

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). 755 OF 2006

AMAR NATH & ORS.

Appellant (s)

VERSUS

STATE OF J&K

Respondent(s)

(With appln(s) for bail and with office report)

WITH

CRIMINAL APPEAL NO. 923 of 2006

(With appln.(s) for bail)

Date: 16/01/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Y. Prabhakara Rao,Adv.

For Respondent(s)

Mr. Altaf H. Nayak, Adv. Gen.

Mr. Anis Subrawardy, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals are allowed in part. The sentences of imprisonment

awarded against the appellants of these Appeals are reduced to the period

already undergone. The appellants, who are in custody, are directed to be

released forthwith if not required in connection with any other case.

(Rajesh Dham)

(Phoolan Wati Arora)

Court Master

Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 755 OF 2006

AMAR NATH & ORS.
nt (s)

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VERSUS

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WITH

CRIMINAL APPEAL NO. 923 of 2006

O R D E R

Heard the parties.

Four appellants of Criminal Appeal No. 755/2006 and two

appellants of Criminal Appeal No. 923/2006 along with one Hukam Chand

were convicted by the trial court under Section 304 Part II RPC and, out

of them, accused Amar Nath, Sansar Chand, Pritam Singh, Shankru and

Hukam Chand were sentenced to undergo rigorous imprisonment for a

period of ten years and to pay fine of Rs. 1000/- and in default to undergo

further imprisonment for a period of three months. So far as ac
cused

Shanti Devi and Satya Devi are concerned, they were sentenced to

undergo imprisonment for the period already undergone. The appellants of

Criminal Appeal No. 755/2006 and accused Hukam Chand were further

convicted under Section 307 RPC and sentenced to undergo rigorous

imprisonment for a period of ten years and to pay fine of Rs. 1000/- each

and in default to undergo further imprisonment for three months. They

were also convicted under Section 342 RPC and sentenced to undergo

rigorous imprisonment for a period of one year and to pay fine of Rs. 500/-

and in default to undergo further imprisonment for a period of three

months. Shanti Devi and Satya Devi were further convicted under Section

307 RPC and sentenced to undergo imprisonment for the period already undergone and they were directed to pay fine of Rs. 500/- each and in default to further undergo imprisonment for three months. All the sentences were, however, ordered to run concurrently.

Against the order of the trial court the accused persons preferred an appeal, whereas on behalf of the State of Jammu & Kashmir an appeal was filed for convicting the appellants under Section 302 RPC. During the pendency of the appeals, Hukam Chand died and, as such, his appeal abated. So far as appellants in Criminal Appeal No. 755/2006 are concerned, the High Court converted their conviction under Section 304 Part II RPC into one under Section 302/149 RPC and sentenced them to undergo imprisonment for life and to pay fine of Rs. 10,000/- each and in default to further undergo imprisonment for one year. Their convictions under Sections 307 RPC and 342 RPC have been confirmed, but the sentences under these Sections have been reduced to seven years and six months respectively. These accused persons have been further convicted by the High Court under Section 148 RPC and sentenced to undergo

imprisonment for one year and to pay fine of Rs. 500/- each. They have also been convicted under Section 447 RPC and sentenced to undergo imprisonment for a period of one year and to pay fine of Rs. 500/- each and in default to undergo simple imprisonment for a period of one week.

So far as the appellants Shanti Devi and Satya Devi are concerned, their conviction under Section 304 Part II RPC has been set aside, but their conviction under Section 307 RPC has been maintained but they have been sentenced to undergo imprisonment for a period of seven years and to pay fine of Rs. 5,000/- each and in default to undergo further imprisonment for a period of one month. These accused persons have been also convicted under Sections 447 RPC, 342 RPC and 148 RPC and each one of them sentenced to undergo imprisonment for a period of one year, six months and one year respectively. All the sentences, however, have been ordered to run concurrently. Hence, these Appeals.

The prosecution case has been supported by the evidence of PW-2

Isher Singh, who is injured, apart from PW-3 Subash Chander, PW-4 Shamsher Singh and PW-5 Safru. All these witnesses have consistently

supported the prosecution case and their evidence is also corroborated by the medical evidence. The trial court came to the conclusion that Amar Nath had received grievous injuries on the head and had the right of private defence but exceeded the same. Therefore, the trial court convicted the accused persons under Section 304 Part II RPC. In our view, the High Court was not justified in convicting the accused persons under Section 302/149 RPC and the trial court was quite justified in convicting them under Section 304 Part II RPC.

It has been pointed out that out of these appellants Amar Nath has remained in custody for a period of about four and a half years and is more than 79 years old. Accused Sansar Chand, Pritam Singh and Shankru have remained in custody for about seven years. So far as Shanti Devi and Satya Devi are concerned, they have remained in custody for a period more than six months. In the facts and circumstances of the case, we are of the view that ends of justice would be met in case the sentences of imprisonment awarded against the appellants are reduced to the period already undergone.

Accordingly, the Appeals are allowed in part; conviction and

sentence of the appellants of Criminal Appeal No. 755 of 2006 under

Section 302/149 RPC are set aside and their conviction under Section 304

Part II RPC recorded by the trial court is restored. The sentences of

imprisonment awarded against the appellants of these Appeals are

reduced to the period already undergone. The appellants, who are in

custody, are directed to be released forthwith if not required in connection

with any other case.

...J.

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(B.N. AGRAWAL)

..J.

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(P.P. NAOLEKAR)

NEW DELHI;

JANUARY 16, 2007.