

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).2035 OF 2010

STATE OF U.P.

... APPELLANT(S)

VERSUS

SHAHZAD

...RESPONDENT(S)

O R D E R

This appeal is filed by the State, aggrieved by the judgment and order of acquittal reversing the judgment of conviction passed by the trial court, in Criminal Appeal No. 544 of 2000. The appellate court, in exercise of its appellate jurisdiction, has re-appreciated the evidence on record, examined the correctness of the finding on the charge recorded by the learned trial court against the accused, referred to the evidence of the eye-witnesses and held that there is contradiction and inconsistency in their evidence with regard to the identity of the accused and also with regard to the occurrence. Apart from

the said finding, the appellate court, after extracting the injuries caused on the dead-body of the deceased, as per Exhibit KA-2, the evidence of the doctor, who attended the deceased at Yashlok Nursing Home, viz. Dr. J.N. Goel (PW-9), who has stated that nowhere he had given any medical aid to the deceased or he had stitched the wound or bandaged it and the doctor, who has conducted the post-mortem on the body of the deceased, viz., Dr. D.C. Jain (PW-4), who has stated that all the wounds of the deceased were stitched and bandaged, acquitted the appellant of the charge under Section 302 of the Indian Penal Code, with a direction of his forthwith release. These facts are further clear from the evidence of Hafeez (PW-1), who has deposed in the case with regard to the evidence given by him regarding the occurrence that the deceased was shifted to the Yashlok Nursing Home. Therefore, the appellate court recorded a categorical finding that the finding of conviction is erroneous and, therefore, it has rightly set aside the same, after considering all the material on record and the contradictory evidence of the eye-witnesses regarding identity of the accused.

In view of the above, we do not find any reason for our interference to annul the finding of fact recorded by the appellate court on the charge framed against the accused in exercise of its appellate jurisdiction. The appeal is devoid of merit, which is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of.

.....J.
(V. GOPALA GOWDA)

.....J.
(R.K. AGRAWAL)

NEW DELHI,
JANUARY 20, 2016

ITEM NO.102

COURT NO.10

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). 2035/2010

STATE OF U.P.

Appellant(s)

VERSUS

SHAHZAD

Respondent(s)

(with appln. (s) for stay)

Date : 20/01/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. Irshad Ahmad, AAG
Mr. Sudeep Kumar, Adv.
Mr. Abhishth Kumar, Adv.

For Respondent(s) Mr. R.D. Rathore, Adv.
Mr. Amit Srivastava, Adv.
Mr. Soumen Talukdar, Adv.
Dr. Kailash Chand, Adv.

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

The appeal is dismissed in terms of the signed
order.

Pending application(s), if any, stand(s) disposed
of.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)