

Mirza Hidayatullah Baig

Vs

State of Maharashtra

Criminal Appeal No. 119 of 1973

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

02.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal has been pressed on the limited point of the applicability of Section 302 to the present case. Mr. Kohli appearing for the appellant has contended that having regard to the facts and circumstances of this case and the nature of the weapon used, it cannot be said that the appellant intended to cause the death of the deceased Akhtar Hussain. The evidence shows that an altercation started over the passing of dirty water through the drain in front of the house of the deceased. An altercation followed in course of which the appellant is said to have given a cane stick blow to the deceased. The weapons was merely a walking stick and would not have normally caused the death of the deceased. In the circumstances we are satisfied that the appellant did not have the intention to cause the particular injury which has resulted from the blow given to the deceased. But as the appellant aimed the blow at the head of the deceased which is a vital part of the body, there can be no doubt that he must be presumed to have the knowledge that death was the likely result of his act. In these circumstances, this case clearly falls within the ambit of Section 302(II) IPC. We, therefore, alter the conviction of the appellant from Section 302 IPC to Section 304 (II) and reduce the sentence to the period already undergone as we understand that the appellant who was not granted bail has already served about six years. With this modification, the appeal is dismissed.

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