

PAPPI @ MEHBOOB

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v.

STATE OF RAJASTHAN

(Criminal Appeal No. 497 of 2009)

FEBRUARY 05, 2019

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[A. M. KHANWILKAR AND AJAY RASTOGI, JJ.]

Penal Code, 1860 – s.302 – One ‘G’ was assaulted with swords by seven persons – ‘G’ succumbed to injuries – Five accused including appellant were tried together while two were absconding – Appellant alone was convicted for offence punishable u/s.302, IPC simpliciter – On appeal, held: Finding of guilt recorded by the Trial Court against the appellant and affirmed by the High Court is a possible view and needs no interference – Merely because the appellant alone was convicted for the stated offence simpliciter u/s.302, while the other co-accused were acquitted, it does not follow that the appellant should be given the benefit of doubt despite the clinching evidence on record to establish his guilt and involvement in the commission of offence – Erroneous finding in favour of other co-accused would be of no avail to the appellant whose name and role was clearly mentioned in the FIR as also by the witnesses PW-6 and PW-9 whose credibility remained unshaken – Appellant gave the first blow with sword, whereafter the other accused followed and repeatedly assaulted deceased – There is direct evidence to establish the role of the appellant in the commission of offence – Acquittal of the co-accused by giving benefit of doubt, by itself can be no ground to discard the otherwise reliable evidence which has remained unshaken – No fault can be found with the impugned judgment affirming the finding of guilt against the appellant alone, amongst the five accused tried together.

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Dismissing the appeal, the Court

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HELD: 1.1 The finding of guilt recorded by the Trial Court against the appellant and affirmed by the High Court is a possible view and needs no interference. The Trial Court besides relying on the evidence of PW-6, an injured eye-witness and PW-9, an independent eye-witness also adverted to other circumstances

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- A to record a finding of guilt against the appellant. The evidence for recording such a finding is very much available on record. Merely because the appellant alone has been convicted for the stated offence simpliciter under Section 302, while the other co-accused have been acquitted, it does not follow that the appellant should be given the benefit of doubt despite the clinching evidence on record to establish his guilt and involvement in the commission of offence. It is a different matter that the same witnesses PW-6 and PW-9 have spoken about the involvement of other accused who have now been acquitted. The reason for which the High Court acquitted those co-accused cannot be countenanced on the basis of the evidence on record against them. However, that erroneous finding in their favour would be of no avail to the appellant whose name and role has been clearly mentioned in the FIR as also by the witnesses PW-6 and PW-9 whose credibility has remained unshaken. The role of the appellant in the commission of the offence has been clearly spelt out by these witnesses. They have stated that the appellant gave the first blow with sword, whereafter the other accused followed and repeatedly assaulted deceased, causing as many as 67 injuries all over his body, most of which are incised injuries, possible by means of a sword. [Para 8][1089-C-G]
- E 1.2 Besides the evidence of PW-6 and PW-9, other circumstances such as recovery of sword at the instance of the appellant has also been proved – as found by the Trial Court and which finding has not been disturbed by the High Court. There is direct evidence to establish the role of the appellant in the commission of offence. He took the lead in assaulting ‘G’ by giving the first sword blow. The prosecution has succeeded in establishing that deceased suffered as many as 67 injuries, most of which were incised wounds caused by sharp weapon like sword. In the opinion of the doctor, the death was caused due to multiple injuries and shock as a result of multiple fractures described in the post-mortem report. The assault continued for quite some time till ‘G’ was completely immobilized and stopped responding. The participation of the appellant in giving first blow and continuing with the assault has been spoken by the injured eye-witness PW-6 and other eye-witness PW-9. That evidence coupled with the circumstances as noted by the Trial Court,
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therefore, would be sufficient to sustain the finding of guilt against A the appellant. [Paras 9, 10][1093-G; 1094-A-C]

1.3 The acquittal of the co-accused by giving benefit of doubt, by itself can be no ground to discard the otherwise reliable evidence which has remained unshaken, pointing towards the complicity of the appellant in the commission of crime. In that B view of the matter, no fault can be found with the impugned judgment affirming the finding of guilt against the appellant alone, amongst the five accused tried together, while convicting the appellant simpliciter under Section 302 of IPC. [Para 13][1094-G-H; 1095-A-B]

Durga Burman Roy v. State of Sikkim (2014) 13 SCC 35 : [2014] 8 SCR 311; Sadananda Mondal v. State of West Bengal (2013) 15 SCC 293 : [2013] 7 SCR 854 – referred to.

Case Law Reference

[2014] 8 SCR 311	referred to	Para 11
[2013] 7 SCR 854	referred to	Para 11

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 497 of 2009.

From the Judgment and Order dated 03.01.2008 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Criminal Appeal No.1614 of 2002.

Ms. Aishwarya Bhati, Adv. for the appellant.

Jayant Bhatt, Ms. Jyoti Sharma, Ms. Ruchi Kohli, Advs. for the respondent.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. This appeal has been filed by accused No.1, who has been convicted for offence punishable under Section 302 of the Indian Penal Code (“IPC”) simpliciter. From amongst seven accused persons named by the prosecution as involved in commission of the offence, five accused were tried by the Additional District and Sessions Judge No.2, (Fast Track), Kota, in Sessions Case No.77/2001. The incident occurred on 15th January, 1998 when one

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- A Guddu @ Shehjad was assaulted by the accused persons while he was returning from Meenawala Baba's Dargah. The incident was witnessed by Yunus (PW-6) who submitted a written report (Exh. P-9) at the Police Station, Railway Colony, Kota, on the same day immediately after the incident in question occurred. He reported that when Guddu @ Shahzad was returning from Meenawala Baba's Dargah, accused Pappi @ Mehboob (Accused No.1/appellant), Idrish (Accused No.2), Laxman (Accused No.5), Hemu @ Hemant (Accused No.6), Gyani @ Lalit Kumar Singh (Accused No.4) and two others, who were equipped with swords, inflicted sword blows on him. When Yunus (PW-6) attempted to intervene, Idrish gave a sword blow which struck on the fingers of his left hand. He was asked to stay away or else face dire consequences. Yunus (PW-6) then watched the entire incident in that condition when the accused persons repeatedly assaulted Guddu who succumbed to the injuries.
2. After registration of FIR and investigation of the case by the local police, charge-sheet was filed and the case was remitted for trial before the Additional District and Sessions Judge No.2, (Fast Track), Kota. Although seven persons were mentioned in the report, Idrish (Accused No.2) and Shamsu (Accused No.7) could not be tried as they were absconding. The trial proceeded against five accused, namely, Pappi (Accused No.1/appellant), Sabir (Accused No.3), Gyani (Accused No.4), Laxman (Accused No.5) and Hemu (Accused No.6) and they were held guilty of committing offence under Sections 148, 302 and 324/149 IPC. Sabir (Accused No.3) came to be acquitted of the charge. Accused Pappi (appellant), Hemu, Gyani and Laxman were acquitted of the charge of committing offence under Sections 147, 307, 307/149, 323/149 IPC.
- F The judgment and order dated 4th September, 2002 passed by the Trial Court was assailed by Pappi (Accused No.1), Gyani (Accused No.4) and Hemu (Accused No.6) before the High Court, being Criminal Appeal No.1614/2002 and Laxman (Accused No.5) filed separate appeal being Criminal Appeal No.1275/2002. The High Court vide impugned judgment disposed of both the appeals together in terms of the following order:
- G “25. As a result of the above discussion, we dispose of the instant appeals in the following terms:-
- (i) Appeal of Pappi @ Mehboob stands dismissed and his conviction and sentence under section 302 IPC are maintained. He
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however stands acquitted of the charges under sections 148 A and 324/149 IPC.

- (ii) Appeals of Gyani @ Lalit Kumar Singh, Hemu @ Hemant and Laxman are allowed and they stand acquitted of the charges under sections 302, 148 and 324/149 IPC. These appellants are in jail, they shall be set all liberty forthwith, if B they are not required to be detained in any other case.
- (iii) Impugned Judgment of learned Trial court stands modified as indicated above.”

3. As a result, Pappi (Accused No.1/appellant) who alone has been convicted for offence simpliciter under Section 302 of IPC is in appeal before this Court. C

4. The appellant Pappi (Accused No.1) has assailed the impugned judgment and order on the ground that the quality of evidence as has come on record is not worthy of recording a finding of guilt against him and in any case, the Trial Court having acquitted Sabir (Accused No.3) and the High Court having acquitted the other three co-accused Gyani, Hemu and Laxman and also that the prosecution could not proceed against Idrish (Accused No.2) and Shamsu (Accused No.7), as they were absconding, the appellant deserves to be acquitted for the same reasons recorded in the case of Gyani, Hemu and Laxman by the High Court. D The High Court vide impugned judgment and order had allowed the appeals filed by the said accused for the reasons recorded in paragraphs 23 & 24 which read thus:

“23. It appears from the material on record that charge sheet was not filed against Shamsu and Idrish was absconded during trial. Learned trial court acquitted Sabir on the ground that he was not named in the FIR. F

24. Having analysed the evidence of Yunus, Rashid and Rafiq with particular reference to its trustworthiness and truthfulness by a process of judicial scrutiny, we find that case of appellants Gyani, Hemu and Laxman is not distinguishable with that of the case of Shamsu and Sabir. All these accused persons have been assigned identical role by injured eye witness Yunus. Since Shamsu was not charge sheeted and Sabir got acquitted and no appeal was filed by the State against him, appellants Gyani, Hemu and Laxman, in our opinion, are entitled to benefit of G H

A doubt. We do not want to express any opinion in regard to accused Idrish since he is not before us.”

5. We have heard Ms. Aishwarya Bhati, learned counsel appearing for the appellant and Mr. Jayant Bhatt, learned counsel appearing for the State of Rajasthan and we have also carefully perused the record. It is noticed from the judgment of the Trial Court that the prosecution case has been believed by the Trial Court against accused Pappi, Hemu, Gyani and Laxman, essentially relying on the evidence of Yunus (PW-6) and Rashid (PW-9). The Trial Court has accepted their evidence to be credible evidence. The Trial Court has also noted that the defence could not shake the credibility of Yunus (PW-6) who was an injured eye-witness and Rashid (PW-9) an independent eye-witness – their presence at the scene of occurrence has been found to be natural. Besides their evidence, the Trial Court has taken into account other circumstances, amongst others, 67 injuries suffered by deceased Guddu to which he eventually succumbed, recovery of swords from the concerned accused including D Pappi (Accused No.1).

6. Notably, even the High Court has not doubted the evidence of Yunus (PW-6) and Rashid (PW-9). The High Court gave benefit of doubt to Accused Gyani, Hemu and Laxman, merely on the ground that their case was not distinguishable from that of Shamsu and Sabir. As regards accused Shamsu, charge-sheet could not be filed as he remained absconding during the trial. As regards Sabir, the Trial Court had taken into account the circumstances such as he was not named in the FIR and his involvement was disclosed by Yunus (PW-6) belatedly. Yunus obviously did not know his name. Further, it has been admitted by Yunus that his name was mentioned to him (Yunus) by a shopkeeper. But that shopkeeper was neither named by Yunus nor was examined by the prosecution. Additionally, Rafiq (PW-5) was examined by the prosecution to establish the involvement of Sabir in the commission of offence but the Trial Court disbelieved PW-5 as unreliable witness. Viewed thus, the acquittal of Sabir by the Trial Court was on different ground and not limited to the fact that his name did not appear in the FIR, as has been noted in paragraph 23 of the impugned judgment. Be that as it may, it is noticed that the names of Gyani, Hemu and Laxman have been mentioned in the FIR, unlike that of Sabir. However, neither the State nor the complainant has chosen to file appeal to question the said conclusion recorded by the High Court in favour of those accused (in paragraph 24 of the impugned judgment).

7. The question is: whether the fact that Sabir (Accused No.3) has been acquitted by the Trial Court and the co-accused Gyani (Accused No.4), Hemu (Accused No.6) and Laxman (Accused No.5) have been acquitted by the High Court, by itself can be the basis to acquit the appellant – Pappi (Accused No.1)? Our answer is an emphatic “NO”. A

8. Learned counsel for the appellant was at pains to persuade us to take a view that the quality of evidence leaves much to be desired and was not sufficient to record a finding of guilt against the appellant Pappi (Accused No.1). However, after going through the judgments of the two Courts and the relevant record, we are of the considered opinion that the finding of guilt recorded by the Trial Court against the appellant Pappi (Accused No.1) and affirmed by the High Court is a possible view and needs no interference. As aforesaid, the Trial Court besides relying on the evidence of Yunus (PW-6) and Rashid (PW-9) also adverted to other circumstances to record a finding of guilt against the appellant. The evidence for recording such a finding is very much available on record. Merely because the appellant alone has been convicted for the stated offence simpliciter under Section 302, while the other co-accused have been acquitted, it does not follow that the appellant should be given the benefit of doubt despite the clinching evidence on record to establish his guilt and involvement in the commission of offence. It is a different matter that the same witnesses Yunus (PW-6) and Rashid (PW-9) have spoken about the involvement of other accused who have now been acquitted. As noted earlier, the reason for which the High Court acquitted those co-accused Gyani, Hemu and Laxman, cannot be countenanced on the basis of the evidence on record against them. However, that erroneous finding in their favour would be of no avail to the appellant whose name and role has been clearly mentioned in the FIR as also by the witnesses Yunus (PW-6) and Rashid (PW-9) whose credibility has remained unshaken. The role of the appellant in the commission of the offence has been clearly spelt out by these witnesses. They have stated that the appellant gave the first blow with sword, whereafter the other accused followed and repeatedly assaulted deceased Guddu, causing as many as 67 injuries all over his body, most of which are incised injuries, possible by means of a sword. The injuries caused to the deceased Guddu, have been noted in the post-mortem report as follows:

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A "Guddu @ Shahjad S/o Yamin Mohd. Caste Mohamaden age 19 years, R/O Safety Match Box Factory dudwada KOTA PS. Rly. Colony PMR No.21/98 16.01.98

Antimortem Injuries :-

- B 1. Incise wound – 5x1 cm x bone deep on centre of parietal scalp oblique. Red color.
2. Abrasion – 8x4 cm. on Lt half of forehead.
3. Abrassion – (4in No.) 1x1 cm each on front of forehad.
4. Abrassion – 2x ½ cm. on nose Rt. Side.
- C 5. Abrassion – 3x2 cm. on Lt. check maxillaryarea.
6. Incise wound:- 8x ½ cm. Skindeep on Rt. Arm upper 1/3 Lateral side obliquely placed.
7. Incise wound 5x ½ cm. x Skindeep Transverse on Rt. Arma middle 1/3 anteriooby.
- D 8. Scratch – 4.cm long on Rt. Arm Lat side obliquely.
9. Incise wound – 2x ½ cm x Skindeep Rt. Aram Lover 1/3 Posteriorly transvorese.
- E 10. Incise wound – 9x2 cm x bone deep on back of Rt.elbow vertical. There is fracture of Rt. Radius & ulna upper 1/3.
11. Scratch – 6 cm oblique on lat side of Rt. Elbow
12. Incise wound – 6x1 cm x skin deep on lat side of Rt. elbow Transverse.
- F 13. Scratch – 5 cm. Transverse on back of Rt. fore arm lower 1/3
14. Incise wound – 1 ½ x ¼ cm. x skindeep on Rt. little finger at Distal Interphalrygeal 1t Post.
15. Incise wound – 2x ¼ cm x muscle deep on Rt. pales vertical.
- G 16. Incise wound – 1 x ¼ cm x skindeep on Rt. Land at web space of thumb & Index finger.
17. Scratch – ½ cm long on back of Rt. index finger.
18. Scratch – ½ cm long on back of Rt. middle finger.

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19. Scracth – 10 cm Transverse on Rt. side of chest. A
20. Scratch – 6 cm. long vertical on Rt. left side of chest.
21. Abrasion : 5x1 cm on Rt. Lat side of Abdomen.
22. Abrassion 6x1 cm on Lt. shoulder.
23. Scratch – 13 cm. oblique on Lt. Scapular region B
24. Scratch – 5 cm on front of Lt. Shoulder upper 1/3 Lately.
25. Scratch – 8cm. on Lt. shoulder upper 1/3 lately.
26. Scratch – 5cm on Lt. arm upper 1/3 Laterally Transverse.
27. Scratch – 3cm. Transverse on Lt arm middle 1/3 lately C
28. Scratch m- 7 cm on Lt. arm lower 1/3 Laterally.
29. Incise wound – 2 ½ x ½ cm. x skindeep on Lt. forearm upper 1/3 Posteriorly oblique.
30. Incise wound – 10x7 cm x bone deep on Lt. forearm upper ½ posteriorly with fracture of upper 1/3 Radius & ulna seen. D
31. Incise wound – 2x ¼ cm. skindeep on Lt. forearm lover 1/3 oblique.
32. Incise wound – 7x 5 cm x bone deep on Lt. wrist Postero medical aspect Transverse with fracture of Lower 1/3 of Radius ulna seen. E
33. Incise wound – 6x1 cm x skin deep on Lt. Wrist parallel to Inj No. (32).
34. Incise wound – 3 x 1 cm x muscle deep on Lt. forearm middle 1/3 anteriorly. F
35. Incise wound – 3 x ¼ cm x skindeep on back of Lt. hand Transverse.
36. Incise wound – 2x ½ cm x muscle deep en Lt. index finger. G
37. Incise wound – 1 x ¼ cm. skindeep on Lt middle finger.
38. Incise wound – 3 x ¼ cm. x skindeep on Lt. Plam.
39. Incise wound – 8 x 3 cm x muscleddeep, vertical on Lt. Palm.

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- A 40. Incise wound – 3 x $\frac{1}{4}$ cm. x skin deep Lt. Palm.
41. Incise wound 6x2cm x muscle deep on Lt. lip lateral side oblique.
42. Incise wound – 4 x 1 cm. x skin deep on Lt. thigh middle 1/3 laterally. Transverse.
- B 43. Incise wound – 1x $\frac{1}{4}$ cm. x skin deep on Lt. High middle 1/3 laterally.
44. Incise wound – 5 x 1 cm x skin deep Lt. thigh laterally.
45. Scratch – 5 cm Transverse just above Lt. knee antly.
- C 46. Incise wound – 1 x $\frac{1}{4}$ cm x skin deep on lateral side of Lt. knee.
47. Incise wound – 2 x $\frac{1}{2}$ cm. x skin deep on Lt. Knee cap oblique.
48. Scratch – 4cm. on Lt. Knee cap Lower part.
- D 49. Scratch – 3cm. on Lt. Leg Upper 1/3 laterally.
50. Scratch – 4 cm. Transverse on Lt. leg upper 1/3 anteriorly.
51. Scratch – 5 cm Lt. leg Middle 1/3 laterally.
- E 52. Incise wound – 5 x 1 cm x Skin deep Lt. leg middle 1/3 anteriorly oblique.
53. Abrassion 3 x 1 cm. Lt. leg middle 1/3 anteriorly.
54. Incise wound 3 x $\frac{1}{2}$ cm. x Skin deep on Lt. leg lower 1/3 laterally. Transverse.
- F 55. Incise wound – 8 x 2 cm x bone deep on medial side of Lt. ankle.
56. Incise wound – 8 x 4 cm x muscle deep on back of Lt. Knee.
57. Scratch 15 cm on back of chest upper part.
- G 58. Incise wound (4 in No.) – 2 x $\frac{1}{2}$ cm x muscle deep on back of Lt. Lip.
59. Incise wound – 2 x $\frac{1}{2}$ cm x muscle deep on back of Rt. Lip.
60. Scratch – 8 cm Transverse on lat side of Rt. High middle 1/3.
- H 61. Abrassion 6x3 cm Rt. Leg upper 1/3 laterally.

62. Incise wound – 2 x ½ cm. x muscle deep on Rt. Leg. Middle A
1/3 antily.

63. Incise wound:- 4 x 1 cm x skin deep on Rt. knee cap.

64. Incise wound:- 3 x 1 cm x bone deep on Rt. leg middle 1/3
inferiorly. B

65. Incise wound:- 5 x 3 cm. x bone deep on Rt. Leg. Lower 1/3
inferiorly with fracture of Rt. tibia & fibula Lower 1/3.

66. Incise wound:- 3 x 1 cm x skin deep on medial side of Rt.
ankle Transverse.

67. Abrasion : - 1 x ½ cm. medial side of Rt. greattse. C

All the above mentioned injuries are ante martem in nature.

Duration:- fresh before death.

Weapon:- Sharp for injury also (1), (6) – (20), (23) – (52), (54) –
(60), (62) – (66) D

Blunt – (2) – (5), (21), (22), (53), (61), (67).”

9. Reverting to the ocular evidence of Yunus (PW-6) and Rashid (PW-9), both of them have stated that when Guddu was coming back on foot from Meenawala Baba's Dargah after performing Jiyarat, Pappi (Accused No.1), Idrish (Accused No.2), Laxman (Accused No.5), Hemu (Accused No.6), Gyani (Accused No.4), Sabir (Accused No.3) and Shamsu (Accused No.7) came running from the front side and immediately after arriving there, accused Pappi @ Mehboob (appellant) gave the first sword blow on the head of Guddu. This version has remained unshaken. Yunus (PW-6) himself was injured in the same incident having been attacked by Idrish with a sword which hit his finger on the left hand. Besides the evidence of Yunus (PW-6) and Rashid (PW-9), other circumstances such as recovery of sword at the instance of the appellant has also been proved – as found by the Trial Court and which finding has not been disturbed by the High Court. To put it differently, there is direct evidence to establish the role of the appellant in the commission of offence. He took the lead in assaulting Guddu by giving the first sword blow. E F G

10. The argument of the appellant that there is no clear evidence to show as to which injury was caused by the blow given by the appellant, H

- A in our view, is devoid of merit. The prosecution has succeeded in establishing that deceased Guddu suffered as many as 67 injuries, most of which were incised wounds caused by sharp weapon like sword. In the opinion of the doctor, the death was caused due to multiple injuries and shock as a result of multiple fractures described in the post-mortem report.
- B The assault continued for quite some time till Guddu was completely immobilized and stopped responding. The participation of the appellant in giving first blow and continuing with the assault has been spoken by the injured eye-witness Yunus (PW-6) and other eye-witness Rashid (PW-9). That evidence coupled with the circumstances as noted by the Trial Court, therefore, would be sufficient to sustain the finding of
- C guilt against the appellant Pappi (Accused No.1).

11. The appellant placed reliance on the dictum in the case of *Durga Burman Roy Vs. State of Sikkim*,¹ in which, however, the accused was acquitted as the prosecution had failed to point out any substantive evidence against him and because the co-accused against whom there was evidence of strangulation was already acquitted. Even the decision in the case of *Sadananda Mondal Vs. State of West Bengal*,² wherein the Court acquitted the appellant as the prosecution had failed to establish the case beyond reasonable doubt about the involvement of the appellant therein in the commission of the crime and that the co-accused were already acquitted having disbelieved the entire case of the prosecution on the basis of the same evidence. To avoid prolixity, we do not wish to refer to other decisions relied upon by the counsel for the appellant which are on the facts of that case.

12. In the present case, however, we find that there is direct evidence to substantiate the involvement of the appellant (Accused No.1) in the commission of the crime, given by the injured eye-witness (PW6) besides the independent witness (PW9) and other circumstances, pointing towards the guilt of the appellant who gave the first blow and continued to give further blows, as a result of which deceased Guddu suffered multiple injuries and succumbed to those injuries.

G 13. Suffice it to observe that the acquittal of the co-accused by giving benefit of doubt, by itself can be no ground to discard the otherwise reliable evidence which has remained unshaken, pointing towards the complicity of the appellant in the commission of crime. In that view of

¹ (2014) 13 SCC 35

H ² (2013) 15 SCC 293

the matter, no fault can be found with the impugned judgment affirming A
the finding of guilt against the appellant alone, amongst the five accused
tried together, while convicting the appellant simpliciter under Section
302 of IPC. Hence, this appeal must fail and the same is dismissed. Bail
bond stands cancelled.

14. While parting, we place on record our appreciation for the B
able assistance given by the counsel appearing on both sides.

Divya Pandey

Appeal dismissed.