State Of U.P vs Indrajeet @ Sukhatha on 25 August, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3158, 2000 AIR SCW 3414, 2000 SCC(CRI) 1338, (2000) 9 JT 426 (SC), 2000 (6) SCALE 101, 2000 (7) SCC 249, 2000 CRILR(SC&MP) 736, 2000 CRILR(SC MAH GUJ) 736, 2000 (8) SRJ 222, (2000) 2 ORISSA LR 618, (2000) 3 CURCRIR 135, (2000) 5 SUPREME 723, (2001) SC CR R 60, (2000) 3 EASTCRIC 1042, (2000) 4 PAT LJR 226, (2000) 29 ALLCRIR 2197, (2000) 6 SCALE 101, (2001) 1 UC 1, (2000) 41 ALLCRIC 563, (2000) 3 CRIMES 184, 2000 (2) ANDHLT(CRI) 216 SC, (2000) 2 ANDHLT(CRI) 216

Bench: Doraswamy Raju, M.Jagannadhi Rao

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
INDRAJEET @ SUKHATHA

DATE OF JUDGMENT: 25/08/2000

BENCH:
Doraswamy Raju, M.Jagannadhi Rao

JUDGMENT:

Raju, J.

Special leave granted. The State of Uttar Pradesh has come up in appeal against the judgment dated 13.2.98 of the Division Bench of the Allahabad High Court in Criminal Appeal No.1299 of 1991 altering the conviction of the respondent from one under Sections 307 and 302, IPC, into one under Sections 302 and 304 Part-II substituting, as a consequence thereof, the sentence of five years R.I. and life imprisonment under Sections 307 and 302, IPC, respectively with five years R.I. and ten years R.I. The case of the prosecution is that the respondent, a Carpenter by profession, at about 4 a.m. in the morning of 14.9.1988 entered the Jhopri (hut) of one Hori Lal, PW-2, who gave the first information with reference to the occurrence and is said to be the father of the deceased, and started assaulting Km. Phoolmati, the victim, with a rukhani (an implement normally used by the Carpenters). She raised an alarm on which PW-2 and Kalawati, PW-1, the mother of the victim, woke up and tried to intervene, but in the process the respondent gave some blows to them as well and after throwing away the rukhani he ran away from the place. The respondent was identified in

the light of a burning lamp and on lodging a complaint at 5.15 a.m., the Police arrived at the scene of occurrence. The victim was taken to Ursala Hospital but was said to have succumbed to her injuries by the time she reached the Hospital. PWs-1 and 2 were also medically examined at 6.00 a.m. by PW-3, Dr. P.N. Bajpai. PW-6, S.S.I., incharge of the Police Station at Juhi when the FIR was lodged, commenced investigation of the case and after examining in the course of the investigation and recording statements of PWs-1 and 2 in the Emergency Ward of the Hospital, took possession of the blood stained clothes of PW-1 and prepared its seizure memo. Thereafter, he visited the scene of occurrence also with PW-1 and thereupon prepared a site plan. He found blood lying on the spot and took plain and blood stained earth from the place of occurrence. An inquest on the body of the dead person was also held by Radhey Shyam Verma, who was deputed to hold the inquest on the body at the Hospital. A post-mortem was got conducted. Initially, the respondent was absconding resulting in the Report submitted for initiating proceedings under Sections 82 and 83, Cr.P.C. After completing the investigation, a charge sheet was filed in the Court and the Magistrate, who entertained the charge sheet, took cognisance of the offence and committed the case to the Court of Sessions.

The learned Sessions Judge, after framing the charges against the accused-respondent under Sections 307 and 302, IPC, who pleaded not guilty and claimed to be tried, examined the prosecution witnesses, nine in number, including two eye-witnesses, PWs-1 and 2. The respondent in his statement under Section 313, Cr.P.C., denied the case of prosecution and submitted that he had been falsely implicated on account of enmity and has not chosen to lead any evidence in support of his defence. The learned Sessions Judge believed the prosecution story and the version of the witnesses examined in support thereof and ultimately by his judgment dated 14.5.91 held that the prosecution has proved beyond reasonable doubt the guilt of the accused under Sections 302 and 307, IPC. After hearing on the point of sentence, the learned Sessions Judge imposed a punishment of five years R.I. under Section 307, IPC, and life imprisonment for the offence under Section 302, IPC. Both the sentences were to run concurrently.

Aggrieved, the accused respondent pursued the matter in appeal before the High Court and as noticed earlier, the High Court, while affirming the conviction of the accused under Section 307, IPC, chose to interfere in favour of the respondent by altering the conviction under Section 302, IPC, into one of Section 304 Part-II, IPC, by reducing also the life imprisonment to ten years R.I., while maintaining the sentence imposed under Section 307 and ordering the sentences to run concurrently. In coming to such a conclusion, the learned Judges of the High Court, though observed that the FIR has been lodged without delay and the presence of the two eye-witnesses, PWs-1 and 2, at the scene of occurrence, cannot be doubted in any manner they having also received injuries in the course of the occurrence and that their version about the assault on them with the same weapon with which the respondent assaulted the deceased found complete corroboration from the medical record and the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death, ultimately held that the prosecution evidence did not prove any motive as such. The learned Judges of the Division Bench also were of the view that the `Rukhani used in the process of inflicting injuries on the victim `cannot be called a weapon and proceeded further to observe that if the appellant wanted to commit the murder of Km. Phoolmati, he could have used a regular weapon which is capable of causing more serious injuries. The learned Judges

further adverted to the fact that the deceased sustained only two incised wounds out of which one only was deep and that it was due to cutting of carotid artery and clavicle vein under Injury No.1 that the deceased died and held that the case, therefore, did not fall under clause thirdly of Section 300, IPC, and consequently the offence committed by the respondent would fall only under Section 304 Part-II, IPC.

The accused-respondent accepted the judgment in that he has not chosen to proceed further by way of challenge. The learned counsel for the appellant-State strenuously argued that the reasons assigned by the High Court to alter the conviction on the alleged absence and proof of motive and the type of weapon used and the nature of injuries found inflicted which resulted in the death of the victim, do not properly accord with or conform to the evidence on record and that even the relevant principles for attracting Section 302, IPC, to the case on hand have been given a complete go-by. The learned counsel for the appellant at length brought to our notice the manner of consideration given by the High Court as well as the Sessions Court to support his claim. The learned counsel for the accused-respondent, after elaborately arguing the matter and inviting our attention to the judgment and the materials on record, submitted that no interference is called for in this appeal since the findings of fact, on which the High Court has chosen to alter the nature of conviction, are well-merited on the materials on record and no case has been made out by the appellant-State for any interference.

We have carefully considered the submissions of the learned counsel appearing on either side and we are of the opinion that except for certain inappropriate language used to express the conclusions of the High Court, the learned Judges could not be held to have committed any serious or grave error of law of great importance or that it could be legitimately contended for the appellant-State that in altering the conviction under Section 302, IPC, into one of Section 304 Part-II, on an appreciation of the evidence on record, any grave injustice has been caused. On the facts and circumstances of the case, we do agree with the claim on behalf of the appellant that there is no such thing as a regular or earmarked weapon for committing murder and that it would have been more proper to have used a better terminology and language to identify the weapon used by the accused, a Carpenter by profession himself, and the same being nothing but an implement used in carpentry, to be not really such a `deadly weapon so as to cause, per se, any serious wound or a grievous hurt or injury to the victim. It is also not in dispute that of the two injuries found inflicted on the body of the victim, only one was found to be a serious one, which was considered in the normal course to be sufficient to cause death. Though the intrusion into the hut by the respondent in the early hours of the morning may be construed to be with a sinister intention or purpose, but from the type of the weapon he was carrying, it could not be either reasonably or legitimately postulated that it was with the intention of committing the murder of the victim or inflicting upon the victim such a grave/serious injury sufficient to cause her death, particularly when he would be fully aware of the fact that in the hut the father and the mother of the deceased would also be present at that time. If the observation of the Division Bench of the High Court is viewed in this context giving due allowance or lenience to the not too happy language used and consider the gravamen of the charge and sum and substance of the evidence placed on record, the inevitable consequence which follows should be that apart from any positive motive being either attributed in this case, or alleged or proved by the prosecution, there is no clinching circumstance or evidence to reasonably establish

the culpability of the accused for a charge of murder. Absence of intention to cause the death coupled with the lack of knowledge that death would be inevitably caused on account of the injury would make the offence fall only under Section 304 Part-II, IPC, and not under Section 302, IPC. Consequently, in the absence of any motive or intention to kill and having regard to the type of weapon used and the number as well as the nature of injuries found inflicted, the case on hand could not appropriately be said to be one warranting the application of Section 302, IPC. The High Court has chosen to also impose the maximum punishment of ten years. That apart, we find no important principle of law is involved and no grave impropriety would result nor injustice would be caused in sustaining the judgment of the High Court. The High Court, therefore, in our view, was justified in converting the conviction of the respondent by altering the same into one under Section 304 Part-II, IPC, instead of Section 302, IPC.

For all the reasons stated above, we see no merit in this appeal. The appeal, therefore, fails and shall stand dismissed, accordingly.