

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 339 OF 2009

GOSAI DAS

Appellant (s)

VERSUS

STATE OF ASSAM

Respondent(s)

O R D E R

This appeal is directed against the judgment of conviction and order of sentence dated 02.08.2005 passed by the Division Bench of the High Court of Gauhati in Criminal Appeal No.179 of 2004 whereby the High Court has concurred with the view expressed by the learned Additional Sessions Judge, Dibrugarh in Sessions Case No.29 of 2001 whereby the learned Trial Judge had found the accused guilty of the offence under Section 302 of I.P.C. and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default, to suffer further imprisonment of one month.

Filtering the unnecessary details, the prosecution case is that on 22.03.2000, the day of Holi, one Sunil Mahali was playing Holi with the village girls which was not appreciated by the deceased. Though nothing happened immediately, yet in the evening the appellant requested one Chanku Mura to call the deceased, namely, Lalu Kishan. As the narration would reveal, there was a good relationship between the two as a consequence of which the deceased came to the house of the accused. At that juncture, an altercation took place, which led to some kind of personal cavil and eventually to a fight. As is evincible, the appellant inflicted blows of dao on the deceased. It is not in dispute that the accused also suffered two injuries. The learned trial Judge accepted the factum of altercation but did not accept the plea of private defence advanced by the accused. The High Court gave the stamp of approval to the conclusion of the learned trial Judge and maintained the conviction and sentence.

We have heard Mr. K.M.M. Khan, learned counsel appearing for the appellant and Ms. Vartika Sahay Walia, learned counsel for the respondent-State. Learned counsel for the appellant submitted, in all fairness, that there is no denial of incident on the giving of blows by the accused-appellant. However, contended Mr. Khan, it is a fit case where it should be converted to one under Section 304 Part-I as there was no intention to cause murder and in fact after long altercation, as the factual matrix would reveal, the blows were given by the accused. It is also urged by him that the appellant had already remained in custody for more than thirteen years.

On a perusal of the evidence it is demonstrable that the accused and the deceased had fairly a good relationship; that the deceased had come to the house of the accused after being asked to come; that the appellant enjoyed some kind of reputation being a teacher in the village school; that there was an altercation which eventually led to this unfortunate incident; and that the appellant did never had the intention or

