

**SUPREME COURT OF INDIA**

Bhoopat Singh

Vs.

J.B.Kataria

CrI.A.Nos.976-977 of 2002

(B.N. Agrawal and G.S. Singhvi JJ.)

11.08.2009

**ORDER**

1. By this order we are disposing of the appeals filed by the complainant, State of U.P. and one of the three accused, namely, J.B. Katariya (hereinafter referred to as 'the appellant') against judgment dated 14.2.2002 rendered by the Division Bench of Allahabad High Court in Criminal Appeal Nos.2350 of 1997, 22 of 1998 and 1315 of 1998. The appellant was tried for offences under Sections 302 and 342 of the *Indian Penal Code, 1860* (for short 'the I.P.C.') and Sections 7 and 13 of the Prevention of Corruption Act. The other two accused, namely, Ghanshyam Sharma and Ram Narain were tried for offences under Sections 302 read with Section 34 and 342 I.P.C. The trial Court convicted the appellant under Section 302 I.P.C. and sentenced him to undergo imprisonment for life. He was further convicted under Section 342 I.P.C. and sentenced to undergo rigorous imprisonment for six months. However, he was acquitted of the charge under Section 7 read with Section 13 of the Prevention of Corruption Act. Ghanshyam Sharma and Ram Narain were acquitted of the charge under Section 302 read with Section 34 I.P.C. but were convicted under Section 323 read with Section 34 I.P.C. as also under Section 342 I.P.C and sentenced to undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

2. The accused filed two appeals (one by the appellant and the other by Ghanshyam Sharma and Ram Narain) to challenge their conviction by the trial court. State of U.P. also filed an appeal against the acquittal of the appellant under Section 7 read with Section 13 of the Prevention of Corruption Act and that of Ghanshyam Sharma and Ram Narain of the charge under Section 302 read with Section 34 I.P.C.

3. The High Court dismissed the appeal filed on behalf of the State but allowed the one filed by Ghanshyam and Ram Narain and set aside their conviction under Section 302 read with Section 34 I.P.C. and Section 342 I.P.C. So far as the appellant is concerned, the High Court allowed his appeal in-part and altered his conviction from Section 302 I.P.C. to Section 304 Part II I.P.C. and sentenced him to undergo rigorous imprisonment for two years. The High Court also directed him to pay a fine of Rs.25,000/- and in default, to undergo further imprisonment for six months.

4. Learned counsel for the parties took us through the entire evidence and made their submissions. Shri Jaspal Singh, learned senior counsel appearing for the complainant and Shri Ratnakar Dash, learned senior counsel appearing for the State of U.P. argued that charge under Section 302 I.P.C. was established against the appellant beyond any pale of doubt and the High Court committed serious error by converting his conviction from one under Section 302 I.P.C. to Section 304 Part II I.P.C. Shri Jaspal Singh emphasized that the appellant's case falls under clause III of Section 300 inasmuch as he had inflicted as many as 18 injuries on the person of the deceased and the same were sufficient to cause death in the ordinary course of nature. Learned counsel submitted that after arresting the deceased Virendra Singh in a false case registered under Section 307 I.P.C., the appellant mercilessly assaulted him while in custody and inflicted injuries on different parts of his body which were sufficient to cause death in the ordinary course of nature. Shri Jaspal Singh made a pointed reference to paragraph 6 of the statement of Dr. C.N. Shukla (PW-8) and argued that in view of unequivocal assertion of the witness that the injuries inflicted on the person of the deceased were sufficient to cause death, the High Court was not justified in altering the appellant's conviction from Section 302 I.P.C. to Section 304 Part II I.P.C. Both, Shri Jaspal Singh and Shri Ratnakar Dash argued that even if this Court comes to the conclusion that the High Court has rightly altered the conviction of the appellant, the sentence of 2 years of imprisonment awarded to him is wholly disproportionate to the seriousness of the crime and, therefore, the same should be suitably enhanced. Shri S.C. Birla, learned senior counsel appearing for the appellant pointed out that none of the 18 injuries found on the person of the deceased was on the vital part and submitted that the appellant only wanted to teach a lesson to the deceased because he had assaulted a man in uniform and the High Court did not commit any error by convicting him under Section 304 Part II I.P.C. He then argued that sentence awarded by the High Court may not be enhanced because the appellant has already reached the age of 64 years and he suffered burn injuries while he was posted in Varanasi District. In support of this argument, learned senior counsel placed before the Court affidavit dated 3.8.2009 of the appellant which is accompanied by certificate dated 30.7.2009 issued by Medical Officer, CMO Office, Allahabad.

5. We have considered the respective submissions and carefully scrutinized the entire record. There is no dispute that the deceased was taken into custody on the accusation of committing an offence under Section 307 I.P.C. and he died while in police custody. Both, the trial Court and High Court have concurrently held that the appellant had inflicted injuries on the person of the deceased. While the trial Court, on a detailed analysis of the evidence came to the conclusion that charge under Section 302 I.P.C. is made out against the appellant, on a re-appreciation of the evidence, the High Court opined that the appellant's conviction under Section 302 I.P.C. is not sustainable and that he was guilty of offence under Section 304 Part II I.P.C.

6. In the context of the argument of learned counsel for the complainant and the State that the statement of Dr. C.N. Shukla (PW-8) who along with Dr. Singhal conducted post-mortem on the body of the deceased is sufficient for convicting the appellant under Section 302 I.P.C. and the High Court gravely erred in altering his conviction from Section 302 to Section 304

Part II I.P.C., it is apposite to mention that in his examination-in-chief itself PW-8 made apparently conflicting statements. In paragraph 3 Dr. Shukla stated, in our opinion, the death of the deceased may have been caused due to ante-mortem injuries, bleeding and shock. In paragraph 6, Dr. Shukla opined that the injuries on the body of the deceased could be caused by lathi and that ante-mortem injuries were ordinarily sufficient to cause death. In view of this, it is not safe to rely on the testimony of PW-8 for recording a firm conclusion that injuries inflicted by the appellant were sufficient to cause death in the ordinary course of nature and the High Court cannot be said to have erred in altering the appellant's conviction from Section 302 to Section 304 Part II I.P.C.

7. However, we are convinced that the High Court committed serious error in awarding sentence of 2 years imprisonment only to the appellant. Though, it may appear repetitive, we consider it necessary to mention that the appellant had taken undue advantage of his position as a police officer and mercilessly assaulted the deceased while he was in police custody. As many as 18 injuries were inflicted on the person of the deceased. There was internal bleeding in at least 5 injuries. The appellant whose duty was to protect life and property of the public had, instead, caused death of a young person, aged 20 years. Therefore, notwithstanding, the fact that the incident had taken place 22 years ago and the appellant is now 64 years of age, we are of the view that the sentence awarded to the appellant deserves to be suitably enhanced. The affidavit and certificate produced by the learned senior counsel for the appellant cannot be relied upon for approving the sentence awarded by the High Court because the same appears to have been procured by the appellant at the last moment to earn sympathy of the Court. Taking into consideration the totality of circumstances, we feel that ends of justice will be met by enhancing the sentence awarded to the appellant from 2 years to 5 years.

8. Accordingly, Criminal Appeal Nos.976-977 of 2002 and Criminal Appeal Nos.980-981 of 2002 are partly allowed and the sentence of imprisonment awarded to the appellant by the High Court is enhanced from 2 years to 5 years imprisonment. Criminal Appeal No.978 of 2002 is dismissed. Bail bonds of the appellant, J.B. Katariya are cancelled and he is directed to be taken in custody forthwith to serve out the remaining period of sentence.