

**SUPREME COURT OF INDIA**

Sharad

Vs.

State of Maharashtra

Crl.A.No.1934 of 2009

(K.G. Balakrishnan CJI., Tarun Chatterjee and Dr. B.S. Chauhan JJ.)

23.10.2009

**ORDER**

Leave granted.

1. The appellant herein was tried by the Ist Adhoc Additional Sessions Judge, Wardha for the offence punishable under Section 302 and was sentenced for undergoing life imprisonment with a fine of Rs.1,000/- in default to suffer rigorous imprisonment for one month.

2. The appellant then filed an appeal before the High Court and the same was dismissed by the High Court. The appellant preferred this appeal and at the time of issuing notice we have indicated that the appeal is only confined to the question of nature of the offence.

Heard both sides.

3. Learned counsel for the appellant contends that the appellant was a young man aged about 20 years at the time of the incident; and there was no pre-mediation or serious intention to kill the deceased. Appellant had a quarrel with one Mukesh in which one Manoj Kashyap and one Sanjay Pande intervened and separated them each other. Thereafter the accused went from the place of incident and he met Mukesh later and it appears that there was a quarrel thereafter and the accused caused injury to Mukesh and he died. The injury was on the left side of the chest near sternum between 3<sup>rd</sup> and 4<sup>th</sup> rib. There is also another injury which is superficial in nature.

4. Learned counsel for the appellant contends that there is only one injury and that too pursuant to the altercation and there is no evidence to show that there was any previous enmity or not. The appellant's contention is that the offence committed does not amount to murder. Going by the injury sustained by the deceased and having regard to the entire facts and circumstances of the case, in our opinion, the offence committed by the appellant, at the most, comes under Part -I of Section 304 I.P.C. We, therefore, set aside the conviction of the appellant under Section 302 I.P.C. and find him guilty under Section 304 Part-I of IPC and sentence him to undergo imprisonment for 10 years. The appellant will undergo the remaining period of sentence.

5. The appeal is disposed of accordingly.