

# SUPREME COURT OF INDIA

Ananta Kamilya

Vs.

State of West Bengal

CrI.A.No.1930 of 2019

(Ashok Bhushan and M.R.Shah,JJ.,)

07.01.2020

## JUDGMENT

**M.R.Shah,J.,**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 14.03.2017 passed by the High Court of Calcutta in Criminal Appeal No. 8 of 2013, by which the High Court has dismissed the said appeal preferred by the appellant-accused and affirmed the conviction of the accused for the offence punishable under Section 302 of the Indian Penal Code (for short 'the IPC'), the convicted accused has preferred the present appeal.

2. At the outset, it is required to be noted that this Court issued limited notice in the present appeal so as to consider whether the case would fall under Section 304 IPC.

3. Learned Counsel appearing on behalf of the accused has vehemently submitted that there was no intention on the part of the accused to cause the very injury which ultimately led to the death of the deceased.

3.1 It is further submitted by the learned Counsel appearing on behalf of the appellant that there was a single injury inflicted on the deceased after some altercation. It is submitted that there was no premeditation or intention to kill. It is submitted that even the accused did not bring any weapon/lathi and on the spur of the moment and during the altercation, he caused the injury on the deceased by lathi which was lying there. It is submitted that therefore the offence committed does not amount to murder in view of Exception 4 to Section 300 IPC. It is further submitted by Learned Counsel appearing on behalf of the accused that even the deceased was taken to different hospitals and he died after a period of seven days. Making above submissions it is prayed to set aside the conviction for the offence punishable under Section 304 IPC and to convert the same into either Section 304 Part I or Section 304 Part II of the IPC.

4. Ms. Soumya Chakraborty, Learned Senior Advocate appearing on behalf of the respondent-State while supporting the impugned judgment and order passed by the High Court has vehemently submitted that the injury caused by the accused has been proved to be fatal. It is submitted that even in the case of a single blow, considering the nature of the injury and if the single blow is caused on the vital part of the body, it would be a case under Section 302 IPC considering Exception 4 to Section 300 IPC. Therefore, it is prayed to dismiss the appeal.

5. Heard learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that the only question which is posed for consideration of this Court is whether in the facts and circumstances of the case, the case would fall under Section 302 IPC or Section 304 of the IPC? From the perusal of the record and even the findings recorded by the learned Trial Court and the High Court, it appears that the incident has taken place on the spur of the moment. It has also come on record that when the accused came to the place of the incident, he did not carry any lathi and/or any other weapon. It was only after some altercation and on the spur of the moment, the accused gave a lathi blow on the head of the deceased and the deceased sustained the injury and there was a fracture on his head. Despite fracture injury on his head, the deceased was conscious. The deceased was first taken to the police station. Thereafter, he was taken to Patashpur Public Health Center; thereafter he was taken to another hospital - Egra Hospital for better treatment; thereafter he was transferred to Midnapur (Paschim) Hospital; thereafter he was shifted to P.G. Hospital, Kolkata. After a few days, he was removed to Ramchandra Bhanja Medical College, Cuttack, Orissa and thereafter he died.

6.1 The aforesaid shows the gravity of injury. It is true that the deceased died because of the injuries caused by the accused. However, as observed above, the incident had taken place on the spur of the moment and after some altercation the accused took the lathi which was lying there and caused the injury on the head of the deceased. There does not appear any intention on the part of the accused to cause the very injury which ultimately led to the death of the deceased. There does not appear to be any premeditation or intention to kill the deceased. The death resulted due to injury in quarrel. Therefore, the case would fall under Exception 4 to Section 300 IPC.

6.2 Going by the injury sustained by the deceased and having regard to the 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 IPC. The offence committed does not amount to murder.

7. In view of the reasons stated hereinabove, we set aside the conviction of the appellant under Section 302 IPC and find him guilty under Section 304 Part I IPC and sentence him to undergo imprisonment for 10 years. The appellant shall undergo the remaining period of sentence. The appeal is partly allowed to the aforesaid extent.