2026 INSC 256

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 443 OF 2012

THE STATE OF UTTAR PRADESH ….APPELLANT(S)

VERSUS

RAM SWAROOP @ BARKAT …RESPONDENT(S)

O R D E R

1. State is questioning the correctness of the Judgment of the High Court of Judicature at Allahabad rendered in Criminal Appeal No.3739 of 2009 dated 04.03.2009, whereunder the appellant came to be acquitted who had been convicted by the Additional Sessions Judge, Fast Track Court No. - 1 in Sessions Trial No.209 of 2001 on 27.06.2006 for the offence punishable under Section 364 of IPC by reversing the said finding of the Trial Court.

2. The gravamen of the prosecution case is: appellant had come to the house of the complainant Shri Puran on 25.11.1998 and took Dinesh son of the complainant from his home on the pretext of watching a movie and he never returned. It was stated that his dead body was found the next morning with gun shot wounds and based on a written report lodged by the

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Reason:

father of the deceased, an FIR came to be registered for the offence punishable under Section 302 of IPC against the appellant and three others. On the basis of chargesheet material and after accused pleaded not guilty the Sessions Judge framed the charge against the accused persons on 12.09.2003.

3. To drive home the guilt of the accused persons the prosecution examined its witnesses and learned Sessions Judge on appreciation of evidence by Judgment dated 27.06.2006 convicted the appellant, Accused no.2 for the offence punishable under Section 364 of IPC and acquitted all other accused of the charge under Section 302 of IPC. It was held that though prosecution failed to prove the charge of murder under Section 302 of IPC, the fact that the accused took the deceased from his house and the body was found next day morning had been fully established and this was sufficient to convict the appellant for the offence punishable under Section 364 of IPC. It came to be further held that since no enmity was there between deceased Ram Swaroop and the appellant, the act of luring the deceased by the appellant was sufficient to convict the appellant under Section 364 of IPC.

4. On appeal being filed the High Court by the impugned Judgment dated 04.03.2009 allowed the appeal primarily on the ground that no charge under Section 364 of IPC was framed and held convicting the accused for

the said charge without prior notice would cause serious prejudice and had violated the fair trial norms. It was further held that Section 364 of IPC is not a minor offence compared to Section 302 of IPC and they involve distinct legal ingredients and cannot be interchanged as permitted under Section 222 of Cr.P.C. It was further held that in the absence of any motive attributed to the appellant, on the sole circumstances of deceased had gone with the appellant cannot sustain conviction under Section 364 of IPC.

5. We have heard the arguments of Shri Goutham Shivshankar, learned Counsel appearing for the Appellant and Shri Jagjit Singh Chhabra, learned Advocate-on-Record appearing for the Respondent – Accused.

6. It is the contention of the learned Counsel appearing for the Appellant that High Court had erred in holding that conviction under Section 364 of IPC was invalid merely due to absence of formal charge, despite their being clear evidence and full opportunity having been afforded to the accused to defend his case. He would further elaborate his submission by contending that Section 364 of IPC is a cognate offence to Section 302, and as such the trial court had rightly invoked Section 222 Cr.P.C to convict the appellant on a lesser charge which was based on the same set of facts. He would further contend that the High Court had ignored crucial circumstantial evidence proving direct role of the accused in alluring the deceased shortly before the murder and this has led to miscarriage of

justice. On these grounds, he seeks for the impugned order being set aside and the Judgment of the trial court being restored. In support of the proposition that an accused can be convicted for a lesser offence though the charge for the bigger offence has been framed, he relies upon the judgment of this Court in ***Rafiq Ahmad alias Rafi vs. State of Uttar Pradesh***[1]. He would also draw the attention of the Court to the Judgment of ***Sangaraboina Sreenu vs. State of Andhra Pradesh***[2]**,** which has been relied upon by the Trial Court by contending that same has been overruled by this Court in ***Dalbir Singh vs. State of U.P.***[3].

7. Per contra, the learned Counsel appearing for the Respondent – Accused would support the impugned order and contends that offence punishable under Section 364 is not a cognate offence of Section 302 of IPC but on the other hand, it is independent, separate and distinct and as such when the charge was framed for the offence punishable under Section 302 of IPC the appellant could not have been convicted for the offence punishable under Section 364 of IPC by taking umbrage under Section 222 of Cr.P.C. He would submit that Trial Court itself had observed that there was no motive on the part of the appellant and in the absence of motive the appellant could not have been convicted for an offence punishable under

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[1] **(2011) 8 SCC 300**
[2] **(1997) 5 SCC 348**
[3] **(2004) 5 SCC 334**

Section 364 of IPC. In support of his submission, he has relied upon the Judgment of this Court in ***Shamnsaheb M. Multtani vs. State of Karnataka***[4].

8. Having heard the learned Counsels appearing for the parties, we deem it proper to note that the charge framed against the appellant was for the offence punishable under Section 302. While appreciating the evidence tendered by the prosecution, the learned Trial Judge took note of Section 362 of IPC to jump to a conclusion that accused Ram Swaroop – Appellant, who had arrived at the house of the deceased and had called the deceased to accompany him on the pretext of watching a movie would fall within the ambit of committing the "abduction of deceased Dinesh" or in other words, the accused had exercised deceit upon deceased for the purpose of securing him from his house with the object and motive of committing murder of the deceased. Hence, the learned Trial Judge held the charge under Section 364 as proved and established, though charge under Section 302 of IPC is sustainable. The Appellate Court found that admittedly no charge had been framed under Section 364 of IPC and took note of Section 221 and 222 of Cr.P.C. which enables the Criminal Court to convict the accused of an offence which is not included in the charge, by holding the primary condition for application of Section 221 is that the

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[4] **(2001) 2 SCC 577**

Court should have felt at the time of framing of the charge as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. It held that in such a case the Section permits to convict the accused of the offence of which he is shown to have committed though he was not charged with it. By relying upon the Judgment of ***Shamnsaheb M. Multtani*** (supra), it arrived at a conclusion that the offence under Section 364 of IPC cannot be said to be a lesser offence in relation to the offence under Section 302 of IPC to be brought within the meaning of Section 222 of Cr.P.C.

9. The expression "minor offence" found in Section 222 is not defined under the Code, it can be discerned from the context which is not merely that the prescribed punishment is less than the major offence. In other words, if the two offences are cognate offences and the main ingredients are common, the offence punishable with lesser sentence can be considered as a minor offence with reference to the other offence. This Court in ***Shamnsaheb M. Multtani*** (supra) has held as under :-

> "**16.** What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the

> one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence.
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> **17.** The composition of the offence under Section 304-B IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-à-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (husband or relative of husband of a women subjecting her to cruelty). As the word "cruelty" is explained as including, inter alia,
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> > "harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand"."

10. The composition of the offence under Section 304-B is vastly different from the offence of murder indicated under Section 302 IPC and hence the former cannot be regarded as a minor offence vis-a-vis the latter. Section 222(1) of the Code deals with a case where a person is charged with an offence consisting of several particulars. The Section permits the Court to convict the accused of the minor offence though he was not charged with it. Sub section (2) deals with a similar, but slightly different situation. When a person is charged with an offence and facts are proved which reduces it to a minor offence he may be convicted of the minor offence although he is not charged with it. As noticed hereinabove, the expression "minor offence" is not defined under the Code, as to whether the act of abduction/ kidnapping defined under Section 364 can be construed as a minor offence would be the question. Section 364 of the IPC would

indicate that if a person kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered would be punishable with imprisonment for life or rigorous imprisonment for a term which may extend to 10 years. This provision when compared with Section 302 would clearly indicate that they are separate and distinct offences and by no stretch of imagination can be construed as cognate offences. As such, we are of the considered view that the High Court was fully justified and correct in reversing the finding of the learned Trial Judge in convicting the appellant for the offence punishable under Section 364 though charged for 302 of IPC.

11. We also note with benefit that there is no whisper either in the complaint or in the chargesheet or in the evidence tendered on behalf of the prosecution namely the deposition of PW-1 and PW-2 that is father and brother of the deceased indicating that the appellant had forcefully taken the deceased from the house or the deceased having been abducted by the appellant. In fact, PW-2 admits in his deposition that he had given the statement that appellant, Satish and Ramesh had committed the murder of his brother, on the basis of hearsay. These factors cumulatively persuade us to reject the contentions raised by the learned Counsel appearing for the Appellant.

12. For the reasons stated above, we do not find any merit in this appeal and consequently it stands dismissed. Pending applications, if any, shall stand disposed of.

.....J.
[ARAVIND KUMAR]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MARCH 18th, 2026.