Supreme Court of India
Guljar Hussain vs State Of Uttar Pradesh on 30 April, 1992
Equivalent citations: AIR 1992 SC 2027, 1992 CriLJ 3659, 1993 Supp (1) SCC 554
Bench: M M Punchhi, S Agrawal
JUDGMENT

1. The appellant Guljar Hussain stands convicted under Section 302, I.P.C. and sentenced to imprisonment for life. His two companions accused who were charged similarly with the aid of Section 34, I.P.C. were acquitted by the High Court whereas the conviction of the appellant was maintained. The order of the Court of Session convicting all the three accused was thus modified. Hence, this appeal.

2. The deceased in this case was Intzar Hussain. On the date of occurrence, i.e. 3rd January, 1975, he was scheduled to marry Afroz Jahan Begum. The marriage had been arranged by Chuttan, the father of the bride and the appellant. The appellant and his brothers did not approve of the match. The parties were otherwise familiar with each other because another sister of the accused named Anisa stood married to Shamshad, the brother of the deceased. It is alleged that at about 6-30 p.m. some time before the marriage party was about to leave the house of the bridegroom, the appellant and his two companions arrived there. One of the companions of the appellant caught hold of the bridegroom from behind and the 'other instigated ; to kill him which led the appellant deliver a knife blow in the abdomen of the deceased. The victim died at about 7-30 p.m. while in hospital. His injury had been examined by Dr. Jamil Ahmed, PW-3. The post-mortem of the deceased was conducted by another medical expert named Dr. Mukherjee. After the usual steps of investigation, the appellant was sent up for trial with the result aforementioned.

3. The only point for consideration in this appeal is whether the conviction of the appellant under Section 302, I.P.C. should be maintained or altered. The occurrence as such cannot be and has not been disputed. The motive for the crime was there. That the appellant was the author of the sole fatal injury, could not be denied. The FIR was prompt and the appellant had been singled out as the one who had caused the fatal injury. Bearing in mind that he had not repeated the blow, though nothing stopped him, it has to be viewed as to what was his intention reflected from the nature of the injury which caused the death of the deceased. Dr. Jamil Ahmed deposing about the injury of the victim could not give its dimensions at the trial because his medico legal register was not available with him. The post-mortem report could legally be not proved because Dr. Mukherjee was not produced at the trial. An effort was successfully made to introduce the post-mortem report by concession. But the fact still remains that the post-mortem report had not been deposed to by any witness at the trial. The post-mortem report, however, does mention about the nature of the injury and the opinion of the doctor that the injury was by itself sufficient in the ordinary course of nature to cause death of the deceased. The benefit of cross-examination of Dr. Mukherjee could not be available at all to the appellant. The benefit of cross-examination of Dr. Jamil Ahmed, P.W. 3 was not available in full measure to the appellant because of the absence of the medico legal report. The medical evidence was thus legally deficient.

4. In these circumstances, it has to be seen whether the appellant intended to cause the death of the deceased. When dimension of the injury has not been legally proved one has to fall back on the proved fact that after the blow of the appellant, the deceased died within two hours. In other words, the death of the deceased was the direct result of the blow of the appellant. Thereafter no other supportive factor is available to maintain the conviction of the appellant under Section 302, I.P.C. The blow was not repeated. The primary intention of the appellant was to obstruct the marriage of his sister. It could well be that the appellant intended to cause such injury as was likely to cause the death of the deceased so as to fall within the grip of Section 304, Part-I, I.P.C., and not per se under Section 302, I.P.C. for intentionally causing the death of the deceased. The totality of the circumstances thus goads us to err on the safer side by altering the conviction of the appellant to one under Section 304 Part-I, I.P.C. for which he should be sentenced to 10 years rigorous imprisonment. Ordered accordingly. The appellant is on bail. He is to surrender his bail bonds. The appeal is partly allowed leading to the afore result.