

CASE NO.:
Appeal (crl.) 1945 of 1996

PETITIONER:
Ramu

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 04/02/2004

BENCH:
N.Santosh Hegde & B.P.Singh

JUDGMENT:

J U D G M E N T
SANTOSH HEGDE, J.

The appellant has preferred this appeal against the judgment of the High Court of Allahabad in Criminal Appeal No.678 of 1980 wherein the High Court while partly allowing the appeal of 5 other appellants by altering their conviction from section 302 read with section 149 to one under section 324 IPC confirmed the conviction and sentence imposed on this appellant for an offence punishable under section 302 read with section 149 as also for offences punishable under sections 148 and 147 IPC. Brief facts necessary for the disposal of this appeal are as follows :

Rani Bitti, PW-1 along with her son Satti was residing in village Sahanipur within the jurisdiction of Police Station Hussainganj. It is alleged that said Satti was married about 6 years ago but his wife stayed with him only for a short time and thereafter deserted him. PW-1 and her son Satti suspected this desertion by Satti's wife was at the instance of Ram Piare A-1 hence entertained some grudge against him. It is further stated that about 1 month prior to 21.7.1978 said PW-1 had sold some sugarcane leaves worth about Rs.50 on credit which amount A-1 had not paid to her. Prosecution further alleges on 21.7.1978 at about 8.30 a.m. PW-1 and Satti went to the house of A-1 and demanded the money which led to a verbal altercation. At that point of time appellant (A-2) came to the house of PW-1 armed with a bhala. Noticing this PW-1 and Satti started fleeing from the house of A-1 when both A-1 and the appellant started chasing them. On the way the prosecution alleges 4 other accused persons also joined A-1 in the chase and when they reached the house of Jagdei PW-6 and started further quarrel there, said PW-6 asked them not to quarrel in front of her house hence PW-1 and Satti ran away from the said place but they were again chased by the accused persons in front of the house of Ram Adhar PW-4 and were attacked by the accused persons. In the said attack PW-1 suffered a lathi blows on her thigh and finger while deceased Sati suffered lathi blows and one incised wound on the abdomen allegedly dealt by the appellant herein with a bhala and died. The incident in question was reported to Hussainganj Police Station at about 10 a.m. by PW-1 and after investigation a chargesheet was filed against the appellant and 5 others before the 2nd Additional Sessions Judge, Fatehpur for offences punishable under sections 147, 148, 302 read with 149 IPC. The Sessions Court after trial came to the conclusion that the prosecution has established its case against A-2 the appellant herein for offence punishable under section 148 IPC hence awarded a sentence of 2 years' RI for the said offence. It

further convicted the appellant for an offence punishable under section 302 read with 149 IPC and sentenced him to imprisonment for life while other accused persons were held guilty for an offence punishable under section 147 and sentenced to one year RI each. They were also further convicted under section 302 read with section 149 IPC and sentenced to undergo imprisonment for life. All the sentences were directed to run concurrently. In an appeal filed against the said judgment and conviction as stated above, the High Court of Judicature at Allahabad came to the conclusion that the prosecution has established its case against 5 other accused who are not appellants before us only for an offence punishable under section 147 IPC for which the said accused persons were punished with the period already undergone and with a fine of Rs.500. They were also held guilty for offence under section 324 IPC and for the said offence also the punishment already undergone by them was held sufficient with a fine of Rs.1,000/- . While the appellant herein was acquitted of the charge under section 302 read with section 149 IPC but was found guilty of an offence punishable under section 304 IPC for which offence he was awarded a sentence of 7 years' RI.

The other accused persons being satisfied with the substantial benefit they obtained under the High Court judgment have not preferred any appeal while the appellant who is convicted for an offence punishable under section 304 IPC alone has preferred this appeal. We have heard Mr. Jaspal Singh, learned senior counsel for the appellant and Mr. Garvesh Kabra, learned counsel for the respondent-State and perused the records. From the evidence of PW-1 who is the injured witness it is clear that she and her son deceased Satti were attacked by the accused persons consequent to which Satti died. It is also clear from the evidence led by the prosecution that Satti died due to an incised wound suffered on his abdomen which could have been caused by a sharp-edged weapon like bhala carried by the appellant. It is the prosecution case that the appellant alone carried such a weapon and from the medical evidence also it is clear that the cause of death was due to shock and haemorrhage consequent to the incised wound suffered on the abdomen of the deceased. But the question for our consideration is what is the nature of offence committed by the appellant in this case. The trial court came to the conclusion that the offence committed by the appellant was one punishable under section 302 read with section 149 while the High Court came to the conclusion that the said offence cannot be one punishable under section 302 because the said offence could not be categorised as a culpable homicide amounting to murder hence held the said offence would fall under section 304 IPC. While coming to this conclusion the High Court held :

"Coming to the role of Ramu we have no doubt that the fatal injury was caused by him to Satti. Yet we find that Ramu had no motive whatsoever or intention to cause any fatal injury to Satti. It is obvious that in the melee relating to assault on Satti he without realising as to what he was doing, he struck a single blow of spear on Satti which hit him on his vital part resulting in his death. He had not repeated the blow and as held earlier, had no motive to otherwise inflict injury on Satti. Consequently we feel that he could be at more held guilty of causing homicide not amounting to murder."

Having examined the evidence on record we are in agreement with the High Court that the appellant did not have

any motive whatsoever to cause any fatal injury to the deceased. We also agree with the High Court that the injury in question was caused during a melee in which 6 persons took part therefore in our opinion on the facts and circumstances of this case, the act of the appellant in causing injury to the deceased which led to his death, cannot be the one which could be construed even as an act of culpable homicide not amounting to murder. Therefore, to that extent in our opinion the High Court fell in error in holding the appellant guilty for an offence under section 304 IPC. In our considered opinion on the facts and circumstances of this case the act of the appellant is one of causing grievous hurt with a deadly weapon which is punishable under section 326 IPC. Noticing the fact that the incident in question has occurred as far back as 1978 and the appellant had no enmity against the deceased nor any motive to cause a fatal injury, we think the ends of justice would be met if the appellant's conviction is altered to one under section 326 IPC and a sentence of 3 years' RI is awarded for the said offence.

Accordingly, this appeal is partly allowed. The appellant is held guilty of causing grievous injury to deceased Satti punishable under section 326 IPC and is sentenced to undergo RI for a period of 3 years. We are told that the appellant has undergone a part of the sentence awarded to him by the courts below. If so, he be given remission for the said period. The appellant is on bail. His bail bonds are cancelled and he shall surrender to serve out the remainder of sentence.