

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS.938-939 OF 2016

PUSHPENDER

Appellant(s)

VERSUS

STATE

Respondent(s)

WITH

**CRIMINAL APPEAL NO. 244 OF 2022
(Arising out of SLP(Cr1) No. 3527/2017)**

O R D E R

CRIMINAL APPEAL NOS.938-939/2016

1. These appeals filed by appellant Pushpender challenge the judgment and order dated 12.10.2015 passed by the High Court of Delhi at New Delhi in Criminal Appeal Nos.160 and 569 of 2015.

2. Five persons namely, Ravinder, Pushpender, Phoolwati, Babu Lal and Harshinder were tried in the Court of Additional Sessions Judge, Fast Track Court,

Rohini, Delhi in Sessions Case No.83 of 2009, arising out of FIR No.211 of 2004 registered with Police Station Narela in respect of offences punishable under Sections 302, 304B, 498A, 120B of the Indian Penal Code, 1860 ("the IPC" for short).

3. According to the First Information Report, dead body of one Meena was found lying in House No. 38. Pocket No.6, Sector A/5, Narela Police Colony on 29.05.2004 with certain injuries on the body of said deceased.

4. After due investigation, the afore-stated five persons namely Ravinder-husband of the deceased, Pushpender and Harshinder- brothers-in-law of the deceased; Phoolwati and Babu Lal- parents-in-law of the deceased, were tried for the aforesaid offences.

5. By its judgment dated 25.11.2014, the Trial Court found Ravinder-husband to be guilty under Section 302 of the IPC, while rest of the accused were acquitted of said charge. The Trial Court, however, found all the accused guilty under Sections 304B and 498A read with Section 34 of the IPC. By Order of Sentence dated

08.01.2015 Ravinder-husband was sentenced to suffer life imprisonment under Section 302 of the IPC while all the accused were sentenced to rigorous imprisonment for 10 years and 3 years respectively under Sections 304B and 498A read with Section 34 of the IPC.

6. Being aggrieved by the decision of the Trial Court, all the convicted accused preferred appeals in the High Court. The original-complainant also preferred an appeal against the acquittal of the accused other than Ravinder-husband, in respect of offences punishable under Section 302 IPC.

7. All these appeals were heard together by the High Court and by its judgment and order which is presently under appeal, it maintained the conviction and sentence of Ravinder-husband under Section 302 IPC. It also accepted the appeal preferred by the complainant and found the present appellant guilty of the offence punishable under Section 302 IPC and proceeded to impose life sentence against the appellant. The conviction and sentence recorded against rest of the accused under Sections 304B and 498A read with Section

34 of the IPC were however, maintained by the High Court.

8. It must be mentioned that Ravinder-husband did not choose to appeal against the decision of the High Court and accepted his conviction and sentence under Section 302 IPC.

The appeal preferred by Babu Lal-father-in-law i.e. Criminal Appeal No.2025 of 2017 came up before this Court. By its order dated 12.03.2021 this Court while maintained his conviction but modified the sentence to one already undergone. It must also be mentioned that the mother-in-law Phoolwati also preferred SLP (Cr1.) No. 8553/2016 challenging her conviction and sentence. However, said Phoolwati expired on 24.08.2019 and as such the proceedings with respect to said Phoolwati stand abated.

9. In these appeals preferred by Pushpender, we have heard Ms. Manmeet Arora, learned advocate in support of the appeals and Ms. Aishwarya Bhati, learned Additional Solicitor General for the State.

10. The only reason which weighed with the High Court while accepting the appeal preferred by the original complainant as against the appellant, was the fact that some blood stained clothes were recovered at the instance of the appellant. The judgment under appeal, particularly paragraphs 72 and 77, in our considered view, do not make out any special circumstance to accept the appeal of the complainant so as to reverse the acquittal ordered by the Trial Court and convict him under Section 302 of the IPC.

11. In the circumstances, we allow the instant appeals to the extent the appellant was convicted and sentenced under Section 302 IPC. We, therefore, set aside the conviction and sentence recorded against the appellant for the offence under Section 302 of the IPC but restore his conviction and sentence in respect of offences under Sections 304B and 498A read with Section 34 of the IPC.

12. The appeals are allowed to the aforesaid extent.

CRIMINAL APPEAL NO.244 OF 2022
(Arising out of SLP(Cr1) No. 3527/2017)

13. Leave granted.

14. This appeal by Harshinder challenges the judgment and order dated dated 12.10.2015 passed by the High Court of Delhi at New Delhi in Criminal Appeal No.160 of 2015.

15. The relevant facts have sufficiently been set out in the earlier part of the order.

16. The father-in-law namely, Babu Lal was granted relief by this court reducing the substantive sentence to one already undergone. In our view, the appellant Harshinder is also entitled to similar benefit as was afforded to Babu Lal.

17. It has been brought to the notice of the Court that the appellant has already undergone actual sentence of seven years (with remission, more than nine years). Therefore, while maintaining his conviction and sentence of the appellant, we reduce the substantive sentence of appellant Harshinder to one

already undergone.

18. The appellant has already been released on bail. The bail bonds are, therefore, cancelled.

19. The instant appeal is allowed to the extent indicated above.

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

.....J.
[S. RAVINDRA BHAT]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
FEBRUARY 15, 2022.

ITEM NO.104

COURT NO.2

SECTION II-C

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). 938-939/2016

PUSHPENDER

Appellant(s)

VERSUS

STATE

Respondent(s)

WITH

SLP(Cr1) No. 8553/2016 (II-C)

(IA No. 17306/2016 - CONDONATION OF DELAY IN FILING

IA No. 18360/2016 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT & IA No. 18359/2016 - EXEMPTION FROM FILING O.T.

IA No. 18361/2016 - PERMISSION TO FILE ANNEXURES)

SLP(Cr1) No. 3527/2017 (II-C)

(IA No. 7555/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT & IA No. 7554/2017 - EXEMPTION FROM FILING O.T.)Date : 15-02-2022 These appeals were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Ms. Manmeet Arora, Adv.
Mr. Rishabh Bansal, Adv.
Ms. Pavitra Kaur, Adv.
Ms. Himanshi Malhotra, Adv.
Ms. Kaveeta Wadia, AOR

For Respondent(s)

Ms. Aishwarya Bhati, ASG
Ms. Kiran Suri, Sr. Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Shalinder Saini, Adv.
Ms. G. Usha Shri, Adv.
Mr. M.P. Gupta, Adv.

Mr. Rakesh Kumar-i, AOR
Mr. Ashish Ranjan, Adv.
Ms. Sataroop Das, Adv

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

Leave granted in SLP(Cr1) No. 3527/2017.

The appeals are allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

SLP(Cr1) No. 8553/2016

Delay condoned.

This Special Leave Petition is dismissed being abated.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)