years ago, sentence is reduced to seven years. The appeal stands disposed of with the aforesaid modification."

Similar view has been taken by the Supreme Court in the case of Laxmi Singh and another v. State of Bihar, (1976) 4 SCC 394, wherein the Supreme Court had considered the non-explanation of the injuries sustained by the accused at the time of occurrence or in the course of altercation is an important circumstance.

Applying the principles laid down in the above-mentioned cases we find that in the case in hand the incident had occurred suddenly and the complainant was the aggressor. The complainant has admittedly diverted water flow for irrigating his field and in the ensuing scuffle the deceased had hit Nathu Lal the accused appellant on his head by spade. After he sustained injuries it appears that he had shot the deceased who had caused him injury.

From the evidence on the record we are of the view that the prosecution's evidence that after altercation the accused-appellant went to his village and brought the rifle, is not true. This part of the evidence is liable to be discarded. The evidence on the record establishes that the complainant was aggressor thus we do not find any evidence to show that the murder of Chhatrapal was a result of premeditation. The accused-appellant has shot Chhatrapal due to the situation which arose on the spot when the complainant interrupted in irrigation of the accused's fields.

From the record we are satisfied that the intention of the accused-appellant was limited to infliction of bodily injury sufficient to cause death in ordinary course of nature and death was caused unintentionally. There was no premeditation thus we are satisfied that the act of the accused-appellant was done on grave and sudden provocation. In such situation there is heat of passion which cloud a person's reason and he acts upon which in normal course would not otherwise do. We do not find that the accused-appellant has acted with cruelty with which the offence was committed.

The finding recorded by the trial court is against the weight of evidence. The trial court has completely ignored the material fact that the complainant was the aggressor and in heat of passion the incident occurred. The trial court also failed to notice the admission of prosecution witness that they had forcibly diverted the water flow to their field. For the said reason we find that the trial court's finding holding the accused-appellant guilty for the commission of offence punishable under Section 302 IPC is unsustainable and is liable to be set aside as the appellant was liable to be held guilty for committing culpable homicide not amounting to murder punishable under Section 304 Part-II IPC. We accordingly set aside the conviction and sentence under Section 302 IPC for the reasons recorded above holding the accused-appellant, Nathu convict for the offence under Section 304 Part-II and sentence him with seven years rigorous imprisonment and fine of Rs. 5,000/- and in case of default in payment of fine he will undergo additional period of simple imprisonment for a period of three months.

The sole surviving accused-appellant Nathu son of Duja Ram is on bail. His bail bonds are cancelled. He shall surrender before the trial court forthwith. The Chief Judicial Magistrate, Pilibhit shall cause the appellant to be arrested and lodged in jail to serve out the sentence.

Accordingly, the appeal is partly allowed and the conviction and sentence are modified.

Let a copy of this judgment and order along with Lower Court record be sent to the Lower Court for its intimation and necessary compliance.

Material exhibits be disposed off in accordance with rules.

Judgment be certified and placed on record.

Order Date :- 18.5.2018 Digamber