

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1511 OF 2010

VIKRAM NAIR

... APPELLANT(S)

VS.

STATE OF M.P. (NOW CHHATTISGARH)

... RESPONDENT(S)

O R D E R

1. The present appeal challenges the judgment and order dated 25th November, 2009 passed by the High Court of Chhattisgarh, thereby partly allowing the appeal filed by the appellant. The learned Additional Sessions Judge, Baikunthpur, by order dated 31st March, 1989 had convicted the appellant for the offences punishable under Section 302 of the Indian Penal Code (For short "the IPC"). The High Court, by the impugned judgment and order, converted the conviction of the appellant to Part-I of Section 304 IPC and sentenced him to suffer RI for 10 years.

2. We have heard Mr. Santosh Paul, learned senior counsel for the appellant and Mr. Gautam Narayan, learned counsel for the respondent-State of Chhattisgarh.

3. Learned senior counsel for the appellant submits that evidence of the witnesses, particularly PW-4 and PW-5, would clearly reveal that the incident occurred on account of a fight between the deceased and the appellant. He further submits, that it was the deceased who had started the quarrel and was an aggressor. He therefore submits that the case of the appellant at the most would fall under Part-II of Section 304 IPC. He further submits that the appellant has already undergone sentence of about four years and as such the said sentence would be sufficient for the offence of Section 304 Part-II IPC.

4. Mr. Gautam Narayan, learned counsel for the respondent-State vehemently opposes the appeal. He submits that as it is the High Court has already taken a lenient view in converting the conviction from Section 302 IPC to Part-I of Section 304. He submits that as a matter of fact, the High Court ought to have confirmed the conviction under Section 302 IPC.

5. We have perused the evidence of PW-4 Ram Naresh s/o Shri Ram Vyas, owner of tea shop and PW-5 Tapan Chakraborty, the owner of the other shop in front of which the initial incident took place.

6. A perusal of the evidence would reveal that on the day of the of incident, the appellant and the deceased had come

to the shop of PW-4 Ram Naresh for having tea. Since it was raining and there was no place in the shop of Ram Naresh, they went and sat in the shop of PW-5-Tapan Chakraborty. At that time, the deceased started assaulting the appellant. The appellant tried to save himself and in retaliation was also attacking the deceased. The evidence further revealed that the appellant was carrying an umbrella with which the deceased started assaulting the appellant. The evidence further revealed that Tapan Chakraborty tried to intervene, separated them and thereafter the appellant ran away and the deceased was chasing him.

7. Thereafter, as to what happened is not witnessed by any one. It is further revealed that the witnesses came to know about the death of the deceased in the hospital.

8. As such from the evidence as led by the prosecution, it would reveal that the prosecution has only established that the fight took place between the deceased and the appellant. It was the deceased who had started the fight and started assaulting the appellant and the appellant in retaliation and to save himself also attacked the deceased. The deceased also attempted to assault the appellant with the pointed part of umbrella. PW-5 separated them and both of them ran away chasing each other. The evidence of PW-5 would also show that the deceased had consumed alcohol and was in an inebriated condition.

9. It could be thus seen that, even if it is held that the prosecution had proved that the injuries sustained by the deceased were sufficient to cause death or were likely to cause death and the appellant had knowledge about the same; there is no evidence to establish that the appellant had an intention to cause death of the deceased.

10. In that view of the matter, we find that the High Court erred in bringing the case under Part-I of Section 304 and ought to have brought it under Part-II of Section 304 IPC.

11. As such, the appeal is partly allowed.

12. The conviction of the appellant under Section 304 Part-I is altered to one under Part-II of Section 304 IPC.

13. The appellant is sentenced for the said offence to the period already undergone.

14. The bail bonds shall stand discharged.

.....J.
[B.R.GAVAI]

.....J.
[VIKRAM NATH]

New Delhi;
February 09, 2023.

ITEM NO.107

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). 1511/2010

VIKRAM NAIR

Appellant(s)

VERSUS

STATE OF M.P. (NOW CHHATTISGARH)

Respondent(s)

Date : 09-02-2023 This appeal was called on for hearing today.

CORAM :

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

For Appellant(s) Mr. Santosh Paul, Sr. Adv.
Mr. B.Ragunath, Adv.
Mr. Sriram Parakkat, Adv.
Mr. M.S.Vishnu Sankar, Adv.
Mr. Aditya Santhosh, Adv.
Mrs. N.C.Kavitha, Adv.
Mr. Vijay Kumar, AOR

For Respondent(s) Mr. Gautam Narayan, AOR

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 application, if any, shall stand disposed
of.

(ANITA MALHOTRA)
AR-CUM-PS

(ANJU KAPOOR)
COURT MASTER

(Signed order is placed on the file.)