

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1540 OF 2017

Lakshmi Chand and another ...Appellant(s)

versus

State of Uttar Pradesh ...Respondent(s)

JUDGMENT

NAVIN SINHA, J.

The two appellants stand convicted under Sections 323 r/w 34, 324 r/w 34 and 307 r/w 34 IPC to undergo one year, two years and eight years of rigorous imprisonment respectively. Appellant No.2 has been additionally convicted under Section 304 Part II r/w 34 to undergo rigorous imprisonment for eight years and fine with a default stipulation.

2. The genesis of the assault lies in an occurrence in the morning of 15.04.1980. The bullocks of the appellants strayed into the neighbouring compound of the deceased,

Prem Lal who drove them out with a lathi, leading to an altercation with the accused Kashmira, since deceased. The latter went back to his house, and returned immediately armed with a lathi, accompanied by the appellants, who were also armed with an iron rod and a knife respectively. They together assaulted the deceased Prem Lal. PW-1, Banarasi, the informant, and PW-2, Omveer, an injured witness and another injured witness Rajendra Singh intervened by picking up a lathi from the ground and retaliated in self-defence. The appellants then scampered away from the place of occurrence. The fourth accused was held to be a juvenile.

3. The post-mortem of the deceased done by PW-7, Dr. B.K. Mishra, revealed three abrasions on the abdomen, back and shoulder apart from two incised wounds, muscle deep, on the scapula and the left thigh, leading to cut of the femoral artery. Death was attributed to the last injury. The abrasions were opined to have been caused by a lathi. PW-3 and Rajendra Singh sustained simple injuries, as

opined by PW-6, Dr. Ajeet Singh, attributable to a knife and iron rod.

4. The High Court, in appeal, after consideration of the evidence, concluded that common intention could not be inferred in the facts of the case. The appellants were held liable for their individual acts. The conviction of the appellants under Section 302 r/w 34 IPC was set aside. Further, holding that the assault on the deceased had taken place on the spur of the moment, preceded by an altercation, without any premeditation, the conviction of appellant no.2 was altered to one under Section 304 Part II r/w 34 IPC. The rest of conviction was sustained relying on the injury reports of PW-2 and Rajendra Singh.

5. Shri S.R. Singh, learned Senior Counsel appearing for the appellants, submitted that from the injuries suffered by them it is manifest that they had acted in self-defence and were not the aggressors. The High Court has concluded the absence of any common intention leaving each

appellant answerable for his own acts. If that be so, and the injuries caused to PW-2 and Rajendra Singh have been found to be simple in nature, their conviction under Section 307 r/w 34 IPC is not sustainable. It was lastly submitted that there was no intention to cause death, much less knowledge can be attributed from the nature of the assault. The fortuitous cutting of the femoral artery cannot impute either intention or knowledge. Had the intention been to cause death, the appellants would not have run away without accomplishing their task, and the assault would have been made with more severity on vital parts of the body. The conviction of appellant no.2 under Section 304 Part II IPC is therefore also not sustainable. The offence deserves to be reduced and/or alternatively the sentence was excessive in the facts of the case arising out of a dispute between neighbours over cattle that had strayed. Reliance was placed on ***Darshan Singh and others vs. State of Punjab***, 2009 (16) SCC 290 and ***Maqsood and others vs. State of Uttar Pradesh***, 2016 (15) SCC 748.

6. Learned counsel for the State opposing the appeals submitted that the conviction of the appellants called for no interference. Knowledge under Section 304 Part II IPC, that death was likely to be caused can easily be attributed to appellant no.2 from the nature of the assault made with severity leading to the femoral artery being cut and which was the cause of death. The injured had suffered assault on the head also, a sensitive part of the human body and therefore the conviction under Section 307 r/w 34 IPC also called for no interference.

7. We have considered the submissions on behalf of the parties. The occurrence undoubtedly had taken place at the spur of the moment without premeditation. It cannot be said that the appellants had any common intention to kill or knowledge that death was likely to ensue. The appellants only intended to vent their ire against their neighbour for having assaulted their bullocks. Having been better equipped with an iron rod and a knife, there was no

occasion for them to scamper away when confronted by the others especially when PW-1 was an old man aged about 61 years. If there existed no common intention each appellant was liable for his own individual acts as observed in ***Darshan Singh*** (supra).

8. PW-6, Dr. Ajeet Singh has deposed that the injuries on PW-2 and Rajendra were simple in nature. There is no consideration of the nature of injuries in the conviction under Section 307 r/w 34. The conviction of the appellants to that extent is held to be unsustainable and is set aside.

9. The deceased is stated to have succumbed to the injury on the thigh leading to the cut of the femoral artery. The injury is attributable to appellant no. 2. The absence of any common intention makes him individually answerable. His conviction under Section 304 Part II IPC therefore calls for no interference. But considering that the occurrence took place at the spur of the moment, the assault was not made on a vital part of the body, that the assailant ran away upon being challenged, the genesis of

the assault lay in a dispute between neighbours with regard to strayed cattle, and that the occurrence had taken place long ago in 1980, we are satisfied to reduce the sentence of appellant no. 2 to a period of two years relying on **Maqsood** (supra).

10. Resultantly, the conviction of the appellants under Sections 323 r/w 34 and 324 r/w 34 is not interfered with. The sentence of appellant no.2 under Section 304 Part II I.P.C. is altered from eight years to two years.

11. The appeal is allowed only to the extent indicated above.

.....**J.**
[Navin Sinha]

.....**J.**
[K.M. Joseph]

NEW DELHI
AUGUST 24, 2018