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Crl.A.No. 648-649 OF 2000  
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
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ITEM No.103 Court No. 1 SECTION II A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CRL. APPEAL NOS. 648-649 OF 2000@@  
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Kripal Singh Appellant (s)

VERSUS

State of M.P. & Ors. Respondent (s)  
(With appln. for exemption from filing OT & Office Report)

Date: 12/09/2001 These petitions were called on for hearing today.

CORAM:  
HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE R.C. LAHOTI  
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant(s) Mr. Niraj Sharma, adv.

For Respondent(s) Mr. R C Kohli, adv.  
Ms. Vibha Dutta Makhija, adv.  
Mr. Uma Nath Singh, adv.  
Ms. Bharati, adv.

UPON hearing counsel, the Court made the following  
O R D E R

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.SP2

The appeals are dismissed in terms of the  
signed order placed on the file.

.SP1  
(V P Tyagi) (Kanchan Jain)  
Court Master AR-cum-PS

Signed order is placed on the file.

.PA  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 648-649 OF 2000

Kripal Singh

Appellant

Versus

State of Madhya Pradesh & Ors.

Respondents

O R D E R

The appellant is the son of deceased Balwantsingh who died in an occurrence which took place on 10th June, 1992. As many as 10 accused-respondents were sent up for trial for the said homicidal death of Balwantsingh. The learned Sessions Judge vide judgment dated 22nd March, 1994 convicted the accused respondents 2 to 11 for offences under Section 148 and 302/149 IPC. The respondents were sentenced to undergo imprisonment for life under Section 302/149 IPC and to pay a fine of Rs. 500/- each and in default to further undergo simple imprisonment for 3 months. For an offence under Section 148 IPC, all the 10 respondents were awarded one year RI. All the sentences were, however, directed to run concurrently.

Aggrieved by their conviction and sentence, the accused respondents 2 to 11 preferred two appeals in the High Court. Five accused joined in each of the two appeals. By the impugned order and judgment dated 28th July, 1999, the High Court, while holding accused respondents 2 to 11 guilty found that the offence committed by the accused did not fall under Section 302/149 IPC and relying upon medical evidence as well as testimony of the eye witnesses, came to the conclusion that the offence, of which the respondents could be convicted, would squarely fall under Section 304 Part II read with Section 149 IPC. Keeping in view the role played by each one of the accused in the occurrence and the weapon with which the accused were armed, the High Court convicted Indersingh, Manoharsingh, Dhansingh and Ajabsingh for an offence under Section 304 Part II/149 IPC and sentenced them to undergo imprisonment for the period already undergone by them which by that time was found to be more than 7 years. Their sentence of one year RI for an offence under Section 148 IPC was maintained. Both the sentences were, however, directed to run concurrently.

As regards accused Ghisaji, it was found that on the date of the judgment, he was eighty years of age. While maintaining his conviction for an offence under Section 304 Part II read with Section 149 IPC, the High Court directed his release on probation of good conduct under Section 4 of the Probation of Offenders Act, on his executing a personal bond for Rs. 10,000/- with one surety of the like amount to the satisfaction of the trial court and to appear and receive sentence when called upon during the period of two years and in the meantime to keep peace and be of good behaviour. So far as remaining accused are concerned, namely, Chandersingh, Sajansingh, Bahadarsingh, Raisingh and Kalusingh, who were alleged to be armed only with lathis at the time of

occurrence, while maintaining their conviction for an offence under Section 304 Part II read with Section 149 IPC, the High Court sentenced each one of them to undergo imprisonment for two years RI each for the said offence. Their conviction and sentence for an offence under Section 148 IPC was, however, affirmed. This appeal by special leave calls in question the acquittal of the respondent Nos. 2 to 11 for an offence under Section 302/149 IPC.

Mr. Neeraj Sharma, learned counsel appearing for the appellant, basing himself on the Constitution Bench judgment in PSR Sadhanatham vs. Arunachalam and Anr. (1980) 3 SCC 141, submitted that since the State had not filed an appeal against acquittal of respondent Nos. 2 to 11 for the offence under Section 302/149 IPC, the appellant, who was also an informant and is son of the deceased, was entitled to maintain this appeal, by special leave, so as to bring to the notice of this Court that grave miscarriage of justice had occurred by the judgment of the High Court in altering the conviction of respondents 2 to 11 from one under Section 302/149 IPC to one under Section 304 Part II read with Section 149 IPC. In view of the Constitution Bench judgment of this Court (supra), the submission of learned counsel for the appellant to maintain this appeal is not wrong.

We have heard learned counsel for the parties.

Respondent Nos. 2 to 11 have not filed any appeal against their conviction and sentence. The judgment of the High Court correctly analyses the evidence when it upheld the view taken by the trial court that participation of respondent Nos. 2 to 11 in the occurrence, resulting in the death of Balwantsingh on the fateful day, is established. Since, there is no appeal against the conviction and sentence filed by the respondents, we need not detain ourselves to consider that aspect of the case at all. We do not find any error to have been committed by the High Court in analysing the evidence. The only issue before us is whether the High Court committed any error in altering the conviction and sentence of respondents 2 to 11 from the one under Section 302/149 IPC, as recorded by the trial court, to the one under Section 304 Part II read with Section 149 IPC.

We have carefully perused the medical evidence and gone through the statement as well as the post mortem report submitted by Dr. Praveen Mishra, PW-9. Keeping in view the medical evidence, and the nature and manner of assault on the deceased as emerging from eye witness account of the three eye witnesses we are of the view that the High Court was well justified in holding that respondent Nos. 2 to 11 could not be held guilty of the offence of murder and that their offence could only be culpable homicide not amounting to murder, punishable under Section 304 Part II IPC, because all of them could be attributed with the knowledge that injuries caused by them were likely to result in the death of the injured. The view taken by the High Court is sound and suffers from no error. It is a reasonable view based on proper appreciation of evidence. We find no cause to interfere with the impugned judgment of the High Court.

The appeals, therefore, fail and are dismissed.

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& & & & & & & & & & & .J  
( R.C. LAHOTI )

& & & & & & & & & & .J  
( ASHOK BHAN )

New Delhi,  
September 12, 2001