

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 361/2013

GOPAL & ORS.

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

O R D E R

1. We have heard the learned Senior Counsel appearing for the appellants and the learned counsel appearing for the respondent.

2. The appellants have been convicted for the offences punishable under Sections 147, 148, 447, 302/149, 325/149 and 323/149 of the Indian Penal Code, 1860 (for short, 'the IPC'). Two of the co-accused A-2 and A-3, one of whom suffered a fatal injury, were acquitted by the High Court for lack of evidence. The incident occurred on 30.03.1989. Earlier, the appellant(s) had purchased a property from one Mrs. Pyaribai through a registered sale deed.

3. The occurrence is stated to have happened pursuant to a civil dispute *inter se* the appellant's/accused's side and the complainant's side. The aforesaid property originally belonged to two brothers namely, Hariram and Ramchandra. During the lifetime of the said Hariram himself, his brother, Ramchandra and his son, Jodhraj (P.W.5) filed a suit, wherein the said Hariram has filed

a written statement denying the factum of adoption of Jodhraj (PW-5) as his son.

4. After the demise of the said *Hariram*, mutation was done in favour of both Jodhraj (PW-5) and Pyaribai. It was thereafter changed vide order dated 11.07.1988 passed by the Sub Divisional Officer. The further appeal filed by Jodhraj (PW-5) was also dismissed by the Board of Revenue on 06.07.1989.

5. Notwithstanding the same, Jodhraj (PW-5) filed a suit on the file of Court of Civil Judge, Class 1 in Civil Suit No.16A/88 claiming possession on the premise that he is the adopted son of *Hariram* and *Pyaribai*. The said suit was dismissed. It went up to the High Court by which, the judgment and decree of the Trial Court has been confirmed.

6. As stated earlier, the appellant(s) are the purchasers of the property from *Pyaribai*. The alleged occurrence took place between two groups. One group consists of the appellants/accused persons and the other consists of nine persons from the complainant's side.

7. At least from a perusal of the record, one can say that the appellant(s) did purchase the property from the said *Pyaribai* and have been in possession thereafter. This is a fact that has been taken note of by the High Court itself.

8. A case and a cross case were filed at the instance of each party. We do not know the fate of the cross case

in pursuance of the complaint given by the appellants. On the complaint given against the appellants, charges have been framed and conviction has been rendered as aforesaid. Learned senior counsel appearing for the appellants would submit that the instant occurrence is a clear case of private defence. Even the High Court has recorded a finding that the appellant(s) purchased the land from Pyaribai and have been in possession. In any case, the earlier suit filed at the instance of *Jodhraj* (PW-5) seeking possession of the disputed property has ended in a dismissal. Considering the above, one can come to the conclusion that the occurrence did take place, but not as it was projected by the prosecution. Both the investigating officer and the court will have to be extra careful when the case involves a cross case. There are two competing versions, and therefore, due care will have to be taken. Foundation of the facts are not in dispute. Admittedly, a purchase was made from the vendor namely, Pyaribai and all the attempts made by *Jodhraj* (PW-5) against her ended in failure. It is with relation to this property that the alleged occurrence took place.

9. In our considered view, both the courts have not taken proper note of the aforesaid facts. Whenever a homicide takes place, it is the duty of the investigating officer and the Court to verify as to whether it would come under Section-304 Part-I or Part-II of the IPC as the case may be, before embarking

upon Section 302 of the IPC. On the facts of the present case, the aforesaid principle would apply with more vigour. Considering the above, we are inclined to hold that this is a case which would come under Section 304 Part-I of the IPC.

10. Accordingly, the conviction stands modified to one punishable under Section 304 Part-I of the IPC. Coming to the question of sentence, the appellants have been under incarceration for more than a period of 07 years. The occurrence was of the year 1989. Now, more than 35 years have since elapsed. Considering the above, we modify the sentence to the one already undergone by the appellants.

11. The appeal is partly allowed. Bail bonds, if any, shall stand discharged.

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

.....J.  
(M.M. SUNDRESH)

.....J.  
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi  
30.07.2025

ITEM NO.113

COURT NO.5

SECTION II-E

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

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Date : 30-07-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH  
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) : Mr. Sushil Kumar Jain, Sr. Adv.  
Ms. Pratibha Jain, AOR  
Mrs. Christi Jain, Adv.  
Mr. Mann Arora, Adv.  
Ms. Akriti Sharma, Adv.  
Mr. Harsh Jain, Adv.  
Mr. Om Sudhir Vidyarthi, Adv.  
Mr. Aditya Jain, Adv.  
Mr. Yogit Kamat, Adv.

For Respondent(s) :  
Mr. Pashupathi Nath Razdan, AOR  
Ms. Maitreyee Jagat Joshi, Adv.  
Mr. Astik Gupta, Adv.  
Ms. Akanksha Tomar, Adv.  
Mr. Yuvraj Nagpal, Adv.  
Mr. Yaduven, Adv.

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

1. The appeal is partly allowed in terms of the signed order.
2. Pending application(s), if any, shall stand closed.

(NISHA KHULBEY)  
SENIOR PERSONAL ASSISTANT  
(signed order is placed on the file)

(POONAM VAID)  
ASSISTANT REGISTRAR\