

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. 1201 OF 1995@@
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SATISH DUBEY Appellant (s)

VERSUS

STATE OF U.P. Respondent (s)

Date : 13/11/2002 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s) Mr. Subodh Lalit, Adv.
Mr. M.C. Dhingra, Adv.

For Respondent (s) Mr. Prakash Kumar Singh, Adv.
Mr. A.S. Pundir, Adv.

UPON hearing counsel the Court made the following
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Mr. Subodh Lalit, learned counsel started his arguments at 12.10 p.m. and concluded at 2.10 p.m.

The appeal is partly allowed. The conviction and sentence imposed on the appellant by the High Court is hereby set aside and the appellant is found guilty of an offence punishable under Section 304 Part II IPC and is imposed the sentence of 3 years' R.I. The sentence undergone by the appellant shall be given remission while calculating the period of imprisonment to be undergone by the appellant. The appellant is on bail. He shall surrender and serve the remaining part of the sentence.

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(Pawan Kumar)
Court Master

(Prem Prakash)
Court Master

(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1201 OF 1995@@
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Satish Dubey

..Appellant

Vs.

State of Uttar Pradesh

..Respondent

O R D E R@@
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.SP2

The appellant along with two other accused persons were charged for the offences punishable under Sections 302 IPC and 307 IPC read with Section 149 IPC before the Court of Sessions at Gorakhpur. The learned Sessions Judge acquitted all the accused persons including the appellant holding that the prosecution has not established the charge against the two non-appellant accused, while it came to the conclusion that the incident alleged had taken place in which the appellant herein had acted in the exercise of his right of his private defence when he caused the death in question hence no offence is made out. The State being aggrieved by the said judgment of the Sessions Judge filed an appeal before the High Court at Allahabad challenging the acquittal of all the three accused persons. The High Court did not grant leave in regard to the two other accused and granted leave only in regard to the ...2/-

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appellant before us. While entertaining the said appeal it did not agree with the findings of the learned Sessions Judge in regard to the appellant and reversing the same held the appellant guilty for the offence punishable under Section 302 and sentenced him to undergo imprisonment for life. It is against this judgment of the High Court the appellant is now before us.

So far as the incident of 25.11.1973 is concerned, the appellant admits the same. The only question for our consideration is whether the said incident has taken place as contended by the prosecution that the appellant intentionally caused the death of Abdul Karim or is as contended by the appellant that the incident took place due to a sudden fight in which he was out numbered and assaulted by the complainants group and was injured and in that process he snatched the knife from the hand of the deceased and while protecting himself he caused a single injury on the deceased which led to his death. The trial court accepted the appellant's version and held that the injury was caused in the course of appellant exercise of his right of private defence, while the High Court has disagreed with the same and found the appellant guilty of offence punishable under Section 302 and accordingly convicted him.

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The prosecution case regarding motive cannot be believed because the alleged fight two days before the incident of 25.11.1973 is not spoken to by PW-5 himself in whose shop the earlier incident allegedly took place. The further case of the prosecution that the appellant came along with his supporters and one of his supporters used a firearm causing pallet injuries to the eye witnesses is also not

believed by both the courts below and we have no reason to disagree with the same. The question then arises what is the nature of the offence committed by the appellant? It has come in prosecution evidence that the fight started in regard to the purchase of some fruits which was not premeditated. The appellant has also suffered as many as 11 injuries out of which one of the injuries is an incised wound obviously caused by a sharp edged weapon. The deceased suffered one injury on his back and he died about 2 hours later in the hospital. Though it is proved from the prosecution case that the appellant has caused this injury, still it cannot be said that the appellant either intended to cause the death of the deceased or had the knowledge that he would cause the death of the deceased by causing the said injury. Because the said injury was caused in a sudden fight when the appellant was surrounded by many assailants from the deceased side. In such
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circumstances, it would be difficult to hold the appellant was responsible for having intentionally caused the death of the deceased. More so in the background of the fact that the appellant had no motive to kill the deceased.

Considering the entire material on record and the nature of injury suffered by the deceased, we are of the opinion that though the appellant is responsible for causing the death of the deceased, the same cannot be construed as an offence punishable under Section 302 IPC. In our opinion, at the most it could be an offence which could be punishable under Section 304 Part II IPC.

Taking into consideration the incident in question is of the year 1973, we are of the opinion that the ends of justice would be met if the appellant is sentenced to undergo R.I. for a period of 3 years for an offence punishable under Section 304 Part II IPC. Accordingly, this appeal is partly allowed. The conviction and sentence imposed on the appellant by the High Court is hereby set aside and the appellant is found guilty of an offence punishable under Section 304 Part II IPC and we impose the sentence of 3 years' R.I. The sentence undergone by the appellant shall be given remission
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while calculating the period of imprisonment to be undergone by the appellant. The appellant is on bail. He shall surrender and serve the remaining part of the sentence.

Accordingly, the appeal is allowed in part.

.SP1

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

New Delhi,
November 13, 2002.