

SUPREME COURT OF INDIA

State of U. P.

Vs.

Murli

CrI.A.No.1084 of 1998

(H. K. Sema and Prakash Prabhakar Naolekar JJ.)

28.09.2005

JUDGEMENT

H.K.Sema, J.

1. Heard the parties.

2. Four accused, A-1 Murli respondent herein, A-2 Harish Chandra, A-3 Chandra Pal and A-4 Som Nath were put to trial before the trial court for an offence under Section 302 read with Section 34 IPC. A-3 Chandra Pal and A-4 Som Nath were acquitted by the trial court. A-1 Murli and A-2 Harish Chandra were, however, convicted under Section 302 read with 34 IPC and sentenced to R.I. for life. They preferred an appeal before the High Court against their conviction. During the pendency of the appeal, A-2 Harish Chandra expired and the appeal against him stands abated. So far the appeal preferred by A-1 Murli is concerned, the High Court accepted the evidence of the prosecution recorded by the trial court. The High Court, however, altered the conviction under Section 302 IPC into one under Section 304 Part I IPC and reduced the sentence to 7 years R.I. Aggrieved thereby this appeal by special leave is preferred by the State of U.P.

3. The prosecution story in brief is as follows:

“Harish Chandra and Lala Ram Sarup (deceased) and first informant, Roshan Lal, were three brothers. Harish Chandra had three sons, Murli respondent herein, Som Nath and Chandra Pal. There appeared to be a partition of landed property among the three brothers, namely, Harish Chandra, Lala Ram Sarup and Roshan Lal. Harish Chandra along with his sons was residing at Moradabad whereas Lala Ram Sarup and Roshan Lal were living in village Badawala within local limits of Amroha township. There was a dispute between Lala Ram Sarup on one side and Harish Chandra and his sons on the other side with regard to construction of mend in between their fields. The attempt of settlement of the dispute amicably through the intervention of the villagers had failed and the relations between the two brothers continued to be strained. It is stated that on 15.1.1988 at about 3 p.m. when deceased Lala Ram Sarup was going

towards his field and reached near the field of Pradhan Harnam Singh, Harish Chandra and his three sons suddenly appeared at the scene from their hideout. It is alleged that the accused Murli was armed with a knife, Harish Chandra with a handle of hand-pump and Som Nath with dandas in their hands attacked and over-powered Lala Ram Sarup and on exhortation of Harish Chandra, the respondent Murli gave knife blows to Lal Ram Sarup. On being raised alarm witnesses Harnam Singh, Kishan Lal, Ram Sarup and his wife Smt. Heera Devi rushed to the scene of occurrence from nearby fields whereupon the miscreants ran away. A case was registered under Section 307 IPC at 5 p.m. on 15.1.1988 itself. However, in the course of investigation Section 307 IPC was converted into Section 302 IPC. The trial court after examining the prosecution evidence threadbare including the dying declaration and testimony of the witnesses convicted the two accused as aforesaid. The deceased Lala Ram Sarup was medically examined by Dr. A.K. Jain, P.H.C., Amroha on 15.1.1988 at 4 p.m. and found the following injuries:

1. Incised wound 2.5 cm x 1 cm x muscle deep on back of left forearm, 4 cm proximal to wrist joint, oblique and pinkish.
2. Incised wound 5 cm x 3 cm on right side abdomen just right to umbilicus, bowel and omentum coming out from the wounds.
3. Abrasion 1 cm x 0.5 cm size on the front surface of lower part of left knee joint, pinkish.”

4. The Doctor opined that the injuries Nos. 1 and 2 were caused by a sharp edged weapon and injury No.3 was caused by blunt object. The Doctor further opined that injuries Nos. 1 and 3 were simple in nature and injury No.2 was described as of grievous nature and dangerous to life also. In the opinion of the Doctor the death was caused as a result of shock and haemorrhage due to antemortem injuries.

5. We noted with dismay the reasoning given by the High Court while altering the offence under Section 302 IPC into one under Section 304 Part I IPC. The High Court has agreed with all the findings recorded by the trial court. The High Court, however, considered the submission of the accused that out of three injuries sustained by the victim only injury No.2 could be fatal. The High Court was also of the view that there was no evidence of intention to commit murder of culpable homicide amounting murder. The High Court has taken this view on the ground that only one blow having been caused on vital part of the body, therefore, no knowledge that death, in all probability, shall be caused, could be assigned. This finding of the High Court, in our view, is perverse and contrary to the evidence on records. It is a clear case of the prosecution that when the deceased was going to his field he was attacked by the respondent along with other accused came out from hideout armed with knife, handle of hand-pump and with dandas in their hands. It is also in the evidence on record that the respondent herein gave a fatal blow to the deceased consequent upon which the deceased succumbed to injuries. From the analysis of the prosecution story and injury caused by the respondent, namely, injury No.2 by the knife the intention of the respondent to

murder was clearly discernible. Therefore, in our view, the reasoning recorded by the High Court is totally unjustified.

6. In the reasons afore-stated, the order of the High Court converting the offence under Section 302 IPC into one under Section 304 Part I, IPC is hereby set aside. The order of the trial court convicting the respondent under Section 302 IPC is restored. The respondent stated to have undergone the sentence of 7 years imprisonment. He shall be taken into custody forthwith to serve out the remaining part of the sentence.

7. The appeal is allowed.

Appeal allowed.