

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2436 OF 2010

DINESH

... APPELLANT(S)

VS.

STATE OF UTTAR PRADESH

... RESPONDENT(S)

O R D E R

1. Three persons, namely, Munnu, Buddhu and Dinesh, were tried by Sessions Judge, Bijnor, in Sessions Trial No.229/1981, for having committed the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The Sessions Court by its judgment and order dated 9.2.1982, accepted the case of prosecution and sentenced them to undergo life imprisonment for the offence with which they were tried. All the accused carried the matter further by filing Criminal Appeal No.424/1982 in the High Court of Allahabad. During pendency of the appeal, Buddhu died and the proceedings abated as regards Buddhu. By its judgment and order under appeal, the High Court found that incident in question had occurred in the heat of passion and as such, the offence was one punishable under Section

304 Part-I of Indian Penal Code. Having so found, the High Court converted the sentence of Munnu to suffer 10 years of rigorous imprisonment, while Dinesh was sentenced to life imprisonment. The present appeal is only at the instance of appellant-Dinesh.

2. After having issued notice, this Court granted leave on 10.12.2010 and by a subsequent order dated 12.8.2013 directed that appellant-Dinesh be released on bail to the satisfaction of the Sessions Judge, Bijnor. We are informed that appellant-Dinesh had been so released on bail and is enjoying the facility of bail.

3. With the help of learned counsel for both the sides we have gone through the record. The injury report (Ex Kha-2) in respect of Munnu, shows that he had suffered four injuries. The post-mortem report indicates that the deceased suffered following injuries :

“(i) Incised wound 2½ cm x 1½ cm & chest cavity deep on the infront of chest Rt. Side 4th in tercostal space 1 cm medial to nipple.

(ii) Incised wound 3 cm x 1½ cm x bone deep on the infront of Rt. Upper limb 5 cm below lip of shoulder.

(iii) Incised wound 3 cm x 1½ cm chest cavity deep on Lt. Side of back at the level of T5 space 1 cm lateral to midline.

(iv) Incised wound 1 cm x ½ cm x muscle deep on the back left side 2 cm lateral to midline 7½ cm above left iliac crest.”

4. Considering the circumstances, the High Court observed that there was an altercation in which heated words were exchanged and in the heat of passion, appellant-Dinesh had given knife blow to the deceased. The High Court further observed that while appellant-Dinesh was so stabbing, the deceased was held by appellant-Munnu. In the facts of the case, when both Munnu and Dinesh were said to be having common intention and when the High Court found that the offence was one "culpable homicide not amounting to murder", in our view, both the accused ought not to have been sentenced to different sentences. We, therefore, grant the present appellant similar benefit and award him sentence of 10 years, as was awarded to accused-Munnu. By maintaining the conviction to the appellant under Section 304 Part-I IPC, we, therefore, alter the sentence and reduce it to 10 years imprisonment.

5. Since the appellant was released on bail pursuant to the orders passed by this Court, we give him one month's time to surrender. The bail bonds stand cancelled and the appellant shall surrender within one month, failing which he shall be taken into custody forthwith to suffer rest of the sentence. A copy of this order be sent to the learned Chief Judicial Magistrate, Bijnor (U.P.) for compliance.

6. The appeal is disposed of in the above terms.
Pending application, if any, stands disposed of.

.....J.
[UDAY UMESH LALIT]

.....J.
[DEEPAK GUPTA]

New Delhi;
13th June, 2018.

ITEM NO.109

COURT NO.5

SECTION II

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).2436/2010

DINESH

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH

Respondent(s)

Date : 13-06-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE DEEPAK GUPTA
(VACATION BENCH)

For Appellant(s) Dr. Abhishek Atrey, AOR

For Respondent(s) ` Mr. V.V.V. Pattabhi Ram, Adv.
Mr. Sanjay Kumar Tyagi, AOR
Mr. Abhishek Chaudhary, AOR

Mr. Pradeep Mishra, Adv.
Mr. Suraj Singh, Adv.

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

Since the appellant was released on bail pursuant to the orders passed by this Court, he is given one month's time to surrender. The bail bonds stand cancelled and the appellant shall surrender within one month, failing which he shall be taken into custody forthwith to suffer rest of the sentence. A copy of this order be sent to the learned Chief Judicial Magistrate, Bijnor (U.P.) for compliance.

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

(Sarita Purohit)
Court master

(Jagdish Chander)
Branch Officer

(Signed order is placed on the file)