

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.315 OF 2005

Shyam Babu Maurya

...Appellant(s)

Versus

State of Uttar Pradesh

...Respondent(s)

O R D E R

Appellant Shyam Babu Maurya and his co-accused Lavlesh @ Pappu and Ram Bahadur were convicted by the trial Court for an offence under Section 302 of the Indian Penal Code, 1860 [for short, “I.P.C.”] and sentenced to undergo imprisonment for life and to pay fine of rupees ten thousand each and in default to undergo further imprisonment for a period of one year. On appeal, the High Court altered the conviction of the appellant and his co-accused from one under Section 302 I.P.C. to Section 302 read with Section 34 I.P.C. Hence, this appeal.

We have heard learned counsel for the parties and perused the record.

The case of the prosecution, as disclosed in the First Information Report, was that the appellant and his co-accused killed Inder Dev Singh on 9.11.1999 near the culvert of minor canal of village Moran by firing shots from their

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pistols. The trial Court relied upon the testimony of Om Dev Singh [P.W.1] [brother of the deceased], Devender Singh [P.W.2], a resident of village Moran and Dr. R.K. Mishra [P.W.6], who conducted the post mortem and found that almost all the injuries were caused by fire arms and were sufficient to cause death in the ordinary course and held that the charge is proved against the accused. Accordingly, it convicted all the accused under Section 302 I.P.C. The High Court independently analyzed the entire evidence and affirmed the finding of guilt recorded by the trial Court. However, conviction of the appellant and his co-accused was altered from one under Section 302 I.P.C. to Section 302 read with Section 34 I.P.C.

Learned counsel for the appellant extensively referred to the testimony of P.W.1 and P.W.2, but could not point out any contradiction on the material aspects. Therefore, we do not find any ground to interfere with the findings recorded by the Courts below.

Learned counsel then argued that the impugned judgment is liable to be set aside because the appellant and his co-accused had not been charged with the allegation of having committed offence under Section 302 read with Section 34 I.P.C. and in the absence of any specific charge, their conviction could not have been altered from Section 302 I.P.C. to Section 302 read with Section 34 I.P.C. In support of his submission, learned counsel placed reliance on a decision of this Court in Shamnsaheb M. Multtani vs. State of Karnataka [2001 (2) S.C.C. 577]. We have carefully gone through that judgment and are of the view that the same is clearly distinguishable. In that case, the accused appellant

had been charged with the allegation of having committed offence under Section 302 I.P.C., but he was convicted under Section 304-B I.P.C. This Court noted that for recording a conviction under Section 304-B, a presumption could be raised against the accused, which he was entitled to rebut by leading evidence, but, as no charge was framed under Section 304-B I.P.C., he was deprived of opportunity to defend himself. Therefore, the case was remitted to the trial Court with a direction to frame charge under Section 304-B I.P.C. and decide the matter afresh after giving opportunity to the parties to lead evidence. The fact situation in this case is entirely different. The appellant and his co-accused were charged and were convicted by the trial Court under Section 302 I.P.C. The High Court, as mentioned above, altered the conviction to one under Section 302 read with Section 34 I.P.C. Learned counsel for the appellant could not show as to how his client was prejudiced on account of non-framing of specific charge under Section 302 read with Section 34 I.P.C. Even otherwise, we are convinced that no prejudice was caused to the appellant because the prosecution had come up with the case that the accused persons armed with fire arms came together, all of them fired on the deceased and then fled from the place of occurrence. The appellant knew of the nature of charge and got ample opportunity to defend himself. The element of common intention could be inferred from the allegation made in the First Information Report and the statements of P.Ws. 1 and 2. Therefore, it is not possible to hold that the High Court committed any error in altering the conviction of the appellant from Section 302 I.P.C. to Section 302 read with Section 34 I.P.C.

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Learned counsel lastly submitted that in any case, this Court should alter the conviction from Section 302 I.P.C. to Section 304 I.P.C. and reduce the sentence to the period already undergone. In our view, this is an argument of desperation and without any basis. If three persons fired at the deceased and many injuries were caused by fire arms, as would appear from the post mortem report, the case cannot be treated as covered by any of the exceptions enumerated under Section 300 I.P.C. Therefore, we do not find any justification to alter the conviction of the appellants and reduce the sentence to the period already undergone. In the result, the appeal is dismissed.

[B.N. AGRAWAL]J.

[V.S. SIRPURKAR]J.

[G.S. SINGHVI]J.

New Delhi,
August 07, 2008.