

Supreme Court of India

Ganga Dass Alias Godha vs State Of Haryana on 2 November, 1993

Equivalent citations: 1994 CriLJ 237, 1993 (3) Crimes 1100 SC, 1993 (4) SCALE 309, 1994 Supp (1) SCC 534, 1994 (1) UJ 167 SC

Author: K J Reddy

Bench: K J Reddy, G Ray

JUDGMENT K. Jayachandra Reddy, J.

1. Special leave granted.

2. The appellant, who figured as original accused No. 1, was tried alongwith three others under Sections 302 and 302/34 I.P.C. The trial Judge acquitted the other three accused but convicted the appellant under Section 302 I.P.C. simpliciter. The convicted accused namely the appellant filed an appeal challenging his conviction and the State also filed an appeal against the acquittal of the other three accused. Both the appeals were dismissed by the High Court.

3. One Umed Singh, aged about 65 years, is the deceased in the case. On 18.11.88 he had gone to Mandir to worship where at about 7.45 A.M. he was attacked. His son Dharampal, P.W.6 reached the Mandir and he also found his brothers there at the Mandir. By then the deceased was injured and on being inquired the deceased told P.W.6 that the appellant hit him with an iron pipe while he was worshipping. The other eye-witnesses P.Ws 12 and 13 also informed P.W.6 about the occurrence. Thereupon P.W.6 went and informed the police. The injured was removed to the hospital and was examined by P.W.11, a Doctor at the Primary Health center. Thereafter the injured was shifted to P.G.I., Chandigarh. P.W.15, a Neuro-Surgeon at P.G.I., Chandigarh carried out an operation on 20.11.88 on the injured deceased. However, he died on 5.12.88 as a result of head injury due to septicemia, renal failure, respiratory failure and finally cardio-respiratory arrest. An altered F.I.R. was issued and the charge-sheet was laid after due investigation.

4. the accused denied the offence and gave some evidence to show that there was some enmity. Both the courts below having believed the evidence of the eye-witnesses convicted the appellant who was responsible for inflicting the blow on the deceased.

5. Learned counsel for the appellant submits that even if the entire prosecution case is to be accepted, an offence punishable under Section 302 I.P.C. is not made out.

6. We find considerable force in this submission. As stated above the occurrence took place on 18.11.88 and the deceased died 18 days later on 5.12.88 due to septicaemia and other complications. The Doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp-edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardio failure etc. Under these circumstances, we set aside the conviction of the appellant under Section 302 I.P.C. and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section

304 Part II I.P.C. and sentence him to undergo six years' R.I. Accordingly the appeal is partly allowed.