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Crl.A.No. 196 OF 2002  
.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp  
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ITEM NO.101 COURT NO.11 SECTION IIA  
(PART-HEARD)

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.196 OF 2002@@  
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Deepak Bhikaji Dharmale Appellant (s)

VERSUS

State of Maharashtra Respondent (s)  
( With Office Report )

Date : 17/07/2002 This petition was called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE DORAISWAMY RAJU  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) Ms. Shipra Ghose, Adv.(SCLSC)  
For Respondent (s) Mr. V.N. Raghupathy,Adv.

UPON hearing counsel the Court made the following  
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Ms. Shipra Ghose, learned counsel appearing on behalf of the appellant resumed arguments at 10.45 AM and concluded at 11.25 AM. Thereafter, Mr. V.N. Raghupathy, learned counsel appearing on behalf of the State addressed the Court upto 11.55 AM.

The appeal is partly allowed in terms of the signed order.

The appellant shall be released from custody forthwith if not required in any other case.

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(Neena Verma) (V.P. Tyagi)  
Court Master Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Deepak Bhikaji Dharmale ..... Appellant

Versus

State of Maharashtra ..... Respondent

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This appeal is directed against the order of the High Court, confirming the order of conviction and sentence passed by the Additional Sessions Judge, Amravati, holding the appellant guilty for the offence punishable under Section 302 IPC in relation to deceased Deepak Sawade and for the offence punishable under Section 324 IPC for causing injuries by knife to Shamlal, the father of the deceased. On the first count, the appellant has been sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- and on the second count, he was sentenced to imprisonment for one year and to pay a fine of Rs.500/-.

The case of the prosecution, as emerged in the trial, stated in brief is: that deceased Deepak Sawade on 20.11.1993 at 5.00 PM was sitting near some temple in Belpura locality of Amravati city. The deceased had in his ...2/-

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hand a receipt book titled as 'Gurudeo Sewa' and he was collecting Rs.2/- or Rs.5/- from the people by standing in front of Vijay Kriana Stores. The appellant objected for such collection. The deceased did not agree and continued to collect the same. Thereafter, abuses were exchanged resulting in scuffle. In the meanwhile Shamlal, father of the deceased, tried to intervene and suffered some injury. There was a sudden scuffle between the appellant and the deceased. In that scuffle, the appellant took out the knife from his waist and assaulted the deceased on the chest as well as on the hand. As a result, the deceased fell down. He was removed to the hospital where he succumbed to injuries and died. The father of the deceased Shamlal gave a report of this incident to the police at about 5.30 PM. The appellant was arrested on the same day. It may be mentioned here that in the scuffle the appellant also had received two incised injuries on his head. During the trial, the prosecution examined witnesses to the incident as well as the formal witnesses, including the Doctor. The learned Sessions Judge on appreciating the evidence brought on record, found the appellant guilty of the offences and convicted him for the same, as stated above. The aggrieved appellant approached the High Court in appeal. The High ...3/-

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Court, on re-appreciation of evidence, did not find any reason or ground to interfere with the order of conviction and sentence passed by the learned Sessions Judge. Consequently, the appeal was dismissed. Hence, this appeal.

The learned counsel for the appellant initially made efforts to point out certain so-called discrepancies and infirmities in the evidence of the prosecution. However, on finding it difficult to show that the findings recorded by the learned Sessions Judge as well as the High Court on proper appreciation of evidence were either perverse or arbitrary or untenable, the learned counsel made submissions that having regard to the facts and circumstances of the prosecution story itself, the conviction of the appellant under Section 302 IPC cannot be sustained and justified; at best, the conviction of the appellant can be sustained under Section 304 Part-II of the IPC. In support of this submission, she contended that there was no enmity between the appellant and the deceased; there is nothing to show that there was any pre-meditation to kill the deceased; it is also the case of the prosecution that there was a scuffle between the appellant and the deceased and that the appellant assaulted the deceased at the spur of the moment ...4/-

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all of a sudden. She further submitted that the appellant himself suffered two incised injuries on the head in the scuffle.

Per cantra, the learned counsel representing the State made submissions, supporting the impugned judgment. He contended that having regard to the injuries found on the deceased, the conviction of the appellant under Section 302 IPC was quite justified and this court may not interfere with the impugned judgment.

We have carefully considered the submissions made by learned counsel for the parties. In our view, the learned Sessions Judge was right in finding the appellant guilty on the basis of the evidence. The High Court, on re-appreciation, did not rightly so, in our opinion, interfere with the finding that the appellant was guilty.

In our view of the evidence, it is not possible for us to say that the appreciation of evidence has been either perverse or the learned Sessions Judge as well as the High Court could not have come to such a conclusion that the appellant was guilty. However, looking to the nature of the injuries, absence of pre-meditation on the part of the appellant, to commit the murder of the deceased and that in the sudden scuffle at the spur of the moment, the appellant ...5/-

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took out the knife and assaulted the deceased, we find it difficult to sustain conviction under Section 302 IPC. It may be also kept in mind that the appellant himself received two incised wounds in the scuffle. There was no previous enmity between the appellant and the deceased. Looking to the totality of the facts and circumstances established in the case and in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicting the injury, which, in the ordinary course of nature, was sufficient to cause death, the offence squarely falls under Section 304 Part-II IPC and not under Section 302 IPC.

When asked, both the learned counsel stated that the

appellant is in custody since 20th November, 1993, that is almost for a period of eight years and eight months.

In the result, while maintaining conviction and sentence under Section 324 IPC, which the appellant has already undergone, we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life therefor, instead, convict him under Section 304 Part-II IPC and sentence the appellant for the

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period already undergone by him. The appellant shall be released forthwith if he is not required in any other case.

The appeal is partly allowed in the above terms.

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.....J.  
( DORAISWAMY RAJU )

New Delhi,  
July 17, 2002.

.....J.  
( SHIVARAJ V. PATIL )