

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).140 OF 2006

MOHD. HALEEM

Appellant(s)

VERSUS

STATE OF M.P.

Respondent(s)

O R D E R

Heard learned counsel for the parties.

Perused the impugned judgment and order.

The finding of fact recorded in the impugned judgment against the accused-appellant on the charge of conviction and sentence for the offence punishable under Section 302/149 read with Section 34 of the Indian Penal Code (for short 'the Code'), imposed by the trial court has been maintained by the High Court. The correctness of the same is challenged in this

appeal urging various legal contentions.

Our attention was drawn to the relevant paragraphs of the impugned judgment and order to show that the benefit of doubt has been extended to the other accused viz., the appellants in Criminal Appeal No. 2871/98 and Criminal Appeal No. 2896/1998 before the High Court, the conviction and sentence of life imprisonment for the charge proved has been set aside and they were instead convicted under Section 326 read with Section 34 of the Code and sentenced to rigorous imprisonment for seven years. Learned counsel for the appellant submits that the same benefit may be extended in favour of the appellant herein. He further submits that the concurrent finding of fact recorded on the charge against the appellant is based on chance witnesses and therefore, the conviction and sentence under Section 302/34 of the Code is wholly unsustainable in law. At best the appellant can be convicted and sentenced under Section 326/34 of the Code.

We gave our thoughtful consideration to the aforesaid contention of learned counsel for the

appellant in the backdrop of findings and reasons recorded by the High Court while re-appreciating the evidence on record to find out the correctness of conviction and sentence under Section 302/34 of the Code. In our considered view, the High Court, after adverting to the evidence of Akil Ahmad (PW-2) after application of mind it has re-appreciated the evidence on record analytically and recorded a finding of fact on the charge stating that the appellant, Accused No.1 along with Hanif, Accused No. 2 caused serious injuries to the deceased by means of knives on his chest and abdomen. Mohd. Salim (PW-10) corroborates the evidence of PW-2 and the same was also corroborated by the evidence of the doctor A.K. Yadu (PW-3), who gave a detailed description of injuries inflicted on the deceased and noted following external ante mortem injuries:

"(i) Penetrating injury of chest, left side in front situated 9 cm above medial to left nipple, 5 cm left of midline - slightly obliquely placed with lower end medial, (shape elliptical two ends angled) size 4 cm x 1 ½ cm x 11 cm, skin, muscles, pleura, pericardium of heart all showed clean cutting, left lung upper lobe, cut through and through in size of 4 cm x 1 cm x 2 cm size, pericardium, left vertical cut wall cut through and through size of

pericardium and left vertical was 2 cm x $\frac{1}{2}$ cm x 2 $\frac{1}{2}$ cm injury had placed into left vertical cavity. The left side of thorax contained above two liters of blood and blood clot. Heart chambers were empty (the size, shape, weight of heart were within normal condition. Direction of wound was left to right and downward medially skin to heart injury were in one line (No bruising of chest skin around wound).

(ii) Penetrating injury on left flank of abdomen situated just above sup. Spinal lateral aspect of abdomen was oblique, situated 25 cm left of midline, size 4 cm x $\frac{1}{2}$ cm x 8 cm haematoma in abdominal wall and blood in left side of abdomen. Pericardium was cut and direction was left to right internally.

(iii) Penetrating injury left side back 4 cm below scapula angle and in line with, transverse 3 cm x 1 cm x 4 cm. Tailing for 3 cm in lateral end. Skin muscles pleura left lung post as per lower lobe shared cut on lung 1 cm x $\frac{1}{4}$ cm x $\frac{1}{2}$ cm. Direction behind forwards.

(iv) Superficial incised wound left side trunk 22 cm below left axilla transverse 2 $\frac{1}{2}$ cm x $\frac{1}{4}$ cm x $\frac{1}{4}$ cm skin muscle cut.

(v) Incised wound right index finger palmer side lower aspect 2 cm linear (4 cm x $\frac{1}{2}$ cm x $\frac{1}{4}$ cm) transverse.

(vi) Incised wound right middle finger in line with injury No.5 size etc. as No.5."

According to the opinion of the doctor (PW-3), the deceased had died on account of excessive haemorrhage through the injury no. 1, which was

sufficient to cause his death. In his opinion, even injury nos. 2 and 3 were also capable of causing death of the deceased and only injury nos. 4, 5 and 6 were simple in nature.

Our attention was drawn to the injury nos. 1 to 3, which are grievous in nature. Having regard to the nature of injuries caused to the deceased, the concurrent finding of fact recorded by the appellate court on the charge under Section 302 read with Section 34 of the Code, we do not find any good reason to interfere with the impugned judgment and order and the contention urged by learned counsel on behalf of the appellant to convert the offence under Section 326/34 of the Code from Section 302/34 of the Code is rejected in view of the reasons and finding of fact recorded by the appellate court in the impugned judgment and order.

In view of the above, the appeal is dismissed being devoid of any merit.

Since the appellant was directed to be released on bail vide order dated 06.02.2006, his bail bond(s)

shall stand cancelled. He shall surrender forthwith before the trial court to undergo remaining sentence failing which he shall be taken into custody for undergoing the sentence imposed on him.

Pending application(s), if any, stand(s) disposed of.

.....J.
(V. GOPALA GOWDA)

.....J.
(ARUN MISHRA)

NEW DELHI,
FEBRUARY 24, 2016

ITEM NO.103

COURT NO.9

SECTION IIA

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(s). 140/2006

MOHD. HALEEM

Appellant(s)

VERSUS

STATE OF M.P.

Respondent(s)

(with office report)

Date : 24/02/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. S.S. Khanduja, Adv.
Mr. Pratyush, Adv.
Mr. Yash Pal Dhingra, Adv.For Respondent(s) Ms. Shashi Juneja, Adv.
Mr. C. D. Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Since the appellant was directed to be released on bail vide order dated 06.02.2006, his bail bond(s) shall stand cancelled. He shall surrender forthwith before the trial court to undergo remaining sentence failing which he shall be taken into custody for undergoing the sentence imposed on him.

Pending application(s), if any, stand(s) disposed
of.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)