

Counsel for the Appellants:

Anil Kumar Yadav, Brij Raj Verma, Rajesh Kumar Tiwari

Counsel for the Respondent:

G.A.

Criminal Law — Indian Penal Code, 1860 - Sections 302/34, 304 Part II/34, 323/34 — Culpable Homicide not amounting to Murder — Sudden Fight — Exception 4 to Section 300 — Absence of premeditation — Altercation over removal of barrier on pathway leading to scuffle — Blows with lathi and danda resulting in death — No prior enmity or motive — Held, occurrence was sudden, without premeditation, in heat of passion — Accused did not act cruelly or take undue advantage — Case falls under Exception 4 to Section 300 — Conviction altered from Section 302/34 IPC to Section 304 Part II/34 IPC. (Paras 25, 26, 30, 31 and 34)

HELD:

In the present case, the question whether the appellants could be said to have caused the injuries with intention of causing death of the deceased is concerned, admittedly, from the evidence adduced by the prosecution, it came into light that the incident had taken place on the spur of moment and in heat of passion upon a sudden quarrel, therefore, it can not be said that the appellants have pre-motivated or premeditation of mind to cause injuries to the deceased. (Para 25)

In the postmortem report no fracture has been found on the body and head of the deceased, which indicates that the appellants had no intention to cause grievous injuries or to kill the deceased. Knowledge and intention of a person is a mental St. and the direct evidence for the same is not possible, it can only be gathered by the attending circumstances like weapon used, commission of crime, manner of assault, nature and number of injuries. These are the factors, which will have to be considered to justify the intention and knowledge. (Para 26)

On going through the entire evidence on record, we find that the necessary ingredients to attract

4th Exception to section 300 IPC are clearly present in the facts of the present case inasmuch as death is caused; there existed no pre-meditation; it was a sudden fight; the offender has not taken undue advantage or acted in a cruel or unusual manner, therefore, the case in hand clearly falls under fourth exception to section 300 IPC. (Para 30)

In the case of Jugut Ram Vs. St. of Chhattisgarh (2020) 9 Supreme Court Cases 520, the Hon'ble Apex Court modified/alterd the charges from Section 302 IPC to 304-II IPC. In that case also the weapon lathi was used and the case was of sudden provocation. In the said case two injuries were found on the head of the deceased caused by lathi blow and in the instant case also two injuries were found on the head of the deceased caused by lathi, therefore, we are of the definite opinion that in the instant case the conviction of the appellants could be altered from Section 302 read with Section 34 IPC to 304-II IPC. (Para 31)

In the present case, the act of appellants are not pre-meditated or pre-motivated, but is a result of sudden fight and quarrel in the heat of passion. Therefore, the finding of guilt recorded by the trial court under Section 302 read with Section 34 IPC deserves to be converted into Section 304-II IPC, therefore, it can be said that though the appellants had knowledge that such an act can result in the death of deceased, but there was no intention to kill the deceased. (Para 34)

Appeal partly allowed. (E-14)

List of cases cited:

1. Gurmukh Singh Vs St. of Har., (2009) 15 SCC 635
2. Pappu Vs St. of M.P., (2006) 7 SCC 391
3. Pulicherla Nagaraju @ Nagaraja Reddy Vs St. of A.P., (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500
4. Jugut Ram Vs St. of Chhattisgarh, (2020) 9 SCC 520

(Delivered by Hon'ble Madan Pal Singh, J.)

1. The instant criminal appeal is directed against the judgment and order dated 12.07.2019 passed by Additional Sessions Judge-IV/Special Judge (E.C. Act), Pilibhit in Sessions Trial No. 230 of 2016 (State Vs. Jumma Shah and two others), arising out of Case Crime No. 1020 of 2016, under Sections 302/34, 323/34 IPC, Police Station Puranpur, District Pilibhit, whereby the appellants have been convicted and sentenced as follows:

(i). 302/34 IPC : Life Imprisonment along with fine of Rs.5000/- each and in default of payment of fine 30 days simple imprisonment to each.

(ii). 323/34 IPC : One year imprisonment to each.

2. Facts giving rise to the present appeal may be summarized as under:

(i). The prosecution case in brief is that on the basis of written report dated 31.05.2016 of the informant Parveen, wife of the deceased (Gulfam), resident of Anandpur @ Bhagwantapur, Police Station Puranpur, District Pilibhit, which has been exhibited as Ext. Ka-2, a first information report was lodged alleging therein that her chachera father-in-law Jumma Shah (appellant no.1) and Husnain Ali (appellant no.2) had put a hurdle in her pathway by putting a block of wood, due to which her way to move outside the house had been blocked. When her father-in-law Alam Shah had approached the appellants and asked them to remove the said wood from the pathway, the appellants, armed with lathi and danda started beating her father-in-law, and on his screaming, Gulfam the husband of the informant came there to rescue his father. The appellants attacked him also with lathi and danda, and gave him serious blows and due to which he

became unconscious. He was brought to the Government Hospital by Ambulance and during treatment, he succumbed to his injuries.

(ii). On the basis of chik FIR, Case Crime No. 1020 of 2016, under Sections 304, 323 IPC, Police Station Puranpur, District Pilibhit was registered against the appellants.

(iii). After the death of the deceased, panchayatnama was conducted, which was marked as Ext. Ka-1 and the body was sent for autopsy.

(iv). After completing the investigation, a charge-sheet was filed against the appellants in the Court of Chief Judicial Magistrate, Pilibhit, under Sections 304, 323 IPC. The cognizance of the offence was taken on 24.08.2016 by the Chief Judicial Magistrate, Pilibhit and thereafter the case was committed to the Court of Sessions on 01.11.2018 for trial.

(v). That on the basis of evidence collected during investigation, vide order dated 17.09.2016, charges under Sections 323/34 and 304/34 IPC were framed against the appellants. The appellants denied the charges and claimed to be tried. Vide order dated 03.04.2017, the then Sessions Judge, Pilibhit modified the order dated 17.09.2016 whereby the charges were framed against the appellants under Section 304/34 IPC and amended the charges to read that they were under Section 302/34 IPC. The appellants denied the charges and claimed trial.

(vi). The prosecution to prove its case had examined P.W.1-Alam Shah, P.W.2-Parveen (informant of the case), P.W.3-Head Constable Rajnath Singh, P.W.4-Afroz, P.W.5-Dr. Jagdish Prasad, P.W.6-Jahan Shah, P.W.7-Smt, Jannati and P.W.8-Sub Inspector Shriram Tamta (Investigating Officer of the case).

(vii). The prosecution in support of its case had also produced oral as well as documentary evidence, which were marked as Panchayatnama Ext. Ka-1, Written report Ext. Ka-2, G.D. entry Ext. Ka-3, Chik FIR Ext. Ka-4, G.D. entry made in the general diary as Ext. Ka-5, Postmortem Report Ext. Ka-4A, Site Plan of the place of incident Ext. Ka-5, Arrest memo Ext. Ka-6 and Charge-sheet Ext. Ka-7.

3. Heard Shri Ajay Kumar Pandey and Shri Rahul Saxena, learned counsel appearing on behalf of appellants, Shri C.B. Dhar Dubey, learned Additional Government Advocate for the State-respondent and perused the record.

4. Learned counsel for the appellants submits that the trial court has not appreciated the evidence in its proper perspective and illegally and wrongly convicted and sentenced to the appellants for life imprisonment. He further submits that the trial court had not convicted the appellants as per the ingredients of sections 302/34, 323/34 IPC while holding the appellants guilty, therefore, the judgment and orders passed by the trial court deserves to be set aside and quashed and further appellants deserve to be acquitted from the charges levelled against them.

5. Learned counsel for the appellants further submits that there are material contradictions in the testimonies of the prosecution witnesses and despite that the appellants had been held guilty of the offences, which they had not committed. Learned counsel for the appellants further submits that there is no independent witness of the incident, who had come forward to support the prosecution case. The trial court had committed manifest error of law in convicting the appellants

under Section 302/34 IPC whereas the prosecution had failed to prove its case beyond all reasonable doubts. The ocular version is totally inconsistent with the medical evidence.

6. Learned counsel for the appellants has also submitted that the conviction of the appellants are based on surmises and conjectures, which deserves to be set aside and quashed.

7. Shri C.B. Dhar Dubey, learned Additional Government Advocate appearing on behalf of the State-respondent vehemently opposed the contentions raised on behalf of the appellants and submitted that the conviction and sentence recorded by the trial court vide judgment and order dated 12.07.2019 is based on proper appreciation of evidence and does not call for any interference by this Court. The criminal appeal filed by the accused-appellants deserves to be dismissed.

8. Before discussing the arguments advanced on behalf of the parties, it is necessary to have a glance on the evidence recorded by the trial court.

9. P.W.1-Alam Shah, who is the father of the deceased in his examination-in-chief has stated that the incident took place ten months ago at about 6.00 pm in the evening. The accused appellants, namely, Jumma Shah, Hasnain Ali and Hashim, had put barriers on the way of the informant. As soon as he came to know about the said barriers, he went there and removed them. Consequently, the accused persons felt annoyed and started beating the P.W.-1 with lathi and dandi. The grandson of the P.W.1 informed the said incident to Gulfam (who is the son of P.W.1-Alam Shah). He rushed to the spot and tried to save his

father. When Gulfam reached the spot, accused persons also started beating Gulfam with lathies and dandas, owing to which he sustained serious injuries and he fell down on the ground. Thereafter the informant called for an Ambulance and took Gulfam to the Government Hospital, where he was declared dead.

10. P.W.2-Smt. Parveen Begum, who is the wife of the deceased, in her examination-in-chief has reiterated the same facts as had been stated by P.W.2-Alam Shah.

11. P.W.3-Head Constable Raj Nath Singh, in his examination-in-chief stated that on 31.05.2016, he along with one Munshi Chandreshwar Prasad Singh and Constable Manoj Kumar were present at the police station Puranpur. They had received the information at about 20.40 hours from CHC Puranpur about the death of Gulfam and the injuries of Alam Shah. After making entries in the GD No. 54 at 20.40 hours, Sub Inspector S.R. Tamta along with other police force departed to the CHC Puranpur. He had further stated that on the same day i.e. on 31.05.2016, the informant came to the police station and had given the application regarding the incident and on the basis of that application Case Crime No. 1020 of 2016, under Section 304, 323 IPC was registered against the appellants.

12. P.W.4-Afroz, is the younger brother of the deceased. In his examination-in-chief, he had reiterated the same facts as had been stated by P.W.1-Alam Shah. Therefore, it does not require repetition again.

13. P.W.5-Dr. Jagdish Prasad, in his examination-in-chief has stated before the trial court that on 01.06.2016, he was

posted as Medical Officer in C.H.C., Puranpur. He conducted the postmortem of the deceased Gulfam son of Mohd. Alam Shah on the same day at 4.15 pm. On external examination, the Doctor had found following injuries on the body of the deceased:

(i) Abraded contusion c traumatic swelling on right side of head just above right ear 10 cm x 12 cm.

(ii) Abraded contusion on left side of head c traumatic swelling size 9 cm x 11 cm just above left ear.

(iii) Abraded contusion just above left elbow joint 9 cm x 2 cm.

(iv) Abraded contusion just above right elbow joint 3 cm x 1 cm.

(v) Abraded contusion above right hip 4 cm x 1.5 cm.

On internal examination of the dead body of the deceased, the cause of death was found to be ante mortem injuries. The injuries were caused by hard and blunt objects like lathi, danda and Kundala.

14. P.W.6-Jahan Shah, in his examination-in-chief has stated that on 01.06.2016, he had gone to Puranpur Government Hospital, where he saw the dead body of the Gulfam. Panchayatnama was prepared in his presence and he has been made witness of the panchayatnama and he had put his signature over it.

15. P.W.7-Smt. Jannati, who is the mother of the deceased, in her examination-in-chief has stated that the incident had happened two and half years and one month prior to the date of testimony at 5.00 p.m. in the evening. At that time she was present in her house. On hearing the hue and cry of her husband, she along with her daughter-in-law (Bahu) Parveen and son Gulfam came at the place of incident and

saw that the appellants were beating to Alam Shah. When Gulfam tried to rescue his father, the appellants gave lathi and danda blow to Gulfam as well, on account of which he sustained serious injuries and he became unconscious. They dialled 108 ambulance and soon Gulfam was admitted in the District Hospital, Puranpur, where the treating doctors declared him dead.

16. P.W.8- Sub Inspector Shriram Tamta (Retd.), Investigating Officer, in his examination-in-chief had stated that on 31.05.2016 he was posted as Sub Inspector at police Station Puranpur and the investigation of this case was handed over to him. During trial he had inspected the spot, prepared Naksa Najari of the place of incident, which was marked as Ext-Ka-5. The arrest memo was prepared as Ext. Ka-6 and the charge-sheet was prepared as Ext. Ka-7.

17. After closing of the prosecution evidence, the statements of the accused persons under section 313 of the Code of Criminal Procedure was recorded. The accused persons stated before the trial court that they had been falsely implicated in the present case. They further stated that the witnesses due to enmity deposed against them.

18. We have heard the arguments of learned counsel for the parties and perused the evidence available on record.

19. So far as the contention regarding non production of independent witness is concerned, from the perusal of the trial court record, it transpires that all the prosecution witnesses and the accused persons belonged to one and the same family, hence there is no doubt about the identity of the accused persons with regard

to the commission of offence. Nowadays, it is being seen that in villages also no one comes forward to support the incident only with a view to avoid any kind of enmity in the village, so merely on the basis of the fact that no independent witness had come forward to support the prosecution case, the prosecution story as setup by the prosecution cannot be discarded. Moreover, there is no such rule that the family members cannot be said to be reliable witness in any case.

20. From the perusal of the site plan prepared by the Investigating Officer (P.W.8), it transpires that the accused persons and the witnesses were living in adjoining accommodations and the incident was said to have taken place at about 6.00 p.m. in the month of March. Generally at that time, it is dusk. Villagers return to their homes from their work places, therefore, the presence of the prosecution witnesses at the place of occurrence cannot be doubted.

21. The ocular version of the witnesses also corroborates the medical evidence. Further more during cross-examination prosecution could not establish any prior enmity between the families of the accused and the deceased, therefore, it cannot be said that the accused persons had been implicated in the garb of prior enmity, thus, in our view, there is no doubt about the presence of the witnesses at the spot when the incident took place.

22. So far as the contradiction in the testimonies of the prosecution witnesses is concerned, we have perused the testimonies of all the prosecution witnesses and found no contradiction regarding place of incident, time of incident, manner of assault and the accused involved in the crime because all the prosecution witnesses

had reiterated the same facts that the incident took place at about 6.00 p.m. in the evening with regard to a petty issue of removal of a barrier put by the accused persons on the main pathway of the deceased. Moreover, all the witnesses of fact had assigned almost the same role to the accused-appellants.

23. All the witnesses of fact were cross-examined at length but the defence could not elicit anything which could prove the story wrong.

24. So far as the argument advanced by the learned counsel for the defence with regard to the fact that in case the prosecution case is taken to be true at its face value even then no case under Section 302 read with Section 34 IPC is made out is concerned, we have perused the postmortem report of the deceased and find that as many as five injuries were found on the body of the deceased, out of which, injuries no. 3, 4 and 5 were on non vital part of the body and the injuries no.1 and 2 were caused on the head of the deceased, hence these facts goes to show that the incident took place and during scuffle with the deceased, accused persons had caused injuries with lathi and danda on the person of the deceased.

25. In the present case, the question whether the appellants could be said to have caused the injuries with intention of causing death of the deceased is concerned, admittedly, from the evidence adduced by the prosecution, it came into light that the incident had taken place on the spur of moment and in heat of passion upon a sudden quarrel, therefore, it can not be said that the appellants have pre-motivated or premeditation of mind to cause injuries to the deceased.

26. In the postmortem report no fracture has been found on the body and head of the deceased, which indicates that the appellants had no intention to cause grievous injuries or to kill the deceased.

Knowledge and intention of a person is a mental state and the direct evidence for the same is not possible, it can only be gathered by the attending circumstances like weapon used, commission of crime, manner of assault, nature and number of injuries. These are the factors, which will have to be considered to justify the intention and knowledge.

27. In the case of ***Gurmukh Singh Vs. State of Haryana (2009) 15 Supreme Court Cases 635***, the Hon'ble Supreme Court held that there are some facts which are required to be taken into consideration before awarding appropriate sentence to the accused. These facts are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant facts are as under : -

- (a) *Motive or previous enmity;*
- (b) *Whether the incident had taken place on the spur of the moment;*
- (c) *The intention/knowledge of the accused while inflicting the blow or injury;*
- (d) *Whether the death ensued instantaneously or the victim died after several days;*
- (e) *The gravity, dimension and nature of injury;*
- (1) *The age and general health condition of the accused;*
- (g) *Whether the injury was caused without premeditation in a sudden fight;*
- (h) *The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*

(l) *The criminal background and adverse history of the accused;*

(Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;

(k) Number of other criminal cases pending against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the Incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

28. In the case of **Pappu Vs. State of M.P. (2006) 7 SCC 391**, the Apex Court in paragraph nos. 13, 14 and 15 held as under :-

“13.... The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case.

For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

14. *It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the weapon used, the size of it in some cases, force with which the blow was given, part of the body on which it was given and several such relevant factors.*

15. *Considering the factual background of the case at hand it will be appropriate to convict the appellant under Section 304 Part II IPC, instead of Section 302 IPC as has been done by the trial court and affirmed by the High Court. Custodial sentence of eight years would meet the ends of justice.”*

29. In the case of **Pulicherla Nagaraju @ Nagaraja Reddy (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500**, the Apex Court has opined that 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. In 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.

30. On going through the entire evidence on record, we find that the

necessary ingredients to attract 4th Exception to section 300 IPC are clearly present in the facts of the present case inasmuch as death is caused; there existed no pre-meditation; it was a sudden fight; the offender has not taken undue advantage or acted in a cruel or unusual manner, therefore, the case in hand clearly falls under fourth exception to section 300 IPC.

31. In the case of **Jugut Ram Vs. State of Chhattisgarh (2020) 9 Supreme Court Cases 520**, the Hon'ble Apex Court modified/alterd the charges from Section 302 IPC to 304-II IPC. In that case also the weapon *lathi* was used and the case was of sudden provocation. In the said case two injuries were found on the head of the deceased caused by *lathi* blow and in the instant case also two injuries were found on the head of the deceased caused by *lathi*, therefore, we are of the definite opinion that in the instant case the conviction of the appellants could be altered from Section 302 read with Section 34 IPC to 304-II IPC.

32. In the case in hand, it is abundantly clear that there was no prearranged plan or that the incident had taken place in furtherance of the pre-meditated intention of the accused persons. When all these facts and circumstances are taken into consideration and in their proper perspective, then it becomes difficult to maintain the conviction of the appellant under Section 302 read with section 34 IPC.

Section 304 IPC reads as under:

"304. Punishment for culpable homicide not amounting to murder.

Whoever commits culpable homicide not amounting to murder, shall be

punished with Imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

33. After evaluating the evidence adduced by the prosecution, role attributed to the appellants, the nature of injuries caused on the person of the deceased and considering the case law cited hereinabove, this Court is of the considered view that it is true that the incident took place but there was no premeditation of mind, the incident took place at the spur of moment, hence it cannot be said that the accused appellants have committed the murder of the deceased having intention that the injuries caused to the deceased would be fatal, in such circumstances, the case would not travel beyond Section 304-II IPC.

34. In the present case, the act of appellants are not pre-meditated or pre-motivated, but is a result of sudden fight and quarrel in the heat of passion. Therefore, the finding of guilt recorded by the trial court under Section 302 read with Section 34 IPC deserves to be converted into Section 304-II IPC, therefore, it can be said that though the appellants had knowledge that such an act can result in the death of deceased, but there was no intention to kill the deceased.

35. In view of above discussions, we alter/modify the conviction of the appellants under Sections 302 read with Section 34 IPC to Section 304-II IPC. Further the conviction of the appellants under Section 323 read with Section 34 IPC is hereby affirmed.

36. Accordingly, the appeal is **partly allowed**. The conviction and sentence of the appellants is altered/modified from Section 302 read with Section 34 IPC to Section 304-II IPC. The appellants are hereby convicted under Section 304-II IPC and sentenced to undergo seven years imprisonment and with fine of Rs.10,000/- each. All the sentences shall run concurrently. The period already undergone by the appellants shall be adjusted. After completion of the sentence as has been modified/altered by this Court, the appellants shall be released, if they are not wanted in any other case.

(2025) 5 ILRA 1578

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 09.05.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Criminal Misc. Writ Petition No. 2588 of 2023

Kodai **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Counsel for the Petitioner:
 Durga Prasad

Counsel for the Respondents:
 G.A., Alok Singh Chauhan, Anil Kumar, Dr. Surendra Singh Chauhan

Criminal Procedure Code, 1973 — Sections 256 & 302 — Death of complainant during

pendency of complaint case — Whether complaint abates — Legal representative on basis of Will — Permissibility to continue prosecution — Held, death of complainant does not ipso facto terminate prosecution — Magistrate may, under Section 302 Cr.P.C., permit any person including legal heir or legatee to continue proceedings — No abatement of inquiry or trial on complainant's death — Heir by Will entitled to pursue complaint — Petition dismissed. (Paras 9, 11, 12, 13, 15 and 18)

HELD:

Section 256(1) Cr.P.C. provides that if the summons have been issued on complaint, and on the day appointed for appearance of the accused, or any day subsequent thereto, the complainant does not appear, the Magistrate shall acquit the accused, unless for some reason, he thinks it proper to adjourn the hearing of the case to some other day; Provided that where the complainant is represented by a pleader, or by the Officer conducting the prosecution, or where the Magistrate is of the opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. It has been provided in subsection (2) of Section 256 that the provisions of sub Section (1) of Section 256 shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death. (Para 9)

In view of above, on the death of the complainant, the criminal prosecution does not put to end and the prosecution can be permitted to be continued by the Magistrate, before whom the proceedings are pending and it may be permitted to be continued through Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor as there is no provision of abatement of inquiry and trial in absence of the complainant, whereas the provision has been made for abatement of appeal or trial on the death of the accused. It is for this reason, it does not provide abatement of the proceedings on death of the complainant, rather if the complainant does not appear, the Magistrate shall acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other date;