

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1480-1481 OF 2017
(Arising out of S.L.P.(Crl.) Nos. 2263-2264 of 2017

SHESHRAO

Appellant(s)

Versus

STATE OF MAHARASHTRA

Respondent (s)

O R D E R

Leave granted.

These appeals by special leave are directed against the judgment and order dated 7.1.2013 passed by the High Court of Bombay, Aurangabad Bench in Criminal Appeal No. 287 of 2011 with Criminal Appeal No. 274 of 2012. The High Court has dismissed the appeals of the appellant herein against the judgment dated 3.2.2011 passed by the Sessions Judge at Bhokar in Sessions trial Case No. 44 of 2010 whereby the appellant was convicted under Section 302 read with Section 34 of the Indian Penal Code (in short 'the IPC') and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to further

suffer rigorous imprisonment for three months.

The facts, as narrated by the prosecution, are that on 9.5.2009 at about 10.00 a.m., the appellant (Sheshrao) (accused no. 2) with other accused came in front of the complainant's house and started scuffling with his father and assaulted his father with the wooden plank on his head causing bleeding injury. Meanwhile one Sayaji Pandurang Nagdarwad (accused no. 1) assaulted the complainant with the wooden plank. Further complainant's mother was administered poison forcibly by Nagarbai and Anusayabai. Subsequently complainant's father (deceased) died in the Government hospital on 26.5.2009 at about 12.45 noon. There was a delay in registering the FIR due to the serious condition of the deceased.

In these appeals, the dispute was between the family members who were closely related to each other.

The trial Court, after going into the evidence, while convicting A1 and A2, acquitted A3 and A4. When the matter was carried to the High Court in appeal, the High Court confirmed the conviction of the appellant herein. Aggrieved by the impugned judgment passed by the High Court, the present appeals have been filed.

At the time of admission, we issued notice limited

to the extent whether the incident has fallen within the scope of Section 304 Part-II or 302 of the Indian Penal Code.

Learned senior counsel appearing on behalf of the appellant argued that it is a case where there was no intention to kill therefore it does not fall within the ambit of Section 302 IPC. According to him, this is a case of sudden fight, where there is no need to convict the accused for life under Section 302 IPC.

On the other hand, learned counsel appearing on behalf of the State has vehemently opposed the arguments of the learned senior counsel for the appellant and supported the judgment passed by the High Court.

We have considered the evidence as well as the material placed before us. It is to be noted that due to the fight between the two groups, the accused as well as the deceased suffered injuries. According to the evidence of the doctor, the accused no. 1 (Pandurang) suffered injuries on the forehead 2 c.m. x 2 c.m. by a blunt object. Accused-A2 (Sheshrao), the present appellant had sustained two contusions, one on the skull on the right side forehead 1 c.m. x 1 c.m. and the other on the left side of forehead 1 c.m. x 1 c.m., which was also caused by blunt object and was simple in nature. It has also been stated that the injuries were on the vital part and could

have caused complications. The prosecution has not produced any such material which can substantiate the reasons for such injuries.

It is seen from the post mortem report that there are only two major injuries i.e. Injury Nos. 3 and 4 on the head of the deceased. Apart from that, the deceased had died after a period of 17 days from the date of incident.

Taking into consideration all the facts and circumstances of the case, we feel that there was no intention on the part of the accused-appellant to kill the deceased. Therefore, we are of the opinion that the accused be given benefit of doubt.

Looking into the circumstances and materials placed before us, we are of the considered view that the ends of justice would be met if we convert the sentence of the appellant, from Section 302 read with section 34 IPC to Section 304 Part-II IPC. The appeals are, accordingly, partly allowed. The conviction under Section 302 read with section 34 IPC is set aside and the accused is convicted under Section 304 Part-II. However, we are not interfering with the condition of fine.

It is stated by learned counsel for the appellant that the accused has already suffered 8-1/2 years of incarceration, which, according to us, is sufficient to punish the accused he is accordingly sentenced.

The accused appellant is stated to be in jail. He is directed to be released forthwith unless not required in any other case.

Ordered accordingly

.....J.
(N.V. RAMANA)

.....J.
(PRAFULLA C. PANT)

New Delhi,
August 23, 2017

ITEM NO.1

COURT NO.10

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).
2263-2264/2017

(Arising out of impugned final judgment and order dated 07-01-2013 in CRLA No. 287/2011 07-01-2013 in CRLA No. 274/2012 passed by the High Court Of Bombay At Aurangabad)

SHESHRAO

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(FOR EXEMPTION FROM FILING CERTIFIED COPY ON IA 4872/2017)

Date : 23-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

Mr. Pallav Shishodia, Sr.Adv.
Mr. Pahlad Singh Sharma, AOR
Kisalaya Shukla, Adv.
Mr. Krishna Kant Shukla, Adv.

For Respondent(s)

Mr. Kunal A. Cheema, Adv.
Mr. Yogesh Ahirrao, Adv.
Mr. Nishant Katneshwarkar, Adv.

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

Leave granted.

The appeals are partly allowed in terms of the signed order.

It is stated by learned counsel for the appellant that the accused has already suffered 8-1/2 years of incarceration, which, according to us, is sufficient to punish the accused he is accordingly sentenced. The accused appellant is stated to be in jail. He is directed to be released forthwith unless not required in any other case.

(SUKHBIR PAUL KAUR)
AR CUM PS

(S. SIVARAMAKRISHNA)
ASST.REGISTRAR

(Signed order is placed on the file)