

# **SUPREME COURT OF INDIA**

State of Himachal Pradesh

Vs.

Ram Pal

Crl.A.No.654 of 1997

(N. Santosh Hegde and B. P. Singh JJ.)

17.02.2004

## **ORDER**

1. The respondent herein and his father one Choudhary Ram were charged for the offences punishable under Sections 302 and 307 read with 34, IPC for having caused the death of one Jaiwant (deceased) and for attempting to cause the death of Hoshiar Singh (P.W. 3). The trial Court after trial came to the conclusion that the prosecution has established its case against accused Ram Pal-respondent herein for an offence under Section 302 read with 34, IPC and sentenced him to undergo life imprisonment and also awarded a fine of Rs. 2000/-. It further convicted him for an offence punishable under Section 324, IPC for which it directed the said accused to undergo rigorous imprisonment for a period of one year while it acquitted A2, Choudhary Ram. In the appeal filed by the accused-Ram Pal to the High Court was allowed in part by altering the conviction of Ram Pal from Section 302, IPC to 304, Part I, IPC. The High Court upheld the conviction under Section 324, IPC imposed on him. For the offences under Section 304, Part I, IPC the High Court felt that the sentence already undergone by the respondent which is about four years was sufficient thus partly allowed the appeal.

2. Against the said order of the High Court the State of Himachal Pradesh is in appeal before us.

3. In view of the short question involved in this case it is not necessary to go into the facts of the case in detail. Hence it is suffice to say that on 9th October, 1991 at about 7-8 p.m. in the village Sunhani, District Bilaspur the deceased and Hoshiar Singh, P.W. 3 went to the tea stall of the respondent and his father, Choudhary Ram to demand certain sums of money due to the deceased. It is the prosecution case that the deceased abused the accused persons by calling him "cheat" and "beiman" etc. It is also stated that after about 10 minutes the deceased came outside followed by Choudhary Ram carrying a stick. The prosecution case further alleges that P.W. 3 snatched the stick from Choudhary Ram when said Choudhary Ram was injured in his face. At that time the respondent-Ram Pal took out a knife kept with him and caused an injury on the chest of P.W. 3. Thereafter it is stated that the respondent caused two stab injuries on the back of the deceased. The further case of the prosecution is that the injured were then taken to the Hospital and at about midnight the deceased died

because of the injuries suffered by him. Based on this fact though the trial Court came to the conclusion that the offence fell under Section 302, IPC the High Court came to the conclusion that the act of the accused does not come under Section 302, IPC but would fall under Exception 4 to Section 300, IPC hence is covered by Section 304, Part-I.

4. Shri J. S. Attri, learned counsel for the State of Himachal Pradesh contended that the High Court has fell in error in coming to the conclusion that the incident in question has taken place in a sudden fight without any premeditation. He submitted that assuming that the incident has taken place in sudden fight still the offender has taken undue advantage of the fact that the deceased was unarmed. Thus, on the facts of this case it is clear that he acted in a cruel and unusual manner. Hence, the act of the respondent could not have been brought under Section 304, Part I, IPC and ought to have been under Section 302, IPC only.

5. Having perused the record for the limited purpose of finding the nature of offence, we see that it is clear from the evidence of P.W. 3 himself that he and Jaiwant consumed liquor before going to the tea stall of the respondent herein to demand the money which was due to him and when they reached there the deceased went inside the tea stall and started quarrelling with accused persons. During the said quarrel it is stated that the deceased called accused persons as "cheat" and "beiman" and the quarrel then split outside the stall at which point of time a stick that was carried by Choudhary Ram was snatched by P.W. 3, in the process Chudhary Ram got injured and fell down. Here we must notice the case of the defence is that P.W. 3 assaulted Choudhary Ram which caused him facial injury and noticing his father being assaulted the respondent intervened and assaulted P.W. 3 first with a knife and then assaulted deceased twice on his back.

6. On the facts of this case whichever version we take it is clear that it is the deceased and P.W. 3 after consuming liquor went to the tea stall of the accused. When deceased went inside and abused the accused, said verbal quarrel then spilled outside the shop when Choudhary Ram was injured on the face either intentionally or otherwise by P.W. 3. It is at that time respondent stabbed P.W. 3 and deceased. From the above facts stand proved are (a) Deceased went with P.W. 3 to the shop of accused; (b) picked up an argument during which he abused the accused; (c) Choudhary Ram was injured first and then respondent stabbed P.W. 3 and deceased; (d) injury was inflicted on the back of the deceased.

7. On the above fact we are of the opinion that the High Court was justified in altering the sentence from Section 302, IPC to Section 304, Part I, IPC. We are also in agreement with the finding of High Court that sentence of over 4 years' R.I. suffered by the respondent meets the ends of justice.

For the reasons stated, this appeal fails hence dismissed.

Appeal dismissed.