PETITIONER:
ANOKHEY & ANR.

Vs.

RESPONDENT:
STATE OF U.P.WITH CRI A.NO. 531-32/93. 609-610/93. CRL.M.P.

DATE OF JUDGMENT14/11/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCALE (6)368

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

The seven appellants in these appeals and one Mahadev Prasad Pandey were placed on trial before the learned Additional Sossions Judge, Mathura. Against the appellants common charges under Sections 120-B. 148, 302/149. and 454 I.P.C. and against Mahadev Prasad Pandey charges under Sections 302/109 and 307/109 IPC were framed. A separate charge under Section 302 IPC was also framed against the appellant Anokhey Lal. On conclusion of the trial the learned Judge. while acouitting Mahadev Prasad, convicted all the appellants under Sections 148 and 324/149 IPC and further convicted Anokhey Lal under Section 302 IPC. For each of their convictions the appellants were sentenced to suffer rigorous imprisonment for two years and Anokhey Lal was sentenced to imprisonment for life for his conviction under Section 302 IPC. The sentences were directed to run concurrently. Against the above judgment two appeals were filed; one by the appellants assailing their convictions and the other by the State against their acquittal of the other charges. The High Court dismissed both the appeals and affirmed the judgment of the High Court. Hence these appeals.

According to the prosecution case on March 27, 1975 at or about 6.30 A.M. the appellants. armed with deadly weapons, raided the house of Gopal and appellant Anokhey Lal thrust a spear on the chest of Makhan, brother of Gopal, felling him down. On hearing the hue and cry raised by Makhan, Ram Dayal, Gopal and Ram Krishan came there and they were also attacked by the appellants by their respective weapons. Finding no other alternative. when Gopal started thowing brick-bats towards the appellants and Ram Dayal and Ram Krishan started beating them with small dandas they fled away.

Makhan, who was seriously injured, was taken to police station along with the other injured by Giriraj. his elder

brother. and there he (Giriraj) gave a written report of the incident, on the basis of which a case was registered against the appellants. Since the condition of Makhan was grave he was immediately sent to Mathura Hospital while the other injured were sent to local Government dispensary. Makhan, however, did not respond to the medical treatment given to him at the hospital and succumbed to his injuries within an hour.

The appellants pleaded not guilty to the charges levelled against them and took up the plea of right of private defence of their persons.

To prove its case the prosecution examined a host of witnesses of whom Giriraj (P.W.1). Ram Krishan (P.W.2), Rameshwar Prasad (P.W.3), Puran Devi (P.W.4) and Ram Dayal (P.W.5) gave the ocular version of the incident. The appellants also examined a number of witnesses in support of their defence.

On consideration of evidence adduced during trial the trial Court accepted the case of the prosecution in preference to that of the defence and held the appellants guilty. The High Court also in its turn. reappraised the evidence and upheld the order of the trial Court.

Having heard the learned counsel appearing for the parties and considered the judgments of the learned Courts below in the light of the evidence adduced during trial we do not find any reason whatsoever to disturb the concurrent findings of fact recorded by them, more so, as they are based on detailed and proper discussion of the entire evidence and supported by cogent reasons.

It was, however, strongly urged on behalf of the appellants that even if the entire prosecution case was accepted as true Anokhey Lal could only be, in view of fact that Makhan sustained only one injury, guilty of an offence under Section 304 (Part II) IPC and not under Section 302 IPC.

As already noticed the prosecution case was that the appellant Anokhey lal had thrust a spear on the chest of Makhan. Dr. Jagdish Lal (P.W. 13) who held post-mortem examination on the dead body of Makhan found the following injury on his person:

> "Incised would 1 1/2" x 1/2" x chest cavity deep of linear nature near the sternum bone on the front side below the chest."

He further stated that on internal examination he found the pericardium damaged and one ounce of blood present. According to P.W.13 the injury was sufficient in the ordinary course of nature to cause death of Makhan and that the same could be caused by a spear.

When considered in the context of the proved facts that the appellants had gone armed with deadly weapons, to attack the members of Gopal's family and after trespassing into the house Anokhey Lal caused a penetrating injury on a vital part of the body of Makhan with a spear which was sufficient in the ordinary course of nature to cause death, the conclusion is inevitable that the offence committed by Anokhey Lal comes within clause III of Section 300 IPC so as to make Anokhey Lal liable for conviction under Section 302 IPC. As regards the other six appellants, whose convictions are to be upheld, we do not feel inclined to send them behind the bars again as more than twenty years have elapsd since the offences were committed by them and each of them has served a substantial part of their sentence of two years rigorous imprisonment.

For the foregoing discussion we uphold the convictions

and sentence recorded against the appellant Anokhey lal and the convictions of the other six appellants put we reduce their sentence to the period already undergone. As all the appellants are on bail. Anokhey Lal will now surrender to his bail bond to serve out the sentence imposed upon him, while the other six appellants will stand discharged from their respective bail bonds. The appeals are thus disposed of.

Since the appeals have been disposed of Special Leave Petition filed by the complainant and the other injured and the Crl. M.P. No. 2949 of 1994 filed in connection therewith are dismissed.

JUDIS