

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1579 OF 2009

DHIREN WALIA

... APPELLANT(S)

VS.

STATE OF HIMACHAL PRADESH

... RESPONDENT(S)

O R D E R

Dr. I.B.Gaur, Advocate-on-record for the appellant has not appeared on the last two occasions. He is not present today as well.

Heard Mr. Abhinav Mukherji, learned counsel appearing for respondent-State of Himachal Pradesh.

The appellant-Dhiren Walia was having drinks with Jai Dev Sharma, Nisha Sharma and Padmesh Kaur till 3.00 a.m. in the morning of 30th May, 2003. According to the prosecution, the appellant started abusing the deceased Padmesh Kaur and called her a bitch. As she protested, the appellant got up and pulled out a pistol from his holster and fired at the deceased Padmesh Kaur. She died instantaneously at the spot. The appellant then ran away from the spot. Jai Dev Sharma was examined by the prosecution as PW-16 and Nisha Sharma was a court witness.

The appellant was tried under Section 302 IPC and was convicted and sentenced to undergo life imprisonment. The conviction and sentence were affirmed by the High Court of Himachal Pradesh.

On 23rd January, 2009 notice was issued limited to the nature of offence and leave was granted on 17th August, 2009. The appellant was directed to be released on bail by order dated 18th October, 2010.

We are informed by Mr. Abhinav Mukherji, learned counsel appearing for the State of Himachal Pradesh that the appellant has undergone sentence of seven years, five months and six days. Mr. Mukherji, learned counsel submits that the nature of offence should not be altered taking into account the facts and circumstances of the case and relied upon the judgment of this Court in the case of *Shankar Jaiswara v. State of W.B.* reported in (2007) 9 SCC 360.

After considering the submissions made by learned counsel for the respondent-State, we are of the opinion that the incident that occurred at 3.00 a.m. on 30th May, 2003 was not pre-meditated. Therefore, we convert the conviction of the appellant from Section 302 IPC to Section 304 Part-II and sentence the appellant to the period already undergone.

In view of the above, the appeal stands disposed  
of.

.....J.  
[L.NAGESWARA RAO]

.....J.  
[HEMANT GUPTA]

New Delhi;  
November 28, 2019.

ITEM NO.108

COURT NO.11

SECTION II-C

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

Criminal Appeal No(s). 1579/2009

DHIREN WALIA

Appellant(s)

VERSUS

STATE OF HIMACHAL PRADESH

Respondent(s)

Date : 28-11-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)

Dr. I. B Gaur, AOR (Not present)

For Respondent(s)

Mr. Abhinav Mukerji, AOR  
Mrs. Bihu Sharma, Adv.  
Ms. Pratishtha Vij, Adv.  
Mr. Samarth Khanna, Adv.

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

The appeal is disposed of in terms of the signed  
order.

Pending application, if any, shall also stand  
disposed of.

(ANITA MALHOTRA)  
COURT MASTER

(ANAND PRAKASH)  
COURT MASTER

(Signed order is placed on the file.)