



Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO..... OF 2024
ARISING OUT OF SLP (CRL.) NO.16487 OF 2023
VITHAL **...APPELLANT**
VERSUS
THE STATE OF KARNATAKA **...RESPONDENT**

ORDER

1. Leave granted.
2. This appeal was heard for admission, as a fresh case on 13.12.2023. While reserving orders, we had required Mr. S. Nagamuthu, learned senior counsel appearing for the appellant to submit written brief by 05.01.2024. The same has since been filed.
3. Prima facie, we were inclined to dismiss the appeal, however, after considering the submissions, we feel that this appeal raises a substantial question which needs to be

addressed and decided by this Court. Since we had heard the matter at length and, also considered the written brief, we are referring to the brief facts of the case and the substantial question which arises in this appeal so that it may be of assistance at the time of final hearing of the matter.

4. Four accused were charge sheeted for offences punishable under sections 341, 302 and 506 read with section 34 of the Indian Penal Code, 1860¹. The Trial Court after considering the evidence led during the trial, convicted all the four accused for the offences punishable under sections 302, 341 and 506 read with section 34 of the IPC vide judgment dated 22.11.2016 and further awarded sentence on 28.11.2016. In addition to the sentence to undergo imprisonment for life, they were also awarded other ancillary sentences.
5. Two appeals were filed before the High Court against the conviction. Accused Nos.1 and 3

¹ IPC

joined together to file Criminal Appeal No.100340 of 2016 whereas accused Nos.2 and 4 preferred Criminal Appeal No.100003 of 2017. The High Court decided both the appeals by a common judgment dated 03.03.2021. It acquitted accused Nos.2, 3 and 4 for the offences under section 302 IPC and convicted them under section 304 Part-II IPC and sentenced them to 10 years rigorous imprisonment along with a fine of Rs. 5,000/-. Insofar as accused No.1 is concerned, his conviction and sentence was confirmed and the appeal was dismissed.

6. Accused Nos.2,3 and 4 preferred Special Leave Petition Nos.6734-6735 of 2021, which were dismissed by this Court vide order dated 17.09.2021. According to the Office Report dated 13.12.2023, a Review Petition bearing No.43274 of 2023 filed against the order dismissing the Special Leave Petitions is pending. However, subsequently the same has since been dismissed on 11.01.2024. Accused No.1 is the appellant in the present appeal.

7. The argument advanced by learned senior counsel which has appealed to us is that if section 34 IPC was applied, then, each one of the accused should have been convicted under the same provision and awarded the same sentence. Once the accused Nos.2, 3 and 4 were convicted under section 304 Part-II IPC and awarded 10 years of rigorous imprisonment with Rs.5,000/- fine each, the same conviction and sentence should have been awarded to the appellant (accused No.1), otherwise, it would amount to travesty of justice.
8. It would be relevant to mention here that as per the prosecution case, accused Nos. 2,3 and 4 had held the deceased whereas the appellant (accused No.1) had assaulted with a sickle on his head and neck, which injuries proved fatal.
9. According to Mr. S. Nagamuthu, learned senior counsel, either all the four accused with the aid of section 34 IPC were liable to be convicted and sentenced under section 302 IPC or under section 304 Part-II IPC.

10. Although there are other arguments advanced by Mr. S. Nagamuthu with respect to self-defence and innocence of the appellant, but we are not inclined to entertain such arguments and we reject the same. The only argument which has appealed to us is with respect to section 34 IPC.
11. Considering the limited question to be considered, we expedite the hearing.
12. List for hearing on 13.03.2024.

.....**J**
(VIKRAM NATH)

.....**J**
(RAJESH BINDAL)

NEW DELHI
JANUARY 30, 2024