

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1084 OF 1998

STATE OF U.P.
ANT

... APPELL

VERSUS

MURLI
DENT

... RESPON

J U D G M E N T

SEMA, J.

Heard the parties.

Four accused, A1 Murli respondent herein, A2 Harish Chandra,
A3 Chandra Pal and A4 Som Nath were put to trial before the trial court for an offence under Section 302 read with Section 34 IPC. A3 Chandra Pal and A4 Som Nath were acquitted by the trial court. A1 Murli and A2 Harish Chandra were, however, convicted under Section 302 read with 34 IPC and sentenced to R.I. for life. They preferred an appeal before the High Court against their conviction. During the pendency of the appeal, A2 Harish Chandra expired and the appeal against him stands abated. So far the appeal preferred by A1 Murli is concerned, the High Court accepted the evidence of the prosecution recorded by the trial court. The High Court,

however, altered the conviction under Section 302 IPC into one under Section 304

Part I IPC and reduced the sentenced to 7 years R.I. Aggrieved thereby this appeal by

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special leave is preferred by the State of U.P.

The prosecution story in brief is as follows:

Harish Chandra and Lala Ram Sarup (deceased) and first informant,

Roshan Lal, were three brothers. Harish Chandra had three sons, Murli respondent

herein, Som Nath and Chandra Pal. There appeared to be a partition of landed

property among the three brothers, namely, Harish Chandra, Lala Ram Sarup and

Roshan Lal. Harish Chandra along with his sons was residing at Moradabad whereas

Lala Ram Sarup and Roshan Lal were living in village Badawala within local limits of

Amroha township. There was a dispute between Lala Ram Sarup on one side and

Harish Chandra and his sons on the other side with regard to the construction of

men in between their fields. The attempt of settlement of the dispute amicably

through the intervention of the villagers had failed and the relations between the two

brothers continued to be strained. It is stated that on 15.1.1988 at about 3 p.m. when

deceased Lala Ram Sarup was going towards his field and reached near the field of

Pradhan Harnam Singh, Harish Chandra and his three sons suddenly appeared at

the scene from their hideout. It is alleged that the accused Murli was armed with a

knife, Harish Chandra with a handle of hand-pump and Som Nath with danda

s in

their hands attacked and over-powered Lala Ram Sarup and on exhortation of Harish

Chandra, the respondent Murli gave knife blows to Lal Ram Sarup. On being raised

alarm witnesses Harnam Singh, Kishan Lal, Ram Sarup and his wife Smt. Heera Devi

rushed to the scene of occurrence from nearby fields whereupon the miscreant
s ran

away. A case was registered under Section 307 IPC at 5 p.m. on 15.
1.1988 itself.

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However, in the course of investigation Section 307 IPC was converted in
to Section

302 IPC. The trial court after examining the prosecution evidence threadba
re

including the dying declaration and testimony of the witnesses convicted t
he two

accused as aforesaid. The deceased Lala Ram Sarup was medically examined by Dr.

A.K. Jain, P.H.C., Amroha on 15.1.1988 at 4 p.m. and found the following injuries :

1. Incised wound 2.5 cm x 1 cm x muscle deep on back of left forearm,

4 cm proximal to wrist joint, oblique and pinkish.

2. Incised wound 5 cm x 3 cm on right side abdomen just right
to

umblicus, bowle and omentum coming out from the wounds.

3. Abrasion 1 cm x 0.5 cm size on the front surface of lower part of left

knee joint, pinkish.

The Doctor opined that the injuries Nos. 1 and 2 were cau
sed by a sharp

edged weapon and injury No.3 was caused by blunt object. The Doctor further opined that

injuries Nos.1 and 3 were simple in nature and injury No.2 was described as of grievous nature and dangerous to life also. In the opinion of the Doctor the death was caused as a result of shock and haemorrhage due to antemortem injuries.

We noted with dismay the reasoning given by the High Court while altering the offence under Section 302 IPC into one under Section 304 Part I IPC. The High Court has agreed with all the findings recorded by the trial court. The High Court, however, considered the submission of the accused that out of three injuries sustained by the victim only injury No.2 could be fatal. The High Court was also of the view that there was no evidence of intention to commit murder of culpable homicide amounting murder. The

High Court has taken this view on the ground that only one blow having been caused on

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vital part of the body, therefore, no knowledge that death, in all probability, shall be

caused, could be assigned. This finding of the High Court, in our view, is perverse and

contrary to the evidence on records. It is a clear case of the prosecution that when the

deceased was going to his field he was attacked by the respondent along with other

accused came out from hideout armed with knife, handle of hand-pump and with dandas

in their hands. It is also in the evidence on record that the respondent herein gave a fatal

blow to the deceased consequent upon which the deceased succumbed to injuries. From

the analysis of the prosecution story and injury caused by the respondent, namely, injury

No.2 by the knife the intention of the respondent to murder was clearly discernible.

Therefore, in our view, the reasoning recorded by the High Court is totally unjustified.

In the reasons afore-stated, the order of the High Court converting the

offence under Section 302 IPC into one under Section 304 Part I IPC is hereby set aside.

The order of the trial court convicting the respondent under Section 302 IPC is restored.

The respondent stated to have undergone the sentence of 7 years imprisonment. He shall be taken into custody forthwith to serve out the remaining part of the sentence.

The appeal is allowed.

.....J.

(H.K. SEMA)

.....J.

(P.P. NAOLEKAR)

NEW DELHI,
SEPTEMBER 28, 2005.

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ITEM NO.101(PH)

COURT NO.6

SECTION II

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). 1084 OF 1998

STATE OF U.P.

Appellant (s)

VERSUS

MURLI

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 28/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. Prashant Chaudhary, Adv.

Mr. Sandeep Singh, Adv.

Mr. Jatinder Kumar Bhatia, Adv.

For Respondent(s)

Mr. Atul Bandhu, Adv.

Mr. Rakesh K. Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Prashant Chaudhary, learned counsel started his arguments at 10.30 a.m. and

concluded at 10.50 a.m. Thereafter, Mr. Atul Bandhu, learned counsel argued the matter

for about 10 minutes. Hearing concluded.

The order of the High Court converting the offence under Section 302 IPC

into one under Section 304 Part I IPC is hereby set aside. The order of the trial court

convicting the respondent under Section 302 IPC is restored. The respondent stated to

have undergone the sentence of 7 years imprisonment. He shall be taken into custody

forthwith to serve out the remaining part of the sentence.

The appeal is allowed in terms of signed judgment.

(signed non-reportable judgment is placed on the file)