2023INSC812

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2006 OF 2023

N. RAMKUMAR ....APPELLANT

versus

THE STATE REP. BY INSPECTOR OF POLICE ....RESPONDENT

J U D G M E N T

ARAVIND KUMAR, J.

1. Heard.

2. This appeal is at the instance of a Convict-Accused and is directed against the judgement and order passed by the Madurai bench of Madras High Court dated 28.10.2015 in Criminal Appeal (MD) No.334 of 2013 whereunder the High Court dismissed

the appeal filed by the appellant herein thereby affirming the judgement and order of conviction and sentence passed by the First Additional District Judge (NCR) Tiruchirappalli in Case No.226 of 2010.

3. The facts in brief, shorn of unnecessary details leading to the filing of this appeal are as under:

4. The case of the prosecution was that the deceased Sangeetha was in love with the appellant and she was unhappy with the conduct of the appellant and her mother had also warned them in this regard. It is further case of prosecution that deceased stopped seeing the appellant and broke her relationship with the appellant and deceased was talking to her neighbour one Mr. Sudhakar and being agitated with the said turn of events, appellant is said to have trespassed into the house of the deceased on 19.06.2010 at about 10.30 p.m. and questioned her conduct of talking to another person. It is stated by the prosecution that appellant in a fit of rage, held the

deceased by her ears and dashed her head against the wall and fled away from the spot. PW-1 and PW-2 had admitted the deceased to the hospital and after three days the complaint was lodged resulting in registration of FIR No.1659 of 2010 for the offence punishable under Sections 294(b), 448, 323 and 506(1) of the Indian Penal Code (hereinafter referred to as "IPC") and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act against the appellant.

5. It is stated by the prosecution that on 28.06.2010 deceased who was under treatment started vomiting blood and struggled to breathe and expired on 29.06.2010 at 3.30 a.m. On her demise the Investigating Officer (PW-12) altered the charge to one under Sections 294(b), 448, 323, 506(1) IPC, and 302 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

6. The appellant – accused came to be tried for the said offence and on the basis of the testimony of the mother of the deceased (PW-1) and also taking into consideration the deposition of neighbour (PW-2) who claimed to have seen the accused fleeing away from the scene of offence by taking into consideration the attendant circumstance, learned First Additional District Judge convicted the accused for the offence punishable under Sections 450 & 302 IPC. The accused was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.50,000/- and in default to undergo simple imprisonment for six months for the offence under Section 450 and sentenced him and to undergo imprisonment for life and to pay a fine of Rs.60,000/- and in default to undergo simple imprisonment for six months for the offence under Section 302 IPC. The sentences were ordered to run concurrently.

7. The legality of the said judgment was questioned before the High Court of Madras in Criminal Appeal (MD) No.334 of 2013 and on re-appreciation of the entire evidence, the High Court affirmed the judgment of the Sessions Court by arriving at a conclusion that it was the appellant who had caused the injury to the deceased resulting in her death and the act of accused in trespassing to the house of the deceased was for committing the murder, had been clearly established. It was also opined by the High Court that deceased had given up her love for the accused and she had developed relationship with one Mr. Sudhakar which enraged the accused to wreak vengeance and for this reason he had gone all the way to the house of the deceased with a determination to eliminate her and as such it would fall within the first limb of Section 300 IPC and thus, he was liable to be punished under Section 302 IPC. Hence, this appeal.

8. We have heard the arguments of learned Advocates. It is the contention of Shri M. A. Chinnasamy, learned counsel appearing for the appellant, that there has been delay in filing the complaint and on this ground alone the theory of the prosecution cannot be considered as trustworthy. He would also contend that conviction of the accused is based on the sole testimony of PW-1 and the contradictions in her testimony is manifestly clear and is not trustworthy and cannot be relied on to convict the appellant. The very fact that PW-1 was against the love affair of her daughter with the accused having been admitted by her would disclose the inimical attitude against the accused. With regard to there being blood in the floor of the kitchen is belied by the statement of PW-12 (investigating officer) and so also the statement of PW-5 who have not whispered a word in that regard. He would also draw the attention of the Court that theory of the prosecution as put forth in the complaint lodged by PW-1 is that the

accused had punched her daughter on the face and she fell on the kitchen slab. However, in her evidence she has deposed that accused held the ears of the victim and dashed her against the wall. Though, PW-1 claimed that deceased was taken in an auto rickshaw, non-examination of the driver of auto rickshaw would create a doubt in the prosecution theory. Neither the clothes of the accused nor of the victim was sent for chemical analysis. He would also contend that in the event this Court were to affirm the findings of the courts below, he would pray for sentence being converted to the one under second part of Section 304 of the IPC in as much as the accused had no knowledge that his act is likely to cause death, as such it would be culpable homicide not amounting to murder.

9. Per contra, learned counsel appearing for the respondent would support the impugned order and has prayed for affirming the same. He would also

contend that the evidence tendered by the prosecution has not been impeached and the prosecution witnesses have stood the test of cross-examination and as such the impugned order deserves to be affirmed. He would further contend that the accused having been in love with the deceased was unable to digest the fact that she had developed intimacy with her neighbour Sudhakar and being dejected the accused had taken the extreme step of eliminating the deceased and the reasons assigned by the High Court while affirming the judgment and sentence awarded by the Sessions Court would not be required to be interfered with. Hence, he has prayed for rejection of the appeal.

10. At the outset, it requires to be noticed that while issuing notice of this appeal on 21.11.2016, it was restricted for the purpose of conversion of the offence. Hence, within this limited sphere this appeal has to be examined, namely, as to whether

judgement, order and sentence passed by the Sessions Court and affirmed by the High Court requires to be affirmed or the sentence is to be converted and punishment to be awarded under Section 304 of IPC and if so, which part of Section 304 IPC?

11. In the aforesaid background, it would be necessary to discern the evidence available on record. The final opinion given by the doctor for the cause of death as evident from exhibit P-9 reads as under:

> "The deceased would appear to have died of "head injury". (viscera report enclosed-alcohol in other format was not detected").

12. The doctor (PW-11) who conducted the post-mortem of the deceased has deposed that he is the author of the report Ex. P-9. He has also deposed that injuries found therein can be inflicted when a person slips and falls on the kitchen slab. He has admitted that two injuries which he had identified had been inflicted a week before, and were in the process of

healing. PW-10 who is the doctor at Cauvery Hospital, Trichy and had examined the deceased, has deposed that deceased was conscious when he examined her on 26.06.2010. He has also deposed that deceased was in a good speaking condition. In the teeth of aforesaid medical evidence available on record, the testimony of eye-witness, namely, mother of the deceased-PW-1 requires to be examined. A perusal of the same would indicate she has deposed that on 19.06.2010 at 10:30 pm when she and her deceased daughter were at home, accused had visited their house and questioned her daughter as to why she was talking to the neighbour Sudhakar and not talking to him. She further deposes that after saying so, he punched on her daughter's face and held both her ears and dashed her hard against the kitchen wall and immediately her daughter fell down and her head was broken and right ear was cut. It is thereafter she is said to have shifted her daughter to Geetanjali hospital and next day to KMC Hospital. The testimony

of the uncle of the deceased – PW-2 which is on record would disclose that he was returning from work at 10:45 pm on 19.06.2010 and he saw the accused coming out of his mother in law's house and heard her cry and as such he rushed to her house and saw the deceased lying in a fainted condition. On enquiry, PW-1 is said to have informed him (PW2) about the attack made by the accused.

13. Having given our anxious consideration as regards the genesis of the incident and the role attributed to the appellant herein and testimony of the doctors who treated her and also who performed the post-mortem of the deceased, discloses that doctor has noted two injuries on the deceased: (i) cut injury in the left ear measuring 3 centimetres and; (ii) Two wounds in left head roughly measuring 7 centimetres and near to that another small injury. The injuries, as noted in Post-Mortem Report Ex.P-9 are as under:

> "(i) Sutured wounds: - On the lobule of right ear 2 cm in length. On removal of the sutures, edges are irregular, 0.5 cm in breadth and muscle deep, on the left temporal region of the scalp, 7 cm in length. On removal of the sutures, edges are irregular, 2 cm in breadth and bone deep, on the left parietal region of the scalp, 2 cm in length. On removal of the sutures, edges are irregular, 1 cm in breadth and bone deep.
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> (ii) Resolving bruising of left temporal, left parietal and left side of occipital regions of scalp. Sub-dural haemorrhage and Sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres. Fracture base of skull-left middle cranial fossa present."

14. The cause of death assigned in the post-mortem report as already noticed is "died of head injury". It is a trite law that "culpable homicide" is a genus and "murder" is its species and all "murders" are "culpable homicides, but all "culpable homicides" are not "murders" as held by this court in ***Rampal Singh*** *Vs.* ***State of Uttar Pradesh*** (2012) 8 SCC 289. The intention of the accused must be judged not in the light of actual circumstances, but in the light of what is supposed to be the circumstances.

15. In the case of ***Basdev*** *Vs.* ***State of Pepsu*** *AIR 1956 SC 488 at page 490* the following observations have been made:

> "Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the act. In many cases intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

16. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be

unsafe to treat ‘intent’ and ‘knowledge’ in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Indian Penal Code namely “intention” and “knowledge” has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury

which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. This Court in the case *of* ***Pulicherla Nagaraju @ Nagaraja Reddy*** *vs* ***State of Andhra Pradesh****, AIR 2006 SC 3010* has observed:

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be

> gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

17. This Court in the case of ***Pratap Singh @ Pikki*** *v.* ***State of Uttarakhand*** *(2019) 7 SCC 424* had noticed that the deceased-victim had suffered total 11 injuries and had been convicted for offences under Section 304 Part-II/Section 34 IPC apart from other

offences. It was noticed that some altercation took place and the groups entered into scuffle without any premeditation and convicted accused for the offence punishable under Section 304 Part-II/Section 34 IPC. Taking into consideration that the appellants therein were young boys and had served sentence of more than three years and five months and there was no previous enmity, persuaded this Court that the quantum of sentence is excessive and accordingly sentenced them to the period already undergone for the offence under Section 304 Part-II/ Section 34 IPC by observing thus:

> "27. We do find substance in what being submitted by the learned counsel for the appellant and in the first place, it is to be noted that the trial Court, while awarding sentence to the appellant has not made any analysis of the relevant facts as can be discerned from the judgment (page 96–97 of the paper book) dated 12th January, 1998. Even the High Court has not considered the issue of quantum of sentence. From the factual position which emerge from the record, it is to be noticed that they were young boys having no previous enmity and were collectively sitting and watching Jagjit Singh night. On some comments made to the girls sitting in

> front of the deceased, some altercation took place and they entered into a scuffle and without any pre–meditation, the alleged unfortunate incident took place between two group of young boys and it is informed to this Court that the appellant has served the sentence of more than three years and five months. Taking into consideration in totality that the incident is of June 1995 and no other criminal antecedents has been brought to our notice, and taking overall view of the matter, we find force in the submission of the appellant that the quantum of sentence is excessive and deserves to be interfered by this Court."

18. In the case of ***Deepak*** *v.* ***State of Uttar Pradesh*** reported in (2018) 8 SCC 228 it came to be noticed by this Court that incident had taken place in the heat of the moment and the assault was by a single sword blow in the rib cage was without any premeditation and incident had occurred at the spur of the moment, and thus inferred there was no intention to kill and as such the offence was converted from Section 302 IPC to Section 304 Part II IPC and the appellant was ordered to be released forthwith by sentencing them to the period of conviction already undergone. It was held:

"7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without premeditation on the spur of time. The fact that the appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased, nothing prevented the appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib-cage area, knowledge that death was likely to ensue will have to be attributed to the appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the appellant under Section 302 IPC and are satisfied that it deserves to be altered to Section 304 Part II IPC. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already undergone. The appellant may be released forthwith if not required in any other case.

9. The appeal is therefore allowed in part with the aforesaid modification of the conviction and sentence."

19. This Court in a recent judgement in the case of ***Anbazhagan vs. The State represented by the Inspector of*** *Police in Criminal Appeal No.2043 of 2023* disposed of on 20.07.2023 has defined the context of the true test to be adopted to find out the intention or knowledge of the accused in doing the act as under:

> "60. Few important principles of law discernible from the aforesaid discussion may be summed up thus:
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> (1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the IPC, the act will be murder even though only a single injury was caused. To illustrate: 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in

ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.

(2) Even when the intention or knowledge of the accused may fall within Clauses (1) to (4) of Section 300 of the IPC, the act of the accused which would otherwise be murder, will be taken out of the purview of murder, if the accused's case attracts any one of the five exceptions enumerated in that section. In the event of the case falling within any of those exceptions, the offence would be culpable homicide not amounting to murder, falling within Part 1 of Section 304 of the IPC, if the case of the accused is such as to fall within Clauses (1) to (3) of Section 300 of the IPC. It would be offence under Part II of Section 304 if the case is such as to fall within Clause (4) of Section 300 of the IPC. Again, the intention or knowledge of the accused may be such that only 2nd or 3rd part of Section 299 of the IPC, may be attracted but not any of the clauses of Section 300 of the IPC. In that situation also, the offence would be culpable homicide not amounting to murder under Section 304 of the IPC. It would be an offence under Part I of that section, if the case fall within 2nd part of Section 299, while it would be an offence under Part II of Section 304 if the case fall within 3rd part of Section 299 of the IPC.

(3) To put it in other words, if the act of an accused person falls within the first two clauses of cases of culpable homicide as described in Section 299 of the IPC it is

punishable under the first part of Section 304. If, however, it falls within the third clause, it is punishable under the second part of Section 304. In effect, therefore, the first part of this section would apply when there is 'guilty intention,' whereas the second part would apply when there is no such intention, but there is 'guilty knowledge'.

(4) Even if single injury is inflicted, if that particular injury was intended, and objectively that injury was sufficient in the ordinary course of nature to cause death, the requirements of Clause 3rdly to Section 300 of the IPC, are fulfilled and the offence would be murder.

(5) Section 304 of the IPC will apply to the following classes of cases : (i) when the case falls under one or the other of the clauses of Section 300, but it is covered by one of the exceptions to that Section, (ii) when the injury caused is not of the higher degree of likelihood which is covered by the expression 'sufficient in the ordinary course of nature to cause death' but is of a lower degree of likelihood which is generally spoken of as an injury 'likely to cause death' and the case does not fall under Clause (2) of Section 300 of the IPC, (iii) when the act is done with the knowledge that death is likely to ensue but without intention to cause death or an injury likely to cause death.

To put it more succinctly, the difference between the two parts of Section 304 of the IPC is that under the first part, the crime of murder is first established and the accused is then given the benefit of one of the exceptions to Section 300 of the IPC, while under the second part, the crime of murder is never established at all. Therefore, for the purpose of holding an accused guilty of

the offence punishable under the second part of Section 304 of the IPC, the accused need not bring his case within one of the exceptions to Section 300 of the IPC.

(6) The word 'likely' means probably and it is distinguished from more 'possibly'. When chances of happening are even or greater than its not happening, we may say that the thing will 'probably happen'. In reaching the conclusion, the court has to place itself in the situation of the accused and then judge whether the accused had the knowledge that by the act he was likely to cause death.

(7) The distinction between culpable homicide (Section 299 of the IPC) and murder (Section 300 of the IPC) has always to be carefully borne in mind while dealing with a charge under Section 302 of the IPC. Under the category of unlawful homicides, both, the cases of culpable homicide amounting to murder and those not amounting to murder would fall. Culpable homicide is not murder when the case is brought within the five exceptions to Section 300 of the IPC. But, even though none of the said five exceptions are pleaded or prima facie established on the evidence on record, the prosecution must still be required under the law to bring the case under any of the four clauses of Section 300 of the IPC to sustain the charge of murder. If the prosecution fails to discharge this onus in establishing any one of the four clauses of Section 300 of the IPC, namely, 1stly to 4thly, the charge of murder would not be made out and the case may be one of culpable homicide not amounting to murder as described under Section 299 of the IPC.

(8) The court must address itself to the question of mens rea. If Clause thirdly of Section 300 is to be applied, the assailant

must intend the particular injury inflicted on the deceased. This ingredient could rarely be proved by direct evidence. Inevitably, it is a matter of inference to be drawn from the proved circumstances of the case. The court must necessarily have regard to the nature of the weapon used, part of the body injured, extent of the injury, degree of force used in causing the injury, the manner of attack, the circumstances preceding and attendant on the attack.

(9) Intention to kill is not the only intention that makes a culpable homicide a murder. The intention to cause injury or injuries sufficient in the ordinary cause of nature to cause death also makes a culpable homicide a murder if death has actually been caused and intention to cause such injury or injuries is to be inferred from the act or acts resulting in the injury or injuries.

(10) When single injury inflicted by the accused results in the death of the victim, no inference, as a general principle, can be drawn that the accused did not have the intention to cause the death or that particular injury which resulted in the death of the victim. Whether an accused had the required guilty intention or not, is a question of fact which has to be determined on the facts of each case.

(11) Where the prosecution proves that the accused had the intention to cause death of any person or to cause bodily injury to him and the intended injury is sufficient in the ordinary course of nature to cause death, then, even if he inflicts a single injury which results in the death of the victim, the offence squarely falls under Clause thirdly of Section 300 of the IPC unless one of the exceptions applies.

> (12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC."

20. Thus, it emerges from the case law analysed herein-above for converting the sentence imposed under Section 302 to Section 304 Part II the facts unravelled during trial will have to be seen. In the facts of the case on hand, it is discernible that there was no premeditation to cause death or the genesis of occurrence and the single assault by the accused and duration of entire episode, were factors to adjudge the intention. The offence can be brought clearly within the ambit of Section 304 Part-II IPC. In the instant case it can be noticed that appellant and the deceased were in love with each other. The fact that deceased had stopped talking to the appellant and

she was talking to her neighbour Mr. Sudhakar had ignited the mind of the appellant to be furious about the conduct of the deceased and he was upset about this change of attitude of the deceased. Even according to the testimony of PW-1, who is none other than mother of the deceased there was altercation between the appellant and the deceased and exchange of words between appellant and deceased with regard to their love affair. On being confronted by the appellant as to why the accused had stopped talking to him and as to why she was trying to develop friendship with Sudhakar and the answer given by the deceased had resulted in appellant's getting infuriated and in that spur of the moment he caught hold of her hair and banged her head to the wall which resulted in blood oozing out and on seeing this he ran away from the scene of the incident. Thus, the single assault by the appellant coupled with the duration of the entire period having occurred for about 2-3 minutes would not be sufficient to infer that

he had the intention to kill the deceased. Had there been any intention to do away with the life of the deceased, obviously the appellant would have come prepared and would have assaulted the deceased with pre-meditation. Yet another factor which cannot go unnoticed, the appellant had obviously approached the deceased and intended to confront her as to why she was not talking to him though they were in love and also to clear the doubts about she being friendly with Mr. Sudhakar (neighbour) and in this factual scenario, heated exchange of words have taken place and enraged by her reply the appellant has banged her head on the wall in a fit of fury, which cannot be inferred that he had any intention to take away her life, particularly when he was in love with her.

21. In the aforesaid analysis of law and facts, we are of the considered view that the present appeal deserves to be allowed in part. The conviction of the appellant under 302 is altered/converted to one under

Section 304 part II of the Indian Penal Code for the altered conviction, the appellant is sentenced to the imprisonment to the period already undergone and shall be released forthwith if not required in any other case.

22. The appeal is partly allowed, in the above terms.

.....J.
[S. RAVINDRA BHAT]

.....J.
[ARAVIND KUMAR]

NEW DELHI;
September 06, 2023