

Radhey Shyam

Vs

State of U.P.

Criminal Appeal No. 1091 of 1998

(G. T. Nanavati, S. P. Kurduker JJ)

16.10.1998

JUDGMENT

NANAVATI, J. -

1. Leave granted.

2. Heard learned counsel for the parties.

3. The appellant and the other two co-accused were convicted by the Court of Additional Sessions Judge, Shahjahanpur, in Sessions Trial No. 181 of 1979 for the offence punishable under Section 302 IPC. All the three accused filed Criminal Appeal No. 396 of 1980 in the High Court of Judicature at Allahabad. The High Court held that the accused had acted in exercise of their right of private defence but had exceeded the same and, therefore, their conviction under Section 302 was not proper. It, therefore, partly allowed the appeal by setting aside their conviction under Section 302 IPC and by convicting them under Section 304 Part I IPC and sentenced them to suffer 7 years' RI. Out of the three convicted accused, only the appellant has filed an appeal challenging his conviction under Section 304 Part I IPC and also the order of sentence.

4. What is urged by the learned counsel for the appellant is that the conviction of the appellant under Section 304 Part I IPC is not sustainable as there is no evidence to show that he had inflicted any blow on the deceased. He submitted that the evidence which was led by the prosecution was of a general nature as Munshi Lal, PW 1 and Raja Ram, PW 2 have not specifically stated that the appellant had given any particular blow with a stick to deceased Ram Saran.

5. In this case, the accused had also led defence evidence to prove that accused Ramanand had also received injuries during the same incident. After appreciating the evidence of the prosecution witnesses and considering the circumstance that the accused had also received injuries which had remained unexplained, the High Court came to the conclusion that the prosecution version was not such as could be accepted in toto. It also took note of the fact that independent witnesses, though available, were not examined by the prosecution. It also held that the accused had a right of private defence. It held that the three convicted accused had exceeded the right of private defence but we do not find any evidence to show that the appellant had given the fatal blow or any blow which was likely to cause the death of Ram Saran. In the absence of such evidence, the appellant could have been convicted only under Section 325 and not under Section 304 Part I IPC. We, therefore, partly allow this appeal and alter the conviction of the appellant from that under Section 304 Part I IPC to Section 325 IPC. Consequently, the order of sentence is also modified and the sentence of 7 years' RI imposed upon him is reduced to RI for 2 years.