

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1562 OF 2008

KRISHNA RAMU GADIWADDAR

APPELLANT(S)

VERSUS

STATE OF KARNATAKA

RESPONDENT(S)

ORDER

This appeal arises from a judgment of a Division Bench of the High Court of Karnataka dated 1 June 2007. The appellant stands convicted of an offence under Sections 302 and 324 of the Penal Code.

The incident which gave rise to the prosecution of the appellant took place on 11 October 1999. PW-1, Laxman Gadiwaddar was the brother of the deceased, Nagawwa. PW-1, according to the case of the prosecution, was carrying on the activity of supplying stones for the purpose of building work. About eight days prior to the incident he had advanced an amount of Rs.500/- to the appellant-accused No.2 by way of an advance. It was alleged that the appellant did not supply the stones to PW-1. As a consequence, an altercation ensued between the appellant and PW-1 when PW-1 asked him to supply the stones or to refund the advance which had been paid. During the course of the altercation, it was alleged that the

appellant assaulted PW-1 on the head with an iron bar, resulting in a bleeding injury. Thereupon, PW-1 is alleged to have gone to his house and informed his mother, sister, brother and father of the incident. PW-1 accompanied by the members of his family went to the house of the appellant to enquire about the incident during the course of which he was assaulted earlier. When PW-1 reached the house of the appellant together with the members of his family and enquired from the appellant, the appellant is alleged to have assaulted Nagawwa with a stone on her head. The incident took place in the evening of 11 October 1999. Nagawwa was admitted to the KLE Hospital Belgaum where she succumbed to her injuries on 12 October 1999.

The appellant was put up for trial together with four other accused on charges of having committed offences under Sections 302 and 143, 147, 324, 504 read with Section 149 of the Penal Code. The Additional Sessions Judge, Belgaum by a judgment dated 4 June 2004 convicted all the accused including the appellant. The appellant was convicted of the offence of murder under Section 302 and was sentenced to imprisonment for life. He was convicted of the offence under Section 324 and was sentenced to two years imprisonment. The High Court, in appeal, maintained the conviction of the appellant.

Learned counsel appearing on behalf of the appellant submitted that the genesis of the incident is the dispute which had taken place between the appellant and PW-1 shortly before the actual incident in which the

deceased suffered a bleeding injury on her head as a result of the assault. Learned counsel submitted that as on the date of this judgment, the appellant has undergone about ten years of imprisonment having regard to the fact that he was in custody from 4 June 2004 until he was granted bail by this Court on 11 August 2014. It is submitted that having regard to the facts and circumstances, at the highest, a case is made out under Section 304 Part-I and hence an appropriate view may be taken in the matter.

On the other hand, learned counsel appearing on behalf of the State of Karnataka supported the judgment of the High Court. Learned counsel submitted that there is no evidence of a free fight between the appellant and the complainant or the appellant or the other persons who were accompanying PW-1. In these circumstances, it is submitted that, the blow administered by the appellant was of such a nature that even though it was a single blow, the conviction under Section 302 is capable of being sustained.

We have adverted to the genesis of the incident in the earlier part of this judgment. There was evidently a dispute between PW-1 and the appellant involving the supply of stones. An altercation had taken place shortly before the actual incident of assault. Initially, the appellant assaulted PW-1 with an iron bar following which PW-1 went to the house of the appellant along with the members of his family. It is at that stage that the appellant assaulted the sister of PW-1 with a stone on the head.

Having regard to the above facts and circumstances, we are of the view that the conviction of the appellant under Section 302 should be converted to one under Section 304 Part I. The appellant has already undergone ten years of imprisonment from 4 June 2004 until he was enlarged on bail by the order of this Court on 11 August 2014. We direct that the sentence be confined to what has already been undergone by the appellant.

We accordingly partly allow this appeal. The bail bond of the appellant shall stand discharged.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Ajay Rastogi]

**New Delhi;
November 27, 2019**

ITEM NO.103

COURT NO.8

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). 1562/2008

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APPELLANT(S)

VERSUS

STATE OF KARNATAKA

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Date : 27-11-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr.Abdul Azeem Kalebudde, AOR

For Respondent(s)

Mr.Shubhranshu Padhi, AOR

Mr.Ashish Yadav, Adv.

Mr.Rakshit Jain, Adv.

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

The appeal is partly allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh)

Court Master

(Saroj Kumari Gaur)

Court Master

(Signed Order is placed in the file)