



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____/2024
(@SLP (CRL.) No. 7609/2024)

RAJESH TANDI

APPELLANT(S)

VERSUS

THE STATE OF CHHATTISGARH

RESPONDENT(S)

O R D E R

Leave granted.

Being aggrieved by the judgment dated 05.12.2023 passed by the High Court of Chhattisgarh, Bilaspur in Criminal Appeal No.804/2016 with Criminal Appeal No.1083/2016 insofar as the conviction under Section 323 and Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short "IPC"), the appellant has preferred this appeal.

Briefly stated, the facts of the case are that on 07.03.2015 at approximately 4:30 P.M., in front of Santoshi Mata Mandir in Motilal Nagar, Kota under Police Station Saraswati Nagar, District Raipur, Tarachand Nayak, the deceased was on his way to the nearby Sulabh Complex when the four accused persons namely Rajesh Tandi ("Accused No.1" or "Appellant"), Rajesh Kshatri ("Accused No. 2"), Kundan Kumar Sharma ("Accused No. 3") and Trinath Baghel ("Accused No. 4"), who had been hiding near the temple, attacked the deceased over an old dispute. They allegedly assaulted him with a sword and a wooden stick, causing fatal injuries to his head, legs, and

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chest. When Pinky Nayak (deceased's wife) tried to intervene, the appellant herein slapped her. She raised an alarm, drawing the attention of Lata Baghel (PW-11), at which point all the accused persons fled the scene. Pinky Nayak then called an ambulance, and the deceased was taken to the hospital, where he died during treatment.

In pursuance of the aforesaid incident, FIR No. 48/2015 dated 07.03.2015 was registered at P.S. Saraswati Nagar, District Raipur against the appellant herein and the three other accused persons.

All the accused persons were arrested on 08.03.2015. chargesheet was filed against the accused persons under Sections 302/34, 294, 323 of the IPC and presented in the court of Judicial Magistrate-First Class, Raipur. As per the order dated 30.05.2015, the case was committed to the Sessions Court, Raipur, Chhattisgarh. The trial was conducted in Session Trial No. 89 of 2015 by the Fourth Additional Sessions Judge, Raipur. The Sessions Court framed the charges against accused Nos. 1, 2, 3 and 4 under Sections 294, 323, and 302/34 of the IPC, and against accused No. 3 under Sections 294, 323, and 302/34 of the IPC, as well as Sections 25 and 27 of the Arms Act.

Vide Order dated 23.02.2016, the Fourth Additional Sessions Judge, Raipur, convicted and sentenced accused No.1-appellant herein to undergo three months' of rigorous imprisonment and a fine of Rs. 500/- for the offence under Section 323 of the IPC. Additionally, appellant herein was

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convicted and sentenced to life imprisonment and a fine of Rs. 500/- for the offence under Section 302 read with Section 34 of the IPC. Further, the Sessions Court convicted and sentenced the other three accused persons-accused Nos. 2, 3 and 4 to life imprisonment and a fine of Rs. 500/- each for the offence under Section 302 read with Section 34 of the IPC. Additionally, accused no. 3 was sentenced to five years' of rigorous imprisonment and a fine of Rs. 500/- for the offence under Section 25 of the Arms Act and three years' of rigorous imprisonment and a fine of Rs. 500/- for the offence under Section 27 of the Arms Act, 1959.

Being aggrieved by the judgment of conviction and sentence passed by the Sessions Court, the appellant herein, along with other accused persons, filed appeals before the High Court of Chhattisgarh at Bilaspur, registered as Criminal Appeal No. 804 of 2016 and Criminal Appeal No.1083 of 2016. The High Court, *vide* impugned judgment dated 05.12.2023, dismissed the appeal filed by the appellant herein and allowed the appeals filed by the other three co-accused persons. Thus, the High Court set aside the conviction of accused Nos. 2, 3 and 4, for the offences punishable under Section 302/34 of the IPC and the conviction of accused No. 3 for the offences punishable under Sections 25 and 27 of the Arms Act as well, thereby acquitting them from the said offences. However, the conviction of the appellant herein for the offences punishable under Sections 323 and 302 of IPC was maintained.

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Being aggrieved by the impugned order dated 05.12.2023 passed by the High Court, whereby the High Court dismissed the appellant's appeal, the appellant has filed the present appeal before this Court.

This Court *vide* its order dated 17.05.2024, issued notice in the instant matter.

We have heard learned counsel for the respective parties.

Learned counsel for the appellant submitted that whereas the appellant herein was convicted of the offences under Section 323 IPC and Section 302 read with Section 34 IPC along with three other accused and sentenced to life imprisonment, the High Court in the aforesaid two appeals acquitted accused Nos. 2, 3 and 4 and the appellant being accused No.1 was solely convicted both under Section 323 and Section 302 read with Section 34 IPC. He submitted that the sentence imposed insofar as Section 323 IPC is concerned was three months' rigorous imprisonment and a fine of Rs.500/- (Rupees Five Hundred Only) only by the Sessions Court which the appellant has already undergone inasmuch as he has completed nine and a half years of imprisonment. However, the High Court was not right in solely convicting the appellant under Section 302 read with Section 34 IPC while at the same time acquitting accused Nos.2, 3 and 4 of the very same offences. He submitted that when the other three accused, against whom also there were sentences under Section 302 read with Section 34 IPC imposed by the Sessions Court and they were acquitted on the substance of the charge under Section 302/34 would also not apply and would call to the

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ground. There being no individual attribution under Section 302 *vis-a-vis* the appellant herein (accused No.1) could not have been solely convicted.

In support of his submission, learned counsel for the appellant placed reliance on a judgment of this Court in the case of Sukhram vs. State of M.P. [1989 Supp (1) SCC 214], with particular reference to 'paragraph 10' therein. He therefore submitted that applying the principle stated in the aforesaid judgment, which has also considered other previous judgments of this Court, the appellant is entitled to acquittal under Section 302 read with Section 34 IPC and the appellant may be released upon acquittal.

Per contra, learned counsel appearing for respondent-State supported the impugned judgment and contended that there were overt acts attributed to the appellant herein; that merely because accused Nos.2, 3 and 4 were acquitted of all charges under Section 302 read with Section 34 IPC, it would not entitle the appellant also for being acquitted. He therefore submitted that there is no merit in this appeal.

We have considered the rival arguments advanced at the bar in light of the material on record.

It is no longer in dispute that the Fourth Additional Sessions Court, Raipur, C.G. in Session Trial No.89/2015 had formulated the following questions for consideration:

"6. The questions for consideration are-

1. Whether the accused caused annoyance to Tarachand Nayak and other public by abusing him in a public place

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in front of Santoshi Mandir, Motilal Nagar Kota PS Saraswati Nagar, Dist. Raipur, CG on March 7, 2015 at around 4:30 pm?

2. Whether the accused, on the said date, time and place, voluntarily caused harm to the injured Mrs. Pinky Nayak by slapping her on her cheek with the intention of causing hurt?

3. Whether the accused, on the said date, time and place, together formed a common intention to kill Tarachand Nayak and in furtherance of that intention, they collectively assaulted Tarachand Nayak with sword and wooden stick which they were holding with them due to which he received fatal injuries on his head, legs and chest?

4. Whether on the said date, time and place, the accused Kundan Kumar Sharma illegally possessed an iron sword used which was about 33 inches long with 2 inches pointed blade in the front, which had a steel handle and the length of which was about six inches, without a license, thereby violating the Government Notification No.631265522 dated 22 November 1974?

5. Whether on the said date, time and place, the aforesaid sword was used by accused Kundan Sharma?"

On conclusion of the trial, the Sessions Court convicted all the four accused and sentenced them to life imprisonment. The relevant portions of the order of the Sessions Court read as under.

"34. Therefore, from the entire discussion above, the documentary evidence annexed in the case and the

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statements of the witnesses, it is clear that the prosecution has failed to prove the offence of Section 294 IPC against the accused beyond reasonable doubt. As a result, the accused are acquitted of the offence under Section 294 IPC by giving them the benefit of doubt. The prosecution has been successful in proving beyond reasonable doubt the charges of offence under Section 323 IPC against accused Rajesh Tandi and Section 302/34 IPC against all the accused and Section 25, 27 of the Arms Act against accused Kundan Kumar Sharma. As a result, accused Rajesh Tandi is convicted under Section 323 IPC and accused Rajesh Tandi, Rajeev Kshatri, Kundan Kumar Sharma and Trinath Baghel are convicted under Section 302/34 IPC and the accused Kundan Kumar Sharma is convicted under Section 25, 27 Arms Act.

35. Keeping in view the situation of the case and the seriousness of the offence, it is not appropriate to give the benefit of probation under Section 360 of the Code of Criminal Procedure and Probation Act to the accused for the offences they have been convicted of.

39. Therefore, accused Rajesh Tandi is sentenced to undergo three months rigorous imprisonment and a fine of Rs.500/- under Section 323 IPC. Accused Rajesh Tandi, Rajesh Kshatri, Kundan Kumar Sharma and Trinath Baghel are sentenced to life imprisonment and fine of Rs.500 each for the offence of section 302/34 IPC. Accused Kundan Kumar Sharma is sentenced with 5 years rigorous imprisonment and a fine of Rs.500 for the offence under Section 25 Arms Act and 3 years rigorous imprisonment and a fine of Rs.500 for the offence under Section 27 Arms Act. In case of default in payment of fine, each accused shall undergo additional simple imprisonment of 1 month each under each section respectively."

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Being aggrieved by the conviction and sentence imposed by the Sessions Court, all the four accused filed their respective appeals before the High Court. The High Court on considering the rival submissions by the impugned judgment, dismissed the appeal filed by the appellant herein while allowing the appeals filed by the accused Nos.2 to 4. The contention of learned counsel for the appellant is that the High Court lost sight of the fact that the offence attributed to the appellant herein was along with accused Nos.2 to 4 inasmuch as Section 302 read with Section 34 IPC was invoked against all the four accused. Therefore, the submission was that when the accused Nos.2 to 4 were acquitted of the substantive offences as well as under Section 34 of the IPC, the appellant herein solely could not have been convicted under Section 302 read with section 34 of the IPC.

In this regard, the judgment of *Sukhram* (supra) was relied upon. 'Paragraph 10' of the said judgment reads as under:-

"10. There is another aspect of the matter which has also escaped the notice of the High Court when it sustained the conviction of the appellant under Section 302 read with Section 34 and Section 436 read with Section 34 IPC while acquitting accused Gokul of those charges. Though the accused Gokul and the appellant were individually charged under Sections 302 and 436 IPC they were convicted only under the alternative charges under Section 302 read with Section 34 and Section 436 read with Section 34 IPC by the Sessions judge. Consequently, the appellant's convictions can be

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sustained only if the High Court had sustained the convictions awarded to accused Gokul also. Inasmuch as the High Court has given the benefit of doubt to accused Gokul and acquitted him, it follows that the appellant's convictions for the two substantive offences read with Section 34 IPC cannot be sustained because this is a case where the co-accused is a named person and he has been acquitted and by reason of it the appellant cannot be held to have acted conjointly with anyone in the commission of the offences. This position of law is well settled by this Court and we may only refer to a few decisions in this behalf vide *Prabhu Babaji v. State of Bombay*, *Krishna Govind Patil v. State of Maharashtra* and *Baul v. State of U.P.*"

Applying the aforesaid judgment to the present case, we find that when the substantive offence under Section 302 read with Section 34 IPC cannot be sustained as against the co-accused, it could not have been sustained only as against accused No.1, the appellant herein. This is because the offence under Section 302 IPC was not attributed to the appellant individually and independent of other co-accused. The High Court has lost sight of the said fact. It is also necessary to note that the State has not filed any appeal as against the acquittal of accused Nos.2 to 4.

That apart, on perusal of the deposition of PW-9, it is noted that the appellant herein had hit her ear with his hand but she also stated that one of the accused was holding Gupti in his hand but she could not tell which accused had held which weapon. Therefore, there is no concrete evidence attributing any overt act, particularly against the appellant herein, as

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already noted there is no independent substantive charge *vis-a-vis* the appellant herein under Section 302 of the IPC. It is only along with other accused i.e. Section 302 read with Section 34 IPC.

In the circumstances, we find that the High Court was not right in dismissing the appeal filed by the appellant herein and convicting him under Section 302 read with Section 34 IPC. Therefore, the appellant is also acquitted of the said charges for the offences against him.

As far as the conviction under Section 323 IPC is concerned, the Sessions Court had ordered rigorous imprisonment of three months plus fine of Rs.500/-. It is stated at the bar that the appellant has completed nine and a half years of imprisonment. If the fine of Rs.500/- is also paid, the appellant shall be released from imprisonment. If the fine has not yet been paid, the said fine shall be paid prior to the release of the appellant.

The appeal is allowed and disposed of in the aforesaid terms.

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

....., J.
(B.V. NAGARATHNA)

....., J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
NOVEMBER 12, 2024

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ITEM NO.15

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
RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (Crl.) No(s). 7609/2024
[Arising out of impugned final judgment and order dated 05-12-2023
in CRLA No. 804/2016 passed by the High Court of Chhatisgarh at
Bilaspur]

RAJESH TANDI

Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(IA No. 116458/2024 - EXEMPTION FROM FILING O.T.)

Date : 12-11-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Abhishek Vikas, Adv.
Mr. Abhijeet Shrivastava, AOR
Mr. Anshuman Shrivastava, Adv.
Mr. Ieeshan Sharma, Adv.
Ms. Rhe Rao, Adv.

For Respondent(s) Mr. Avdhesh Kumar Singh, A.A.G.
Mrs. Prerna Dhall, Adv.
Mr. Piyush Yadav, Adv.
Ms. Akanksha Singh, Adv.
Mr. Prashant Singh, AOR

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

Leave granted.

The appeal is allowed and disposed of in terms of the
signed order.

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

(RADHA SHARMA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)