



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2024
[Arising out of Special Leave Petition (Criminal) No.11919 of
2022]

DEVENDRA SINGH **...APPELLANT (S)**

VERSUS

STATE OF UTTAR PRADESH **...RESPONDENT (S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. This appeal challenges the judgment and order dated 08th January, 2019 passed by the Division Bench of the Allahabad High Court in Criminal Appeal No. 302 of 1987 wherein the Division Bench dismissed the Criminal Appeal preferred by the appellant-Devendra Singh and upheld the order of conviction under Section 302 of the Indian Penal Code, 1860 (“IPC” for short) and sentence of life imprisonment dated 17th January, 1987 as recorded by the learned Sessions Judge, Bijnor

(hereinafter referred to as “the trial court”) in S.T. No. 166 of 1986.

3. Shorn of details, the facts leading to the present appeal are as under:-

3.1 On 29th May, 1986, one Dharam Pal Singh (PW-1) lodged a written report at P.S. Afzalgarh at about 11:15 p.m. wherein he stated that pursuant to a previous dispute, the appellant and his co-accused Yogendra Pratap Singh stabbed Parpoor Singh (hereinafter referred to as ‘the deceased’) who eventually succumbed to his injuries on the very same day. On the basis of the written report, a First Information Report (‘FIR’ for short) being Crime No. 70 of 1986 came to be registered at Police Station, Afzalgarh for the offence punishable under Section 302 of the IPC, against the appellant and his co-accused. On the conclusion of a preliminary investigation, the Police arrested the accused persons on 30th May, 1986. At the instance of the appellant, the police recovered a blood-stained knife which had been allegedly used in the commission of the crime. It is notable

that at the time of their arrest, both the accused persons had injuries on their body. On 31st May, 1986, the accused persons had their injuries examined at the State Dispensary, Qadradabad whereupon they were found to have lacerated wounds and abrasions on their bodies. In the interim, the post-mortem of the deceased was conducted and the cause of death was ascertained to be shock and hemorrhage as a result of ante-mortem injuries.

3.2 The prosecution case is that a few days prior to the date of the incident, the appellant had molested the wife of Dharam Pal Singh (PW-1), the elder brother of the deceased. Angered, the deceased forbade the appellant from misbehaving with his sister-in-law in the future and further warned the appellant of dire consequences were he to repeat his actions. On the day of the incident, at about 09:30 p.m., a marriage procession was passing through Village Qadradabad, of which the deceased was one of the attendees. Owing to the marriage procession, the area was lit up with decorative lights which were powered by a high-power

generator. In the meanwhile, the appellant and his co-accused reached the spot and picked up a quarrel with the deceased by bringing up their previous altercation. Being riled up about the fact that the deceased was acting as the protector of his family, the appellant exhorted to kill him. Amidst the scuffle that subsequently ensued between them, the co-accused Yogendra Pratap Singh caught hold of the deceased while the appellant stabbed him with a knife. On being struck, the deceased fell to the ground. Thereafter, in an attempt to save the deceased, Manjit Singh (PW-3) beat the accused persons with a lathi whereupon, the accused persons fled the scene. In addition to Manjit Singh (PW-3), this entire incident was also witnessed by Dharam Pal Singh (PW-1) and Kernail Singh (PW-4) who rushed over to the deceased and took him to the Government Dispensary, Qadrabad, where he was declared dead on arrival.

3.3 Upon the conclusion of the investigation, a chargesheet came to be filed before the Court of the Chief Judicial Magistrate, Bijnor. Since the case was exclusively triable by

the Sessions Court, the same came to be committed to the trial court.

3.4 Charges came to be framed by the trial court against the appellant for the offence punishable under Section 302 of the IPC and against his co-accused for the offence punishable under Section 302 of the IPC read with Section 114 of the IPC. The accused persons pleaded not guilty and claimed to be tried.

3.5 The prosecution examined 08 witnesses to bring home the guilt of the accused. The accused persons denied the allegations against them and alleged that they had been falsely implicated in the case. The appellant also stated that litigation arising out of land disputes was pending between him and Kernail Singh (PW-4). The accused persons chose not to lead any oral evidence, however, they relied on certain documentary evidence.

3.6 At the conclusion of the trial, the trial Court found that the prosecution had proved the case against the accused persons beyond reasonable doubt and accordingly

convicted the appellant for the offence punishable under Section 302 of the IPC and the co-accused for the offences punishable under Section 302 read with Section 114 of the IPC sentenced them to undergo rigorous imprisonment for life.

3.7 Being aggrieved thereby, the accused persons preferred a Criminal Appeal before the High Court. During the pendency of the appeal, the co-accused Yogendra Pratap Singh passed away whereafter his appeal stood dismissed vide order dated 25th September, 2018. On the conclusion of the hearings qua the appellant, the High Court by the impugned judgment dismissed the Criminal Appeal and affirmed the order of conviction and sentence awarded by the trial Court.

3.8 Being aggrieved thereby, the present appeal.

4. We have heard Ms. Rukhmini Bobde, learned counsel appearing for the appellant and Ms. Garima Prashad, learned Sr. A.A.G. appearing for the respondent-State.

5. Ms. Rukhmini Bobde, learned counsel, submits that though the present case is a case of acquittal, since this Court has issued notice, limited to the question as to whether the conviction under Section 302 of IPC can be converted either under Section 304 Part-I or under Section 304 Part-II of IPC, she is not arguing on the correctness of the conviction.

6. Ms. Bobde submits that a perusal of the testimony of all the witnesses would reveal that there was no premeditation. The incident occurred in a sudden fight in the heat of passion upon a sudden quarrel. She submits that the weapon used in the crime was a pocketknife. She further submits that a single injury has been caused with the use of the said knife. She, therefore, submits that the present case would squarely fall under Part-II of Section 304 IPC inasmuch as, the appellant had no intention to cause death of the deceased. She further submits that the prosecution has failed to explain the injuries sustained by the deceased and as such an adverse inference needs to be drawn on account of the same.

7. Ms. Garima Prashad, learned Sr. A.A.G., on the contrary, would submit that both the trial court as well as the High Court, upon correct appreciation of evidence, have found the appellant guilty for the offence punishable under Section 302 of the IPC. It is submitted that on account of previous enmity arising out of the appellant molesting the wife of the deceased's elder brother and the deceased's questioning the appellant about the same, the appellant had intentionally committed the crime. She, therefore, submits that no interference is warranted in the present appeal.

8. PW-1-Dharam Pal Singh has stated in his evidence that on the date of the incident there was marriage procession of the grand-daughter of Thakur Vijay Pal Singh. He stated that many persons in the village witnessed the marriage procession. He further stated that both the accused came near the house of Virendra Tomar and started indulging in 'marpeet' with the deceased. He stated that Yogendra Pratap Singh caught hold of the deceased whereas the appellant assaulted the deceased with a knife, which hit the left side of his chest.

9. In his cross-examination, PW-1 has admitted that the deceased received only one knife blow. He has further admitted that the appellant took out knife from the pocket of his 'Pajama'.

10. PW-3-Manjit Singh, in his evidence, stated that in the marriage procession, accused persons came from the north side and started scuffle with the deceased and told that, "Tu Ghar Ka Rakhwala Banta Hai, Aaj Tujhe Jan Se Maar Denge". Thereafter, Yogendra Pratap Singh caught hold of the deceased and the appellant took out the knife from the pocket of his 'Pajama' and assaulted the deceased. He stated that he assaulted both the accused persons with 'Danda'. He has also admitted in his cross-examination that a 'marpeet' took place between the deceased and the appellant and Yogendra Pratap Singh.

11. To the similar effect is the evidence of PW-4-Kernail Singh.

12. It will be relevant to note that the appellant has sustained the following injuries:

“(1) Lacerated wound 5 cm. x 1/2 cm. x skin deep obliquely placed on the left side scalp, 4 cm. behind the forehead, 14 cm. above the ear.

(2) Abrasion 2 cm. x 1.5 cm. longitudinally placed on the right side, scalp just above the forehead.

(3) Abraded contusion 8 cm. x 2 cm. obliquely placed on the back of the right shoulder, 7 cm. right from the back bone.

(4) Abrasion 2 cm x 1 cm. transversally placed on the lateral side of the right wrist above the index finger.”

13. Yogendra Pratap Singh, who was co-accused in the crime has also received the following injuries:

“

(1) Lacerated wound 4 cm. x 1/2 cm. x skin deep longitudinally placed on the left side scalp just above the forehead.

(2) Complaining pain on the right side back, but no superficial injury mark is present.

(3) Lacerated wound 1 cm. x .5 cm. x skin deep on the lateral side of the right little finger in the junction of 1st and 2nd digit.

(4) Complaining pain on the lateral side of the left wrist but no superficial injury mark is present.

- (5) Abrasion 8 cm. x .25 cm. obliquely placed on the palmer side of the left forearm, 3 cm. above the wrist.”

14. It could thus be seen that both the accused persons have received injuries in the incident. In the evidence, PW-3-Manjit Singh has stated that he had a ‘Danda’ and he had assaulted both the accused with ‘Danda’. As such, the possibility of a scuffle between the two groups cannot be ruled out.

15. The injuries sustained by the deceased are thus:

- “(1) Incised wound/5 cm. x 3 cm. x cavity, deep on the front of left side chest lower part extending over to the epigastrium, obliquely placed underlying. left 9th and left 10 ribs were clean cut. Intervening intercostal space was also clean cut. Wound was 11 cm. below the left nipple at 7 O'clock position. On exposure, the wound was found directing upwards, backwards and laterally (cut -wound).
- (2) Multiple abrasions in an area of 8 cm. x 6 cm on the outer aspect upper part of left arm.
- (3) Contusion 8 cm. x 1.5 cm. on the top of left shoulder extending to the front of left side chest.

- (4) Abrasion 3 cm. x 1 cm. on right side front of abdomen, 10 cm. from umbilicus at 9 o'clock position.
- (5) Linear abrasion on the back of left side abdomen 17 cm. in length 11 cm. to the left from midline.
- (6) Abrasion, 7 cm. 1.5 cm. on the back of left side abdomen upper part, 8 cm. towards right from midline at the level of T12 L1.”

16. It could thus be seen that except the injury at serial no.1, which can be said to be caused by the knife, all other injuries are abrasions and contusion.

17. Taking into consideration the nature of injuries sustained by both the accused persons as well as the deceased, the possibility of the incident taking place in a sudden fight in the heat of passion, upon a sudden quarrel cannot be ruled out.

18. It is further to be seen that there is no evidence to show that the appellant has taken undue advantage or acted in a cruel or unusual manner. It is further to be seen that the weapon used is a pocketknife. The injury caused by the said knife is a single injury.

19. We, therefore, find that, in the totality of the circumstances and, particularly, on account of the injuries sustained by the accused persons, the appellant is entitled to the benefit of Exception 4 to Section 300 IPC. We are, therefore, inclined to partly allow the present appeal. It is ordered accordingly.

20. The conviction of the appellant under Section 302 IPC is altered to the one under Part-I of Section 304 IPC. The appellant is sentenced to suffer rigorous imprisonment for 8 years for the said offence.

21. The appeal is partly allowed in the above terms.

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

.....**J.**
[SANJAY KAROL]

.....**J.**
[K.V. VISWANATHAN]

NEW DELHI;
AUGUST 02, 2024