

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2063 OF 2009
(Arising out of SLP(Crl.) No. 4943/2007)

CHHOTU

APPELLANT(S)

:VERSUS:

STATE OF HARYANA

RESPONDENT(S)

O R D E R

Leave granted.

Heard the learned counsel for the parties.

This appeal is directed against the judgment and order dated 23.01.2006 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.489-DB of 1999.

The appellant along with the co-accused Bhallu was convicted under Section 302 read with Section 34 of the I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs.2,000/- by the Additional Sessions Judge, Hissar. The High Court while setting aside the conviction of the co-accused Bhallu, affirmed the conviction of the appellant herein. This Court while entertaining the special leave petition of the appellant, issued notice confined to the question of the nature of the offence.

Dr. Daya Nand (PW-1), who conducted the post-mortem examination on the body of the deceased Dilbagh has opined as follows:

"There was no external mark of injuries over the body except a diffused swelling over left temporal region. On cut section of this echymosis was present in the skin and sub-cutaneous tissues. On further dissection on removing the scalp haematoma was present under the scalp in left temporal, left parietal and right temporal region. After removing this haematoma skull bone was seen and there was fracture on left temporal bone. Infiltration of the blood was present at the fractured ends. After removing the skull there was extra dural haematoma was found lying in whole of the temporal region and parietal region of left side."

Admittedly, this was the only one injury found on the body of the deceased. This injury was attributed to the appellant.

In the facts and circumstances of this case, we are of the considered view that the conviction of the appellant under Section 302/34 I.P.C. is inappropriate. In our considered view, the ends of justice would be met if the conviction of the appellant is altered from Section 302/34 I.P.C. to one under Section 304 Part II of

the I.P.C. and he is sentenced to undergo rigorous imprisonment for ten years.

Accordingly the impugned judgment passed by the High Court is set aside and the appellant is convicted under Section 304 Part II of the I.P.C. and sentenced to undergo rigorous imprisonment for ten years.

The appeal is partly allowed and disposed of accordingly.

New Delhi;
November 9, 2009.



.....J
(DALVEER BHANDARI)

.....J
(DR. MUKUNDAKAM SHARMA)

JUDGMENT