

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 17 OF 2003

CHANGDEO NIVRUTI KAMATHE

.....

APPELLANT

VERSUS

STATE OF MAHARASHTRA

.....

RESPONDENT

with
SLP(CRL.) NO. 5513 of 2002

O R D E R

The broad facts for the disposal of the present appeal are as under:-

19 persons in all including A1 - Changdeo Nivruti Kamathe, the appellant herein were brought to trial for offences under Sections 302, 326, 324, 353, 332, 387 read with Section 149/148 IPC for having caused the death of Kalo Ram and injuries to several of the witnesses, on the 12th of April, 1985 during the course of a fair and a religious procession in the village of which both the parties were residents. The Sessions Judge, Pune, vide his judgment dated 16.05.1986 acquitted all the accused holding inter alia that the witnesses were interested parties and that they had deposed against the accused persons on account of enmity and that the prosecution version was not

supported by the medical evidence or the evidence of the police officer who had investigated the matter.

The matter was thereafter taken in appeal before the Bombay High Court, which, by its order dated 23rd July, 2002, partly allowed the appeal and convicted the appellant under Section 302 of the Indian Penal Code simplicitor and sentenced him to undergo life imprisonment and to the payment of a fine with a default clause and convicted two of the other accused Vishnu Nivruti Kamathe, Shankar Mugut Kamathe and Bhanudas @ Bhalchandra Gulab Kamathe under Section 323 IPC and also sentenced them to undergo a term of imprisonment.

Two appeals have been filed by Changdeo Nivrutti Kamathe alone who has been convicted for the offence of murder and the other that is S.L.P. (Cr1.) No. 5513 of 2003 has been filed by the other accused. We grant leave in this matter as well.

Mr. R. Sundaravardhan, the learned senior counsel for the appellant in Criminal Appeal No. 17 of 2003 has raised several arguments during the course of the hearing. He has pointed out that it was well settled that the High Court in dealing with an appeal

against acquittal should not ordinarily interfere with the judgment of the trial court unless that judgment could be said to be perverse and as this cardinal principle had been discarded by the High Court, interference by this Court was called for to rectify what was an apparent mistake. He has also submitted that the observations of the High Court on the statements of the witnesses (that the trial court found were not worthy of belief as they were relatives of the complainant party) were also erroneous as the medical evidence did not support the ocular testimony.

Mr. Ravindra K. Adsure the learned counsel for the State of Maharashtra has, however, supported the judgment of the High Court and submitted that as the judgment of the Sessions Judge was erroneous to the point of perversity, interference by the High Court was justified.

We have considered the arguments advanced by the learned counsel for the parties.

In the light of the fact that all P.Ws. some of them injured, have specifically named the appellant herein i.e Changdeo Nivruti Kamathe as the primary

mover of the crime and has attributed the fatal injury on the person of Kaluram deceased to him, we are of the opinion that his presence appears to be proved on the record. It has come in the evidence of the witnesses that Kaluram had fallen on the ground and as his son attempted to save him a gupti which had been concealed by the appellant was used to cause an injury on the person of Kaluram and one injury on the back of Sudhakar (PW 6). The presence of the injury on the deceased is evident from the medical evidence.

Mr. Sundaravardhan has then fallen back alternatively on the argument that Section 302 was not made out as only one injury had been found as per the medical evidence and that too during a fracas involving a large number of persons on both sides the matter would fall under Section 304 Part I or 304 Part II IPC.

We have considered this argument and find that it has merit.

We see from the evidence of P.W. 9 Dr. Sheikh who had performed the post mortem on the dead body and had noted one injury 2.5cm X ½cm X 11cm at 2 cms left lateral to the first thoracic spine on the shoulder.

On an examination of the said injury he found that it had penetrated into the aorta. We also see that the incident happened during the course of a heated argument between a large number of persons present on both sides. It is also clear from the evidence of P.Ws. 7 and 8, police constables who were on bandobast duty during the procession, that a crowd of 400 to 500 representing rival groups had collected at the place and stone pelting by rival groups and fiery speeches had been made as a prelude to the incident which happened despite the efforts of those present to pacify both sides. We also see that the incident happened in the year 1985 and that the trial court by its judgment dated 16.05.1986 had acquitted all the accused.

In view of the above stated facts, we feel that the ends of justice would be met if the offence is converted into one 304 Part-I and the sentence is reduced to five years rigorous imprisonment.

With this above modification, the above appeal is dismissed.

For the reasons recorded in Criminal Appeal No. 17 of 2003, the special leave petition stands dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
OCTOBER 07, 2009.

