

**NON - REPORTABLE**

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1846 OF 2010**

POP SINGH & ORS.**Appellant(s)****VERSUS****STATE OF MADHYA PRADESH****Respondent(s)****J U D G M E N T****B.R. GAVAI, J.**

1. The appeal challenges the judgment and order passed by the High Court of Madhya Pradesh dated 20th November, 2009, whereby the High Court has partly allowed the appeal filed by the present appellants. The learned Fifth Additional Sessions Judge, Indore had convicted the appellants under Section 148 and Section 304 (Part-I) of the Indian Penal Code (for short, "I.P.C.") read with Section 149 of the I.P.C. and sentenced them to undergo R.I. for 02 years for offence under

Section 148 IPC and R.I. for 10 years for offence under Section 304 (Part-I) with a fine of Rs.2,000/- (Rupees Two Thousand Only) in default of payment of fine to suffer additional R.I. for 6 months. The High Court, while confirming the conviction under 304 (Part-I), reduced the sentence to seven years.

2. The prosecution case in brief is that there was a dispute between accused persons and one Mr. Guman Singh, father of deceased Jeevan Singh on account of purchase of land of one Gulab Singh by the accused. It is the prosecution case that on 23rd April, 1997, when deceased Jeevan Singh was going to a vegetable market, Indore for selling the vegetables on his scooter, at around 07:30 a.m., when he reached in front of the house of one Ramlal in Village Alwasa, all the appellants armed with Axe, Farsa and Dharia started assaulting Jeevan Singh. Jeevan Singh fell down on the ground from the scooter. P.W.6 Padam Singh, who is the uncle of the deceased Jeevan Singh, on hearing cry of Jeevan Singh, reached on

the spot and saw the appellants-accused assaulting Jeevan Singh with various sharp edge weapons. Since, the accused persons also attempted to assault Padam Singh, he ran away and hid inside the jungle. P.W.1 Bhagwantibai, one Ramesh and P.W.7 Peer Mohd. had also witnessed the incident. Thereafter, the appellants went to the house of Guman Singh and threatened him. Jeevan Singh was taken to the hospital at Indore by P.W.8-Peer Mohd. and Rajendra Singh.

3. F.I.R. came to be lodged by P.W.6-Padam Singh. Since, the deceased was admitted to the hospital, initially the F.I.R. came to be lodged for the offences punishable under Sections 307, 147, 148 and 149 of the I.P.C. The statement of the deceased was also recorded by the Police on the same day in which he named all the appellants. The appellants were apprehended and on their disclosure statement, weapons were seized. After four days of hospitalization, the deceased died on 27th April, 1997. After completion of the investigation, charge-sheet was

filed for offences punishable under Sections 147, 148 and 302 read with Section 149 of the I.P.C. in the Court of competent Judicial Magistrate and the case was committed to the Sessions Judge. The learned Sessions Judge passed the aforesaid order of conviction. In the appeal before the High Court, the High Court confirmed the same.

4. Shri Sushil Kumar Jain, learned senior counsel appearing on behalf of the appellants submits that none of the injuries sustained by the deceased were on the vital parts of the body. Injuries were only on the hands and legs. It is therefore, submitted that it cannot be said that either the appellants had an intention or knowledge that injuries caused would result in death. He therefore submits that the case at the most would fall under Sections 325 or 326 of the I.P.C. He submits that for the said offence the period undergone i.e. three years and five months would subserve the ends of justice.

5. Shri Harmeet Singh Ruprah, learned counsel appearing on behalf of the respondent-State, on

the contrary, submits that the High Court has already taken a lenient view in the matter and has reduced the sentence from R.I. for 10 years to 07 years. He, therefore, submits that, as a matter of fact, the instant case would fall under Section 302 of the I.P.C., inasmuch as the appellants armed with deadly weapons had waylaid the deceased on account of previous enmity. He further submits that as many as 09 injuries have been sustained by the deceased and, therefore, prays for dismissal of the appeal.

6. With the assistance of the learned counsel for the parties, we have scrutinized the evidence on record.

7. The incident is not disputed by the parties.

8. From the perusal of the evidence of Dr. Saroj Bharani, Assistance Surgeon, it is revealed that the deceased has sustained the following injuries:

1. Clean lacerated wound measuring 9 cm x 4 cm x muscle deep on dorsal exposed, bleeding.
2. Lacerated wound measuring 2 cm x 1 cm x muscle deep on...
3. Lacerated wound measuring 5 cm x 4 cm x

on lateral aspect rt and bone exposed.

4. Lacerated wound measuring 9 cm x 4 cm x muscle deep x tender exposed on IP ankle.

5. Lacerated wound measuring 4 cm x 1 cm x muscle deep rt knee.

6. Lacerated wound measuring x 1 cm x muscle deep on middle of rt. Leg.

7 Lacerated wound measuring 2 cm x muscle deep on lower 1/3rd of rt leg.

8. 10 cm x 4 cm x muscle deep cut and bleeding located on Rt. Elbow.

9. Lacerated wound measuring 2 cm x 1 cm x muscle deep on lt. Arm, swelling.

9. We find that from the nature of injuries, it cannot be said that the instant case would either fall under the Section 325 or Section 326 of the I.P.C. The question, therefore, that will have to be considered is as to whether the conviction under 304 (Part-I) is sustainable or requires alteration to 304 (Part-II).

10. No doubt that there are 09 injuries. However, all the injuries are lacerated wounds and, therefore, they can be caused only by the blunt side of the weapons used. If the appellants had an intention to do away with the deceased, nothing prevented them from assaulting the deceased with the sharp side of the weapons.

11. We, therefore, find that it cannot be said that the appellants had an intention to cause the death of the deceased. However, from the nature of injuries, it is clear that the act was done with the knowledge that the injuries were likely to cause the death of the deceased.

12. We are, therefore, of the considered view that the case would not fall under Section 304 (Part-I) and would fall under Section 304 (Part-II) of the I.P.C.

13. We, therefore, alter the judgment and order of the Trial Court as well of the High Court and convert the conviction of the appellants herein from Section 304 (Part-I) to the one under Section 304 (Part-II) of the I.P.C.

14. For the said offence, we find that 05 years rigorous imprisonment would subserve the ends of justice. As the appellants have already undergone 03 years and 05 months, the appellants shall surrender to the custody within a period of four weeks from today for serving remainder of the sentence.

15. The appeal is allowed to the extent as indicated above.

16. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi
November 29, 2023