

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1260 OF 2009

Hem Raj

Appellant (s)

Versus

State of M.P.

Respondent(s)

O R D E R

Heard Mr. Kanhaiya Priyadarshi, learned counsel for the appellant and Mr. Naveen Sharma, learned counsel for the respondent-State.

This Court while issuing notice has limited it to the nature of offence. It is submitted by learned counsel for the appellant that the High Court has failed to appreciate the plea of private defence raised by the appellant. It has also been contended by him that the conviction under Section 302 IPC in the case at hand deserves to be converted to Section 304 Part-I IPC.

Mr. Naveen Sharma, learned counsel for the State, has seriously opposed the said submission.

To appreciate the aforesaid limited submission, we have carefully perused the judgment of the High Court and the evidence. Learned counsel has drawn our attention to the testimony of Dehati Nalsi lodged by PW-8 and the oral evidence recorded in the court. He has also taken us through

the evidence of DW-2, Dr. D.S. Malhotra, who has proved the injury report that relates to the appellant. On a careful scrutiny of the same, we find that there was an altercation between the deceased and the appellant relating to money; that there was some grapple; and that after some time, the appellant had inflicted three "gupti" blows on the deceased causing piercing injuries to lung, heart and internal organs. The injuries sustained by the deceased had been proven by the examining doctor, PW-9, who had found following injuries:

"(1) On the left chest, stab wound of having 1.5 x 2 cm of dimension just 2 cm below the nipple, deep and 5 cm away from the midline, whose both the sides are clearly cut and both the ends were found to be pointed. These injuries penetrated the chest of the deceased and after cutting the 4th and 5th muscles of the deceased cut the front portion of the lungs completely and after entering the left chamber of the heart was found to be 15 cm deep.

(2) On the left chest clearly cut edges of 9 x .9 cm and both the ends pointed in shape and the injury of stab wound which after piercing the chest has gone up to 4th and 5th ribs and of 4.5 cm deep.

(3) On the left side of the abdomen in the standing position 1 x 3 cm stab wound, clearly cut edges pointed ends. This injury after cutting the main vessels of

stomach was of 12 cm deep and blood was full in chest and stomach."

PW-8, who is the brother-in-law of the deceased has supported the allegations he had made in the F.I.R. Nothing has been elicited to discredit his testimony. In any case, by no stretch of imagination, it can be held that it is a case for private defence, which should have been taken note of by the High Court. That apart, we do not find any justification to convert the offence under Section 302 IPC to Section 304 Part-I IPC.

In view of the aforesaid analysis, we do not find any merit in this appeal and, accordingly, the same stands dismissed.

.....J.
[Dipak Misra]

.....J.
[Uday Umesh Lalit]

New Delhi
November 27, 2014

ITEM NO.107

COURT NO.5

SECTION IIA

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.1260 of 2009

HEM RAJ

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STATE OF M.P.

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(With appln. (s) for exemption from filing O.T. and office report)

Date : 27/11/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Kanhaiya Priyadarshi, AOR

For Respondent(s) Mr. Naveen Sharma, Adv.
Mr. Mishra Saurabh, AOR

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

The appeal is dismissed in terms of the signed
order.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed order is placed on the file)