SUPREME COURT OF INDIA

Shaukat

Vs.

State of Uttaranchal

Crl.A.No.757 of 2005

(J.M. Panchal and Deepak Verma

22.04.2010

JUDGMENT

J.M. PANCHAL, J.

1. The appellant in Criminal Appeal No.757 of 2005 with his father Sabbir, son of Ilahi Bux was charged for commission of offences punishable under Section 302 read with Section 34 Indian Penal Code (IPC) and Section 307 read with Section 34 IPC for causing death of Wilayat and attempting to commit murder of Rahmat. The learned Sessions Judge, Nainital by judgment dated September 18, 1982 passed in Sessions Trial No.17 of 1981 convicted the appellant under Sections 302 and 307 for causing murder of deceased Wilayat and for making attempt to murder Rahmat and sentenced him to life imprisonment for commission of offence punishable under Section 302 as well as R.I. for ten years for commission of offence punishable under Section 307 IPC. His father Sabbir was convicted under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC. Mr. Sabbir was sentenced to life imprisonment for commission of offence under Section 302 read with Section 34 IPC and R.I. for seven years for commission of offence under Section 307 read with Section 34 IPC.

2. Feeling aggrieved, the appellant and his father preferred Criminal Appeal No.1034 of 2001 in the High Court of Uttaranchal at Nainital. During the pendency of the said appeal, Sabbir, who was father of the appellant, expired. Therefore, the appeal filed by the appellant was considered by the High Court. The Division Bench of the High Court, by judgment dated December 24, 2004, held the appellant guilty for commission of offence of culpable homicide not amounting to murder punishable under Section 304 Part-I IPC and sentenced him to undergo R.I. for 10 years and a fine of Rs.5,000/- in default R.I. for one year. The High Court also found the appellant guilty for commission of offence under Section 308 IPC and sentenced him to R.I. for two years and fine of Rs.1,000/- in default R.I. for three months. Feeling aggrieved, the appellant has filed Criminal Appeal No.757 of 2005 by Special Leave.

3. As noticed earlier, the appellant was acquitted of the offences punishable under Sections 302 IPC and Section 307 IPC. Therefore, feeling aggrieved by the said acquittal, the State of Uttaranchal has filed Criminal Appeal No.758 of 2005 by Special Leave.

4. Both the appeals arise out of the common judgment dated December 24, 2004 rendered by the Division Bench of the High Court of Uttaranchal at Nainital. Therefore, this Court proposes to dispose them of by this common judgment.

5. The facts emerging from the record of the case lie in narrow compass. The appellant is resident of Village Darauki Madhaia, P.S. Kichha, District Nainital. In the village, there is a Panchayat pond. The length of the pond from east to west is about 40 to 50 paces whereas its width from north to south is about 25 to 30 paces. The said pond is meant for common use of all the villagers. The people of the village used to take earth from the said pond for maintenance of their houses and other household purposes. The field of the appellant is located on the southern side of the pond. Between the pond and the field of the appellant, there is a palm tree. The boundary of the field belonging to the appellant is extended upto the said palm tree after which the boundary of the pond begins. On the western side of the pond, there is a house of one Sagir and on the west side of the said house, there is a passage whereas on the west side of the passage there is abadi of the village. Injured Rahmat and deceased Wilayat were also residents of this very village. From the place which is near to the field of the appellant, deceased Wilayat used to dig and take earth from the pond. This was not approved by Sabbir who was father of the appellant and he used to object to the digging of soil from the pond on the ground that the field belonging to him would get damaged. The incident in question took place on October 13, 1980. On that day, in the morning at about 5.00 a.m., Rahmat, with his deceased brother Wilayat and Chhote went for offering prayers in a mosque. After offering Namaz, they came out from the mosque at about 5.30 a.m. Rahmat and his brother Chhote were residing in the same house and the house of deceased Wilayat was situated leaving one house from their house. The appellant with his father was residing near the mosque. The appellant and his father stopped Wilayat and Rahmat and told that they had taken earth from the place near their field and if earth was again taken from the same place, they would be appropriately dealt with. Thereupon deceased Wilayat replied the appellant and his father that their field was upto the palm tree whereas pond was common for the villagers and he would bring soil from the pond even on that day. On hearing such reply, the appellant told Wilayat

that he would see Wilayat on the spot. Thereafter, the three brothers came to their respective houses. Deceased Wilayat, after taking a spade, went towards the pond for bringing soil at about 5.45 a.m. After some time, Chhote came out from his house and witnessed that deceased Sabbir and the appellant were going speedily towards the pond. As Chhote saw the appellant and his father going speedily towards the pond, he decided to go to the place where his deceased brother Wilayat was digging the earth to see that nothing untoward happened to him. Chhote was also accompanied by his brother Rahmat. When they reached the pond, they saw that their brother Wilayat was digging earth in the pond from 10 to 12 paces away from the field of the appellant. Accused Sabbir forbade Wilayat from digging the soil but Wilayat continued digging the soil. Thereupon a scuffle ensued between accused Sabbir and deceased Wilayat. When scuffle was so going on, the accused Sabbir asked the appellant to kill Wilayat by saying as to what he was looking at. On this, the appellant who was already armed with a knife, took out the same from his pant's pocket and gave one blow on the back of Wilayat. On receipt of the knife blow, Wilayat immediately turned. Thereupon, the appellant inflicted another injury by knife on left side of chest of Wilayat from the front side. On sustaining injuries, Wilayat fell down in the mud. Rahmat tried to catch hold of the appellant but the appellant inflicted injuries by knife on Rahmat also. Chhote also tried to catch hold of the appellant but accused Sabbir caught hold of collar of the shirt of Chhote and in the meantime the appellant made his escape good from the place of incident. Because of the hubbub created by the incident, Ms. Banu Begum, Pattu Wilayat, Mohd. Yasin, Bafati Shah etc. reached the place of incident. They found that Wilayat had died on the spot. They also noticed that Rahmat who had attempted to rescue his brother Wilayat was also assaulted by the appellant with knife as a result of which Rahmat had fallen down. Accused Sabbir had also made attempt to flee from the place of incident but Md. Yasin with others had caught hold of the legs of Sabbir and, therefore, Sabbir had also fallen down and dashed with another palm tree and sustained superficial injuries. Thereafter, those people who had gathered near the place of incident had tied Sabbir with the tree. A cart was summoned at the place of incident and Chhote along with injured Rahmat had gone to Kichha where he had met Sayed Mohammed Saleem who had reduced the information into writing. After the complaint was scribed, Chhote had put his thumb mark thereon and went to the Police Station. At the Police Station, the complaint was presented. In view of the contents of the First Information Report, offences punishable under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC were registered and investigation commenced. The Investigating Officer went to the place of incident and held inquest on the dead body of Wilayat in the presence of Panchas. He also made arrangement for sending the dead body of the deceased to hospital for post mortem examination. He recorded the statements of those persons who were found to be conversant with the facts of the case. Incriminating articles were seized from the place of incident. Injured Rahmat was referred to hospital for treatment. His condition was precarious and, therefore, his statement could not be recorded. The accused Sabbir was arrested from the spot. The appellant was also arrested on the same day. After investigation was over and chargesheet was submitted, the case was committed to the Court of learned Sessions Judge, Nainital for trial.

6. The learned Sessions Judge framed charge against the appellant for commission of offences punishable under Sections 302 and 307 IPC and against accused Sabbir for commission of offences punishable under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC. The charge was read over and explained to the appellant and his father. Both of them pleaded not guilty to the same. Therefore, the prosecution examined witnesses and produced documents to prove its case against the appellant and his father. After recording of evidence of the prosecution

witnesses was over, the learned Judge explained to the appellant and his father the circumstances appearing against them in the evidence of prosecution and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. In their further statements, the appellant and his father pleaded that they were innocent. However, no witness was examined by any of them in support of their defence that they were innocent.

7. On appreciation of the evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that the deceased Wilayat had died a homicidal death. The learned Judge considered the eye-witness account tendered by the first informant Chhote, injured Rahmat as well as witness Md. Yasin and found that their evidence was reliable. Placing reliance on the testimony of the abovementioned witnesses, the learned Judge held that the appellant had committed murder of deceased Wilayat and had made attempt to murder injured Rahmat and was, therefore, liable to be convicted under Section 302 and 307 IPC. The learned Judge further held that accused Sabbir had shared common intention with the appellant to cause death of the deceased Wilayat and had attempted to murder injured Rahmat and, therefore, he was liable to be convicted for commission of offences punishable under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC. Accordingly, the appellant and his father were convicted. Thereafter, the appellant and his father were heard on the question of sentence. After hearing the appellant and his father as well as learned Additional Public Prosecutor and the defence counsel, the appellant was sentenced to life imprisonment for commission of offence punishable under Section 302 as well as R.I. for ten years for commission of offence punishable under Section 307 IPC whereas his father Sabbir was sentenced to life imprisonment for commission of offence punishable under Section 302 read with Section 34 IPC and R.I. for seven years for commission of offence punishable under Section 307 read with Section 34 IPC.

8. Feeling aggrieved, the appellant and his father preferred Criminal Appeal No.1034 of 2001. During the pendency of the appeal, the father of the appellant, i.e., Sabbir expired and, therefore, the case of the appellant alone was considered by the Division Bench of the High Court of Uttaranchal at Nainital. The High Court found that there was no enmity between the parties nor there was premeditation between the appellant and his father for committing the crime. According to the High Court, the quarrel took place suddenly under the heat of passion because the time between the quarrel and the fight was stated to be few minutes. The High Court was of the view that the quarrel had taken place on account of sudden provocation in which the appellant had caused injuries to the deceased with knife and, therefore, the appellant had committed the offence of culpable homicide not amounting to murder punishable under Section 304, Part I of the IPC. The appellant was accordingly convicted and was sentenced to undergo R.I. for ten years and a fine of Rs.5,000/- in default R.I. for one year. The High Court was further of the view that the injuries on the person of Rahmat indicated that Rahmat had tried to apprehend the appellant when the appellant was trying to make his escape good from the place of occurrence and, therefore, it was natural for the appellant to inflict injuries on the person of Rahmat in order to make his escape good. The High Court, therefore, concluded that the appellant had, in fact, no intention to make an attempt to commit murder of Rahmat and had committed offence punishable under Section 308 IPC. Accordingly, the High Court convicted the appellant under Section 308 IPC and sentenced him to R.I. for two years and a fine of Rs.1,000/- in default R.I. for three months by judgment dated December 24, 2004. The above judgment has given rise to the two appeals.

9. This Court has heard learned counsel for the parties at length and considered the documents forming part of the appeal as well as original record summoned from the Trial Court.

10. The fact that deceased Wilayat died a homicidal death is not disputed before this Court. The said fact stands amply proved by the testimony of PW9, Dr. S.C. Mishra. According to the Medical Officer, Haldwani, he had conducted autopsy on the dead body of deceased Wilayat on October 14, 1980 and found a stab wound measuring about 8 cm x 4 cm x cavity deep over left side of chest about 2 cm below left nipple and one incised wound measuring about 6 cm x 2 cm x muscle deep in left luminar region about 8 cm above head of femur. The injuries mentioned by Dr. Mishra are also noted in the post mortem report prepared by him and produced on the record of the case at Exhibit KA-19. It is nobody's case that the deceased received the abovementioned injuries accidentally. Nor it is the case of anyone that the deceased had received those injuries in an attempt to commit suicide. On the facts and in the circumstances of the case, this Court is of the definite opinion that the fact that the deceased had died a homicidal death is firmly established.

11. The evidence of the three eye-witnesses, namely, Chhote, who was the first informant as well as that of injured Rahmat and witness Md. Yasin would indicate that when the deceased was digging earth, he was prevented from doing so by accused Sabbir whereupon a scuffle had ensued between the deceased and accused Sabbir. All the witnesses have specifically stated that accused Sabbir had told his son, i.e., the appellant not to be a passive spectator and kill the deceased. According to the witnesses, the appellant had thereupon taken out knife from his pant's pocket and inflicted first blow on the back of the deceased. Their evidence further shows that on receipt of the blow on his back, the deceased had immediately turned and, therefore, another blow was inflicted by the appellant on the chest of the deceased whereupon the deceased had fallen down on the ground and died on the spot. The eye-witness account further establishes that injured Rahmat had tried to save his brother Wilayat but the appellant had also injured him with the knife. As per the medical evidence on record, injured Rahmat had received as many as six injuries. This is amply proved by PW4, Dr. Yogesh Mishra, who was the then surgeon, Primary Health Centre, Kichha. On reappraisal of the testimony of the three witnesses, this Court finds that the version presented by them before the Court inspires confidence. Though each of them was subjected to searching cross-examination, nothing could be brought on record to impeach credibility of any of them. It is relevant to notice that one of the eye-witnesses was injured Rahmat himself. Therefore, his presence at the place of incident can hardly be doubted. He being real brother of the deceased and he himself having received injuries, would not allow the real culprit to go scot free and involve innocent persons falsely. The evidence of the eye- witnesses further makes it clear that there are no major contradictions or omissions. Under the circumstances, this Court is of the opinion that neither the Trial Court nor the High Court committed any error in placing reliance on the testimony of the three eye-witnesses for the purpose of coming to the conclusion that the appellant was the author of the injuries sustained by the deceased and injured Rahmat.

12. The learned counsel for the appellant in Criminal Appeal No.757 of 2005 argued that the accused Sabbir had received two injuries whereas the appellant had sustained one injury and, therefore, injuries having been caused to the deceased in exercise of right of self-defence, the conviction of the appellant under Section 304, Part-I for the death of the deceased and under Section 308 IPC for causing injuries to Rahmat should be set aside. On the other hand, the learned Additional Public Prosecutor vehemently argued that the Trial Court had given cogent and convincing reasons for the purpose of coming to the conclusion that the appellant is guilty under Section 302 IPC for causing murder of the deceased Wilayat and under Section 307 for attempting to commit murder of injured Rahmat and the High Court was not justified in coming to the conclusion that the appellant had committed offence punishable under Section 304, Part I IPC as far as murder of the deceased was concerned and offence punishable under Section 308 IPC for causing injuries to injured Rahmat.

13. In order to determine whether the appellant is guilty under Section 302 for causing murder of the deceased and under Section 307 for attempting to commit murder of injured Rahmat, it would be necessary to consider the relevant facts which have emerged from the record of the case.

14. The learned counsel for the appellant would argue that the injuries sustained by the appellant and his father would indicate that the appellant had murdered deceased Wilayat and injured witness Rahmat, in exercise of right of self- defence as a result of which conviction under Section 304, Part-I for murder of the deceased and under Section 308 IPC for causing injuries to the injured Rahmat should not be interfered with by this Court in State appeal. While considering these submissions, this Court finds that PW4, Dr. Yogesh Mishra had examined accused Sabbir on October 13, 1980 and had found the following injuries:

"(i) Contusion 2 cm x 1 cm present on the noce, = cm below the bridge of nose.

(ii) Contusion 2 cm x 3 cm present on the right of face 1 cm below the right eye."

The testimony of Dr. Yogesh Mishra further makes it very clear that on the same day he had also examined the appellant and found following injury :

(i) Incised wound 3 cm x 0.5 cm x skin deep present on the right palm on middle side 6 cm above ulnar styloid process."

The doctor has stated in his testimony that the two injuries sustained by accused Sabbir were simple

and could have been caused by dash with the palm tree. As far as injury sustained by the appellant is concerned, it was mentioned by the same medical officer that the injury could have been caused by sharp weapon like knife or could have been self-inflicted. This medical officer was cross-examined on behalf of the appellant and a suggestion was made to him that the injury sustained by the appellant could have been caused by a sharp side of the spade. It may be mentioned that this suggestion was made because according to the prosecution witnesses, the deceased was digging earth with a spade. However, the medical officer has in terms stated that the injuries sustained by the appellant could not have been caused by the sharp side of a spade as it could have been caused by a sharper weapon than spade and that the spade was not sharp enough to cause the injury sustained by the appellant. From the record, it is clear that the learned Sessions Judge had put a question to the witness to elicit answer from him as to whether the sharp edged spade used by the deceased for digging the earth, produced as Exhibit-I could have caused the injury sustained by the appellant. The medical Officer, after looking to the spade, answered that its sharpness was not such so as to cause injury sustained by the appellant. The medical officer was further questioned by the learned counsel for the appellant and it was replied by him that if the spade had been used to cause injury to the appellant, it would have caused an abrasion and not the incised wound. After explaining the difference between incised wound and an abrasion, namely, that incised wound contains edge and also intermediary tissue and all those are clean cut whereas in case of an abrasion, skin tissues slough superficially, it was mentioned by the medical officer that Exhibit-I was not that sharp so as to cause incised wound sustained by the appellant. It was suggested to the medical officer that Exhibit-I, spade, before it was opened in the court was kept at different places for a period of about 1= years and, therefore, its edge might have become blunt, but this suggestion was emphatically denied by him. As far as injuries sustained by accused Sabbir are concerned, it was mentioned by this witness in cross-examination that both the injuries sustained by Sabbir could have been caused by only one dash with any blunt object.

15. A fair reading of the testimony of the medical officer makes it abundantly clear that the accused Sabbir had sustained two superficial injuries when he had hit the palm tree whereas the injury sustained by the appellant was self- inflicted one. The evidence on record does not indicate that any assault was mounted either on the appellant or his father by the deceased or injured Rahmat. On the contrary, the evidence shows that the appellant and his father had gone to the place where deceased was digging earth and accused Sabbir had picked up quarrel with him. On the facts and in the circumstances of the case, this Court finds that plea of self-defence is not made out by the appellant and, therefore, contention that the finding recorded by the High Court that he is guilty under Section 304, Part-I IPC for causing death of the deceased and under Section 308 IPC for causing injuries to Rahmat should be sustained cannot be accepted.

16. As far as the High Court is concerned, this Court finds that the High Court has recorded a finding that there was no enmity between the appellant and his father on one hand and the deceased and the injured on the other nor was there premeditation on the part of the appellant and his father to murder the deceased and as the quarrel had taken place all of a sudden under the heat of passion, the appellant would be guilty under Section 304, Part I IPC for causing death of the deceased and under Section 308 for causing injuries to injured Rahmat. However, this Court notices that several important aspects of the matter have been totally lost sight of and ignored by the High Court while recording abovementioned findings. To begin with, the reliable testimony of three witnesses has

established that in the morning at about 5.30 a.m. on the date of the incident, the accused Sabbir and the appellant had asked the deceased not to dig earth from the place which was near their field whereupon the deceased had told him that pond was meant for general public and, therefore, he would dig the earth from the same place. Two brothers of the deceased, namely, Chhote and Rehmat have in terms stated that the accused Sabbir had threatened that he would not spare the deceased. The evidence of the witnesses would further show that the deceased had gone in the early morning to dig the earth and thereupon the appellant and his father had followed him. What is relevant to mention is that the appellant was carrying a knife in his pant's pocket and this fact was known to his father Sabbir, who had asked him to kill the deceased. As soon as the appellant was asked by his father to kill the deceased, he had taken out the knife from his pant's pocket and inflicted a blow on the back of the deceased. The evidence further establishes that on receipt of the blow, the deceased had turned and the appellant who was bent upon obeying directions of his father to kill the deceased had inflicted another blow on the chest of the deceased. The testimony of Dr. S.C. Mishra, who performed autopsy on the dead body of the deceased would indicate that during the internal examination, heart was found to be pale, empty and punctured whereas the fifth rib of the left side was found fractured. This establishes that the blow with knife on chest of the deceased was inflicted with a great force. According to the doctor, the puncture of heart and fracture of the fifth rib was corresponding to injury No.1. The doctor further

mentioned that injury No.1 could have been caused by knife which was produced as Exhibit-3 and that the said injury was sufficient in the ordinary course of nature to cause death of the deceased immediately. This assertion made by the medical officer was not challenged during his cross-examination at all. The evidence on record, thus, shows that before reaching the place of incident, the appellant had armed himself with a dangerous weapon and had caused injury by using that weapon with such a great force on vital part of the body of the deceased that it had resulted into instant death of the deceased on the spot. It is not the case of the appellant that he had intended to inflict injury No.1 on other part of the body of the deceased and due to movement of the deceased, the blow had landed on the chest of the deceased which had punctured his heart and fractured his rib. The eye-witness account of assault on the deceased by the appellant read with medical evidence makes it more than clear that the act of the appellant, by which the death of the deceased was caused, was done with the intention of causing such bodily injury to the deceased as found by medical evidence in this case and that the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death of the deceased. Thus the facts proved, bring the case of the appellant within four corners of clause Thirdly of Section 300 IPC and it will have to be held that the appellant had committed murder of the deceased punishable under Section 302 IPC.

17. As observed earlier, the High Court has held that there was no enmity between the parties nor there was premeditation on the part of the appellant and his father to murder the deceased and as the quarrel had taken place all of a sudden under the heat of passion, the appellant would be guilty under Section 304 Part I IPC. In view of this finding, it has become necessary for this Court to examine the question whether Exception 4 to Section 300 IPC would be applicable to the facts of this case.

Exception 4 to Section 300 IPC would be attracted only if four requirements are satisfied, namely, (1) it was a sudden fight; (2) there was no premeditation; (3) the act was done in a heat of passion;

and (4) the assailant had not taken any undue advantage or acted in a cruel manner. The facts of the instant case establish beyond pale of doubt that there was premeditation between the appellant and his father to cause the death of the deceased and to execute the threat given by accused Sabbir to the deceased near the mosque at about 5.30 in the morning. Thus, both of them had followed the deceased who had gone to the pond for the purpose of digging the earth and ultimately the appellant had murdered him. Further, the appellant had carried with him lethal weapon like knife while following the deceased. The record would show that the father of the appellant had asked the deceased to stop digging the earth but the deceased had continued to dig the earth because the pond was meant for the benefit of all the villagers including the deceased and thereupon a scuffle had ensued between the father of the appellant and the deceased. The evidence does not indicate at all that any scuffle had taken place between the appellant and the deceased. It is also established that the father of the appellant had asked the appellant not to look at the scuffle as a passive spectator and kill the deceased and thereupon the appellant had first of all given blow with knife on the back of the deceased and thereafter on the chest of the deceased. If the intention of the appellant had not been to murder the deceased, the appellant would not have inflicted second blow with knife with such a great force on vital part of the body of the deceased which resulted into puncture of heart and fracture of rib and ultimately into death of the deceased within no time. Further, the evidence of the injured, i.e., Rahmat would show that he had tried to save his brother but as many as six injuries were caused to him by the appellant. The record amply establishes that motive for the crime was digging of earth by the deceased near the field of the appellant. There is nothing on the record of the case to suggest even remotely that a sudden quarrel had taken place either between the appellant and the deceased or between the father of the appellant and the deceased. On the contrary, the evidence establishes that the appellant and his father had followed the deceased who had gone to the pond for the purpose of digging earth and after picking up quarrel with him, the appellant had murdered him. This cannot be said to be a sudden quarrel within the meaning of Exception IV to Section 300 IPC at all. Further, the appellant had taken disadvantage of the situation in the sense that after inflicting one blow on the back of the deceased, he was not contented and had caused another fatal injury on the chest as well and also caused as many as six injuries to injured Rahmat who had made attempt to save his brother. There is nothing on the record of the case even to remotely suggest that a sudden fight had taken place between the appellant and the deceased. Premeditation to cause death of the deceased stands proved by reliable evidence adduced by the prosecution. Nothing is brought on record of the case to show that the act of mounting fatal attack on the deceased was done by the appellant in a heat of passion. The evidence adduced positively proves that the appellant had taken undue advantage while delivering fatal blow to the deceased. The four requirements for applicability of Exception 4 to Section 300 IPC are not satisfied at all and, therefore, the conclusion of the High Court that the appellant would be guilty under Section 304 Part I IPC, being erroneous in law, is liable to be set aside. Therefore, the appellant will have to be found guilty under Section 302 IPC for causing murder of the deceased.

18. As far as conviction of the appellant recorded under Section 308 IPC for attempting to commit culpable homicide by causing injuries on the person of Rahmat is concerned, this Court finds that the medical officer had found following six injuries on the person of the injured Rahmat when he was examined at 7.50 a.m. on October 13, 1980:

"(i) An incised wound 10 cm x 7 cm x bone deep with fracture of left side ribs with surgical empty

semi with tear of pleura on the left side of chest, posturaly 8 cm lateral to left nipple.

(ii) An incised wound 6 cm x 4 cm x bone deep with fracture of under lying bone present on left side of back just at the iliac crest.

(iii) Incised wound 4 cm x 1 cm x bone deep present on the left hand 2 cm below the left index finger base.

(iv) An incised wound 2 cm x 0.5 cm x muscle deep present on the left thumb in the aspect 2 cm above the base of right thumb

(v) Incised wound 1 cm x 0.2 cm x skin deep present on the inner aspect of right thumb just at the nail root.

(vi) An incised wound 4 cm x 2 cm present on the ventral aspect of left tercunum 6 cm above the left writ joint."

The medical officer has in terms stated that the first two injuries sustained by the injured were grievous whereas injuries 3, 4, 5 and 6 were simple. According to the doctor, all the injuries could have been caused by a sharp object. What is relevant to notice is that the doctor had conducted operation of injured Rahmat with regard to injury No.1 and, for that purpose, the injured was admitted in the hospital. The assertion made by the doctor that injury Nos. 1 and 2 sustained by the injured were grievous in nature has gone unchallenged and was never disputed by the defence. Causing an incised wound 10 cm x 7 cm x bone deep with fracture of left side rib with surgical empty semi with tear of pleura on the left side chest, and another incised wound 6 cm x 4 cm bone deep with fracture of under lying bone on left side of back just at the iliac crest, cannot be regarded as bringing the case of the appellant within the purview of Section 308 IPC. There is no manner of doubt that the injuries were caused to injured Rahman with a view to committing his murder. The finding recorded by the High Court that the appellant had caused injuries to Rahmat in an attempt to escape, is not borne out from the record of the case at all. Even no suggestion was made to any of the eye-witnesses that the appellant had caused injuries to injured Rahmat while making attempt to make his escape good. On the contrary, reliable evidence of Rahmat satisfactorily proves that the appellant had caused injuries to this witness when the witness had made attempt to save his brother. The findings recorded by the High Court are not only not borne out from the record of the case but are contrary to the positive evidence on record. Therefore, this Court is of the firm opinion that the appellant could not have been convicted under Section 308 for causing injuries to injured Rahmat and is liable to be convicted under Section 307 IPC.

19. For the foregoing reasons, Criminal Appeal No.757 of 2005 filed by the appellant Shaukat is dismissed whereas Criminal Appeal No.758 of 2005 filed by the State of Uttaranchal is accepted. The appellant is held guilty under Section 302 IPC for commission of murder of deceased Wilayat and under Section 307 for attempting to commit murder of injured Rahmat. The sentences, as imposed on the appellant by the Trial Court for commission of offences under Sections 302 and 307 IPC, are restored. Both the appeals accordingly stand disposed of.