

ITEM NO.105

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1211 OF 2004

STATE OF RAJASTHAN

Appellant (s)

VERSUS

SANJAY & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 02/12/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s) Dr. Manish Singhvi, AAG.
Mr. D.K. Devesh, Adv.
Mr. Sahil S. Chauhan, Adv.
Mr. Milind Kumar, Adv.

For Respondent(s) Mr. Manoj Prasad, Adv.
Mr. Sadashiv Gupta, Adv.
Mr. Rohit Singh, Adv.
Mr. Satendra Singh Kashyap, Adv.
Mr. Ajay Srivastava, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the
signed order.

(KALYANI GUPTA)
SR. P.A.

(VINOD KULVI)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1211 OF 2004

STATE OF RAJASTHAN

APPELLANT

VERSUS

SANJAY & ORS.

RESPONDENTS

O R D E R

1. Seven persons in all were sent up for trial for having committed the murder of Ashok Kumar on the 13th of June, 1995. Of the seven persons aforesaid Surendra Kumar and Shivdayal absconded. The trial court by its judgment dated 7th August, 1998 in the present matter convicted all the accused for the offence punishable under Section 302/149 of the Indian Penal Code and sentenced them to life imprisonment. An appeal was thereafter taken to the High Court and during the pendency of the appeal Rajpal accused died and the appeal was, accordingly, dismissed qua him as having abated. The High Court vide its judgment dated 29th May, 2003, however, acquitted respondent Nos. 2 to 4 namely, Satish Kumar, Ashok Kumar and Lakhan Singh on the ground that the medical evidence did not support the ocular evidence insofar as they were concerned and as far as respondent No. 1 was concerned

his conviction was altered from one under Section 302 to Section 304 (II) of the Indian Penal Code and as he had been in jail since June, 1995, the sentence was reduced to that already undergone. It is under these circumstances that this appeal has been filed by the State of Rajasthan impugning the acquittal of respondent Nos. 2 to 4 in toto and also challenging the acquittal of respondent No. 1 under Section 302 and the substitution of Section 304(II) of the Indian Penal Code instead.

2. During the course of hearing today, Dr. Manish Singhvi, the learned Additional Advocate General representing the State of Rajasthan, the appellant herein, has very forcefully argued that the case of the respondent No. 1 fell squarely under the purview of Section 302 IPC and his conviction was, therefore, to be made under that provision. He has pointed out that in any case the conviction of the respondent No.1 for the offence under Section 304(II) IPC was completely erroneous as there was clear intention on the part of respondent to cause death. The learned counsel for the respondents has controverted this submission and has supported the judgment of the High Court.

3. We see that the High Court has dealt with this matter on the facts of the case. The Court has held that

the participation of the three acquitted respondents could not be established beyond reasonable doubt as the statements of the eye witnesses, P.Ws2 and 3 were discrepant on material particulars and the medical evidence also did not support the prosecution story. We also see that the High Court has dealt with the case of respondent No. 1 in a clear cut manner as the injury attributed to him was not on a vital part of the body and that it could not be ascertained as to which of the accused was the assailant. In the light of the arguments made by Dr. Manish Singhvi some of the broad observations made by the High Court may not be entirely correct but we feel that keeping in view the totality of the circumstances, no interference is called for.

4. The appeal is, accordingly, dismissed.

JUDGMENT

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
DECEMBER 02, 2010.