

SUPREME COURT OF INDIA

Nazar

Vs.

State of Kerala

Crl.A.No.511 of 2004

(B. N. Agarwal and Tarun Chatterjee JJ.)

02.11.2004

JUDGMENT

B. N. Agarwal, J.

1. The sole appellant was convicted by the Trial Court under Section 304 Part II of the Indian Penal Code [for short 'I.P.C.'] and sentenced to undergo rigorous imprisonment for a period of five years. Against the order of conviction, the appellant preferred an appeal before the High Court of Kerala, whereas another appeal was filed by the State of Kerala, as in its opinion the appellant should have been convicted under Section 302 I.P.C.
2. The High Court dismissed the appeal filed by the appellant, whereas allowed the appeal filed by the State and set aside the conviction of the appellant under Section 304 Part II I.P.C. and convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life. Hence, these appeals by special leave.
3. From a bare perusal of the Trial Court judgment it would appear that after taking into consideration evidence adduced in the case, it came to the conclusion that the accused had right of private defence of person and he exceeded the same. As such he was convicted under Section 304 Part II I.P.C
4. The view taken by the Trial Court could not have been said to be a perverse one so as to be interfered with by the High Court in appeal filed by the State. In our view, the Trial Court had taken a possible view under law and, therefore, the High Court was not justified in interfering with the same.
5. For the foregoing reason, the appeals are allowed, conviction and sentence of the appellant under Section 302 I.P.C. by the High Court are set aside and the same recorded by the Trial Court restored.