

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.670 OF 2005

MD. SHAKEEL

Appellant (s)

VERSUS

STATE OF A.P.

Respondent(s)

(With appln(s) for bail)

Date: 22/11/2006 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Gautam Prasad,Adv.

Mr. Krishnanand Pandeya,Adv.

For Respondent(s) Mr. P. Vinay Kumar,Adv.

Mrs. D. Bharathi Reddy,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeal is allowed in-part and conviction of the appellant under Section 302 I.P.C. is altered into Section 304 Part II I.P.C. and he is awarded sentence for the period already undergone. The appellant, who is in custody, is directed to be released forthwith if not required in connection with any other case.

[Alka Dudeja]

Court Master

[Khushi Ram]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.670 OF 2005

Md. Shakeel

...Appellant(s)

Versus

State of Andhra Pradesh

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

The appellant, along with accused - Mohd. Isaq and

Mohd. Siraj, was tried and by judgment rendered by the trial

court, while the other two accused persons were acquitted, the appellant was convicted under Section 302 of the Indian Penal Code [for short, 'the I.P.C.'] and sentenced to undergo imprisonment for life and to pay fine of Rs.2,000/-; in default to undergo simple imprisonment for a period of six months. Against the order of acquittal, no appeal was preferred. On appeal being preferred by the appellant, the High Court confirmed the conviction. Hence, this appeal by special leave.

The prosecution case is supported by the evidence of P.Ws 2,3 and 4 [Zubeda Bee, Zaheda Begum and Mohd. Sarwar respectively]. These witnesses have consistently supported the prosecution case and their statements are corroborated by the medical evidence. Therefore, we are of the view that the prosecution has succeeded in proving its case beyond reasonable doubt.

....2/-

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Coming now to the nature of offence, it may be stated that the appellant is said to have inflicted only one injury and he has also received injury. In the facts and circumstances, we are of the view that the High Court was not justified in confirming conviction of the appellant under Section 302 I.P.C. rather he should have been convicted under Section 304 Part II I.P.C. It

has been stated that the appellant is in custody since the year 1999. In our view, ends of justice would be met in case the appellant is awarded punishment under Section 304 Part II I.P.C.

for the period already undergone.

Accordingly, the appeal is allowed in-part and conviction of the appellant under Section 302 I.P.C. is altered into Section 304 Part II I.P.C. and he is awarded sentence for the period already undergone. The appellant, who is in custody, is directed to be released forthwith if not required in connection with any other case.

.....J.
[B.N. AGRAWAL]

.....J.
[P.P. NAOLEKAR]

New Delhi,
November 22, 2006.