

PETITIONER:
PRAKASH HIRAMAN HINGANE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 09/12/1997

BENCH:
G.T. NANAVALI, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

The following Judgment of the Court was delivered:
Nanavati, J.

The appellant was tried for committing murder of one Ashok on 12.4.1986 at 6.30 a.m. The Trial Court believed the prosecution witnesses and held that in all 10 injuries were caused by the accused with a knife and that three or four injuries were sufficient in the ordinary course of nature to cause his death. It, however, held that as the prosecution has failed to prove that the accused had any motive to cause death of Ashok, it would not be proper to convict the appellant under Section 302 IPC. So it convicted him under Section 304 Part II IPC.

The appellant challenged his conviction by filing an appeal to the High Court. The State also filed an appeal against the acquittal under appeal against the acquittal of the appellant under Section 302 IPC. The High Court dismissed the appellant's appeal and allowed the appeal filed by the State and convicted the appellant under Section 302 IPC. The appellant has, therefore, filed this appeal challenging the judgment and passed by the High Court.

Both the courts have believed the evidence of PW1, who was himself an eye-witness and PWs 3 and 4. The learned counsel was not able to point out any flaw in the appreciation of evidence by the High Court. We therefore, proceed on the basis that the finding that their evidence is trustworthy and correct. If their evidence is believed, then it has to be held that the finding recorded by the courts below regarding causing of injuries by the accused to the deceased is also proper. The appellant had given as many as 10 blows with a knife to the deceased who was unarmed. Merely because there was some grappling between the accused and the deceased, possibly because the deceased tried to see that the blows did not hit him, it cannot be said that the accused was entitled to give those blows in exercise right of private defence of was entitled to any other exception. As the injuries caused by the accused to the deceased were intentional and they were found to be sufficient in the ordinary course of nature to cause death, the appellant was rightly held guilty under Section 302 IPC. The High Court

was, therefore, justified in altering the Conviction of the appellant from under Section 304 Part II IPC to Section 302 IPC. This appeal is, therefore, dismissed.

JUDIS