

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.875 OF 2009
[ARISING OUT OF SLP (CRIMINAL) NO.6649 OF 2008]

RAMESH KUMAR @ TONI

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

ORDER

Leave granted.

This appeal arises out of the judgment of the Punjab and Haryana High Court dated 29.4.2008 whereby the appeal filed by the present appellant against the judgment of conviction recorded by the trial court for an offence punishable under Section 302 IPC, has been dismissed.

The facts giving rise to this appeal are as under:-

The incident happened on 28th September, 1996. The deceased Rajinder Pal was a student of the I.T.I., Ambala. His mother Shakuntla PW.8 and uncle Sunder PW.9 had gone to the fields to harvest the maize crop in the morning. At about 4.00 P.M. the deceased took tea for his mother and uncle. At about 5.00 P.M. all three were returning to the village with the deceased going ahead by 10-15 paces. As the deceased was walking through the vacant field of the accused, the appellant abused him for having entered his field. The deceased also abused the appellant in return. On this, the appellant who was holding a kassi (spade) while mending the ridges of the field inflicted one blow on the head of the deceased. Thereafter, the

appellant ran away along with his weapon. Shakuntla and Sunder removed the injured to a clinic at the bus stand, but they were advised to take him to Ambala. Accordingly, the injured was taken to Ambala, where he died in the Emergency Ward at about 8.40 P.M. The trial court relying on the evidence of the two eye witnesses convicted the accused appellant for an offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life. As already mentioned above, the order of conviction and sentence has been maintained by the High Court.

When this matter came up for hearing before this Court on 11.9.2008, notice was issued confined to the nature of the offence only. The learned counsel for the respondent has also put in appearance and we have heard their submissions on this limited score.

Mr. Mahabir Singh, the learned senior counsel for the appellant has pointed out that the case of the appellant would fall within exception 4 of Section 300 of the IPC and since the said case was not one of murder but culpable homicide not amounting to murder, it would be punishable under Section 304 of the IPC.

The learned counsel appearing for the respondent has, however, submitted that both the trial court as well as the High Court had rejected this argument and held that the case related to a murder.

Exception 4 to Section 300 reads as under:-

"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner".

A bare perusal of the aforesaid provision indicates that culpable

homicide is not murder (i) if it is committed without premeditation (2) in a sudden fight (3) in the heat of passion upon a sudden quarrel and (4) without the offender having taken undue advantage or acted in a cruel or unusual manner.

We find that the prosecution story itself spells out that all these conditions are satisfied in the present case. As per the eye witnesses, PW.8 and PW.9, the incident had happened when the deceased accompanied by the two witnesses were passing through the vacant field of the accused, the appellant had abused him for having entered his field on which the deceased had also abused the appellant. It appears that it was after this altercation that the appellant inflicted a spade (kassi) blow on the head of the deceased. We also see from the prosecution evidence that though the fields of the two parties were adjacent to each other, no quarrel of any kind had earlier taken place. In this view of the matter, we are of the opinion that the case of the appellant would fall under exception 4 and be punishable under Section 304 Part I of the IPC as a single injury had been inflicted on the head of the deceased.

We, accordingly, allow this appeal and convert the conviction of the appellant from one under Section 302 IPC to Section 304 Part-I IPC and and reduce the sentence from life imprisonment to seven years R.I. We also direct that if the accused has already undergone seven years of imprisonment, he shall be released forthwith, if not required in any other case.

The appeal is, accordingly, disposed of.

**.....J.
(Harjit Singh Bedi)**

.....J.
(J.M. Panchal)

New Delhi;
April 22, 2009.

