



ITEM NO.9

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

IA 89545/2022 IN/AND CRIMINAL APPEAL NO(S). 1245/2013

DAYA SHANKAR

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

RESPONDENT(S)

(IA No. 89545/2022 - SUSPENSION OF SENTENCE)

Date : 06-02-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Ms. Prerna Mehta, AOR

For Respondent(s) Ms. Ruchira Goel, AOR  
Mr. Adit Jayeshbhai Shah, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is partly allowed to the extent indicated in the signed order.

The appellant is directed to be released forthwith, if his detention is not required in any other case.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)  
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)  
COURT MASTER (NSH)

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

IA NO.89545/2022 IN/AND CRIMINAL APPEAL NO(S). 1245/2013

DAYA SHANKAR

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

RESPONDENT(S)

O R D E R

The present appeal assails the judgment and order passed by the High Court of Judicature at Allahabad dated 16.02.2012, thereby confirming the order of the learned Sessions Judge at Banda U.P., convicting the appellant for offences punishable under Section 302 of the Indian Penal Code (IPC) and sentencing him to suffer life imprisonment.

We have heard Ms. Prerna Mehta, learned counsel appearing for the appellant and Ms. Ruchira Goel, learned counsel appearing for the respondent/State.

Learned counsel for the appellant submits that the prosecution case is based entirely on the witnesses who are interested witnesses. It is submitted that even the weapon, which is alleged to have been used in the crime, has not been recovered. As such, the order of conviction and sentence is not sustainable.

Learned counsel for the respondent/State, on the

contrary, submits that the appeal arises out of the concurrent orders of the Trial Court and the High Court upon correct appreciation of evidence. She submits that both the Courts have found that the prosecution has failed to prove its case beyond reasonable doubt, as such the appeal deserves to be dismissed.

A perusal of the evidence placed on record would reveal that the incident is the outcome of a sudden fight which arose on account of the dispute with regard to running water in the fields of the complainant party.

From the material placed on record, it cannot be said that the prosecution has proved its case beyond reasonable doubt that the accused persons with a premeditated mind had come to do away the deceased. The evidence clearly shows that there was a possibility of the accused being provoked on account of sudden and grave fight between the two groups.

We, therefore, find that the appellant is entitled to benefit of doubt.

Though the order of conviction is maintained, the conviction imposed upon the appellant is converted from Section 302 IPC to Section 304, Part I, IPC. The appellant has already undergone sentence of about twelve years with remission. We feel that, in the interest of justice, the period already undergone by the appellant will be sufficient for the offences punishable under Section 304 Part I of the IPC.

The appeal is partly allowed to the extent indicated

above.

The appellant is directed to be released forthwith, if his detention is not required in any other case.

Pending application(s), if any, shall stand disposed of.

.....J  
( B.R. GAVAI )

.....J  
( VIKRAM NATH )

NEW DELHI;  
FEBRUARY 06, 2023