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ITEM NO.110

COURT NO.8

SECTION II

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). 2095/2008

STATE OF U.P.

Appellant(s)

VERSUS

FADRUDDIN

Respondent(s)

(with office report)

Date : 04/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR  
HON'BLE MR. JUSTICE A.K. SIKRI

For Appellant(s)

Mr. Irshad Ahmad, AAG  
Ms. Alka Sinha, Adv.  
Mr. Anuvrat Sharma, Adv.

For Respondent(s)

Mr. Mushtaq Ahmad, 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.

(DEEPAK MANSUKHANI)  
COURT MASTER

(INDU BALA KAPUR)  
COURT MASTER

(Signed order is placed on the file)

Signature Not Verified

Digitally signed by  
Deepak Mansukhani  
Date: 2014.09.06  
11:17:31 IST  
Reason:

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2095 OF 2008

STATE OF U.P.

Appellant(s)

VERSUS

FADRUDDIN

Respondent(s)

O R D E R

This appeal has been filed against the judgment and order passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 551 of 2006 by which the High Court reversed the conviction and sentence of the sole respondent herein recorded by the Additional Sessions Judge, Fast Tract Court No. 2, Ballia on 30th September 2005 wherein the respondent herein was found guilty of

the offence under Section 302 IPC and directed to suffer imprisonment for life along with a fine of Rs. 10,000/-. By the judgment under appeal, the respondent was acquitted. Hence this appeal by the State.

The case rested on the evidence of three witnesses who were said to be eye-witnesses, of which two of them are child witnesses aged 10 and 14 and the children of the two deceased. The incident took place on the intervening night of 9/10 September, 2004 according to the prosecution around 4.30 in the morning at the residence of the deceased. Both the deceased were man and wife and the respondent is a nephew of the deceased Sarfaraz Ahmad. The High Court mainly rested its decision on the evidence of PW 7 the Doctor who conducted the post-mortem examination of the deceased. The post-mortem was conducted at 4.30 p.m. & 5.15 p.m. on 10 th September, 2004 and according to the Doctor, having regard to the fact that he found semi-digested food on the stomach of both the deceased, the death must have occurred some 16 hours prior to the post-mortem which would place the time of occurrence around 12'o clock midnight. On the contrary, the evidence of child witnesses who were said to be the eye-witnesses is that the incident took place at 4.00 a.m. to 4.30 a.m.

The High Court, therefore, thought it not safe to sustain the conviction of the respondent and we do not see any reason to interfere with such a conclusion drawn by the High Court.

We see no merit in the appeal. The appeal is dismissed.

.....J.  
(J. CHELAMESWAR)

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

NEW DELHI  
SEPTEMBER 04, 2014.