

[2022 LiveLaw \(SC\) 992](#)

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**A.S. BOPANNA; J., PAMIDIGHANTAM SRI NARASIMHA; J.**

NOVEMBER 23, 2022

CRIMINAL APPEAL NO. 2038 OF 2022 (Arising out of SLP (Crl.) No. 6537/2019)

**JAI KARAN YADAV versus STATE (NCT OF DELHI) THROUGH SHO**

**Indian Penal Code, 1860; Section 300, 302, 304 Part II - Appeal against concurrent murder conviction of a husband accused of killing wife - Partly allowed - Modified to Section 304 Part II of IPC - there was no pre-mediation to cause the death and the incident had occurred at the spur of the moment and the appellant having realised his mistake had thereafter taken immediate steps to shift his wife to the hospital but unfortunately she breathed her last.**

(Arising out of impugned final judgment and order dated 25-11-2014 in CRLA No. 1145/2011 passed by the High Court of Delhi at New Delhi)

*For Petitioner(s) Mr. Shekhar Prit Jha, AOR Ms. Preeti, Adv. Ms. Sakshi, Adv.*

**ORDER**

Leave granted.

Heard learned counsel for the appellant.

The appellant is before this Court assailing the judgment dated 25.11.2014 passed by the High Court of Delhi at New Delhi in Crl.A. No. 1145/2011. Through the said judgment, the High Court has confirmed the conviction and sentence rendered by the trial court through its judgment dated 19.04.2011. At the outset, it is necessary to take note that when this Court directed notice to the respondent on 19.07.2009 an opinion was formed that insofar as the conviction, the trial court as well as the High Court were justified. The notice was limited to the question of considering the nature of offence and the quantum of punishment. What was at that stage taken note was as to whether the conviction awarded to the appellant under section 302 of IPC in the facts and circumstances was justified or as to whether such conviction ought to have been under Section 304 Part II of IPC.

In order to consider this aspect of the matter, a perusal of the appeal papers would indicate that the appellant who is the husband of the deceased was charged of assaulting his wife Kaushalya Yadav in the matrimonial house on 14<sup>th</sup> July, 2010 at 10.30 P.M.. The sole eyewitness account which was recorded was of the seven years old daughter Khushi who was examined as PW-3. The said witness on noticing her father assaulting the mother had shouted out and it is at that stage two other witnesses, namely, Sanjay and Sunil who are neighbours of the family had come to the spot. Insofar as the incident having occurred and the veracity of the evidence tendered by the child witness, there is detailed consideration made by the trial court as also the High Court and had believed the statement given by the child. Therefore the only aspect which arises for consideration herein is as to whether even if the incident is accepted in the manner in which it had occurred, was it at the spur of the moment requires further consideration in the matter.

In that regard a perusal of the evidence of PW-3 would indicate that in her cross examination she had stated with regard to the incident where her mother is said to have said something to her father on which the father started beating her mother. She

also stated that she was not able to open the latch of the door to her house and she thereafter went there. Further she has stated that immediately her father had dressed up and moved her mother to the Hospital where the other family members are also stated to have gone. These aspects of the matter would indicate that there was no pre-mediation to cause the death and the incident had occurred at the spur of the moment and the appellant having realised his mistake had thereafter taken immediate steps to shift his wife to the hospital but unfortunately she breathed her last.

Therefore, if these aspects are kept in view as mitigating circumstances, we are of the opinion that the conviction under Section 302 IPC would not be justified. Hence, we modify the judgment to hold the appellant guilty of the offence under Section 304 Part II of IPC. Insofar as the sentence we notice that the appellant has already undergone more 12 years of sentence and as such we hold that the period undergone will be sufficient punishment. Hence, to that extent the sentence is also modified and we direct that the appellant be set at liberty forthwith if he is not required in any other case.

The appeal is accordingly, allowed in part.

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