

STATE OF U.P.

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v.

JAI DUTT AND ANR.

(Criminal Appeal No. 37 of 2022)

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JANUARY 19, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Penal Code, 1860 – ss.302 and 326 – Murder – Conviction by trial court u/s.302 accepting the prosecution case that the accused persons armed with deadly weapons went to the agricultural field were the victim (complainant's father) was working and beat him, resulting in his death – High Court converted the conviction to that u/s.326, primarily on grounds that the victim died six days after the incident and no fracture was found on his head – Justification – Held: Not justified – Merely because the victim died six days after the incident not a ground to set aside the conviction u/s.302 and convert it u/s.326 – Also, merely because no fracture was noticed and/or found cannot take the case out of s.302 when the victim died due to head injury – Causing injury on the head can be said to be causing injury on the vital part of the body and therefore a clear case of s.302 is established and proved – Conviction by trial court, of first respondent u/s.302 and of second respondent u/s.302 r/w s.34, accordingly, restored.

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Allowing the appeal, the Court

HELD:1.1. Merely because the deceased died after six days could not have been the ground to set aside the conviction for the offence under Section 302 IPC and to convert it to Section 326 IPC. The deceased was first taken to the PHC, however his condition was found to be serious and therefore, he was taken to the Lucknow Hospital on 20.12.1983 and thereafter while under treatment he died on 26.12.1983 and the main cause of death is found to be the head injury no.1. Though the High Court has noticed the nine injuries as noticed by the Medical Officer at PHC, the High Court has not at all noticed and/or considered at all the antemortem injuries on the dead body mentioned in the

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- A post-mortem report. As per the medical evidence the cause of death was due to head injury no.1. The weapon was used on the head - vital part of the body and ultimately the same proved to be fatal and the deceased died due to head injury no.1. Therefore, by no stretch of imagination the case would fall under Section 326 IPC. [Para 7.1][220-G-H; 221-A-B]
- B 1.2. One another reason given by the High Court to convert the conviction from Section 302 IPC to Section 326 IPC is that no fracture on the head was found. However, it is required to be noted that the deceased died because of the internal injuries. As per the deposition of PW8, who conducted the post-mortem, on opening of the brain menages, he found brain congested, subdural hematoma over both temporal lobes. Therefore, merely because no fracture was noticed and/or found cannot take the case out of Section 302 IPC when the deceased died due to head injury no.1. Causing injury on the head can be said to be causing injury on the vital part of the body and therefore a clear case of Section 302 IPC has been established and proved. Therefore, the trial Court rightly convicted the accused for the offences under Section 302 IPC and Section 302/34 IPC respectively. [Para 7.2] [221-C-E]
- E 1.3. Even otherwise considering Section 326 IPC, one fails to appreciate how the case would fall under Section 326 IPC when the deceased actually died due to grievous hurt and the injuries were on the vital part of the body – head. [Para 7.3][221-E-F]
 - 2. The impugned judgment and order passed by the High Court acquitting the accused- respondents for the offence under Section 302 IPC and Section 302/34 IPC respectively and convicting them for the offence under Section 326 IPC is hereby quashed and set aside. The judgment and order of the trial Court convicting the first respondent for the offence punishable under Section 302 IPC and convicting the second respondent for the offence punishable under Section 302/34 IPC is hereby restored. The respondents- accused are sentenced to undergo life imprisonment with the fine as imposed by the trial Court. [Para 8][222-B-C]
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal A
No. 37 of 2022.

From the Judgment and Order dated 18.09.2019 of the High Court of Judicature at Allahabad in Crl. Appeal No.870 of 1987.

Rana Mukherjee, Salman Khurshid, Sr. Advs., Ankit Goel, Mrs. Naghma Imtiaz, Ahmed Zargham, Saif Naseem, Ms. Lubna Naaz, Ms. Sommya Chaturvedi for M/s Equity Lex Associates, Advs. for the appearing parties.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.09.2019 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.870 of 1987, by which the High Court has allowed the said appeal in part and has converted the conviction of the accused from that of Section 302 read with Section 34 IPC to Section 326 IPC, the State of Uttar Pradesh had preferred the present appeal.

2. As per the case of the prosecution when the deceased was working in his agricultural field all the accused persons reached there and started abusing him. That the deceased was beaten by the accused persons. All the accused persons were having different weapons with them. All of them started beating the deceased resulting in a number of injuries and later considering his serious condition, he was taken to hospital at Lucknow where after about six days, he succumbed to the injuries. All the accused persons were charged and tried for the offences under Section 302 read with Section 34 of the IPC except accused no.1 Jai Dutt who was charged and tried for the offence punishable under Section 302 IPC. To prove the charge against the accused, the prosecution examined a number of witnesses of which, PW1 and PW2 were the eye-witnesses to the incident. By examining PW8 - Dr. P.R. Mishra who conducted the post-mortem on the body of the deceased, the prosecution brought on record the post-mortem report. The trial Court convicted Jai Dutt for the offence under Section 302 IPC and sentenced him to undergo life imprisonment. The learned trial Court also convicted other accused Lal Bahadur, Sher Singh and Shastri for the offences under Section 302 read with Section 34 of the IPC and sentenced them to undergo life imprisonment.

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- A 2.1 Feeling aggrieved and dissatisfied with the judgment and order of conviction passed by the learned trial Court, all the accused preferred the criminal appeal before the High Court. During the pendency of the appeal, accused Lal Bahadur and Sher Singh expired. Therefore, appeal qua those persons abated. That by impugned judgment and order the High Court has partly allowed the said appeal qua rest of the accused Jai Dutt and Shastri and has converted the conviction from that of Section 302 read with Section 34 IPC to Section 326 IPC, mainly on the ground that the deceased died after six days from the incident and no fracture of head was found. The High Court has imposed the sentence of two years only for the offence under Section 326 IPC solely on the ground that incident occurred about 36 years back and therefore imposing two years sentence would be sufficient to meet the ends of justice.
- B 2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court converting the conviction from Section 302 IPC to Section 326 IPC, the State has preferred the present appeal.
- C 3. Shri Rana Mukherjee, learned Senior Advocate appearing on behalf of the appellant – State has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in converting the conviction from Section 302 IPC to Section 326 IPC.
- D 3.1 It is submitted by Shri Mukherjee, learned Senior Advocate that as such the High Court has specifically held against the accusedas they went to the field of the deceased and started the quarrel and used weapons and caused the injuries. It is submitted that the High Court has also observed and held that PW1 and PW2 – eye witnesses are wholly trustworthy but there is no reason to disbelieve their statements. It is submitted that despite the above when the deceased succumbed to the injuries and died because of the head injury, a clear case of murder was made out and therefore, the High Court ought not to have converted the conviction from Section 302 IPC to Section 326 IPC.
- E 3.2 It is submitted that merely because the deceased died after six days could not have been the ground to convert the conviction from Section 302 IPC to Section 326 IPC. It is submitted that the High Court has not at all appreciated and/or considered the injuries mentioned in the post-mortem report and the cause of death. It is submitted that merely because no fracture on the head was found cannot be a ground, not to convict the accused for the offence under Section 302 IPC. It is submitted that in a given case a person might have died because of the internal

A injuries like in the present case. It is submitted that therefore, the reasoning given by the High Court while converting the conviction from Section 302 IPC to Section 326 IPC can be said to be perverse.

B 4. Present appeal is vehemently opposed by Shri Salman Khurshid, learned Senior Advocate appearing for the respondents – accused.

C 4.1 It is vehemently submitted by Shri Khurshid, learned Senior Advocate appearing for the accused that in the facts and circumstances of the case and having found no fracture on the head of the deceased and he died after six days of the incident and also, considering the fact that the injuries were not so serious and/or grave, the High Court has rightly acquitted the accused for the offence under Section 302 IPC and has rightly converted the same to Section 326 IPC. It is submitted by Shri Khurshid, learned Senior Advocate that when the deceased was first taken to the PHC, PW6 Dr.B.L. Katiyar who did MLC of injured Ram Autar (who subsequently died) noticed nine injuries which were simple in nature. It is submitted therefore that the case would not fall under Section 302 IPC as observed and held by the High Court.

D 4.2 It is submitted by Shri Khurshid learned Counsel appearing on behalf of the accused that in fact the incident occurred on the spur of the moment and the quarrel took place because of the minor dispute and there was no intention to kill the deceased, therefore, the case would not fall under Section 302 IPC.

E 5. Making the above submissions it is prayed to dismiss the present appeal more particularly when the High Court has already passed an order to pay compensation of Rs.2 lakhs to the objector Raman Babu.

F 6. We have heard learned counsel appearing for the respective parties at length.

G 7. At the outset, it is required to be noted that on appreciation of evidence the trial Court convicted the accused for the offence under Section 302 IPC and Section 302 read with Section 34 of the IPC respectively, having killed/committed the murder of deceased Ram Autar, relying upon the medical evidence on record as well as the evidence of eye-witnesses of PW1 and PW2. However, in an appeal preferred by the accused, the High Court has observed that PW1 and PW2 – eye witnesses are wholly trustworthy and there is no reason to disbelieve their statements. Though the High Court has accepted the case on behalf of the prosecution that on 20.12.1983 in the evening all the four accused

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- A persons entered the field of the complainant and started abusing deceased Ram Autar and all the accused persons were having different weapons with them and all of them started beating the deceased resulting in a number of injuries on his body and thereafter when the Ram Autar was taken to the hospital and later succumbedto injuries and died, the High
- B Court has converted Section 302 IPC to Section 326 IPC on the ground that the deceased died after six days of the incident and no facture on his head was found. However, the High Court has not at all considered the injuries mentioned in the post mortem report. As per the post mortem report following antemortem injuries on the dead body of the Ram Autar were found:
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 - 1. Scabbed abraded contusion 8 cm x 6 cm on the left side ofhead above the left eye brow.
 - 2. Scabbed abraded contusion 9 cm x 5 on the left scapularregion.
 - 3. Scabbed abraded contusion 6 cm x 5 cm on the left side ofbuttock.
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 - 4. Abraded contusion 4 cm x 4 cm on the 5th lumberv spine.
 - 5. Infected wound 1.5 cm x 0.5c, x muscle deep on the frontof mid of left leg.
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 - 6. Multiple scabbed abraded contusion in an area of 18 cm x2 cm on the upper half of left leg.
 - 7. Scabbed abrasion on an area of 22 cm 2 cm on the front ofright leg.”
- F 7.1 As per the deposition of Dr.P.R. Mishra – PW8 who conducted the post mortem, on opening of the brain menages, found brain congested, subdural hematoma over both temporal lobes. As per the doctor the deceased died due to head injury no.1. The aforesaid injuries more particularly head injury no.1 was fatal and because of said injuries the deceased died. Merely because the deceased died after six days could not have been the ground to set aside the conviction for the offence
- G under Section 302 IPC and to convert it to Section 326 IPC. The deceased was first taken to the PHC, however his condition was found to be serious and therefore, he was taken to the Lucknow Hospital on 20.12.1983 and thereafter while under treatment he died on 26.12.1983 and the main cause of death is found to be the head injury no.1. At this
- H stage, it is required to be noted that though the High Court has noticed

the nine injuries as noticed by Dr. B.L. Katiyar of Medical Officer at PHC, the High Court has not at all noticed and/or considered at all the antemortem injuries on the dead body of Ram Autar mentioned in the post-mortem report. As observed hereinabove and as per the medical evidence the cause of death was due to head injury no.1. The weapon was used on the head - vital part of the body and ultimately the same proved to be fatal and the deceased died due to head injury no.1. Therefore, by no stretch of imagination the case would fall under Section 326 IPC.

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7.2. One another reason given by the High Court to convert the conviction from Section 302 IPC to Section 326 IPC is that no fracture on the head was found. However, it is required to be noted that the deceased died because of the internal injuries. As per the post-mortem report and the medical evidence head injury is found. Head injury no.1 is reproduced hereinabove. As per the deposition of Dr. P.R. Mishra – PW8, who conducted the post-mortem, on opening of the brain menages, he found brain congested, subdural hematoma over both temporal lobes. Therefore, merely because no fracture was noticed and/or found cannot take the case out of Section 302 IPC when the deceased died due to head injury no.1. As observed hereinabove causing injury on the head can be said to be causing injury on the vital part of the body and therefore a clear case of Section 302 IPC has been established and proved. Therefore, the learned trial Court rightly convicted the accused for the offences under Section 302 IPC and Section 302/34 IPC respectively.

7.3 Even otherwise considering Section 326 IPC, we fail to appreciate how the case would fall under Section 326 IPC when the deceased actually died due to grievous hurt and the injuries were on the vital part of the body – head. At this stage, it is required to be noted that in fact the accused went to the field of the complainant where his father deceased Ram Autar was also working. All of them went with the deadly weapons and had beaten the deceased Ram Autar and caused serious injuries and immediately the deceased Ram Autar was required to be taken to the hospital and he was first taken to PHC and thereafter to Lucknow, Hospital where he succumbed to the injuries. For the reasons stated above also the High Court has committed grave error in convicting the accused for the offence under Section 326 IPC by acquitting the accused for the offence under Section 302 IPC. The impugned judgment and order passed by the High Court acquitting the accused for the offence Section 302 IPC and to convict the accused for the offence under Section

- A 326 IPC is unsustainable and deserves to be quashed and set aside and the judgment and order passed by the trial Court is required to be restored.
 - 8. In view of the above and for the reasons stated hereinabove the present appeal succeeds. The impugned judgment and order passed by the High Court acquitting the accused – respondents Jai Dutt and
- B Shastri for the offence under Section 302 IPC and Section 302/34 IPC respectively and convicting them for the offence under Section 326 IPC is hereby quashed and set aside. The judgment and order of the learned trial Court convicting the accused Jai Dutt for the offence punishable under Section 302 IPC and convicting the accused - Shastri for the offence punishable under Section 302/34 IPC is hereby restored. The
- C respondents – accused are sentenced to undergo life imprisonment with the fine as imposed by the learned trial Court.

Now both the accused be taken into custody forthwith to undergo the life imprisonment. Present appeal is allowed accordingly.

Bibhuti Bhushan Bose

Appeal allowed.