



CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL No. 429 OF 1999

State of U.P.

Appellant

Versus

Raj Bahadur Singh and Another

Respondent

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By the judgment and order dated 26.11.1988 in Sessions Case No. 167 of 1987 the Vth Additional Sessions Judge, Etah convicted the respondents for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced each of them to suffer rigorous imprisonment for life.

Against that judgment, respondents preferred an appeal being Criminal Appeal No. 2683 of 1988 before the High Court of Allahabad. The High Court partly allowed the appeal by the judgment and order dated 13.5.1998 by setting aside the conviction under Section 302 of the Indian Penal Code and held that the respondents are required to be convicted for the offence punishable under Section 304 Part I IPC. The High Court imposed sentence of rigorous imprisonment for seven years for the offence punishable under Section 304 Part I IPC. Against the said judgment and order, the State has preferred this appeal.

Learned counsel for the appellant submitted that the order passed by the High Court is, on the fact of it, erroneous as the ground given by the High Court for modification of the order passed by the Sessions Judge that as there was a sudden quarrel, the respondents are required to be convicted for the offence punishable under Section 304 Part I, IPC is illegal and erroneous.

In the present case as per the prosecution version which is proved by the evidence of PWs 1 and 2, on 11.8.1986 at about 6.30 O' Clock in village Hathoda Kheda, District Etah complainant Vijendra Singh along with his father Shripal Singh was returning to his home from the field. Complainant and his father saw that accused Raj Bahadur Singh and Ram Nath Singh of their village were digging the foundation for constructing a wall on the thoroughfare. Complainant and his father requested the accused not to obstruct the passage and upon which an altercation took place between the parties. Hearing this commotion number of persons came there. At that time Ashok son of Raj Bahadur Singh asked his father not to stand and to go and fetch a gun to kill the complainant and his father. Thereafter, Raj Bahadur Singh and Ram Nath Singh went at the rooftop of the house with their respective licensed guns and both of them fired a gunshot each which caused fatal injury to the complainant's father. It is the say of the complainant that he escaped narrowly. Thereafter complainant's father fell down on the ground. He was removed to the hospital. FIR was lodged at about 8.30 O' Clock. After investigating the offence accused were charged for the offence punishable under Section 302 read with section 34 IPC. Both were

convicted for the said offence.

After considering the entire evidence the High Court arrived at the conclusion that the prosecution has proved its version beyond reasonable doubt. The Court also held that the accused were not entitled to get benefit of Exception 4 of Section 300 IPC on the ground of sudden quarrel and that injuries were caused only to the prosecution witnesses. However, surprisingly, the Court held that as there was no enmity between the parties and as the quarrel took place all of a sudden and the accused fired only one gun shot from his licensed gun, it cannot be inferred that there was intention to commit murder or that injuries were intended to be inflicted to commit murder. The Court arrived at the conclusion that the intention of the accused appeared of causing such bodily injuries as were likely to cause the death and so offence would not be to commit murder, but would only one under Section 304 Part I of the Indian Penal Code.

In our view, the reasoning given by the Court is, on the fact of it, erroneous. It is true that all of a sudden quarrel took place between the parties because accused were constructing a wall which would block the passage. But after quarrel, as stated by the prosecution witnesses, the accused with their licensed gun went to the roof top of their house and fired from there which caused fatal injuries to the deceased Shripal, father of the complainant. It would be unreasonable to hold that from this act of the accused of firing from his gun, intention to cause murder cannot be inferred. From this act, without any hesitation, it can be held that their intention was to cause such bodily injury which was likely to cause death of the person to whom it hits.

In this view of the matter, the appeal is allowed, the impugned order passed by the High Court is set aside and the order passed by the Additional Sessions Judge convicting the accused-respondents for the offence punishable under Section 302 read with Section 34 IPC and sentencing them to suffer life imprisonment thereunder is restored.

& ..& & & & & & & ..J.  
(M.B. SHAH)

& & ..& & & & & & ..J.  
(DORAISWAMY RAJU)

New Delhi,  
July 17,2001