

High Court of ALLHABAD
Bench: Mrs. Jyotsna Sharma,J.
Date of Decision: 17.10.2023

CRIMINAL APPEAL No. - 450 of 1998

Jangali Singh And Others Appellant

Versus

State of U.P. Respondent

Section, Acts, Articles and Rules:

Section 302, 307, 304 Part II, 147, 148, 149 of the Indian Penal Code (IPC)

Section 161, 313 of the Criminal Procedure Code (Cr.P.C)

Subject: Criminal Appeal – Conviction under Section 304 Part II IPC – Background of long-standing enmity between two sides of the family - Acquittal of certain accused persons - Failure to establish such participation for four accused persons - Conviction upheld for Triveni Singh under Section 304 Part II IPC.

Headnotes:

Criminal Appeal – Conviction under Section 304 Part II IPC – Acquittal of certain accused persons – Evidence of eye-witnesses and medical evidence establish the involvement of accused Triveni Singh who caused fatal injuries – Conviction upheld for Triveni Singh under Section 304 Part II IPC [Para 25-26]

Acquittal – Other accused persons acquitted of charges under Section 304 Part II IPC and Sections 147 and 148 IPC – Lack of sufficient evidence to establish their active participation in the offense – Orders of conviction and sentence set aside for Jangali Singh, Jai Prakash Singh, Rajesh Singh, and Sadanand Singh [Para 25-26]

Enmity and Long-Standing Feud – Background of long-standing enmity between two sides of the family – Caution urged in cases involving party factions where innocent individuals may be falsely implicated – Court must carefully evaluate evidence to ensure the guilty are convicted and the innocent protected [Para 15]

Burden of Proof – Prosecution’s burden to prove the active participation of accused persons in the offense – Failure to establish such participation for four accused persons – Acquittal of accused persons under Section 304 Part II IPC read with Section 149 IPC [Para 23]

Dying Declaration – Dying declaration recorded by the Investigating Officer not accepted as reliable evidence – Considered a mere reproduction of the FIR – Not substantive evidence [Para 11]

Nature of Injuries – Injuries sustained by the deceased consisted of two piercing wounds caused by a ‘bhala’ wielded by Triveni Singh – No evidence of injuries from ‘lathis’ by any particular accused – Lack of reliable evidence to convict accused under Section 149 IPC [Para 19]

Importance of FIR – FIR as important evidence but not substantive evidence – FIR used for corroboration and contradiction purposes – Explanation of the value of an FIR [Para 18]

Conviction in Part II of Section 304 IPC – Conviction of Triveni Singh under Section 304 Part II IPC upheld – Knowledge imputed to the accused regarding the potential fatal consequences of his actions [Para 24]

Differentiating Among Accused – Need for differentiation among accused based on their specific roles and participation – Cautious approach when several accused are named in the FIR – Conviction upheld only for Triveni Singh based on clear evidence of his actions [Para 25]

Referred Cases:

- Sheikh vs. State of Bihar, 1972 Cri.L.J. 233
- Bajwa and Others vs. State of U.P., (1973) 1 SCC 714
- Amzad Ali and Others vs. The State of Assam, (2003) 6 SCC 270
- Anbazhagan vs. The State Rep. By the Inspector of Police Criminal Appeal no. 2043 of 2023 passed on 20th July, 2023

Representing Advocates:

For Appellant : Vinod K. Singh, Anupesh Kumar, Sandeep Singh

For Respondent : Govt. Advocate, Gyanendra Singh Sikarwar

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Sandeep Singh, learned counsel for appellant nos. 1, 2, 4, and 7, Sri Pawan Mishra, learned counsel for appellant no. 9 and Sri Yugal Kishore, learned A.G.A. for the State; perused the material on record.

2. During the course of hearing of this appeal, the appellant nos. 3, 5, 6 and 8 i.e., Umesh Singh, Dhan Raj Singh, Shobha Singh and Vikal Singh have died. The appeal as regards them has abated.

3. By means of this criminal appeal the convicts/the remaining appellants i.e., appellant no. 1-**Jangali Singh**, appellant no. 2-**Jai Prakash Singh**, appellant no. 4-**Rajesh Singh**, appellant no. 7-**Sadanand Singh** and appellant no. 9-**Triveni Singh** have challenged the order dated 30.07.1998 by which learned Special Sessions Judge, Bahraich, in S.T. No. 274 of 1994, convicted them under Section 304 Part II readwith section 149 I.P.C. and sentenced all of them to undergo rigorous imprisonment for a period of five years and a fine of Rs. 1,000/- each and further to undergo rigorous imprisonment for a period of six months in default of payment of fine; in addition convicting and sentencing the appellant nos. 1 to 7 under section 147 I.P.C. to six months rigorous imprisonment and appellant nos. 8 and 9 under section 148 IPC to one year rigorous imprisonment.

4. The facts in brief are as below:-

**The first informant-Rajendra Singh submitted a written report in the Police Station-Kaisergaj, Bahraich alleging that in the month of May last year, one Shobha Singh had murdered the first informant's brother-Satish Singh and a criminal case was pending, therefore the accused side nursed enmity with them; a day before the incident, the complainant's servant was cleaning the drain of complainant's house; the accused Jangali Singh tried to stop him; the first informant's father retorted by saying that the drain fell in his area and he may rather get his place measured.*

**In the background of this episode, the accused Jangali Singh, JaiPrakash Singh, Umesh Singh, Rajesh Singh, Dhan Raj Singh, Shobha Singh, all of them holding lathis, Vikal Singh holding a firearm, Triveni Singh holding a 'bhala', came together to his house, at about 7 am on 25.02.1994; they started abusing them; Dhan Raj Singh and Shobha Singh exhorted rest to kill them; Triveni Singh stabbed informant's father with 'bhala' and caused him injuries; Sadanand Singh was pelting stones and pieces of bricks.*

**The incident was witnessed by informant's mother Dulari Devi, Rajendra Singh and Subhash Singh, his neighbours; they raised alarm and challenged the accused persons; Accused Shobha Singh commented "let's return as we have done our job" and they fled away.*

**On the basis of this written report, FIR case crime no. 274 of 1994 was lodged; the investigating officer proceeded to inspect the spot and prepared the site map and took into possession the blood stained and plain earth.*

**During the course of investigation, the injured Nanku Singh died, therefore the case was converted from one under section 307 IPC to 302 IPC; the inquest on the body was done same day at about 15.30 hours; the postmortem was conducted the next day at District Hospital.*

**The investigating officer recorded the statement of the witnesses and chargesheeted the accused persons;*

**All the accused persons were put to trial and were convicted for the offences under section 304 Part II read with sections 149 I.P.C., further appellant nos.*

1 to 7 were convicted under section 147 I.P.C. and appellant nos. 8 and 9 under section 148 I.P.C.

5. Before taking up the contentions of the rival side, I find it appropriate to refer to the statements in brief, given by the prosecution witnesses:-

- * **PW1-Rajendra Singh**, son of the deceased supporting the prosecution case, has stated that the accused persons Shobha Singh, Triveni Singh, Vikal Singh, Sadanand Singh, Rajesh Singh etc were named in a case of murder of his cousin Satish and they were on bail; a day before the occurrence, the accused Jangali Singh objected to the clearing of drain; his father, the deceased said that before objecting, he should get his land measured. The next day at 7 am, he and his father were sitting beside a bonfire; suddenly all the accused persons, who included Triveni Singh holding a '*bhala*', Vikal Singh holding a desi firearm and others carrying '*lathi*' came over. His father-Nanku Singh was beaten by them; further on exhortation by Dhan Raj Singh and Shobha Singh, accused Triveni Singh thrust '*bhala*' on his father; he fell on the ground; the informant immediately went to report the matter to the police station concerned and lodged the FIR; he took his father along; then he went to the hospital at Kaiserganj, from where his father was referred to District Hospital Baraich, but, he died before he could be treated at the District Hospital.
- * **PW2-Dulari Devi**, an eye witness, has supported the prosecution case and dittoing the prosecution story, she said that the accused persons assaulted her husband Nanku Singh; he fell on the ground; a number of people like Satish and Subhash etc came to the spot, when she raised alarm.
- * **PW3-Dr. Prem Nath Bansal**, who conducted the postmortem on 26.02.1994 found following ante-mortem injuries:-
 - (i) *one piercing wound 1x1 cm, circular hole x bone deep, left upper outer side laterally, 10 cms below the tip of left shoulder;*
 - (ii) *abrasion, 4x3 cms, on left forearm, laterally, 2 cms below the left elbow joint;*
 - (iii) *multiple abrasions on the right side of the face, in an area of 4x3 cms laterally, to the angle of right eye;*
 - (iv) *one punctured wound 1x1 cm, into bone deep, with a circular opening, on left thigh, medially, 9 cms below the middle of left region, underneath hematoma in an area of 12x8 cms is present. With left femoral artery badly lacerated.*
- * **PW4-Arif Alif Farooqi**, the investigating officer has proved the facts that he took the statement of witnesses, including that of Nanku Singh (deceased), Rajendra Singh-the first informant, witness-Dulari Devi, Subhash Singh. He visited the spot and prepared the site map. He took the blood stained and plain earth and prepared the memo of seizure. He converted the case from section 307 IPC to section 302 IPC, on receiving the information of the death of the injured.
- * **PW5-Inspector-Matarwar Yadav** has given a statement that he was handed over the investigation. He completed other formalities of the investigation, like arresting of the accused and making other entries in the case diary and after completing the investigation, submitted a chargesheet.

***PW6 and PW7-Constable Deena Nath and SSI Jitendra Singh** who are the formal witnesses, have proved certain prosecution papers.

6. In the statement recorded under Section 313 Cr.P.C. the accused persons denied their involvement in the incident; they said that they have been falsely implicated because of previous enmity and that the FIR has been lodged in consultation with interested persons.

7. Certain specific statements have been made by the accused persons.

Accused-Triveni Singh stated that the FIR has been registered after consultation and that he has been named falsely on account of enmity, as he happens to be son of Shobha Singh.

Accused-Shobha Singh, in his statement, stated that the first informant Rajendra Singh and his family members have criminal antecedents and that undesirable criminal people used to visit his house. He further said that the members of community do not keep any relation with the members of the family of the first informant because of his involvement in criminal activities.

Same kind of statements have been given by accused **Dhan Raj Singh** under section 313 Cr.P.C..

Accused-Jangali Singh, in his statement, under section 313 Cr.P.C. has stated that the first informant-Rajendra Singh has been exerting pressure on him to give a false statement in favour of his relative Harpal; He also wanted to pressurize him, for giving false statement in the case of murder of Satish; He refused to budge. Before this occurrence, his father-Nirahu Singh was beaten by accused persons and a case under section 325 IPC was pending. One of the accused Prakash is his real brother. He has stated that the members of the community have cut off their relations with the family of the first informant.

Accused-Jai Prakash Singh stated that Jangali Singh is his real brother, therefore, he has also been falsely implicated.

Accused-Rajesh Singh has stated that he has been falsely implicated because he is son of Dhan Raj Singh.

8. **D.W.1 Yar Mohammad** has stated that he resided one kilometer away from the house of deceased Nanku and is acquainted with them. On the day of occurrence, he heard some noise. People were saying that Nanku is lying injured in his orchard. He went there and saw Nanku Singh lying unconscious. Blood was oozing out from his leg. He and a few others carried him on a cot to his house. His son was not around then.

9. The prosecution case in nutshell is that both the sides had long standing enmity between them, and that just a day before the actual occurrence, the accused side was enraged because the deceased had asked them to get their property/land measured before they proposed to object to the cleaning of the drain, purportedly falling on the side of the complainant. On the day of occurrence, the accused side, who were nine in all, attacked Nanku Singh, the deceased. The deceased sustained two piercing wounds; one on his shoulder and another on his thigh and he died of shock and hemorrhage. The incident occurred on 7:00 a.m. on 25.02.1994; the F.I.R. was lodged the same day, with a gap of merely one and a half hours, by the son of the deceased. Exhibit ka-8 is copy of G.D., which proves the fact of lodging of the F.I.R. same day with reasonable promptness. This paper also

proves that the first informant, his son i.e. Rajendra Singh, took along his injured father, to the police station. In this paper, the concerned police official has noted down the details of the injuries sustained by deceased Nanku. This evidence has come, that immediately after registration of the F.I.R., the injured was taken to the hospital. The Doctor, finding him in a serious condition, referred him to the District Hospital. He died before he could be given proper medical assistance. Exhibit ka-9 is the copy of another G.D. dated 25.02.1994, which corroborates the fact that Constable Lalji, who took the deceased Nanku Singh, in injured condition to the hospital, returned by 18.05 hours the same day; and informed the police station that he had died at about 10:45 a.m. The case was converted to one from section- 307 I.P.C. to section 302 I.P.C. The inquest on the body of the deceased was conducted the same day, between 15:32 and 17:00 hours and the postmortem was conducted the next day, at 2:00 p.m.

10. As per prosecution case, the incident was witnessed by the first informant. The first informant has been examined as P.W.1. He has supported the prosecution case. Giving details of the incident, he has stated that Triveni Singh holding a '*bhala*', Vikal Singh holding a '*katta*' and rest of the accused persons namely Jangali Singh, Jai Prakash Singh, Umesh Singh, Rajesh Singh, Dhan Raj Singh, Shobha Singh, each holding a '*laathi*', came over to their house, abusing and throwing foul words at them. At that time, he and his father were sitting beside a bonfire. The moment he saw the accused persons coming, he rushed inside the house but his father could not move. The accused persons first thrashed him, thereafter, on exhortation by accused Dhan Raj and Shobha Singh, he was hit two times with the '*bhala*' by Triveni Singh. Thereafter they fled away. In his cross-examination he has said that his father started bleeding profusely; he tied a plaid (*gamchha*) around his wounds; brought a four wheeler and took him to the police station straight; from that place he went to Kaiserganj Hospital; it was 9:00 to 9:30 by then. The Doctor advised him to go to District Hospital and they immediately rushed to District Hospital, where he died before medical assistance could be given. The prosecution, besides other evidence, has relied upon a dying declaration. As per prosecution case, the Investigating Officer had recorded a statement under section 161 Cr.P.C. of deceased. I perused the evidence in this regard. The Investigating Officer, P.W.5 has stated that he recorded statement under section 161 Cr.P.C. of Nanku Singh. The session court has not relied upon the dying declaration, observing that the Investigating Officer has simply recorded a dying declaration, which was nothing but a statement under section 161 Cr.P.C. before Nanku Singh died.

I perused Exhibit ka-5 supposedly a dying declaration. Exhibit ka-5 gives a definite impression that this contains an exact replica of F.I.R. In my view it is just not humanely possible that two witnesses – the first informant and other one the injured give statements, which is exact copy of the other. In fact dying declaration was never given, the Investigating Officer just mechanically copied the F.I.R.

11. As far as material facts related to “**occurrence**” and the “**sequence of events**” are concerned, this witness has given a credible and consistent statement. He is the one who was with his father all along the incident. He was the one who lodged the FIR, took his father to hospital and was with him when he succumbed to injuries. There is nothing in evidence which can give

rise to any doubt as regard his presence on the spot. The incident took place at the door of his house and therefore his presence is nothing but natural. The defence could not point out any good ground which could bring the eye-witness account given by this witness, into shadow of reasonable doubt.

12. P.W.2, who too is an eye-witness and was present in the house when the incident occurred, has named all the accused persons stating that first all of them thrashed her husband; her son had come inside rushing in; her husband fell on the ground; two of the accused persons, namely Dhan Raj and Shobha Singh exhorted others to kill him and Triveni Singh gave her husband two blows from '*bhala*' which pierced his body. On their raising alarm, a number of co-villagers came over there; the eye-witness account given by P.W.2, in my view, is worth credence. She has given all material details of occurrence and has given eye witness account which does not differ from eye witness account given by P.W.1 on any material particular.

Like PW1, her presence in the house and therefore having seen the occurrence is but natural and cannot be doubted.

13. No adverse inference can be drawn just because P.W.1, the son of the deceased, P.W.2-wife of the deceased did not sustain any injury on their person. The arguments of the defence that it was nothing but natural that seeing the deceased, being thrashed by the accused persons, they should have rushed in to rescue him and in the process they must have sustained some injury at least, does not carry weight. I do not find much substance in this argument. It may be noted that the accused persons were particularly annoyed with the deceased only in the background of a tiff which had taken place a day earlier in the morning. Therefore, the prime target was him only. Further, how a witness reacts may depend on number of factors like whether witness had an opportunity or courage to face them in the wake of evidence that they were 9 persons in all and all were holding '*laathi, bhaala, katta etc*' or whether he was prepared enough. No straight jacket formula apply in such a situation. The court has to draw inference on the basis of evidence before it and not on the basis of conjectures. In my view, the presence of the witnesses, the son and his mother was quite natural as the occurrence took place just in the front of their house and it was early morning time.

14. Not only, the small altercation, a day before, which in my view worked as one of the precursor to the occurrence, there were other factors like deep rooted enmity between the two sides. This has come in the evidence of both the witnesses of fact, that the accused persons were named in another F.I.R., lodged about a year ago, regarding the murder of first cousin of the first informant and that case was pending when this occurrence took place. P.W.1 has said that he was scribe of aforesaid F.I.R. This has come in evidence that one more criminal case is pending, in which first informant and his son have been named; and that case pertained to causing injuries to Ram Dulare, the real brother of one of the accused Shobha Singh and that too was pending at the time of occurrence.

15. Enmity is an admitted fact and that how the "enmity" played a role is a specific area for which this court feels concerned. Enmity no doubt is double edged weapon and might have worked both ways. Enmity, at one hand may ignite a spark for a criminal incident to happen, on the other hand, may also give an

opportunity to victim side to seize the opportunity and work to his advantage. This point will be taken up later once again.

16. From the testimony of P.W.1 and from the prosecution papers, it is clear that the accused persons resided in the neighbourhood; their residence were just a few feet away from the house of the complainant; Accused persons and the complainant side belonged to same family, coming from a common ancestor. From the statements given by the accused persons under section- 313 Cr.P.C., it appears that admittedly both the sides did not have normal relations, since long, before this incident took place.
17. Despite the fact that in this case the F.I.R. was lodged promptly ruling out any substantial improvement, or embellishments as far as 'occurrence' in particular is concerned, even then, the Court needs to tread very cautiously, when considering the role of accused persons, their complicity in cases where fairly large number of people are said to be involved. The court has to sift through the evidence before it and see that the real culprits do not escape from the hands of law and at the same time innocents are protected. With above in mind, I went through the oral and documentary evidence, analysing each and every aspect of the case.

In this case the F.I.R. named nine persons, who included two real brothers, Jangali and Jai Prakash, sons of Nirha Singh, another set of two brothers, Umesh and Rajesh, sons of Dhan Raj Singh including their father. Yet another set of real brothers, Vikal and Triveni Singh, sons of Shobha Singh, along with their father. It may be noted that Dhan Raj and Shobha Singh were assigned a role of exhortation only. In my view, where there is a long standing enmity and the members of the two families are sharply divided over civil and criminal disputes, not much time is required for introducing the names of persons in the F.I.R. who might have no role in the incident.

18. Before I proceed further, it may be noted that FIR though a very important piece of evidence, is not substantive evidence. The FIR has a great value but a limited application. The purpose and value of the FIR has been explained by the Supreme Court in **Sheikh vs. State of Bihar, 1972 Cri.L.J. 233**. The Supreme Court explained the same in following language:

"... The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses...."

Thus, though an FIR, more so if it is prompt, remains very important but cannot be taken as conclusive piece of evidence for everything stated therein.

19. Moreover, the deceased sustained only four injuries; two were of the nature of abrasion; rest of the two injuries were caused by 'bhala'. There is consistent evidence that it was Triveni who gave the deceased two successive blows from 'bhala'; one piercing wound on left upper arm placed laterally and going deep into bone; the other one, again a piercing wound on left thigh placed medially; there was accumulation of blood in the area of 12cm x 8cm below the injury, left femoral artery was badly lacerated. As per prosecution case, the deceased was first battered with 'laathis'; all the accused persons attacked him, but sustained only four injuries. Effectively there were two injuries caused by 'bhala'. And there is clear and unimpeachable evidence that it was Triveni Singh, who gave blows from 'bhala'. As per prosecution case, out of 9 persons, 7 persons had 'laathi'. No evidence has been given that Nanku (deceased) sustained injury from blows of 'laathi' by any particular accused. There is just a vague evidence that all of them thrashed him with 'laathi'. But medical evidence does not support this theory. Importantly there is no evidence to differentiate between the persons who actually participated in the incident and who did not. In these circumstances, I do not find it safe to conclude that all the named accused persons in fact participated in the offence.
20. P.W.1 has given a categorical statement that it was Triveni Singh who wielded 'bhala' and gave two blows to the deceased Nanku; he started bleeding profusely. In my view, there is nothing to doubt this categorical statement given by an eye-witness PW1, corroborated by the evidence of another eye-witness P.W.2 Dulari Devi and yet again corroborated by the medical evidence and the F.I.R. It may be noted again that in the F.I.R. it has been clearly mentioned that it was Triveni Singh, who had badly injured father of the first informant. In my view, a prompt F.I.R. definitely minimizes the introduction of embellished and colored facts but is no guarantee of truth. The Court has to apply its judicial mind and find out the truth from the melee of facts. This Court is convinced that as far as accused-Triveni Singh is concerned, it was him who actually caused him injuries from 'bhala' but so far as other accused persons are concerned, it is not safe to convict them with the help of section 149 IPC.
21. In ***Bajwa and Others vs. State of U.P., (1973) 1 SCC 714***, it has been observed as below:-
- "16. But this does not conclude the appeal. The evidence through which we have been taken by the learned counsel at the bar, has been examined by us with care and anxiety because in cases like the present where there are party factions, as often observed in authoritative decisions there is a tendency to include the innocent with the guilty and it is extremely difficult for the Court to guard against such a danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on acceptable evidence which in some measure implicates such 58 accused and satisfies the conscience of the court. (see, Kashmira Singh vs. State of M.P., (1952) 1 SCC 275 and Bhaban Sahu vs. The King, 76 IA 147 . In the case in hand, no doubt, the prosecution witnesses claiming to have seen the occurrence have named all the appellants and. the approver has even named those, acquitted by the High Court, but in our view it would be safe***

only to convict those who are stated to have taken active part and about whose identity there can be no reasonable doubt.”

22. In ***Amzad Ali and Others vs. The State of Assam, (2003) 6 SCC 270***, it has been observed as below:-

“The courts below despite the other accused acquitted by them being named also in the evidence, have chosen to give some of them benefit of doubt in the absence of positive role by any overt acts being attributed to them. The same treatment cannot be meted out to all the other accused whose complicity and specific role in the commission of the offence was firmly established by the evidence.”

23. At the risk of repetition a few things must be recapitulated as below:-

- First that except Triveni Singh, Vikal Singh and Sadanand, all others were carrying laathi and there was no injury caused by any blunt weapon like 'laathi'. The abrasion can very well be sustained by any person who falls on the ground on being attacked by others.
- No role of causing any injury has been assigned to Dhan Raj and Shobha Singh (both of them since been dead and the appeal as regards them has abated) of giving any blow by 'laathi'. They merely played a role of exhortation.
- Accused Vikal Singh is said to have a 'katta' in his hand but no shot was fired by him.
- Remaining only accused person namely, Sadanand was throwing stones from his own house.
- Except Triveni Singh, any reliable evidence as regard actual participation of other accused person is lacking. The prosecution had burden to prove the same and that burden has not been sufficiently discharged.
- I took all the facts and circumstances of the matter in consideration, and I am of the view that except Triveni Singh, it is not safe to agree with the opinion of the trial court as regards conviction of other accused persons under section-304 I.P.C. (Part II) read with section- 149 I.P.C.

24. The prosecution has raised the issue of conviction in Part II of section 304 IPC instead of Part I of section 304 IPC.

It was observed by the Supreme Court in ***Anbazhagan vs. The State Rep. By the Inspector of Police in Criminal Appeal no. 2043 of 2023 passed on 20th July, 2023*** in para no. 48 as below:-

“48. In Camilo Vaz v. State of Goa [(2000) 9 SCC 1 : 2000 SCC (Cri) 1128] the accused had hit the deceased with a danda during a premeditated gang-fight, resulting in the death of the victim. Both the trial court and the Bombay High Court convicted the appellant under Section 302 IPC. This Court, however, converted the conviction to one under Section 304 Part II IPC and observed:- (SCC p. 9, para 14) “14. ... When a person hits another with a danda on a vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation case will fall in Part II of Section 304 IPC as in the present case.”

In my opinion, this case is squarely covered by Section 304 Part II IPC. Triveni Singh had a '*bhala*' in his hand and he pierced the body of deceased from lateral sides causing injuries on one side of the body. And the deceased died of those injuries. In my view, the accused had knowledge that such act may cause death. I do not find any good ground to disturb the finding of trial court in this regard.

25. On the basis of above discussion, the appellants who are remaining surviving accused persons i.e., Jangali Singh, Jai Prakash Singh, Rajesh Singh and Sadanand Singh are hereby acquitted of the charges under Section 304 Part II read with section 149 I.P.C. The appellants namely, Jangali Singh, Jai Prakash Singh, Rajesh Singh and Sadanand Singh convicted under sections 147 and 148 IPC are also hereby acquitted. The order of trial court as regard aforesaid accused persons is set aside. The sureties are discharged.
26. The prosecution has been able to prove the offence under section 304 Part II IPC beyond reasonable doubt against accused Triveni Singh. The accused Triveni Singh is convicted under Section 304 Part II IPC simplicitor. Further, he shall undergo the remaining part of sentence awarded under Section 304 Part II IPC. Accordingly, the sentence order is maintained. To that extent, the judgment and order dated 30.07.1998 passed in S.T. No. 274 of 1994 under Section 304 Part II IPC is hereby affirmed.
At the same time, in view of the facts and circumstances of the case discussed above, he is acquitted of charge under section 148 IPC. Accordingly, the order of conviction and sentence as regard Triveni Singh for charge under section 148 IPC is set aside to that extent.
27. The sureties are hereby discharged from their liabilities.
28. Accordingly, this criminal appeal is **partly allowed**.
29. All the accused persons namely, Jangali Singh, Jai Prakash Singh, Rajesh Singh and Sadanand Singh shall, before the court concerned, within a period of next four weeks, execute bail bonds with two sureties and personal bond of the same amount, to the satisfaction of the court concerned, to ensure their appearance before the higher court, as and when such court issues notice in respect of this case. Such bail bonds shall be in force for a period of six months from the date of execution thereof.
30. The accused-Triveni Singh shall immediately surrender before the court concerned and undergo remaining part of sentence.
31. Copy of the judgment be provided to the counsel for the accused-Triveni Singh immediately on his surrender/arrest.
32. Copy of judgment shall be transmitted to the trial court, alongwith the record of the case for compliance. Another copy of the judgment shall be transmitted to the district jail concerned by the court concerned, for the purpose that it is immediately handed over to the accused when he is lodged in district jail.
33. Lower court record be returned immediately.

*Disclaimer: Always compare with the original copy of judgment from the official website.