

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Prakash @ Gajendra

CrI.A.No.1246 of 2015

(Kurian Joseph and Arun Mishra,JJ.,)

23.09.2015

## JUDGMENT

**Arun Mishra,J.,**

1. Heard learned counsel for the parties.

2. Leave granted.

3. On being aggrieved by the judgment and order dated 29.5.2013 passed by the High Court of Judicature for Rajasthan at Jodhpur, the appeal has been preferred by the State of Rajasthan. The trial court has convicted the respondent for commission of an offence under section 302 and section 458 IPC and sentenced to life imprisonment with a fine of Rs.2,000/- and RI for seven years and a fine of Rs.1,000/- respectively for the aforesaid offences. While maintaining conviction and sentence under section 458 IPC, the High Court has altered conviction from section 302 to section 304 Part II and sentenced him to the period already undergone, i.e. 8 years and 7 months.

4. The prosecution case, in short, is that on 22.10.2004 Prakash Salvi inflicted injuries on deceased Mahendra by knife. On raising a hue and cry, Naresh, Adesh, Mukesh and Tej Singh Balla reached the spot and took Mahendra to hospital. On 27.10.2004, the deceased succumbed to his injuries and the offence was converted to section 302/458 IPC from sections 307/324/458IPC.

5. The High Court in the impugned judgment has observed that death was not caused immediately. The incident took place on 22.10.2004 whereas death took place on 27.10.2004. The dying declaration was recorded by the Police and not by the Magistrate and a careful scrutiny of the evidence makes it clear that it is a case of culpable homicide not amounting to murder. As such, the conviction has been altered from section 302 to section 304 Part II IPC.

6. We have heard learned counsel for the parties at length. The only discussion with respect to conversion of the offence from section 302 to section 304 Part II IPC is at page 9 of the impugned judgment. The relevant portion of the judgment is quoted below :-

“Further, we have examined the factual aspect of the matter and found that the injuries upon the body of the deceased were although serious in nature but death was not immediately caused because occurrence took place on 22.10.2004 and injured died on 27.10.2004 during which statement of the deceased was recorded by the police and not by the Magistrate. Therefore, our opinion is that the prosecution has proved its case with regard to the occurrence but careful scrutiny of the entire evidence makes it clear that it is a case of culpable homicide not amounting to murder. Therefore, convicting of the appellant for offence under section 302, I.P.C. is not sustainable in the eye of law. The case against the accused-appellant does not travel beyond offence under Section 304 Pt.-II, I.P.C.”

7. It is crystal clear that the High Court has not considered the evidence, neither the nature of injuries nor method and manner in which they were inflicted. The High Court has also not considered the aspect whether the accused intended to inflict injuries so as to cause the death. Even the circumstances to take the case out of the purview of section 302 have also not been discussed by the High Court. Simpliciter, it has been observed that a careful scrutiny of the entire evidence has been made but we find from the judgment that no such exercise has been done. Mere statement in the judgment to that effect is not enough. Evidence is not only required to be mentioned in the judgment but its evidentiary value has to be assessed carefully. No such exercise has been made.

8. Thus, we have no hesitation to set aside the judgment and order passed by the High Court. While allowing appeal, we remit the matter to the High Court to decide the same again after hearing the parties in accordance with law. It is made clear that we have not expressed any opinion on the merits of the case. The High Court is required to reconsider the matter in accordance with law and to decide the appeal de novo after hearing the parties. The respondent-accused shall remain on bail for a period of four weeks from the date of the judgment during which time he will be free to apply to the High Court for regular bail.