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Crl.A.No. 678 OF 2000

Item No.101

Court No. 9

Section II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No. 678 of 2000@@  
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Suryamani Singh Appellant (s)

Versus

State of U.P. Respondent (s)

( With appln. for bail and with Office Report )

Dated: 20/08/2002: This matter was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE Y.K. SABHARWAL  
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s) Mr. Shakil Ahmed Syed, Adv.  
Mr. SA. Kashif, Adv.

For Respondent (s) Mr. Praveen Swarup, Adv.  
Mr. Prashant Chaudhary, Adv.  
Mr. Pramod Swarup, Adv.

UPON hearing Counsel the Court made the following

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Mr. Shakil Ahmed Syed, the learned counsel appearing for the appellant resumed arguments at 10-45 a.m. and concluded his arguments at 11-00 a.m. Thereafter Mr. Praveen Swarup, the learned counsel appearing for the respondent replied for about 5 minutes. Hearing concluded. The appeal is disposed of.

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(S.Thapar) (V.P. Tyagi) @@  
AA  
PS to Registrar Court Master@  
AAA

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 678 OF 2000@@  
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Suryamani Singh

Appellant (s)

Versus

State of U.P.

Respondent (s)

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The appellant and six other accused were tried and convicted for offence under Section 302 read with Section 149 IPC and imprisonment of life was imposed on them. They were also convicted for offence under Section 307 read with Section 149 IPC and rigorous imprisonment of 5 years was imposed. Bahadur Singh one of the accused was also convicted and sentenced to life imprisonment under Section 302 IPC simplicitor and Algu Singh for offence under Section 307 IPC simplicitor and sentenced to undergo rigorous imprisonment of 5 years in respect of the said offence. The appellant Suryamani @ Jhilmit Singh was also convicted and sentenced to undergo two years rigorous imprisonment for offence under Section 147 IPC, while remaining accused were convicted under Section 148 IPC and each of them was sentenced to two years' rigorous imprisonment for the said offence.

The incident took place on 29th of May, 1978 in the morning at about 7-30 a.m. when Gulab Singh was murdered and

P.W.2 Ghasitu @ Ram Parvesh Singh sustained injuries. One of the three eye-witnesses to the incident was P.W.1 on whose information the F.I.R. was lodged. He was brother of deceased Gulab Singh. The incident was reported to the police at 8-45 a.m. P.W.2 Ghasitu was the injured witness who remained in hospital as indoor patient on account of injuries suffered by him for more than a fortnight. P.W.3 is the other eye-witness who was present near the place of occurrence. The occurrence had taken place on account of some altercation which took place the previous day between Gulab Singh and Rajpati Singh.

Aggrieved by the judgment and order of the trial court, all the 7 accused filed Criminal Appeal before the High Court. The High Court by impugned judgment has acquitted the four accused. The three accused whose conviction in substance was maintained are the appellant, Bahadur Singh and Algu Singh. They were found guilty of offence under Section 302 read with Section 34 IPC and under Section 307 read with Section 34 IPC. Each of them was awarded life imprisonment for offence under Section 302 read with Section 34 IPC and 5 years rigorous imprisonment for offence under Section 307 read with Section 34 IPC. Thus, the High Court instead of

convicting them for offence under Section 302 read with

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Section 149 IPC convicted them for offence under Section 302 read with Section 34 IPC. This was, as a result of acquittal of the 4 accused and the effect that there was no unlawful assembly as the number of accused were less than five in number. Bahadur Singh and Algu Singh have not challenged the impugned judgment and order of the High Court.

The only contention urged in support of the appeal by the learned counsel for the appellant is as to the nature of offence. Counsel submits that the appellant had no intention of causing murder of deceased Gulab Singh and the conviction deserves to be converted from offence under Section 302 read with Section 34 IPC to the one under Section 304 Part II read with Section 34 IPC.

From the evidence on record, it appears and is not in dispute that the appellant was carrying with him a lathi and according to the case of the prosecution he gave only one lathi blow to the deceased. The deceased, it appears from the nature of injuries died on account of incised wounds inflicted on him by Bahadur Singh and Algu Singh. The first such injury was inflicted by Bahadur Singh. On these facts and circumstances, it is difficult to hold that the appellant had intention of causing murder of Gulab Singh and thus we find

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substance in the contention of learned counsel for the appellant.

In view of the aforesaid state of affairs, we convert the conviction of the appellant from offence under Section 302 with Section 34 IPC to a conviction under Section 304 Part II read with Section 34 IPC and sentence him to rigorous imprisonment for a period of 7 years for the said offence. The appeal is disposed of accordingly.

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.....J  
(Y.K. Sabharwal)

New Delhi,  
August 20, 2002

.....J  
(H.K. Sema)