

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 12.04.2019

Date of decision: 19.07.2019

IN THE MATTER OF:

CRL.A. 218/2004

SHYAM @ SHYAMU & ANR. Appellants
Through: Ms. Aishwarya Rao, Advocate.

Versus

STATE OF DELHI Respondent
Through: Mr. Amit Gupta, APP with SI
Vikash Fageria, P.S. Raja Garden.

AND

CRL.A. 708/2005

GYAN CHAND @ SETHI Appellant
Through: Ms. Aishwarya Rao, Advocate
versus

STATE Respondent
Through: Mr. Amit Gupta, APP with
SI Vikash Fageria, P.S. Raja Garden

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

HIMA KOHLI, J.

1. The present appeals are directed against the judgment dated 23.2.2004, passed by the Court of the learned Additional Sessions Judge in Sessions Case No. 64/2002 arising from FIR No.1006/2000, registered at PS Rajouri Garden under Sections 302/34 of the Indian Penal Code, 1860 (in short 'IPC'), whereunder Shyam @ Shyamu and Ramu (both brothers), appellants in Crl.A. No.218/2004 and Gyan Chand @ Sethi, appellant in Crl. A. No.708/2005 have been convicted under Section 302/34 IPC. Vide order on sentence dated 24.2.2004, all the three appellants have been sentenced to undergo imprisonment for life and pay a fine of Rs.3,000/- each under Sections 302/34 IPC. In default of payment of fine, each of the appellants has been directed to undergo simple imprisonment for a period of three years.

2. The incident in question relates back to 26.10.2000, eve of the festival of Diwali when the deceased, Chandu @ Chander Bhan and his friend Monu, both residents of Raghbir Nagar, Delhi were heading together towards the latter's house at about 11.30 P.M. in the night. It is the prosecution case that they had seen Geeta, sister of Shyam @ Shyamu and Ram (hereinafter, referred to as 'A-1' and 'A-2', respectively) coming out from a public toilet and walking down the street towards them and the deceased had tried to molest her by brushing his hands against her breast. At this, Geeta had raised an alarm and A-2 alongwith Gyan Chand @ Sethi (A-3) rushed to the spot. A-2 caught hold of the deceased by his neck and exhorted A-3 to teach him a lesson. A-3 reacted by picking up a wooden stick lying in the street and hit the deceased on his head. On hearing the ruckus, A-1 also came to the spot

armed with a hockey stick and hit the deceased on his legs, due to which he fell down. Thereafter, A-2 picked up a stone lying in the street and hit the deceased on his head. When he raised an alarm, all the three accused persons ran away from the spot. In the meantime, on receiving information about Chandu being assaulted, his cousin Raj Karan, reached the spot. Thereafter, Monu, who was also present at the spot rushed the deceased in an auto rickshaw to DDU Hospital along with Raj Karan where the doctor declared him as brought dead.

3. SI Sandeep Kumar, posted at PS Rajouri Garden, received DD No.23 (Ex.PW-1/A) and reached DDU Hospital alongwith Constable Ravail Singh. He was informed by the doctor that the deceased had been brought dead to the hospital. While at the hospital, he met Monu and recorded his statement. Based on his statement, he prepared a *rukka*. On the basis of the said *rukka*, FIR No.1006/2000 was registered on 27.10.2000, at 1.35 A.M. On completion of investigation, charge punishable under Section 302 IPC was framed against all the three appellants who were accused of assaulting the deceased with a *danda*, hockey stick and heavy stone in furtherance to their common intention to murder him. All the three appellants pleaded innocence and claimed trial.

PROSECUTION EVIDENCE

4. To bring home the guilt of the accused, the prosecution produced a total of 19 witnesses. The prime public witness is Monu (PW-2), an eyewitness to the incident on whose complaint the *rukka* was prepared and the FIR was registered. However, he turned hostile in Court and

denied having any knowledge of the accused. He deposed that he was sitting in his house, when the police officers came and inquired about the house of the deceased whereafter, he was taken to the police station and his signatures were obtain on a blank paper. While denying the contents of his statement as recorded in Ex.PW-2/A, he admitted to his signatures at point 'A'. The said witness was extensively cross-examined by the Public Prosecutor and he was confronted with Ex.PW-2/A wherein, his statement was recorded to the effect that the deceased used to reside in his neighbourhood and was his friend and on the eve of Diwali, when he alongwith the deceased were going towards his house, he had seen A-2 and his younger sister, Geeta stepping out from the public toilet. He denied that Chandu's elbow had struck against the breast of Geeta, whereupon A-2 had got agitated and caught hold of the deceased and instigated A-3 to finish him. He also denied that A-3 had picked a *danda* lying nearby and assaulted the deceased and that A-1 reached the spot with a hockey stick and had given a blow on Chandu's legs who fell down whereafter, A-2 picked up a big stone lying in the street and gave him blows on the head. PW-2 denied having raised an alarm on seeing the altercation. He denied that PW-4, a cousin of the deceased came to the spot and both of them had taken Chandu in an auto rickshaw to DDU Hospital. The said witness refused to identify the accused persons who were present in Court as the same persons who had given *danda* and hockey blows on the person of the deceased. He also denied that he was a witness to the arrest of the three accused persons or that they had made their disclosure statements (Ex.PW-2/B, Ex.PW-2/C and Ex.PW-2/D), in his presence or that he was a witness to the seizure of the weapons of

offence and blood stained clothes that were got recovered at the instance of the accused persons. He also denied that he was a witness to the seizure of the blood stained gauze and earth control by the IO on 27.10.2000, vide seizure memo, Ex.PW-2/I.

5. Raj Karan (PW-4) was a cousin brother of the deceased who deposed that on 26.10.2000, at about 11.30 P.M., he was present in his shop at Raghbir Nagar when someone informed him that a quarrel was taking place between his cousin and some others. When he reached at the spot, he saw that his cousin was lying on the ground in an injured condition. He deposed that he had seen the accused persons, whom he knew from before, running away from the spot; that A-1 had a hockey stick in his hands, while A-3 had a *danda*; that he had hailed an auto rickshaw and taken the injured to DDU Hospital and duly accompanied by PW-2; that the doctor had declared Chandu as brought dead. He deposed that that when he had taken the deceased to the hospital, his clothes had got stained with blood and he had given the said clothes, collectively marked as Ex.P1-2 to the police and they were seized vide seizure memo Ex.PW-4/A, that bears his signatures. He stated that on 28.10.2010, he had again joined the investigation with the IO and was a witness to the disclosure statements made by A-2 and A-3. He had also accompanied the police party with A-2 and A-3 at whose instance, their blood stained clothes were recovered from their homes and they were taken into possession, duly witnessed by him vide Ex.PW-4/B and Ex.PW-4/C. The said witness identified the clothes belonging to A-2 and A-3 as also the hockey stick (Ex.P-4) broken into two pieces and the *danda* (Ex.P-5) broken into three pieces as the same that he had seen in

the hands of the accused persons when they were running away from the spot.

6. SI Sandeep Kumar (PW-13) who was present at the hospital along with Constable Ravail Singh (PW-11) recorded the statement of Monu (PW-2), marked as Ex.PW-13/A. Based thereon a *rukka* (Ex.PW-2/A) was prepared and the FIR was registered. Prem Singh (PW-14), brother of the deceased and Ganga Ram (PW-15), father of the deceased identified and received the body of the deceased vide memo, Ex.PW-14/A.

7. Dr. Shekhar N. (PW-3), CMO, DDU Hospital proved the MLC of the deceased (Ex.PW-3/A) by identifying the signatures of Dr. Simon J.D., who had examined the deceased on the relevant date, but had left the services of the hospital. The handwriting of Dr. Simon J.D. was also identified by PW-3. Dr. Rakesh Bhardwaj (PW-17), who was posted at DDU Hospital at the relevant time also identified the signatures of Dr. Simon J.D. affixed on the MLC of the deceased. Dr. R.K. Sharma (PW-10), Autopsy Surgeon, DDU Hospital, who conducted the postmortem on the body of the deceased, proved the postmortem report as Ex.PW-10/A. He opined that “*Death was due to cerebral lacerations and intra cranial hemorrhage (head injury)*”.

8. The rest of the police witnesses were mostly formal in nature except for the Investigating Officer, Inspector Hoshiyar Singh (PW-19). Constable Kanwar Singh (PW-5) was posted as the Duty Constable in DDU Hospital on the relevant date. He informed PP Raghbir Nagar that the deceased was admitted in the hospital in an injured condition and was declared by the doctor as brought dead. DD No.1/A containing the

aforesaid information was proved by him as Ex.PW-1/A. Head Constable Suresh Chand (PW-6) was posted as a Duty Officer at PS Rajouri Garden. He deposed that on 27.10.2000 at 1.35 A.M., he had received a *rukka* from Constable Ravail Singh (PW-11), sent by SI Sandeep Kumar (PW-13). On the basis of the said *rukka*, he had recorded FIR No.1006/2000, marked as Ex.PW-6/A. He also deposed that he had recorded DD No.19A and DD No.20A marked as Ex.PW-6/B and Ex.PW-6/C, respectively. Constable Mohd. Musralin (PW-7) stated that he had taken the special report from the Duty Officer on 27.10.2000 at 2.10 A.M. and delivered it to the area Magistrate on the same day.

9. Head Constable Rohtas Singh (PW-8) was the Storeroom Keeper posted at PS Rajouri Garden at the relevant time. He deposed that the IO, Inspector Hoshiyar Singh had deposited several sealed parcels in the storeroom on 27.10.2000, 28.10.2000 and 31.10.2000. On 18.12.2000, 13 sealed parcels alongwith sample seals were sent to the FSL through Constable Kapil Kumar (PW-16). PW-8 received the results from FSL on 29.06.2001, through Constable Joginder Singh (PW-18) and made relevant entries in the Register. He deposed that as long as the case property remained with him, it remained intact. SI Mahesh Kumar (PW-9) was the draftsman posted at the Police Headquarters, who deposed that on receiving a call from the IO on 9.11.2000, he had reached the scene of crime and taken rough notes and measurements on the spot. Based on the said rough notes and measurements, he had prepared a scaled site plan marked Ex.PW-9/A. Constable Ravail Singh (PW-11), SI Naresh Kumar (PW-12) and SI Sandeep Kumar (PW-13) were witnesses to the recovery of the clothes of the accused persons and the

weapons of offence. They corroborated the statement of the Investigating Officer, Inspector Hoshiar Singh, who appeared in Court as PW-19.

10. Inspector Hoshiar Singh (PW-19) testified that on 27.10.2000, he was posted as SHO, PS Rajouri Garden and had taken over the investigation of the case from SI Sandeep Kumar (PW-13). He inspected the scene of crime and had got the site plan (Ex.PW-19/A) prepared. The seizure memo vide which the exhibits were collected from the spot was proved as Ex.2/I. He stated that at the time of collecting the exhibits, PW-2, the eye witness was also present. After conducting the postmortem, the body of the deceased was handed over to his family members and the statement of the witnesses regarding identification of the dead body were recorded. He collected the sealed *pullandas* containing blood samples and clothes of the deceased alongwith the sample seal from the doctor, who had conducted the postmortem on the body of the deceased, vide Ex.PW-11/A. The said witness deposed that he alongwith other police personnel and PW-2 had returned to the scene of crime in search of the accused persons. On receiving secret information, A-2 and A-3 were apprehended from a park in front of ESI Hospital and they were interrogated. On the basis of their disclosure statements (Ex.PW-2/B and Ex.PW-2/C), they were taken to different places and recoveries were effected. On the pointing out of A-2, he had recovered a blood stained stone lying near Gupta Kiryana Store, B-Block, Raghubir Nagar, that was seized vide seizure memo Ex.PW-2/F. At the instance of A-3, he had also recovered three pieces of the *danda* from the bushes near the *ganda nala* at Paschim Vihar, that were seized

vide seizure memo, Ex.PW-2/E. The witnesses to the said recoveries were PW-2, PW-11 and PW-13. On the next day, i.e., on 28.10.2000, A-2 got recovered his pant and shirt from the bathroom of his house that were seized by the IO vide seizure memo, Ex.PW-4/C and A-3 had got recovered his T-shirt and blood stained pant from the first floor of his house that were seized vide seizure memo, Ex.PW-4/B. PW-4, PW-11 and PW-13 were witnesses to the said recoveries made by the I.O. The blood stained clothes of PW-4, who had accompanied PW-2 and the deceased to the hospital, were seized vide seizure memo, Ex.PW-4/A.

11. PW-19 further stated that on 30.10.2000, A-1 had surrendered in the court and his police custody was obtained. On the basis of the disclosure statement made by A-1, who led the police party alongwith PW-2 to his house at Raghubir Nagar, he had seized two pieces of blood stained hockey sticks vide seizure memo, Ex.PW-2/G. The blood stained pant and shirt (Ex.P6/1 and P6/2) found lying in the room of A-1, were also seized by him. The said recoveries made by the I.O. at the instance of A-1, were witnessed by PW-2, PW-12 and PW-18. The disclosure statement of A-1 is marked as Ex.PW-2/B

12. Though an opportunity was afforded to the three accused persons to lead evidence in their defence, they did not produce any witness. In their statements recorded by the learned ASJ under Section 313 Cr.P.C., they denied having any knowledge of the incident and pleaded innocence. On the basis of the evidence brought on record by the prosecution, all the three accused persons were convicted by the trial court under Sections 302/34 IPC and sentenced to undergo life imprisonment.

ARGUMENT

13. Ms. Aishwarya Rao, learned counsel engaged to appear on behalf of the appellants by the Delhi High Court Legal Services Committee, sought to assail the impugned judgment on merits by contending that once the star witness of the prosecution, i.e., Monu (PW-2) had turned hostile and besides him, there was no other public witness to prove the case, the trial court could not have indicted the appellants on the basis of the evidence brought on record. She urged that the other public witness, Raj Karan (PW-4) was not a witness to the incident but only claimed to have seen the accused at the scene of crime after the incident had taken place and in any case, his testimony is unreliable as he is an interested witness, being a cousin brother of the deceased. She canvassed that the prosecution has failed to establish any motive behind the crime so much so that even the sister of A-1 and A-2, who was allegedly molested by the deceased, was not cited by them in the list of witnesses.

14. Learned counsel submitted that the deceased was a notorious bad character of the area and had at least three FIRs registered against him and though the IO had conceded in his cross-examination that the deceased used to do *dadagiri* and had a bad eye on the sister of A-1 and A-2, the prosecution did not bother to follow the lead and investigate the matter in the said perspective. She pointed out that the prosecution has failed to prove the site plan (Ex.PW-19/A) that was prepared at the instance of the IO, when admittedly, he was not a witness to the crime. A reference was made to the MLC (Ex.PW-3/A), prepared by Dr. Simon J.D. to state that it did not mention the name of the accused or record that

blood was oozing from the injuries suffered by the deceased, which casts a shadow of doubt on the entire version of the prosecution. Lastly, it was urged that the prosecution has failed to conclusively prove the recovery of the weapons of offence and clothes of the accused and the said recoveries appear to have been planted for the reason that no public witness was associated during the recoveries, though several persons were present at the spot. Neither was a drawing/khakha or measurement of the weapons or recovered articles prepared by the IO and nor was any opinion sought from the doctor regarding the possibility of the injuries caused by the weapons so recovered. Moreover, no scientific test with regard to finger/chance prints was conducted on the weapons of offence to connect them with the accused persons.

15. In the alternate and without prejudice to the above arguments, learned counsel for the appellants urged that if the Court is not convinced on merits and is inclined to uphold the impugned order of conviction, then the order on sentence deserves to be interfered with for the reason that given the fact and circumstances of the instant case even in the worst case scenario, the appellants could have been held guilty for the commission of a lesser offence under Section 304 Part II of the IPC and not Section 302 IPC. In support of the said submission, learned counsel cited the following decisions:-

- (i) Surender Kumar versus Union Territory, Chandigarh, (1989) 2 SCC 217
- (ii) Ankush Shivaji Gaikwad versus State of Maharashtra, (2013) 6 SCC 770
- (iii) Madhavan & Ors. Vs. State of Tamil Nadu, (2017) 15 SCC 582

- (iv) Dashrath Vs. State of M.P. in **Crl.A. No.76/2008** decided on 16.1.2018.

DISCUSSION AND ANALYSIS

16. We have carefully considered the arguments advanced by Ms. Aishwarya Rao, learned counsel for the appellants and Mr. Amit Gupta, learned APP, who has strongly supported the impugned judgment. We have also scanned the trial court record and scrutinized the evidence. From the evidence brought on record, the following facts and circumstances stand proved:-

- (i) That an altercation had taken place between the appellants and the deceased in the night of 26.10.2000, at a public place in which the deceased had received the following injuries, as recorded by the Doctor in the postmortem report:-

“1. Anti mortem contused lacerated wound left side of forehead with fracture of frontal wound.

2. C.L.W. right eyebrow have depressed fracture of right side of frontal would extending backward and involving the anterior cranial fossa which lasaration (sic) or brain and bleeding with ructure of maninges.

3. Fracture of left leg bones and nemourous (sic) contusions and abrasions in should upper arm and legs.”

- (ii) That PW-10, the doctor, who had conducted the postmortem on the body of the deceased, had opined that the death had occurred due to head injury, i.e., *cerebral lacerations and intra cranial hemorrhage.*

(iii) That the deceased was taken by PW-2 and PW-4 in an injured condition to DDU Hospital in an injured condition and on arriving there, was declared as brought dead by the doctor.

(iv) That the MLC of the deceased has recorded that it is a case of alleged assault and the name of PW-4 duly finds mention in the column of relatives/friends, who had accompanied the injured to the hospital.

17. Even though PW-2, the eye witness to the incident had turned hostile in the present case, the *rukka* recorded at his instance has not been questioned by the defence counsel and we find that the said witness was not even examined on the contents of the said *rukka*. Pertinently, PW-2 did not deny his signatures on Ex.PW-2/A, though during his cross-examination, he claimed that they were obtained on a blank paper. In any event, *dehors* PW-2, on the basis of the evidence brought on record, the presence of PW-4 at the scene of crime stands amply proved. His presence at the hospital stands corroborated by the MLC of the deceased. Even the blood stained clothes of PW-4 were seized at the hospital itself and sent to the FSL for a report. The FSL report dated 28.5.2001 refers to various exhibits which includes the blood stained broken sticks (Ex.1), blood stained stone piece (Ex.3), blood stained gauze piece (Ex.6) and blood stained hockey stick pieces (Ex.12). On an analysis of the said exhibits, the presence of human blood of 'B' Group, the same as that of the deceased, was detected on them. Further, human blood of Group 'B' was detected on the clothes of the accused and of PW-4, that were seized by the police. Though he had specifically stated that he had seen the accused persons running away from the spot, PW-4 was not cross-

examined on this part of his deposition and nor was any suggestion given to him by the defence counsel that he was not present on the spot, at the time of the incident. Thus, the presence of PW-4 at the spot and at the hospital cannot be questioned or doubted in any manner.

18. Another relevant factor that goes against the appellants is that even though PW-2 had resiled from his statement as recorded in Ex.PW-2/A, it transpires from a perusal of the *rukka* and the FIR that the names of all the accused were recorded therein. The incident had taken place on 26.10.2000 at around 11.30 P.M. and the *rukka* was recorded within 2 hours therefrom, at 1.35 A.M. on 27.10.2000. The FIR was also registered in the early hours of 27.10.2000 and a copy was delivered to the area Magistrate at 10 A.M. on the same day. Once the names of the deceased were recorded in the *rukka* and subsequently in the FIR, on the basis of the statement made by PW-2, irrespective of the said witness having turned hostile, the appellants cannot be heard to state that the prosecution has tried to incriminate them or has planted the recoveries to frame them falsely.

19. Even otherwise, assuming that PW-2 did not support the prosecution version, besides him, there were two other witnesses to the recovery of the weapons of offence made on 27.10.2000, at the instance of A-2 and A-3 from public places, namely, PW-11 and PW-13. On 28.10.2000, not only PW-11 and PW-13, but PW-4, a public witness, had also witnessed the recovery of blood stained clothes of A-2 and A-3 from their respective houses. Further, on 31.10.2000, after A-1 had surrendered before the court, based on his disclosure statement, the

weapon of offence, i.e., two pieces of blood stained hockey stick and his blood stained clothes were recovered in the presence of PW-2, PW-12 and PW-18. Thus, even if we ignore PW-2, PW-4, PW-11, PW-13 and PW-18 have proved the recovery of the weapons of offence and blood stained clothes of the accused.

20. There is no good reason for this Court to disbelieve the said recoveries merely because PW-11, PW-12, PW-13 and PW-18 happen to be police officers. In this context, we may profitably refer to the case of Baldev Singh vs. State of Haryana reported as (2015) 17 SCC 554, wherein the Supreme Court held as follows:-

“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.

11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in Girja Prasad v. State of M.P., (2007) 7 SCC 625, it was held as under:-

“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base

*conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. **No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence.** But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.*

26. *It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in **Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217**, Venkatarama Ayyar, J. stated:*

'40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.'

27. *In **Tahir v. State (Delhi) (1996) 3 SCC 338**, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated:*

'6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend

corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.” (emphasis added)

[Also refer: Pala Singh and Anr. vs. State of Punjab AIR 1972 SC 2679; Paras Ram vs. State of Haryana AIR 1993 SC 1212; Pradeep Narayan Madgaonkar and Ors. vs. State of Maharashtra AIR 1995 SC 1930; Balbir Singh vs. State (1996) 11 SCC 139; Kalp Nath Rai vs. State (Through CBI) AIR 1998 SC 201 and M. Prabhulal vs. Assistant Director, Directorate of Revenue Intelligence AIR 2003 SC 4311].

21. We are thus of the opinion that in the instant case, non-joining of any public witness at the time of recovering the weapons of offence is not enough reason to doubt the truthfulness of the testimony of the police witnesses on the above aspect or discard their evidence. Their testimony inspires confidence. Even otherwise, the conviction of the appellants is not based solely on the testimony of police witnesses and finds corroboration from other independent sources as well.

22. Another critical and corroborative piece of evidence brought on record is the FSL Report in respect of the weapons of offence and the blood stained clothes of the deceased that is sufficient to nail down the appellants as the assailants. In the totality of the facts and circumstances of the case and given the evidence brought on record, we do not find any justification for interfering with the impugned order of conviction. It adequately stands established that the death of Chandu was caused at the hands of the appellants who had used a *danda*, a stone and a hockey stick to assault him and the said injuries were sufficient to cause his death in due course.

23. Coming next to the alternate arguments addressed by learned counsel for the appellants that the present case is covered under Section 304 Part II of the IPC and not Section 302 IPC, we have examined the manner in which the incident had unfolded on the night of 26.10.2000. It emerges from the record that the altercation between the appellants and the deceased was a result of a sudden and unpremeditated fight that took place. On seeing that the deceased had inappropriately touched his sister, A-2 lost his temper and in a fit of anger, caught hold of him. At the same time, A-3, who was accompanying A-2, picked up a *danda* lying in the street and assaulted Chandu. On hearing the commotion, A-1 rushed to the spot with a hockey stick within minutes and aimed blows on the leg of the deceased. When the deceased fell to the ground, A-2 picked up a stone lying in the street and hit him on his head, thus causing a fatal injury due to which he died while on way to the hospital. The fact that the deceased had died a homicidal death is therefore not in dispute.

24. That the deceased was a bad character of the area is borne out from the testimony of the IO (PW-19), who had stated during his cross-examination that “*Deceased used to do dadagiri and also used to have bad eye upon the sister Geeta of the accused persons Ramu and Shamu*”. Learned counsel for the appellants has referred to three FIRs pending against the deceased at PS Rajouri Garden, i.e., FIR No.669/1997 dated 11.08.1997 under Sections 380/451/411/34 IPC, FIR No.58/2000 dated 23.01.2000 under Section 160 IPC and FIR No.406/2000 dated 15.04.2000 under Sections 379/411/34 IPC.

25. Given the aforesaid antecedents of the deceased, we would be inclined to accept the prosecution version that the deceased had tried to molest the sister of A-1 and A-2, which caused a grave and sudden provocation resulting in a sudden fight in the heat of passion. It was not as if the appellants had come prepared in advance to assault the deceased. Two of the weapons of offence, namely, the *danda* and stone used to attack the deceased, were available at the spot. On hearing the commotion, A-1 too jumped into the fray, armed with a hockey stick. The postmortem report bears out the submissions made by learned counsel for the appellants that it was not as if the appellants had given several blows to the accused. In all, there were three injuries on the body of the deceased, two on the forehead and one on the lower limb. The cause of death was the head injury suffered by the deceased. We find that it was the deceased who had provoked them by misbehaving with their sister to which they took strong objection. The same escalated into a serious incident where a sudden fight broke and culminated in the deceased on being hit by A-2 and A-3 with a stone and a *danda* that were easily found at the spot and a hockey stick carried by A-1. Unfortunately, one of the injuries received by the deceased was on a vital part of his body, to which he succumbed. Given the above sequence of events, it cannot be urged by the appellants that it was not a crime committed with the knowledge that their act is likely to cause the death of the deceased.

CONCLUSION

26. Given the nature of the injuries inflicted by the accused, the part of the body on which it was inflicted, the weapons used to inflict the injury and the circumstances in which the injuries were inflicted on the deceased, we are of the view that there is no indication that the appellants had come fully prepared with the intention to kill the deceased. It is evident that they were overcome with fury on seeing the deceased misbehaving with their sister which is what made them react in the manner that they did. In our opinion, it is a fit case where the conviction of the appellants ought to be moderated from Section 302 to one under Section 304 Part II of the IPC.

27. The order on sentence is resultantly modified and each of the appellants are directed to undergo rigorous imprisonment for a period of 7 years. They shall also be liable to pay a fine of Rs.3,000/- each and in default, to undergo further rigorous imprisonment for a period of six months. As per the latest nominal rolls on record, A-1 has undergone sentence for a period of 4 years, 9 months and 21 days, A-2 has undergone sentence for a period of 5 years, 2 months and 11 days and A-3 has undergone sentence for a period of 6 years 5 months and 24 days. The appellants shall surrender before the trial court/Superintendent Jail, within two weeks to undergo the remaining period of their sentence. The appeals are partly allowed and disposed of on the above terms.

28. Trial court record be released forthwith alongwith a copy of this judgment. Another copy of the judgment be forwarded to the Superintendent, Jail, for information.

(HIMA KOHLI)
JUDGE

(MANOJ KUMAR OHRI)
JUDGE

JULY 19, 2019
NA/rkb