

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 425 OF 2012

DEENA NATH

Appellant(s)

VERSUS

STATE OF U.P.

Respondents(s)

WITH

CRIMINAL APPEAL NO. 393 OF 2012

O R D E R

The appellants in these two appeals are son and mother. The allegation against them is that they, along with Lotu, father of appellant Deena Nath and husband of appellant Gulabi Devi, came to the place of the victim in Village Marhatha, Police Station Campier Ganj, Gorakhpur, on 13.6.1996 at 12'o clock where they were extending their cottages on the vacant place. Sant Ram, the informant stopped them from doing so. In retaliation, all the three persons gave him beating and they also attacked Pyarey Yadav and Ramawati father and wife of Sant Ram respectively. As a result, Sant Ram and Ramawati suffered injuries whereas Pyarey Yadav died having succumbed to those injuries. Sant Ram reported the matter to the Police on the basis of which FIR was registered on 13.6.1996 at 2030 hours. In this FIR, he narrated the incident

Signature Not Verified

Digitally signed by

in the following manner:-

Deepak Mansukhani

Date: 2014.05.29

11:10:32 IST

Reason:

"...It is submitted that in the north of

1

village, I and my collateral Lotu are having cottages. Some persons of the village held panchayat and they decided for we both to construct our cottages by leaving 1-2 hands space for tethering the cattle. We constructed our cottages after leaving 1 hand space. Today at about 12 o' cock in the day Lotu and his son Deena and wife of Lotu whose name I do not know were extending their cottages on the vacant place. On this my wife Ramawati objected. Then Deena abused her badly and started beating her by Danda, legs and fists. Then my wife cried. After hearing I and my father Pyarey rushed to rescue her. Then Lotu having pharsa in his hands and Deena and wife of Lotu having lathi-danda started beating us...."

The matter went for trial in which all the three persons were charged for offences under Section 302 IPC and Section 323 read with Section 34 of the Indian Penal Code. After the trial, all the three were convicted for the offences under Section 302 read with Section 34 IPC. Sentence of life imprisonment was imposed upon them. For offence under Section 323 read with Section 34 IPC, rigorous imprisonment for three months and a fine of Rs. 1,000/- was inflicted. The appellants filed appeal against this sentence and conviction by approaching High Court of Judicature at Allahabad. Vide impugned judgment dated 7th September, 2007, the High Court has dismissed the appeal confirming the sentence.

2

All the three convicted persons had filed special leave petitions under Article 136 of the Constitution. In so far as Special Leave Petition of the convict Lotu is concerned, the same was dismissed in limine. Result thereof is that his conviction is sustained and he is undergoing life imprisonment.

Leave was granted in these two cases. The appellants are not denying the incident and the attack which was posted by them on the victim as aforesaid. The only submission of learned counsel for the appellants is that there was no common intention to commit the murder of the deceased and in the absence thereof, the appellants should not have been convicted for an offence under Section 302 IPC. He further submitted that the death of Pyarey Yadav occurred, as per the medical evidence, because of pharsa blows which were given by Lotu. In so far as these two appellants are concerned, they had Dandas in their hands with which they had inflicted blows on the three persons. The medical report would show that injuries which were due to these blows were simple in nature. He further submitted that, in such circumstances, the appellants should have been convicted under Section 304 Part I IPC.

We have already reproduced the relevant portion of the FIR which shows that the fight broke out when the appellants along with Lotu wanted to encroach upon the land and this act of theirs was resisted by the complainant as well as Ramawati and Pyarey Yadav. It is, in these circumstances, difficult to say that it

3

was a pre-meditated act or there was common intention of all the parties to cause murder of the deceased.

We have gone through the medical evidence. It is not in dispute that as far as these two appellants are concerned, they had only given Danda blows as a result thereof, the injuries which are sustained by the victims are not even on the vital parts of the body. We, therefore, are not in a position to accept the findings of the High Court that ingredients of Section 34 of IPC are established in the present case.

In view thereof, we convert the conviction of the appellants from Section 302 IPC to that of Section 304 Part I IPC and accordingly impose rigorous imprisonment of 7 years on both of them. After serving the aforesaid sentence, they shall be released.

The appeals are partly allowed.

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

.....J.  
(A.K. SIKRI)

NEW DELHI  
MAY 27, 2014.

ITEM NO.107

COURT NO.2

SECTION II

4

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). 425/2012

DEENA NATH

Appellant(s)

VERSUS

STATE OF U.P.

Respondents(s)

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

WITH

Criminal Appeal No(s). 393/2012

(With appln(s) for bail)

Date : 27/05/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN

HON'BLE MR. JUSTICE A. K. SIKRI

(VACATION BENCH)

For Appellant(s)

Mr. Sanjay Mani Tripathi, Adv.  
Mr. Kamal Kant Tripathi, Adv.  
Ms. Gauri Karuna Das Mohanti, Adv.  
Mr. Ali Jethmalani, Adv.  
Ms. Anu Gupta, Adv.

For Respondent(s)

Mr. Vivek Vishnoi, Adv.  
Mr. M.R. Shamshad, Adv.  
Mr. Shashank Singh, Adv.  
Mr. M.A. Umar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are partly allowed in terms of the signed order.

(DEEPAK MANSUKHANI)  
COURT MASTER

(M. S. NEGI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)