

# SUPREME COURT OF INDIA

State of U.P.

Vs.

Chatur Singh

Crl.A.No.406 of 1999

(H.K.Sema and C.K.Thakker JJ.)

17.11.2005

## JUDGMENT

### **H. K. Sema, J.**

1. Sole respondent was convicted by the trial court under Section 302 IPC and sentenced to R.I. for life for the double murder of his brother and sister-in-law with a Kulhari. The evidence on record sufficiently established that the respondent went to the house of the deceased armed with a Kulhari in his hand and hacked both of them to death one after another. Aggrieved thereby, the respondent preferred an appeal before the High Court, The High Court on the re-appreciation of the evidence maintained the conviction of the respondent. The High Court, however, converted the conviction under Section 302 IPC into one under Section 304 Part I, IPC for the first murder and sentenced him R.I. for 10 years and converted the conviction under Section 302 IPC into one under Section 304 Part II IPC with regard to the second murder and sentenced him to R.I. for seven years. Aggrieved thereby, the State preferred this appeal by special leave.

2. We have heard the counsel at length.

3. In this case apart from the other evidence on record both the trial court and High Court also relied upon the extra-judicial confession recorded by P.W. 1 Sarju Prasad who is none other than Pradhan of the village. The extra-judicial confession is marked as Ex.Ka.1. The High Court in his order referred to the Ex.Ka.1 and was of the view that it was written by the accused with a free will and almost immediately after the occurrence of the incident. The High Court was also of the view that extra-judicial confession was not made at a suggestion or dictation of any one else. The High Court was further of the view that the voluntariness and genuineness of the extra-judicial confession lends assurance to the correctness of the prosecution story. Having held, thus, the High Court went wrong. The High Court went wrong in relying the material Ex.X-6 seizure memo which has been Ex. as K.8. P.W.I Sarju Prasad and P.W.8, I.O., O.P. Dikshit have both stated that a lathi was found near the dead body and the same was seized. It is nobody's case that the accused was beaten by the said lathi seized from the place of occurrence. It is not the case of the respondent either that he

received an injury on his body. The High Court on the basis of the seizure of Ex.K.8, the lathi, was of the opinion that the seizure of the said lathi was itself shows that the deceased Nawab Singh would have assaulted the accused with a lathi and only then the respondent would have hit the deceased by a Kulhari in exercise of right of private defence. The view taken by the High Court, in our view, is far fetched. The argument that the accused acted in self-defence was considered by the trial court and it rejected in paragraph 71 of his judgment. The trial court after threadbare consideration of the evidence on record came to the conclusion that there is not an iota of evidence on record to show that there is any substance that the accused was beaten with lathi by Nawab Singh. The trial court further held that there is no evidence that the accused received any injury on his person. The accused was arrested and a Panchanama was prepared. Nowhere, it is come on evidence that the accused sustained injuries due to beating by Nawab Singh on his body. This being the established evidence on record we affirmed the view taken by the trial court and rejected far fetched view taken by the High Court.

4. That apart the accused-respondent was examined under Section 313 Cr.P.C. not even whisper in his examination that he was beaten by his brother Nawab Singh resulting into the double murder. Even assuming that we accept the defence of the respondent with regard to the first murder that is the murder of his brother Nawab Singh, the second murder that is the murder of his sister-in-law can never be said to be in the right of private defence. Woman by its feminine nature and with a feeble body, ordinarily would not pose threat or danger to life of a well bodied man with a lathi. Similarly, from the evidence on record it is clearly established that the respondent went to the house of the deceased armed with Kulhari shows his intention and premeditated notion to murder the deceased. So also the nature of murder being committed one after another, by no stretch of imagination it can be said to be in exercise of right of private defence particularly, the second murder was of the sister-in-law of the accused. The cumulative effect of the evidence on record clearly established the intention of the accused to commit the murder. No other conclusion is possible on the facts and circumstances of this case. The High Court was clearly in error in upsetting the well merited reasoning recorded by the trial court in convicting the respondent under Section 302 IPC.

5. In the premises of the aforesaid the order of the High Court is set aside and the conviction and sentence recorded by the trial court is restored. The respondent is stated to be out of the jail after serving 10 years period of sentence. He shall be taken back to the custody forthwith to serve the remaining part of the sentence. Compliance report should be sent to this Court within one month.

6. The appeal is allowed accordingly.

7. Having regard to the valuable assistance rendered by the learned amicus curiae we fix her fee at Rs.750/-.