

¢

SLP(Crl.)No. 5082 OF 2003  
ITEM No.45

Court No. 5

SECTION II  
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Crl.) No. 5082/2003

(From the judgement and order dated 09/07/2003 in DBCRL 600/2000  
of The HIGH COURT OF RAJASTHAN AT JAIPUR)

BABU LAL

Petitioner (s)

VERSUS

STATE OF RAJASTHAN

Respondent (s)

( With Appln(s). for bail )

Date : 27/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU  
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s)Mr. Sushil Kumar, Sr. Adv.  
Mr. Sanjay Jain, Adv.  
Mr. Adolf Mathew, Adv.  
Mr. Vinay Arora, Adv.

For Respondent (s)

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

Despite service of notice no one appeared for the respondent.

Leave granted.

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

(D.L.Chugh) (Vijay Aggarwal)  
Court Master Court Master

Singed order is placed on the file

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.117 OF 2004

(Arising out of SLP(Crl) No.5082 of 2003)

BABU LALAppellant(s)

versus

STATE OF RAJASTHAN Respondent(s)

O R D E R

Despite service of notice no one appeared for the respondent, when the matter was called, even after it was passed over once in absence of respondent's counsel. Leave granted.

By an order dated 6.1.2004, notice was issued confined to the nature of offence. Originally there were five accused persons. One of them, namely, Thakur Das was discharged. The trial proceeded against the rest four accused. Accused Ram Swroop, Neetu and Ashok Kumar who were convicted under Section 302/34 IPC by the trial court have been acquitted by the High Court. We are concerned only with the appeal of Babu Lal whose conviction under Section 302 IPC was maintained by the High Court. He was sentenced to undergo imprisonment for life. The accused pleaded innocence. It was also pleaded that the accused persons have also suffered injuries and, therefore, the prosecution version was not acceptable. One residual prayer was made that in any event, the case of the appellant is not covered under Section 302 IPC. Both the trial court and the High Court did not accept this prayer. Learned counsel for the appellant submitted that the prosecution version does not inspire any confidence. In view of the order dated 6.1.2004, this appeal is confined only to the nature of offence and we do not think it appropriate to accept that submission about vulnerability of prosecution case. From the evidence it appears that only one blow was given by accused Babu Lal to the deceased Sunil Kumar. Though it cannot be laid down as a rule of universal application that whenever one blow is given, the case will be covered under Section 304 Part I or Part II IPC. However, looking to the facts and circumstances of the case, as noticed by the courts below we think it to be an appropriate case which is covered under Section 304 Part II IPC. Accordingly the conviction is altered. Custodial sentence of eight years would meet the ends of justice. The appeal is allowed to the extent indicated above.

.....J.  
(DORAISWAMY RAJU)

.....J.  
(ARIJIT PASAYAT)

NEW DELHI,  
JANUARY 27, 2004