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SANKATH PRASAD

v.

STATE OF UTTAR PRADESH

(Criminal Appeal No. 50 of 2020)

B

JANUARY 10, 2020

**[DR. DHANANJAYA Y CHANDRACHUD AND
HRISHIKESH ROY, JJ.]**

Penal Code, 1860 – s.302 and s.304 Part-I – Conversion of

- C *conviction u/s. 302 IPC to s.304 Part-I IPC – Held: The facts, as they have emerged from the record, indicate that the incident had taken place on the spur of the moment and was a fallout of an altercation over the excavation of a mound by the brother of the appellant – This was objected to by the complainant – The altercation resulted in the appellant going into his house and bringing out a country made pistol – The son of the complainant - who is the deceased - intervened in the course of the altercation and was fired at resulting in a single fire arm injury leading to his death – Considering the circumstances of the case, the conviction u/s. 302 IPC converted to one u/s. 304 Part-I.*
- D *country made pistol – The son of the complainant - who is the deceased - intervened in the course of the altercation and was fired at resulting in a single fire arm injury leading to his death – Considering the circumstances of the case, the conviction u/s. 302 IPC converted to one u/s. 304 Part-I.*

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The complainant noticed brother of the appellant getting a mound dug on a disputed plot. The appellant intervened in the altercation and there was an exchange of words. The appellant rushed to his house and returned with a country made pistol. The son of the complainant caught hold of the appellant from behind and got shot by the appellant. The son of the complainant succumbed to his injuries. The appellant was convicted u/s. 302 by the Additional Sessions Judge. The High Court dismissed the appeal filed by the appellant. Hence, the present Criminal Appeal.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 50 of 2020.

G

From the Judgment and Order dated 05.09.2017 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2546 of 1987.

Nirmal Kumar Ambastha, Ms. Ashmita Bisarya, Advs. for the Appellant.

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Vishnu Shankar Jain, Shreyas Agrawal, Advs. for the Respondent. A

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment and order of a Division Bench of the High Court of Judicature at Allahabad dated 5 September 2017. The High Court, by its decision, dismissed Criminal Appeal No 2546 of 1987 filed by the appellant in order to challenge his conviction of an offence under Section 302 of the Indian Penal Code 1860¹ by the IIIrd Additional Sessions Judge, Fathepur in Sessions Trial No 59 of 1986. C
The appellant was sentenced to imprisonment for life. B

3. The incident in question is alleged to have taken place at 8.45 am on 25 August 1985. Gaya Prasad (PW 1), who is the complainant, was returning home after answering a call of nature. When he reached the disputed plot while passing through the Chak road, he noticed that Durga Prasad, the brother of the appellant, was getting a mound dug with the help of two labourers, one of whom was Ram Nath (PW 2). When the complainant objected, Durga Prasad is alleged to have stated that he was not committing any wrong. At that point, the appellant intervened in the altercation and there was an exchange of words. The appellant rushed to his house and returned with a country made pistol. While he was aiming a shot at the complainant Gaya Prasad (PW 1), Uma Shanker, the son of the complainant, caught hold of the appellant from behind. The appellant managed to free himself and shot Uma Shanker who fell down as a consequence of a fire arm injury. Uma Shanker succumbed to his injuries. F
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4. The eye-witness account of the occurrence was based on the depositions of the complainant Gaya Prasad (PW 1) and Ram Nath (PW 2). Both these witnesses deposed about the incident. Both the Sessions Court and, in appeal, the High Court have relied upon the evidence of PWs 1 and 2. Taking cognizance of the fact that PW 1 is a father of the deceased, the High Court, on a careful evaluation of his testimony, found no reason to discredit his account. The High Court held that the presence of PW 1 was natural, having regard to the time and place of the incident. Moreover, PW 1 did not implicate Durga Prasad in G

¹ IPC H

- A the crime despite his presence which was an indicator of the fact that he had given a truthful account of the actual incident. The ocular evidence was supported by the medical evidence and by the evidence of the doctor (PW 4) who opined that the ante-mortem injury could have been caused by a gun. The post mortem report indicated one fire arm injury, in the following terms:
- B "One fire arm wound of entry 1" x 1" x chest cavity deep on the sternum 3" from the right nipple at 3 o'clock position. The margins were inverted and lacerated. There was blackening and tattooing around the wound. The direction of the injury was from front to back.
- C He found one pellet from inside the dead body of Uma Shankar."
- D On this state of evidence, the nature of the incident has been duly established. The presence of the appellant and the role of the appellant in the incident has emerged from the evidence on record.
- E 5. While entertaining the Special Leave Petition on 18 May 2018, this Court noted the submission of the appellant that even if the entire evidence is to be accepted to be correct, the present case may fall under Section 304 IPC. In pursuance of the notice issued by this Court, the State of Uttar Pradesh has entered appearance and a counter affidavit has been filed.
- F 6. The facts, as they have emerged from the record, indicate that the incident had taken place on the spur of the moment and was a fall out of an altercation over the excavation of a mound by the brother of the appellant. This was objected to by the complainant Gaya Prasad (PW 1). The altercation resulted in the appellant going into his house and bringing out a country made pistol. The son of the complainant – deceased Uma Shanker intervened in the course of the altercation and was fired at, resulting in a single fire arm injury leading to his death.
- G 7. Having regard to the circumstances of the case, we are of the view that the conviction under Section 302 of the IPC should be converted to one under Section 304 Part I. We accordingly hold the appellant guilty of an offence under Section 304 Part I of the IPC and sentence him to imprisonment for a term of ten years.
- 8. The appeal is allowed in the above terms.