

2019 (0) AIJEL-HC 240186

GUJARAT HIGH COURT

Hon'ble Judges: J.B.Pardiwala and A.C.Rao JJ.

Babubhai Kamjibhai Pargi Versus State Of Gujarat

CRIMINAL APPEAL No. 29 of 2015 ; *J.Date :- FEBRUARY 14, 2019

- CODE OF CRIMINAL PROCEDURE, 1973 Section - 374
- INDIAN PENAL CODE, 1860 Section - 300 , 302 , 304

Code of Criminal Procedure, 1973 - S. 374 - Indian Penal Code, 1860 - S. 300, 302, 304 - murder or culpable homicide not amounting to murder - sudden quarrel - single blow - no intention to cause death - accused inflicted one blow on the head of deceased with Spade (Trikam) which proved to be fatal - even evidence of prosecution witnesses does not establish and prove intention of accused to commit murder - there was no preparation on the part of accused - scuffle took place in the heat of passion and there was no premeditation - therefore, it cannot be held that accused had intention to murder the deceased or to cause such bodily injury as is likely to cause death - all requirements u/s. 300 Exception 4 of IPC have been satisfied - therefore, benefit of Exception 4 u/s. 300 IPC is attracted to the fact situations and appellant-accused is entitled to this benefit - conviction of appellant-accused of offence of murder punishable u/s. 302 of IPC is altered to S. 304 (II) of IPC - appeal partly allowed.

Imp.Para: [8][9][10]

Cases Referred to :

1. Kikar Singh V. State Of Rajasthan, 1993 4 SCC 238

Cases Relied On :

1. Singh V. State Of Punjab, 2017 5 SCC 796
2. Talaram V/s. State Of Madhya Pradesh, AIR 2018 SC 2146

Equivalent Citation(s):

2019 (4) GLR 2738 : 2019 CrLJ 2455

JUDGMENT :-

A.C.RAO, J.

1 By way of the present Criminal Appeal under section 374 of the Code of Criminal Procedure, the appellant herein original accused seeks to challenge the judgement and order of conviction and sentence passed by the 7th Additional Sessions Judge, Panchmahals at Godhara in Sessions Case No.205 of 2013 dated 31/03/2014. The Sessions Judge convicted the appellant original accused for the offence punishable under section 302 of Indian Penal Code. The appellant is sentenced to undergo life imprisonment with fine of Rs.10,000/- and in default, sentenced to undergo further Simple Imprisonment for a period of one year. The learned Sessions Judge granted benefit of set off under section 428 of the Code of Criminal Procedure.

2 The case of the prosecution, in nutshell is as under :-

The complainant Salubhai Jyotibhai Parti lodged the FIR being CR No.I-75 of 2013 against the accused with the Santram Police Station for the offence punishable under section 302 of Indian Penal Code and under section 135 of the Gujarat Police Act. It is inter-alia alleged that on 25/6/2013 at about 18.15 hours, the deceased Parthingbhai was speaking abusive language near the house of the complainant and in the land of the complainant. The son of Babubhai, who happens to be the brother of Parthingbhai and his mother Maniben and his wife Ushaben asked him not to hurl abuses. They all were trying to take him to his house. However, Parthingbhai was not coming to home and at that time Babubhai had gone to his home. Thereafter, Lalo - son of Babubhai was taking Parthingbhai to his home by holding him in his arms. At that time Parthingbhai and Lalo both had fell down and Lalo was found beneath the foot of Parthingbhai. The mother of the appellant shouted that leave him, Lalo would die. Hearing the same, Babubhai came out from his house with Spade (Trikam) in his hand asking Parthingbhai that as to why he was not listening to his family members. Saying so, he got excited and inflicted one blow with a Spade (Trikam) on the head of Parthingbhai. In such circumstances, all family members started shouting. Babubhai ran away. On account of the injury on the head of Parthingbhai, there was profuse bleeding and he fell unconscious. The wife of Parthingbhai called 108 Ambulance and the doctor after examination, declared Parthingbhai dead. Therefore, the FIR, as aforesaid, came to be lodged for the murder of the deceased Parthingbhai.

2.01. Thereafter during the course of the investigation, the investigating officer arrested the accused, prepared inquest panchnama, sent the dead-body for postmortem, prepared panchnama of the scene of offence, collected sample of blood and mud from the place of offence, recorded the statements of the witnesses, etc. After completion of investigation, the investigating officer filed Chargesheet under section 173 of the Code of Criminal Procedure in the court of Judicial Magistrate, First class, Santrampur, District Panchmahals for the offence

punishable under section 302 of IPC and under section 135 of G.P. and the case was registered as the Criminal Case No.986 of 2013.

2.02. Since the case was triable by the Court of Sessions, the Judicial Magistrate after providing copies of the Chargesheet papers to the accused, committed the case to the Court of Sessions under section 209 of the Cr.P.C. On committal, the case came to be registered as the Sessions Case No.205 of 2013 in the court of the Sessions Judge, Panchmahals at Godhara.

2.03. Thereafter, the Sessions Court framed Charge against the accused at Ex.2. Plea of the accused was recorded at Ex.3. The accused pleaded not guilty and claimed to be tried.

2.04. The prosecution produced the following oral as well as the documentary evidence :

: ORAL EVIDENCE :

PW No.	Ex. No.	Particulars	Remarks
1	6	Dr.Ravindrakumar Lakhanprasad Nrala	Medical officer, who performed postmortem of the deceased
2	1	Poonabhai Motibhai Pargi	Panch witness to Inquest Panchnama
3	12	Valabhai Mogjibhai Pargi	Panch witness to Inquest Panchnama
4	13	Raisingbhai Virsingbhai	Panch witness to place of offence panchnama

5	17	Kaljibhai Motibhai Pargi	Panch witness to place of offence panchnama
6	24	Salimbhai Mohammadbhai Fauji	Panch witness to panchnama Ex.25
7	29	Maniben Kamjibhai Pargi	Mother of deceased and
			accused
8	30	Hakjibhai Jyotibhai Pari	Uncle of deceased.
9	31	Aadil Tajmohammad makrani	Panch to panchnama Ex.25.
10	32	Salubhai Jyotibhai Pargi	Complainant
11	35	Falabha Bhudabhai pargi	PSO police witness
12	37	Sikandarkhan Nasirkhan Pathan	Panch witness to panchnama Ex.18
13	38	Karmaben Khshalbhai pargi	Bhabhi of the deceased
14	39	Devlben Jivabhai Pargi	Bhabhi of the deceased
15	40	Kaljibhai Rangabhai Pargi	Cousin of father of the deceased
16	41	Jivabhai Jalmabhi Pargi	Cousin of father of the deceased

17	42	Kaliben Sadubhai pargi	Aunt of the deceased
18	43	Lalabhai Babbhai Pargi	Son of the deceased

: DOCUMENTARY EVIDENCE :

Sr. No.	Ex. No.	Particulars
1	7	Police report sent to the civil Surgeon along with the dead-body sen for inquest examination.
2	8	Inquest Panchnama.
3	10	Postmortem note of the deceased.
4	14	Panchnama of scene of offence.
5	15	Panchnama for recovery of the clothes of the deceased.
6	16	Panchnama for the recovery of the muddamal weapon.
7	33	Complaint given by Salubhai Jyotibhai Pargi.
8	34	Receipt for handing over the dead-body.
9	36	Yadi return for filling up the inquest.
10	46	Reminder letter.
11	49	Letter written to FSL, Vadodara for analysis of muddamal.
12	50	Letter regarding authority and muddamal dispatch note.
13	51	Receipt regarding receipt of the muddamal by FSL, Vadodara.
14	52	Letter of FSL.
15	53	Analysis report of FSL.
16	54	Serology report.
17	55	Copy of Notification

2.05. At the conclusion of the trial, the 7th Additional Sessions Judge, Panchmahals at Godhara convicted the appellant for the offence punishable under section 302 of IPC and sentenced him to undergo life imprisonment with fine of Rs.10,000/-, as aforesaid. However, the trial court acquitted the accused of the offence punishable under section 135 of the Gujarat Police Act. Hence, the appellant herein original accused has preferred the present Criminal Appeal questioning the legality and validity of the judgement and order of conviction.

3 Mr.Aftabhusen Ansari, the learned counsel appearing for the appellant original accused has vehemently submitted that the Sessions Court erred in convicting the appellant for the offence punishable under section 302 of IPC. He submitted that the conviction is against the evidence on record, the provisions of law and settled legal principles. He submitted that the trial court failed to appreciate that the case against the appellant is not proved beyond reasonable doubt. He further submitted that it is a case of one blow hit by the accused on the head of the deceased. He submitted that the incident had taken place in the heat of moment. There was no premeditation on the part of the accused. He submitted that there was no intention on the part of the accused to kill the deceased. He submitted that even if the allegations levelled against the appellant are accepted in toto, then also the motive to kill the deceased is absolutely absent. He submitted that the case would not fall under section 302, but, at the best would fall under section 304 part-II of IPC. He submitted that therefore, the trial court has erred in convicting the appellant for the offence punishable under section 302 of IPC and imposing life imprisonment. He submitted that therefore, at the best the appellant may be convicted for the offence under section 304 Part-II. Hence made a fervent appeal to reduce the sentence from life imprisonment to the period already undergone by the appellant.

4 On the other hand, this appeal is opposed by Mr.Ronak Raval, the learned APP appearing for the State. He submitted that the prosecution has successfully proved the case beyond reasonable doubt. He further submitted that the witnesses have supported the case of the prosecution. He submitted that the judgement and order of conviction and sentence passed by the trial court is on proper appreciation of the evidence and same is not perverse and no error has been committed by the trial court and therefore, the same is not required to be interfered with at the hands of this Court.

He prayed that the appeal be dismissed.

5 Heard the learned counsel for the appellant and the learned APP appearing for the State, at length. Perused the impugned judgement and order of conviction. Re-appreciated the evidence on record.

6 On perusal of the evidence on record, the following facts have emerged :-

(i) PW No.1 - Dr.Ravindrakumar Lakhansprasad Nirala - Ex.6 who performed the postmortem of the deceased, has stated in his deposition that there was one injury lacerated punctured wound on the right side of the head of the deceased resulting in the depressed fracture on the temporal region of the skull of the head of the

deceased. According to him, the cause of death of the deceased was due to intracranial haemorrhage.

(ii) Panch Witness - PW Nos.9, 11, 12, 13, 17 and 24 have not supported the case of the prosecution and they are declared hostile.

(iii) PW No.7 Maniben Kamjibhai Pargi Ex.29 mother of the deceased and the accused has not supported the case of the prosecution and she is declared hostile.

(iv) PW No.8 Hakjibhai Jyotibhai Pargi - Ex.30, uncle of the deceased and accused has not supported the case of the prosecution and he is declared hostile.

(v) PW No.10 Sulabhai Jyotibhai Pargi - Ex.33 complainant, has also not supported the case of the prosecution and he is declared hostile.

(vi) PW No.14 Devliben Jivabhai Pargi Ex.39, Bhabhi of the deceased and accused has also not supported the case of the prosecution and she is declared hostile.

(vii) PW No.15 Kaljibhai Rangabhai Pargi Ex.40, cousin of the father of the deceased has also not supported the case of the prosecution and he is declared hostile.

(viii) PW No.16 Jivabhai Jalmabhai Pargi - Ex.41 cousin of the father of the deceased has also not supported the case of the prosecution and he is declared hostile.

(xi) PW No.17 Kaliben Sadubhai Pargi - Ex.42 aunt of deceased has also not supported the case of the prosecution and she is declared hostile.

(x) PW No.18 Lalabha Babubhai Pargi - Ex.43 son of the deceased has also not supported the case of the prosecution and she is declared hostile.

(xi) PW No.19 Ushaben Parthingbhai Pargi - Ex.44 wife of the deceased has supported the case of the prosecution. She has stated in her evidence that the accused had beaten her deceased husband.

7 The aforesaid prosecution witnesses, who have supported the case of the prosecution are cross-examined by the defence, however, nothing substantial could be elicited so as to render the entire case doubtful.

8 However, considering the overall evidence on record, we are of the opinion that there is substance in the submission of the learned counsel for the appellant that at the best it is a case of culpable homicide not amounting to murder. In the quarrel which had taken place suddenly, the accused inflicted one blow on the head of the deceased with Spade (Trikam), which proved to be fatal. Even if the evidence of the prosecution witnesses is believed to be true, than also, the same does not establish and prove the intention of the accused to commit murder. The evidence on record indicates that the accused inflicted one blow on the head of the deceased which proved to be fatal and even the medical evidence corroborates the same. Thus this is a case of one bow hit by the accused on

the head of the deceased with a Spade (Trikam) in a sudden quarrel and the intention to kill the deceased is absent. The law on this aspect is required to be referred to.

9 Section 299 of the IPC explains culpable homicide as causing death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that the act complained of is likely to cause death. The first two categories require the intention to cause death or the likelihood of causing death while the third category confines itself to the knowledge that the act complained of is likely to cause death. On the facts of this case, the offence of culpable homicide is clearly made out.

9.01. Section 300 of the IPC explains what is murder and it provides that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death or the act complained of is so imminently dangerous that it must in all probability cause death or "such bodily injury as is likely to cause death." There are some exceptions when culpable homicide is not murder and we are concerned with Exception 4 which reads:

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

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

9.02. Exception 4 to Section 300 of the IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the first exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the

other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

9.03. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code.

9.04. In *State of A.P. Versus Rayavarapu Punnayya and another*, reported in (1976) 4 SCC 382 : (AIR 1977 SC 45), the Supreme Court, while drawing a distinction between Section 302 and Section 304, held 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 greatest 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.

9.05. In the case of *Budhi Singh Versus State of Himachal Pradesh*, reported in (2012) 13 SCC 663 : 2013 AIR SCW 457, the Supreme Court 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.

Another test that is applied more often than not is that the behaviour of the assailant was that of a reasonable person. A fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Such act should have been done during the continuation of the state of mind and the time for such person to kill and reasons to regain the dominion over the mind. Once there is premeditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide not amounting to murder....."

9.06. In the case of *Kikar Singh v. State of Rajasthan*, reported in (1993) 4 SCC 238 : AIR 1993 SC 2426, the Supreme Court held as under:-

"8. The counsel attempted to bring the case within Exception 4. For its application all the conditions enumerated therein must be satisfied. The act must be committed without premeditation in a sudden fight in the heat of passion; (2) upon a sudden quarrel; (3) without the offender's having taken undue advantage; (4) and the accused had not acted in a cruel or unusual manner. Therefore, there must be a mutual combat or exchanging blows on each other. And however slight the first blow, or provocation, every fresh blow becomes a fresh provocation. The blood is already heated or warms up at every subsequent stroke. The voice of reason is

heard on neither side in the heat of passion. Therefore, it is difficult to apportion between them respective degrees of blame with reference to the state of things at the commencement of the fray but it must occur as a consequence of a sudden fight i.e. mutual combat and not one side track. It matters not what the cause of the quarrel is, whether real or imaginary, or who draws or strikes first. The strike of the blow must be without any intention to kill or seriously injure the other. If two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such weapon must be held to have taken an undue advantage denying him the entitlement to Exception 4. True the number of wounds is not the criterion, but the position of the accused and the deceased with regard to their arms used, the manner of combat must be kept in mind when applying Exception 4. When the deceased was not armed but the accused was and caused injuries to the deceased with fatal results, the Exception 4 engrafted to Section 300 is excepted and the offences committed would be one of murder.

9. The occasion for sudden quarrel must not only be sudden but the party assaulted must be on an equal footing in point of defence, at least at the onset. This is specially so where the attack is made with dangerous weapons. Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, Exception 4 is not attracted and commission must be one of murder punishable under Section 302. Equally for attracting Exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4...."

9.07. The Supreme Court, in the case of Singh v. State of Punjab, reported in (2017) 5 SCC 796 : (AIR 2017 SC 1904), has observed that:

"The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300, IPC is not defined in IPC..... A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

9.08. In the case of Taram Versus State of Madhya Pradesh, reported in AIR 2018 S.C. 2146, it is held that the intention to cause death must not be readily inferred

though the accused may be attributed with the knowledge that the injury is likely to cause death. The Supreme Court in the said case, in the absence of any premeditation, altered the conviction from section 302 of IPC to the second part of the section 304 of the IPC.

9.09. Section 304 of the IPC provides the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death then the punishment may extend up to imprisonment for life. On the other hand, Part II of Section 304 provides that if the offending act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death then the punishment may extend to imprisonment for 10 years.

9.10. The intention to cause death must not be readily inferred. The court below assumed that the accused had intended to cause death of the deceased. There is nothing on record to suggest such an intention and none of the witnesses have given any indication of the intention of the appellant to cause death of the deceased. The appellant accused inflicted one blow on the head of the deceased with Spade (Trikam) which proved fatal. However, the intention of the accused to kill the deceased is not apparent. In view of the evidence on record, we are satisfied that the ingredients of murder as explained in Section 300 of the IPC are missing in this case.

9.11. Thus, in entirety, considering the factual scenario of the case on hand, the legal evidence on record and in the background of legal principles laid down by this Court in the cases referred to supra, the inevitable conclusion is that the incident happened in heat of moment and suddenly and there was no preparation. The scuffle took place in the heat of passion and there was premeditation. This being position, it cannot be held that the accused had intention to murder the deceased or to cause such bodily injury as is likely to cause death. In the facts of the case on hand, all the requirements under Section 300 Exception 4 of the IPC have been satisfied. Therefore, the benefit of Exception 4 under Section 300 IPC is attracted to the fact situations and the appellant-accused is entitled to this benefit. Hence, the following order :-

10 The Criminal Appeal filed by the appellant original accused viz. Babubhai Kamjibhai Pargi is hereby partly allowed.

The judgment and order of conviction and sentence passed by the 7th Additional District and Sessions Judge, Panchmahal at Godhra dated 31st March, 2014 in the Sessions Case No.205 of 2013, by which, the trial Court held the accused guilty of the offence of murder punishable under Section-302 of the IPC is hereby quashed and set aside. The conviction of the appellant-accused of the offence of murder punishable under Section-302 of the IPC is altered to Section 304(II) of the IPC. The sentence is reduced to the period already undergone. The appellant accused shall be set at liberty forthwith, if not required in any other case.