

CASE NO.:
Appeal (crl.) 849 of 2006

PETITIONER:
MOHMAD AKRAM

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 31/01/2008

BENCH:
P.P. NAOLEKAR & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT
O R D E R

1. The appellant Mohmad Akram along with three other persons was tried for committing offences under Sections 324/307/302/34 of Indian Penal Code (hereinafter referred to as \023I.P.C.\024). The trial court by judgment and order dated 16.11.1999 convicted all the accused under Section 302 read with Section 34 I.P.C. and sentenced them to undergo life imprisonment and to pay fine of Rs. 3,000/- each (rupees three thousand) and in default to undergo simple imprisonment for one year. The appellant and three other accused persons were acquitted by the trial court under Sections 307/324/34 I.P.C. Aggrieved by the order of the learned Sessions Judge, Criminal Appeal No. 460 of 1999 was filed before the High Court. The High Court, by impugned judgment dated 14.9.2005, acquitted accused No. 2 Mohmad Aslam, accused NO. 3 Mohmad Ajam and accused No. 4 Mohmad Mukarram under Section 302 read with Section 34 I.P.C. but maintained the sentence of appellant-accused No. 1 Mohmad

Akram passed by the Sessions Court. Aggrieved by the impugned judgment passed by the High Court, the present appeal by special leave has been filed in this Court.

2. The case of the prosecution is that on 11.1.1999, PW 12 Mirza Jahangir Yavar Ali lodged a report at Gevrai Police Station stating that on the fateful day he had gone to Beed for selling sunglasses. At about 7.45 p.m. he returned to Gevrai. While he was proceeding to his house on foot, he found appellant Mohmad Akram, accused No. 2 Mohmad Aslam, accused No. 3 Mohmad Ajam and accused No. 4 Mohmad Mukarram standing near his house by the side of the road and hurling abuses on his family members. On reaching the house, he made enquiry with his sister-in-law Shabanabi (P.W. 13) and paternal aunt Zarinabi as to why appellant and accused were hurling abuses upon which he was informed that in the morning there was a quarrel between children viz noori (PW15) and son and daughter of appellant Mohmad Akram. He was further informed that appellant and accused persons had come to their house and beat the female inmates of the house and report about the said incident was lodged with Gevrai Police Station. When PW 12 Mirza Jahangir went to the accused persons to enquire about the cause of the incident, accused No.2 Mohmad Aslam dealt stick blow on his head while appellant-

accused No. 1 Mohmad Akram dealt knife blow on his shoulder forearm and back. In the meantime, his brother Parvez rushed to the spot to save him but he was given stick blows by accused No. 3 Mohmad Ajam and accused No. 4 Mohmad Mukarram. Appellant Mohmad Akram and accused No. 2 Mohmad Aslam then stabbed knife on the abdomen and other parts of body due to which Parvez fell down on the ground bleeding profusely. PW 13 Shabanabi was also given stick blows by accused when she attempted to intervene in the incident. Parvez was

then taken to the hospital by his relatives where he succumbed to the injuries caused by the appellant and accused persons.

3. PW 20 Dr. Ashruba who conducted post-mortem examination on 12.1.1999 on the dead body of Parvez found the following injuries:

\0231. Incised perforated wound on left hypochondriac are of abdomen of size 1 1/2\024 x 1/2\024 x 6\024.

Following were the correspondent internal injury:

1. Incised perforated wound on greater curvature at middle part size 1 1/2\024 x 1/2\024 x 6\024 going through both layers there was 200 ml. semi digested food with blood clot.
2. Incised wound on left lobe at anterior surface of size 1 1/2\024 x 1/2\024 x 1/2\024.

In his examination-in-chief, PW 20 opined that cause of death was \023haemorrhagic shock due to incised perforated wound to vital organs like liver and the stomach\024 and the injury found on the victim was sufficient in natural course of things to cause his death. In the incident, appellant also sustained injuries and he was examined by the doctor. The evidence of prosecution witness as regards other accused persons was disbelieved by the courts and they were acquitted.

4. We have heard learned counsel for the parties and gone through the material on record.

5. In the facts and circumstances of the case and the nature of injury which is one in number, we are of the opinion that the fatal injury inflicted on the stomach which caused the death of Parvez (since deceased) was caused with the knowledge that the injury was likely to cause death but without intention to cause particular injury which was sufficient to cause death and, thus, we convert the sentence of appellant from under Section 302 to Section 304-Part II I.P.C. and sentence him to undergo R.I. for five years and to pay fine of Rs. 3,000/- (rupees three thousand) and in default to undergo simple imprisonment for one year. The appellant shall be entitled for deduction of sentence already undergone by him.

6. With the aforesaid modification, appeal stands disposed of.