

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.805 OF 2006

Manoj ...Appellant

Versus

State of U.P. ...Respondent

O R D E R

The appellant and three others were tried for offences punishable under Section 302 read with Section 34 IPC, 307 IPC read with Section 34 IPC and 504 IPC. The

trial court acquitted all the accused by giving them the benefit of doubt. On appeal, the High Court of Allahabad

convicted the appellant herein for the offence punishable under Part-I of Section 304 IPC and, accordingly, sentenced him to undergo seven years' rigorous imprisonment. Hence, this appeal.

The incident took place on 3rd November, 1994 at about 11.15 P.M. in Mohalla Mata Ka Bagh, Baghdiyan, Police Station Brahmuri, Meerut. The deceased was one

Ramesh, a real brother of Budh Ram, PW-1. The allegation against the accused was that on the fateful night, there

was some altercation between Satish, son of the deceased Ramesh on the one hand and one of the accused, Sanjai, on the other, with regard to bursting of crackers. On hearing commotion, deceased Ramesh reached the spot near

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the house of one of the accused Sanjai and at that time, all the four accused were present. The specific allegation against the appellant herein is that during the altercation and exchange of words, all of a sudden, he stabbed deceased Ramesh while the remaining three accused assaulted Budh Ram, PW-1 with lathis. The knife injury

inflicted on the deceased Ramesh was so serious that the

intestine of the deceased had come out. He was removed to a local nursing home where he was admitted. First information report was lodged by PW-1 Budh Ram.

Dr.Sunil Gupta, PW-3, had initially examined Ramesh on 3rd November, 1994 at about 11.30 P.M. in the nursing home and found that the patient was in a condition of shock and small intestine with mesentery were coming out from the wound over left abdomen. He died at about 4.25 A.M. on 4th November, 1994. Post-mortem over the dead body

of the deceased was conducted on 4th November, 1994 at 2.30 P.M. by Dr.K.N. Tiwari, PW-6. The following ante-mortem injuries were found on the person of the deceased:

1. Stitched wound on front of abdomen in midline 18 cm long with 16 stiches present. Direction vertical.
2. Stitched wound 3 cm long, with three stitches present on anterior aspect of abdomen 4 cm left to injury No.1. Direction oblique with lower end nearer to wound (1).
3. Stitched wound 2.5 cm with one stitch present in vertical direction 27 cm below left nipple at 6 0' clock position.

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The prosecution, in support of its case, examined altogether eleven witnesses out of which Budh Ram PW-1, who is none other than the brother of the deceased, Chatursen PW-2, father, and Satish PW-4, son of the deceased, were eye witnesses. The trial court discarded the evidence of eye witnesses mainly on the ground that they were the near relatives of the deceased and, in fact, that was the only ground on which their evidence was rejected.

On re-appreciation of evidence, the High Court mainly relied upon the evidence of eye witness PW-1 Budh Ram, who was also an injured witness. After careful analysis of the evidence, the High Court found what the appellant did was his individual act and other accused were not vicariously liable for the criminal act of stabbing of the deceased Ramesh by the appellant. The

High Court came to the right conclusion that there is no reason to discard and disbelieve the evidence of PW-1 Budh Ram, PW-2 Chatursen and PW-4 Satish, only on the ground of their relationship with the deceased. Their evidence clearly supports the version of the prosecution that is the appellant who stabbed the deceased Ramesh. The incident was witnessed by PW-1, PW-2 and PW-4. Their presence at the scene of offence cannot be doubted and they are the natural witnesses. Merely because the prosecution failed to examine independent witnesses is of no consequence. On most of the occasions, the persons who

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were present at the scene of offence may not come forward and speak for variety of reasons. Nothing is suggested to PW-1, PW-2 and PW-4 as to why they should falsely implicate the appellant herein. It is true that they might have spoken about the presence of the other accused and might have attributed some overt acts which were not acceptable to the court below. May be to that extent, there was an attempt by them to over implicate the accused. But, on a careful reading of the evidence, the High Court came to the right conclusion that it was in a sudden quarrel over the cracking of fireworks in the night of Diwali festival and in that heat of passion, the appellant whipped out knife and fatally stabbed Ramesh in the abdomen resulting in his death on that very night. We have no reason whatsoever to disbelieve mainly the evidence of PW-1 Budh Ram, who was an injured witness, as well as the evidence of PW-2 Chatursen and PW-4 Satish.

The High Court rightly found the appellant guilty of the offence punishable under Part-I of Section 304 IPC. Having regard to the nature of injury inflicted by the appellant upon the deceased resulting in his death, it is not possible to reduce the sentence of imprisonment awarded by the High Court.

The appeal is, accordingly, dismissed.

The appellant is on bail.
stand cancelled to serve out the remaining sentence.

His bail bonds shall

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.....J.
(B. Sudershan Reddy)

.....J.
(Surinder Singh Nijjar)

New Delhi,
February 10, 2011.

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ITEM NO.115

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 805 OF 2006

MANOJ Appellant (s)

VERSUS

STATE OF U.P. Respondent(s)

(With office report)

Date: 10/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Mr. R.K. Kapoor, Adv.
Mr. H.C. Pant, Adv.
Mr. Mukesh K. Verma, Adv.
Mr. Anis Ahmed Khan, Adv.

For Respondent(s) Mr. Ratnakar Dash, Sr. Adv.
Mr. Rajeev Dubey, Adv.
Mr. Kamalendra Mishra, Adv.

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

The Appeal is dismissed in terms of the signed order. The appellant is on bail. His bail bonds shall stand cancelled to serve out the remaining sentence.

(N. Annapurna)
AR-cum-PS

(Renuka Sadana)
Court Master

(Signed order is placed on the file)