

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1316 OF 2010

State of Rajasthan

Appellant(s)

Versus

Poona Ram and Others

Respondent(s)

O R D E R

Since the respondent Nos.1 to 4 chose not to appear in this criminal appeal inspite of notice, orders were passed for issuance of non-bailable warrants. The same having been executed, all the four respondents are now in custody and have filed the criminal miscellaneous petition seeking interim bail till the final disposal of the present matter. Instead of confining the arguments on bail, we have heard learned counsel for the parties on merits of the appeal itself which has been preferred by the State of Rajasthan against the judgment and order dated 21st September, 2005, passed by a Division Bench of the High Court of Rajasthan at Jodhpur in D.B. Criminal Appeal No.956/2001. The State is aggrieved on account of the Division Bench altering the sentence of the respondents from Section 302 IPC to Section 304-II IPC and reducing the sentence of life imprisonment to

one of slightly more than five years, i.e., the period which the respondents had undergone till the date of the impugned judgment.

It is made clear at the outset that the accused persons i.e. respondent Nos.1 to 4 have not preferred any appeal against their conviction which stands affirmed by the High Court. As a result, their involvement in the occurrence in which the deceased, Babu Lal, received large number of injuries caused by lathis wielded by the four accused persons is not in dispute. Now the only issue for consideration is whether the High Court was justified in converting their conviction from Section 302 to Section 304-II IPC which led to reduced punishment of about five years rigorous imprisonment only.

The trial court judgment dated 21st September, 2001 passed by Additional Sessions Judge (Fast Track) Jodhpur in Sessions Case No.45/2001 discloses the manner of occurrence in which Babu Lal was assaulted by all the four accused persons by giving him repeated lathi blows. It was a night time occurrence and the accusation is assault by all the four accused persons without specifying who caused injury on the head and the ribs. It is evident that the assault was merciless, but it is also worth noting that there is no allegation that the accused persons wanted to kill the deceased. No uttering or exhortation by the accused persons

is to be found in the F.I.R. which is a detailed one lodged by an eye-witness. It has been stated by the informant that the accused persons were sort of vagabond men who used to roam throughout the night under the influence of liquor and since the deceased used to check them, they had enmity with him.

The place of occurrence is an agricultural farm in a rural area of Rajasthan. The accused persons had not come prepared with any dangerous weapons. Lathi is a hard and blunt substance which is usually carried by villagers for self protection even against animals and reptiles.

On behalf of the appellant-State, we were shown the medical evidence consisting of deposition of the doctor, PW-24, who had found total 33 injuries, including fracture, injuries on the head and on sixth to eighth ribs. There was lacerated wound on right lung. The death, in the opinion of the doctor, was due to head injury and injury to the right lung. The injuries were also found sufficient to cause death. On the basis of the same, it has been submitted that the trial court committed no error in inferring an intention on the part of the accused persons to cause death of the deceased by inflicting so many injuries and, hence the High Court should not have taken a lenient view as done in the order under appeal. He further submitted that even if the intention to cause death cannot be specifically and clearly

attributed to the accused persons, they ought to have been convicted for the offence under Section 304-I and more stringent sentence should have been imposed.

On the other hand, Ms. Aishwarya Bhati, learned counsel appearing for the respondents highlighted the facts noticed above for submitting that in the absence of any specific allegation as to who caused fatal injuries on the head and ribs, all the accused persons cannot be held guilty of offence under Section 302 IPC because it cannot be said with certainty that they shared a common intention of causing death. None of them had uttered any words to disclose such a intention, nor had they come prepared for such offence by carrying fire arms or any lethal weapon. She further submitted that even if the allegation that the accused persons were under influence of liquor is accepted, it does not aggravate the offence and it will not be appropriate in the facts of the case to hold that they all shared any common intention of causing death.

Having considered all the relevant materials and the impugned judgment, as well as the rival contentions, we are of the view that the High Court erred in applying Section 304-II to the offence at hand. Section 304-I of the IPC would clearly cover such an offence where the accused persons caused indiscriminate assault and some of the injuries proved fatal. By the rashness of their act, the accused persons

must be treated to be fully in know of the consequences of their acts including possible death. Hence, in the facts of the case, we set aside the impugned judgment and order under appeal and convict the respondent Nos.1 to 4 for offence under Section 304-I of the IPC. The facts of the case and the ends of justice require that the accused persons should serve at least eight years of rigorous imprisonment and also pay a fine of Rs.25,000/- (Rupees twenty five thousand) each and in default undergo further rigorous imprisonment of six months. We order accordingly. If the fine is realized, the same should be paid as compensation to the heirs of the deceased, if any.

The appeal is allowed to the aforesaid extent.

.....J.
[Dipak Misra]

.....J.
[Shiva Kirti Singh]

New Delhi
March 03, 2016.

ITEM NO.114

COURT NO.4

SECTION II

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

Criminal Appeal No.1316/2010

STATE OF RAJASTHAN

Appellant(s)

VERSUS

POONA RAM & ORS.

Respondent(s)

Date : 03/03/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Appellant(s) Mr. Prashant Bhagwati, Adv.
Mr. Milind Kumar, AOR

For Respondent(s) Ms. Aishwarya Bhati, AOR
Ms. Anshul Sharma, Adv.
Ms. Eshita Kapur, Adv.
Mr. Dilip Nayak, Adv.

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

The appeal is allowed in terms of the signed order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)