

# SUPREME COURT OF INDIA

Shahajan Ali

Vs.

State of Maharashtra

Crl.A.No.458-459 of 2014

(L.Nageswara Rao and Navin Sinha,JJ.,)

23.05.2017

## JUDGMENT

### **L. Nageswara Rao,J.,**

1. The Appellant in Criminal Appeal No.430 of 2014 was convicted for an offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and sentenced to life imprisonment. The Appeal preferred by him was dismissed by the High Court. The Appellants in Criminal Appeal Nos.458-459 of 2014 who were tried along with the Appellant in Crl. Appeal 430 of 2014 were acquitted by the Trial Court. Their acquittal was challenged by the State and the wife of the deceased before the High Court. The High Court reversed the acquittal and convicted them under Section 302 and sentenced them to life imprisonment. Aggrieved by the judgment of the High Court, the Appellants have filed the above Appeals.

2. An FIR was registered at 11:45 am on 11.01.2010 on the basis of statement given by Sadiq Hussain Majloom Jafri (PW-3). As per the FIR, Sarfraj Akbar Syyed who was a resident of Jamkhed, District Ahmednagar was eking out his livelihood by selling goggles and spectacles. Sadiq Hussain Majloom Jafri (PW-3) along with his cousin Jafar Ali (PW-4) reached Ahmednagar at 10:00 am on 09.01.2010. They spent the whole day selling goggles at Ahmednagar and spent the night in a hotel. They continued their activity of selling goggles during the day time on 10.01.2010 also. On the night of 10.01.2010, they were joined by their maternal uncle Sarfraj and all of them stayed at a lodge. At 09:00 am PW-3, PW-4 and Sarfraj reached Chaudhari Dhaba at Nagar Manmad road, Tal. Nagar, Ahmednagar. They made an attempt to sell the goggles to the truck drivers at the dhaba, in vain. They sat on a cot in front of the dhaba and were having tea. The Appellants reached the dhaba and asked Sarfraj to step aside as they wanted to speak to him. Sarfraj went with the Appellants to the rear side of the dhaba. After some time PW-3 and PW-4 heard abuses and shouts from the back side of dhaba and they rushed to see what was happening. They saw Sigva Ali (A-4) and Javed Ali (A-3) catching hold of the hands of Sarfraj. Sikandar Ali (A-1) attacked Sarfraj with a knife on the left side of his neck. They also saw Shahajan Ali (A-2) abusing Sarfraj

and assaulting him by giving him fist blows. PW-3 and PW-4 started shouting for help and caught hold of A-1 and A-2 not permitting them to escape. A-3 and A-4 ran away from the spot. PW-7 who was working at the dhaba also witnessed the incident. On receipt of information, the police reached the place of occurrence within half an hour. A-1 and A-2 were taken into custody by the police. PW-3 and PW-4 took Sarfraj to the Civil Hospital, Ahmednagar in an auto rickshaw. At 11:30 am, the doctor examined Sarfraj and declared him dead. Thereafter, PW-3 and PW-4 went to the MIDC Police Station and reported the incident.

3. The Post-mortem was conducted by Dr. Sandhya Deorao Chavan (PW 8) at the Civil Hospital, Ahmednagar at 2.30 pm. The external injury found on the dead body was described as follows in the post-mortem certificate issued by PW 8 :-

"1/- Deep incised wound on left side of neck at corotidregion, horizontal, slightly curved laterally 3" length, 1" in breadth and 2.1/2" in depth. Deeper on lateral aspect than medical aspect. Edges are well defined clean and everted and deeply stained. Sprouting of blood seen on left side of chest, shoulder and back. Carotid vessel torn and retracted on left side."

4. The cause of death was haemorrhage shock due to rupture of right carotid vessel. Charge-sheet was filed against all the four accused and thereafter charges were framed for an offence punishable under Section 302 read with Section 34 IPC. The Trial Court convicted the Appellant in Criminal Appeal No. 430 of 2014 for an offence punishable under Section 302 and sentenced him to life imprisonment. The other accused who are Appellants in Criminal Appeal Nos. 458-459 of 2014 were acquitted by the Trial Court. As stated earlier, the conviction and sentence of the Appellant in Criminal Appeal No. 430 of 2014 was confirmed by the High Court. The acquittal of the Appellants in Criminal Appeal Nos. 458-459 of 2014 was reversed by the High Court and they were convicted under Section 302 IPC and sentenced to life imprisonment.

5. The deceased Sarfraj was having a shop at Jamkhed where he was selling goggles. He was the maternal uncle of PW-3 who is also in the same business. PW-3 was being helped by the deceased for selling goggles in the Ahmednagar area. The case of the prosecution is that there was rivalry between the accused and the deceased as they were in the same business. PW-3, PW-4 and PW-7 deposed that at 10:00 am the deceased, PW-3 and PW-4 reached Chaudhari dhaba at Nagar Manmad road and were having tea. All the accused reached the dhaba and took the deceased behind the dhaba saying that they wanted to speak to him. There is evidence on record to show that the deceased was attacked by Sikandar Ali (A-1) with a knife and the other accused assisted him in the attack. Sikardar Ali (A-1) and Shahjahan Ali (A-2) were caught and handed over to the police at the spot. Though PW-3 and PW-4 were related to the deceased, their evidence is credible and trustworthy. The oral testimony of PW-7 who was working at the dhaba is consistent with the version of PW-3 and PW-4. The medical evidence of PW-8 corroborates the oral testimonies. We are in agreement with the findings recorded by the Trial Court that the death of Sarfraj is homicidal in nature. We also do not find fault with the finding recorded by the Trial Court that the death of

Sarfraj was caused due to the injury caused by Sikandar Ali (A-1). We find no fault with the judgment of the High Court in confirming the findings of the Trial Court that Sikandar Ali is guilty of causing the death of Sarfraj.

6. The Trial Court acquitted accused 2 to 4 on the ground that the only role that was attributed to them by PW-3 and PW-4 was that they caught hold of the hands of the deceased during the attack. The Trial Court further held that though the presence of the Appellants in CrI. Appeal Nos.458-459 of 2014 was proved there was no evidence to prove the common intention of these accused along with A-1. The Trial Court also held that there was no evidence to show that the attack was pre-meditated. In the appeals against acquittal, the High Court held that there was a common intention on the part of A-1 to A-4 to eliminate Sarfraj. The High Court further held that A-2 to A-4 assisted A-1 to cause injury to the deceased, and, thus, were liable to be punished for the homicide. On the basis of the said findings, the High Court convicted A-2 to A-4 under Section 302 IPC and sentenced them to life imprisonment.

7. We have no doubt about the complicity of all the accused in the homicide of Sarfraj. A-1 attacked the deceased with the knife and caused injury on his neck which resulted in his death. The other accused assisted him in committing the crime by holding the hands of the deceased. However, the only question that falls for our consideration is whether the accused are liable to be punished for an offence under Section 302 IPC. After considering the submissions made by the counsel for the Appellants and scrutinising the material on record, we are of the opinion that the accused are not liable to be convicted under Section 302 IPC. We are convinced that there was neither prior concert nor common intention to commit a murder. During the course of their business activity the accused reached the dhaba where the deceased was present. An altercation took place during the discussion they were having behind the dhaba. That led to a sudden fight during which A-1 attacked the deceased with a knife. Exception 4 to Section 300 is applicable to the facts of this case. As we are convinced that the accused are responsible for the death of Sarfraj, we are of the opinion that they are liable for conviction under Section 304 part II of the IPC. We are informed that A-1 has undergone a sentence of seven years and that A-2 to A-4 have undergone four years of imprisonment. We modify the judgment of the High Court converting the conviction of the accused from Section 302 to Section 304 part II of the IPC sentencing them to the period already undergone. They shall be released forthwith.

8. The Appeals are disposed of accordingly.