

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 701

OF 2008

State of Rajasthan

...Appellant

Versus

Anni & Ors. etc.

... Respondents

With

Crl.A.No.702 of 2008

O R D E R

1. These appeals have been preferred against the impugned judgment and orders dated 1.5.2006 passed by the High Court of Judicature of Rajasthan (Jaipur Bench) in D.B. Criminal Appeal No.114 of 2004 and in D.B. Criminal Leave to Appeal No.0293 of 2004 by which the High Court has partly allowed the appeal preferred by the respondent against the judgment and order dated 18.12.2003 passed by the Additional Sessions Judge (Fast Track), Hindon City, District Karoli (Rajasthan) in Session Case No.1 of 2003 converting the conviction from Section 302 of Indian Penal Code, 1860 (hereinafter called IPC) to Section 304 Part II IPC and imposed the punishment as undergone, i.e., 4 years and 5 months.

So far as Appeal No.702 of 2008 is concerned, the application for Leave to Appeal filed by the State

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of Rajasthan stood dismissed and the judgment and order of the trial Court of the same day in the same trial has been upheld wherein respondents had been convicted by the trial Court under Section 323 IPC, however, they had been given the benefit of Section 4 of Probation of Offenders Act imposing a fine of

Rs.1,000/- each.

2. The prosecution case had been that on 20.1.2002, Roop Singh (PW.5) submitted a report at the P.S. Todabhim stating therein that on the preceding day, the accused persons armed with various weapons assaulted Hari Singh (deceased). Ramesh inflicted blow of Dharia on the head of Hari Singh as a result of which he fell down and became unconscious. Thereafter, other accused respondents had beaten him. When Tunda Ram tried to intervene, he was also beaten out. Hari Singh was taken to hospital from where he was referred to Jaipur and a case under Sections 147, 341, 323, 448, 336 and 307 IPC was registered and investigation commenced. After Hari Singh succumbed to the injuries, Section 302 IPC was added. On completion of investigation, chargesheet was filed and after conclusion of the trial, the trial Court convicted the respondents accused and imposed the punishment referred to hereinabove.

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3. Being aggrieved, the respondent accused preferred the criminal appeal, however, the State preferred application for Leave to Appeal. Both the matters were heard together and the High Court allowed the appeal filed by Anni/accused partly, converting his conviction from Section 302 IPC to Section 304 Part II and imposing the punishment as undergone, i.e. 4 years and 5 months and dismissed the application for leave to appeal filed by the State. Hence, these appeals.

4. We have heard learned counsel for the parties and perused the record.

The contention raised by learned counsel for

the State of Rajasthan has been that the trial Court committed an error in acquitting the respondents accused other than Anni of the charges under Section 302 IPC and the High Court committed an error in rejecting the application for leave to appeal. The conversion of conviction of Anni-accused from Section 302 IPC to Section 304 Part II is unwarranted and uncalled for. In the facts and circumstances of the case, the respondents accused in both these appeals were liable to be convicted under the provisions of Section 302 IPC.

5. The prosecution projected Tunda (PW.1) as its star witness. He is also the real brother of the deceased and had also sustained injuries during the incident. According to him when Ramesh came to the place of occurrence armed with Dharia, he could not inflict any injury as the Dharia had been snatched from him. It was Anni accused who pelted stone at Hari Singh which hit him on the head and caused injury that proved fatal.

6. Both the parties were neighbours and incident occurred while the accused were keeping stone slabs at one place and Hari Singh objected to it. Both the courts below after appreciating the evidence came to the conclusion that vicarious criminal liability could not be fastened to all the accused and therefore, except Anni, other accused respondents could be convicted only under Section 323 IPC and it is in view thereof that the trial Court convicted them under Section 323 IPC and granted the benefit of the provisions of Probation of Offenders Act. The High Court concurred with the said finding and dismissed

the application for leave to appeal filed by the State.

7. We do not see any cogent reason to interfere in the said appeal. So far as accused Anni is concerned, the evidence on record makes it clear that the attack was not pre-planned or motivated. The incident occurred all of a sudden and having got enraged, Anni pelted one stone and in such a fact-situation the High Court has rightly convicted the said accused under Section 304 Part II. The deceased Hari Singh had only one injury on the head. The respondent accused did not make any attempt to cause any other injury by pelting the stone again. In view of the above, we are of the view that it is not a fit case for interference.

The appeals lack merit and are accordingly dismissed.

.....J.  
(Dr. B.S. CHAUHAN)

.....J.  
(DIPAK MISRA)

New Delhi,  
May 16, 2012

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ITEM NO.111

Court No.5

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(s). 701 OF 2008

STATE OF RAJASTHAN

Appellant (s)

VERSUS

ANNI & ORS.

Respondent(s)

(With office report )

WITH APPEAL(CRL) NO. 702 of 2008  
(With office report)

Date: 16/05/2012 These Appeals were called on for hearing

today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE DIPAK MISRA  
(VACATION BENCH)

For Appellant(s)            Mr. Imtiaz Ahmed, Adv.  
                                 Ms. Naghma Imtiaz, Adv.  
                                 Milind Kumar, Adv.  
                                 Mr. Jatinder Kumar Bhatia, Adv.

For Respondent(s)

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

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The appeals lack merit and are accordingly  
dismissed in terms of the signed order.

(DEEPAK MANSUKHANI)  
Court Master

(M.S. NEGI)  
Court Master

(The signed order is placed on the file)