

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 1546 OF 2017

SUNNY KHANNA

VERSUS

Appellant(s)

STATE OF CHHATTISGARH

Respondent(s)

WITH

CRIMINAL APPEAL No. 1547 OF 2017

PRADEEP SINGH @ JUGU

VERSUS

Appellant(s)

STATE OF CHHATTISGARH

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) These appeals arise out of judgment dated 17th November, 2014 passed by the High Court of Chhattisgarh at Bilaspur in and by which the High Court has affirmed the conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. for the death/murder of deceased-Irfan @ Golu. So far as the death/murder of Anil Chandrakar, the High Court has altered the conviction of the appellants from Section 302 I.P.C. to Section 307 I.P.C. read with Section 34 I.P.C. and sentenced them to undergo imprisonment for seven years.

(2) Case of the prosecution is that on 21st March, 2008 at about 10.30 pm deceased-Irfan @ Golu and deceased-Anil Chandrakar were present near *Holika dahan*. An altercation took place between deceased Irfan @ Golu and Chotu which resulted in

heated arguments. Thereafter, both the appellants Sunny Khanna and Pradeep Singh @ Jugu caught hold of the deceased - Irfan @ Golu and the juvenile accused Chotu inflicted stabbed injuries twice on abdomen and right elbow and Irfan @ Golu fell down. At that time second deceased-Anil Chandrakar rushed to save Irfan @ Golu and then both the appellants are alleged to have caught hold of him and juvenile accused Chotu assaulted him by knife and caused injuries. Complainant-Aavez Khan (PW-1) took the deceased persons to hospital where deceased Irfan @ Golu was declared dead. Deceased-Anil Chandrakar also succumbed to injuries on 13th April, 2008 i.e. twenty days after the incident. After completion of the investigation, a chargesheet was filed against the accused under Section 302 I.P.C. read with Section 34 I.P.C. on two counts.

(3) Upon consideration of the evidence of Salim Khan (PW-10) and also Aavez Khan (PW-1), the Trial Court vide judgment dated 24th January, 2009 convicted the appellants-accused under Section 302 I.P.C. read with Section 34 I.P.C. for causing murder of both the deceased - Irfan Khan @ Golu and Anil Chandrakar, and sentenced them to undergo life imprisonment.

(4) In appeal, the High Court dismissed the appeal filed by the appellants thereby confirming the conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. and affirmed the sentence of life imprisonment awarded to them for causing murder of the deceased - Irfan Khan @ Golu. So far as the death of the deceased - Anil Chandrakar, as aforesaid in

para (1) the conviction of the appellants was altered from Section 302 I.P.C. read with Section 34 I.P.C. to Section 307 I.P.C. read with Section 34 I.P.C.

(5) In his evidence Salim Khan (PW-10) has stated that the appellants-accused, Sunny Khanna and Pradeep Singh @ Jugu held the deceased-Irfan @ Golu and juvenile accused, Chotu, stabbed the deceased Irfan @ Golu with a weapon like butter knife. When the deceased-Anil Chandrakar ran to save Irfan @ Golu, the appellants-accused caught hold of Anil Chandrakar and the juvenile accused, Chotu, stabbed him in the abdomen. On raising alarm, the accused fled away from the scene of occurrence.

(6) Mr. S. Nagamuthu, learned senior counsel appearing for the appellant-Sunny Khanna, and Mr. Dushyant Parashar, learned counsel appearing for the appellant-Pradeep Singh @ Jugu, submitted that Salim Khan (PW-10) is related to the deceased person-Irfan @ Golu and, therefore, his solitary testimony ought not to have been made the basis for conviction, unless being corroborated. The occurrence was at the night time on the day of Holika Dahan, a day prior to Holi and at that time it cannot be expected of the prosecution to examine any independent witnesses. Further, as pointed out by the Trial Court as well as the High Court the evidence of Salim Khan (PW-10) is corroborated by the medical evidence as well as by the recovery of weapon from juvenile accused - Chotu. When both the courts have accepted the evidence of Aavez Khan (PW-1) as

credible witness, we do not find any good reason to interfere with the said concurrent findings.

(7) So far as the conviction of the appellants under Section 302 I.P.C. regarding the death of Irfan @ Golu, from the evidence of Salim Khan (PW-10) it emerges that when preparation was going on to burn Holika and when they were all standing there, juvenile accused-Chotu was using abusive language and Irfan @ Golu asked Chotu to stop using abusive language and there was heated arguments, scuffle and sudden fight between them. It is in these circumstances, the juvenile accused, Chotu, inflicted injuries on deceased-Irfan @ Golu while the appellants herein held the deceased-Irfan @ Golu. As the occurrence took place in the course of sudden fight between the deceased and the accused party the occurrence would fall under sub-section (4) of Section 300 I.P.C. The injuries inflicted on the deceased-Irfan @ Golu is on the backside piercing the left lung which shows the intention of the juvenile accused who inflicted the injury. Keeping in view the nature of the injuries and considering the fact that the appellants-accused had not taken undue advantage of the deceased and in the facts and circumstances of the case, the conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. is modified as the one under Section 304 Part-I I.P.C. It is submitted that both the appellants have undergone imprisonment for more than ten years.

(8) In the result, the conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. is modified to Section 304 Part-I I.P.C. and the sentence of life imprisonment awarded to the appellants is reduced to the period already undergone by each of the accused.

(9) The appeals are partly allowed. The appellants are on bail. Their bail bonds shall stand discharged.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
OCTOBER 4, 2018.