

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 976 of 2011

THE STATE OF MADHYA PRADESH

Appellant(s)

VERSUS

MOHAR SINGH

Respondent(s)

J U D G M E N TR. BANUMATHI, J.:

(1) This appeal has been preferred by the State of Madhya Pradesh against the Judgment dated 09.04.2007 passed by the High Court of Madhya Pradesh, Bench at Gwalior, in Criminal Appeal NO.179 of 1995 in and by which the High Court has modified the conviction of the respondent under Section 302 I.P.C. to Section 304 Part-I of I.P.C. and sentenced him to the period already undergone by him and also imposing fine of Rs.15,000/-.

(2) We have heard Mr. R.K. Rathore, learned counsel appearing for the appellant-State of Madhya Pradesh and Mr. Lakhan Singh Chauhan, learned counsel appearing for the respondent and perused the impugned judgment and the evidence and materials on record.

(3) The case of the prosecution is that as per complainant-Harnam Singh (PW-4), on 09.03.1993 at around 01.30 p.m., he was going towards Chopal. On the way, he saw that the

respondent/accused Mohar Singh and co-accused Ajab Singh were hurling abuses to his brother deceased-Bhagwan Singh. When deceased-Bhagwan Singh objected to it, co-accused Ajab Singh instigated the respondent Mohar Singh to bring his gun. Respondent-accused brought a gun from his house and fired a shot at the deceased causing injuries on the neck of the deceased who died on the spot. Complainant-Harnam Singh (PW-4) lodged the complaint against the accused based on which FIR was registered under Section 302 read with Section 34 I.P.C. against the accused.

(4) The Trial Court relying upon the evidence of Kaptan Singh (PW-1), Harnam Singh (PW-4), Sarnam Singh(PW-2) and Narayan Singh (PW-3) held that the respondent-accused brought gun from his house and fired at the deceased-Bhagwan Singh which hit the neck of the deceased. The Trial Court vide order dated 21.03.1995 convicted the respondent-accused under Section 302 I.P.C. and sentenced him to undergo life imprisonment. The Trial Court, however, acquitted the other accused Ajab Singh and Gulab Singh and acquitted them from all the charges.

(5) In appeal, the High Court has held that the respondent-accused has caused a single gun-shot injury to the deceased that too on being instigated by Ajab Singh who had already been acquitted by the Trial Court and, therefore, it cannot be held that the respondent had intentionally caused the gun-shot injury on the deceased-Bhagwan Singh. The High Court held that the entire incident occurred when there was heated altercation between both the parties and resultantly the respondent had

fired the gun-shot injury on the deceased and, therefore, in the facts and circumstances of the case, the act of the respondent would not attract Section 302 I.P.C.; but would fall under Section 304 Part-I of the I.P.C. The High Court has also pointed out that the occurrence was of the year 1993 and the respondent has already undergone nearly seven years and six months and if the remission is taken into account his sentence would be more than nine years. It is stated at the Bar that the fine amount of Rs.15,000/- imposed upon the respondent has already been paid by him.

(6) In the above facts and circumstances of the case, the impugned judgment of the High Court modifying the conviction of the respondent from Section 302 I.P.C. to Section 304 Part-I of I.P.C. cannot be said to be perverse and we do not find any good ground to interfere with the impugned judgment.

(7) In the result, the appeal is dismissed.

.....J.
(R. BANUMATHI)

.....J.
(A.S. BOPANNA)

NEW DELHI,
AUGUST 7, 2019.