

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1955/2010

AVTAR SINGH

Appellant(s)

VERSUS

STATE OF M.P. (NOW CHHATTISGARH)

Respondent(s)

O R D E R

We have heard learned counsel for the parties. One of the arguments raised by the appellant is that the Trial Court has convicted the appellant for an offence under Section 302 read with section 34 of IPC, whereas, the High Court without any cross appeal by the State has convicted the appellant for an offence under Section 302 IPC substantively. Secondly, the argument is that the order of this Court in Criminal Appeal No.428/89 dated 27/11/1997 had given a finality to the acquittal of the appellant for the offence under section 302 IPC, when this Court has allowed the appeal of the appellant and another two co-accused.

We do not find any merit in the arguments raised. A perusal of the order of this Court shows that the High Court had allowed the complainant's revision petition against the acquittal of all the accused and ordered a retrial qua the accused number 1 to 3, including appellant. This Court found that such

course adopted by the High Court is not sustainable and the order of the High Court, to the extent the re-trial was ordered in respect of all the accused, was set aside. This Court in appeal specifically mentioned that appeal of the appellant was pending before the High Court and thus no observation was made regarding the same as it had to be decided by the High Court on merits. Hence, the acquittal of the appellant for the offence under Section 302 IPC had not attained finality as it was the subject matter of appeal, may be at the instance of the appellant.

We also do not find merit in the argument that the appellant could not be convicted for an offence under Section 302 IPC without any cross appeal on behalf of the State. It is noted that the appellant is the sole convict. The High Court found from the statement of Amar Singh (PW-45) that the appellant fired from the fire arm in his hands. It was the said fatal shot which has taken the life of the deceased Mrs. Swadesh Neelam. Still further, the postmortem report shows the entry and exit wound in the skull of the deceased.

There was direct evidence on record implicating the appellant under Section 302 IPC. The argument that without cross appeal the conviction of the appellant for an offence under Section 302 read with

Section 34 IPC could not be converted to one under Section 302 IPC is not sustainable in view of Section 386 of the Code of Criminal Procedure, 1973, which permits the High Court to modify the conviction of one offence to another.

In view of the said fact, the High Court has not committed any illegality in convicting under Section 302 IPC.

Accordingly, the appeal is dismissed.

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

.....J.
[HEMANT GUPTA]

.....J.
[VIKRAM NATH]

New Delhi;
AUGUST 23, 2022.

ITEM NO.101

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

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Date : 23-08-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Mr. Vikas Singh Jangra, AOR

For Respondent(s) Mr. Sumeer Sodhi, AOR

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, also stand disposed of.

(HARSHITA UPPAL)
SENIOR PERSONAL ASSISTANT

(Signed order is placed on the file)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)