

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

CRIMINAL APPEAL NO(S). 1076/2010

THE STATE OF MADHYA PRADESH

APPELLANT(S)

VERSUS

DEVILAL KUSHWAHA

RESPONDENT(S)

WITH

CRL.A. NO. 1072/2010

CRL.A. NO. 1065/2010

O R D E R

These are the appeals challenging the judgment(s) and order(s) passed by the learned High Court dated 16.05.2008, vide which the learned High Court has modified the judgment(s) and order(s) passed by the learned Sessions Judge.

Originally, six accused were prosecuted, out of whom, Pushendra Singh, Hanumant Singh and Subhash Jain were acquitted by the Trial Court. The Trial Court convicted accused, Pramod Kumar Gautam under Section 302 of the IPC and accused Jagdish Gautam and Devilal Kushwaha under

Section 302/34 of the IPC, and sentenced all of them to life imprisonment. Accused-Geeta Gautam was chargesheeted under Section 327 of IPC but was discharged by the High Court. Rahul Gautam was tried as a juvenile for allegedly throwing a stone on the complainant but was also acquitted by the Trial Court.

In an appeal, the High Court converted the conviction of accused-Pramod Kumar Gautam from Section 302 to Section 304, Part I of the IPC. Insofar as the other accused i.e. Devlal Kushwaha and Jagdish Gautam are concerned, the learned High Court found that the conviction under Section 302 IPC was not sustainable and convicted them for the offences punishable under Section 323 of the IPC.

Being aggrieved thereby, the State of Madhya Pradesh has come in these appeals.

Shri Yashraj Bundela, learned counsel, along with Shri Gopal Jha, learned Standing Counsel for the appellant-State, vehemently submit that the judgment and order passed by the High Court is totally unsustainable. It is submitted that the learned Trial Judge, upon correct appreciation of the evidence, had found that all the three accused were liable to be convicted for the offences punishable under Section 302 IPC, the High court has erred in interfering with the same. They submit that the material on record would clearly

reveal that the accused-Pramod Kumar Gautam has used a firearm and shot at one of the deceased and, therefore, the intention to kill the deceased was very much available.

The High Court has found that both the parties were present at the spot for the purposes of measurement of land. It has also been found that some quarrel took place between them and there was a scuffle, in the said scuffle one person from the complainants side had received injuries. It had been found that thereafter, it is the complainants who had gone to the house of the accused person, knocked their doors and tried to assault them. The learned Judge of the High Court, therefore, found that the possibility of the accused-Pramod Kumar Gautam, in order to exercise his right of self defence, shot from the firearm cannot be ruled out.

Insofar as the accused Jagdish Gautam and Devilal Kushwaha are concerned, the learned High Court found that no specific role was attributed to them except giving blows to the complainants.

The view taken by the High Court cannot be said to be a perverse or an impossible view. The law with regard to interference in an appeal against acquittal is well settled. Unless it is found to be perverse and impossible, it is not permissible for the Court to interfere. Equally when the view taken is a possible one, it is also not permissible to

interfere. We find that the view taken is a possible view.
No case is made out for interference.

The appeals are, accordingly, dismissed.

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

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

NEW DELHI;
DECEMBER 01, 2022

ITEM NO.107

COURT NO.8

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). 1076/2010

THE STATE OF MADHYA PRADESH

APPELLANT(S)

VERSUS

DEVILAL KUSHWAHA

RESPONDENT(S)

WITH

CRL.A. NO. 1072/2010 (II-A)

CRL.A. NO. 1065/2010 (II-A)

Date : 01-12-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. Yashraj Bundela, Adv.
Mr. Gopal Jha, AOR

Mr. Arjun Garg, AOR

For Respondent(s) Mr. Akash Sirohi, Adv.
Mr. Rajmohan Gupta, Adv.
Mr. Rajesh, AOR

Mr. Praveen Chaturvedi, AOR

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

The appeals are dismissed, in terms of the signed order.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

(Signed order is placed on the file)