

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 389 OF 2019  
(Arising out of (CrI.) No(s)7596/2015)

KISHAN SINGH alias ACTOR

Appellant(s)

VERSUS

STATE OF UTTARANCHAL (NOW UTTARAKHAND) & ANR.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal calls in question the judgment of the High Court of Uttarakhand at Nainital in Criminal Appeal No.156 of 2005 dated 14<sup>th</sup> December, 2012 in and by which the High Court has modified the conviction of the appellant from Section 302 I.P.C. to Section 304 Part-I I.P.C. while maintaining the sentence of life imprisonment imposed upon the appellant.

(3) On 17<sup>th</sup> November, 2013 the appellant-Kishan Singh and the deceased-Govind Singh went to the house of the appellant and both of them were drunk. In the wordy quarrel between the appellant and his wife, the appellant tried to attack his wife with an axe. When the deceased-Govind Singh intervened the axe fell on the parietal region of the deceased-Govind Singh and he sustained injuries and succumbed to injuries. The law was set in motion by one Inder Singh Negi, brother of the deceased-

**Govind Singh.**

(4) Based on the evidence of Rajendra Singh (PW-4) to whom extra judicial confession was made by the appellant and recovery of blood-stained clothes and axe from the appellant's house, the Trial Court convicted the appellant for the offence punishable under Section 302 I.P.C. and sentenced him to undergo life imprisonment. In appeal, the High Court has modified the conviction of the appellant from Section 302 I.P.C. to section 304 Part-I I.P.C., as aforesaid in para (2).

(5) By order dated 7<sup>th</sup> September, 2015 notice was issued limited on the question of sentence.

(6) We have heard Ms. Anuradha Mutatkar, learned counsel appearing for the appellant and Mr. Ashutosh Kumar Sharma, learned counsel appearing for the respondent-State and also perused the impugned judgment and the evidence/materials on record.

(7) The appellant-accused and the deceased-Govind Singh were closed friends and used to drink together. Admittedly, at the time of occurrence both the deceased-Govind Singh and the appellant-accused were drunk. From the evidence it is brought on record that the appellant attempted to attack his wife with an axe and at that time deceased-Govind Singh intervened and the axe fell on him. Though Motima Devi (PW-1) turned hostile, the case of the prosecution is established by the evidence of Rajender Singh (PW-4) to whom the appellant is said to have

made extra judicial confession and by other evidence. Since there was no premeditation for the occurrence, the High Court has rightly modified the conviction of the appellant from Section 302 I.P.C. to Section 304 Part-I.

(8) Considering the facts and circumstances of the case, we deem it appropriate to reduce the sentence of life imprisonment of the appellant to a period of ten years while maintaining the conviction. Ordered accordingly.

(9) This appeal is partly allowed.

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

.....J.  
(R. SUBHASH REDDY)

NEW DELHI,  
FEBRUARY 26, 2019.