

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1088 OF 2009

HEERALAL & ORS.

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

O R D E R

Heard learned counsel for the parties.

This appeal takes exception to the judgment passed by the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No. 693 of 1998. All the appellants were tried for offence punishable under Section 302 read with Section 149 of the IPC and came to be convicted by the Trial Court. In Appeal, however, the High Court converted the offence to one under Section 304 part II *simpliciter*, for the reasons recorded in the impugned judgment. Despite doing so, the High Court convicted all the accused for the said offence. This is the manifest error committed by the High Court.

Be it noted that the respondent State has not challenged the judgment of the High Court for converting the offence to one under Section 304 Part II *simpliciter*. In that case, only the accused who was responsible for causing the fatal injury to the deceased can be proceeded further. In the present case, the only injury that has been identified as the fatal injury caused to the deceased Babu is Lacerated wound on the left parietal region of skull of about 12 cms x 2 cms. X 1 ½ cms, boney pieces felt in wound, medial half of left parietal bone is depressed. This injury, as per the

evidence of PWS-1, 2 & 3 is attributable only to Madan Lal - accused No.2 and none-else. If so, the High Court, at best, could have convicted Madan Lal - accused No.2 for the offence punishable under Section 304 Part II simpliciter and not the other accused, having dropped Section 149 for the reasons recorded in the impugned judgment.

Accordingly, this appeal partly succeeds. The conviction and sentence awarded to all other accused except Madan Lal - Accused No.2 is set aside. They are acquitted by giving benefit of doubt. However, the appeal filed by Madan Lal-accused No.2 is dismissed. The bail bonds of all the acquitted appellants stand discharged. The appellant No. 2 Madan Lal shall surrender within four weeks, to undergo the remaining sentence period for offence punishable under Section 304 Part-II simpliciter.

Appeal disposed of in the above terms.

.....J  
(A.M. KHANWILKAR)

.....J  
(AJAY RASTOGI)

New Delhi  
February 14, 2019

REVISED

ITEM NO.104

COURT NO.11

SECTION II-A

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). 1088/2009

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Date : 14-02-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Ms. Pratibha Jain, AOR

For Respondent(s)

Mr. Vaibhav Srivastava, Dy.AG for M.P.  
Mrs. Swarupama Chaturvedi, AOR

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

The Criminal Appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)  
COURT MASTER (SH)

(VIDYA NEGI)  
COURT MASTER (NSH)

[Signed order is placed on the file]