

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.545 OF 2011

DEEPAK

....APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH
(NOW UTTARAKHAND)

...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The Appellant assails the reversal of his acquittal, and consequent conviction under Section 302 I.P.C. sentencing him to life imprisonment.

2. On 27.08.1993 at about 8.30 a.m., irked by the loud noise of the tape recorder being played by the deceased in

his house, the Appellant had a verbal altercation with the deceased which culminated in a single sword blow by the Appellant in the rib cage area of the deceased.

3. The M.L.C. of the injured was done at 8.45 a.m. by PW.8 Dr. S.K. Prabhakar who found an incised wound of 2½ cm x 2 cm. The injured was deceased the same day. The post mortem was done the same day at 3.30 p.m. by PW-5 Dr. P.K. Bhatnagar, who found

“Punctured wound 2 cm x 1 cm x cavity deep just above upper border of the left lower rib on lateral side of chest 9 cm away from umbilicus at 2 O’clock position with surgical dressing”.

4. The Trial Court granted the benefit of doubt to the Appellant. The High Court on reappreciation of the evidence, particularly the testimony of PW-4 Omwati, an injured witness, and other eye-witnesses PW-1 Babu Ram, PW-2 Ram Kumar and PW-3 Kalu Ram, convicted the Appellant.

5. We have considered the submissions made respectively on behalf of the parties. The trial court has laid exaggerated emphasis, by erroneous appreciation of evidence, on minor omissions and contradictions in the evidence of PW-1, PW-2 and PW-3 so as to doubt the veracity of the entire prosecution case without any discussion of the injured eye witness PW-4. The High Court upon reappreciation of the evidence has correctly held that the evidence of PW-4 stands corroborated by the other three prosecution witnesses.

6. It is manifest from the evidence of the prosecution witnesses that the Appellant and the deceased lived opposite each other across the road. Their houses were separated by a distance of approximately 20-25 feet by the road in-between. The genesis of the occurrence was the

loud playing of a tape recorder in the house of the deceased, objected to by the Appellant. A verbal argument ensued. The Appellant rushed across to his house, came back with a sword and delivered a single blow to the deceased in the rib cage area and then ran away threatening to see him later. The entire altercation is stated to have lasted for 1½ to 2 minutes.

7. On consideration of the entirety of the evidence, it can safely be concluded that the occurrence took place in the heat of the moment and the assault was made without pre-meditation at the spur of time. The fact that the Appellant may have rushed to his house across the road and returned with a sword, is not sufficient to infer an intention to kill, both because of the genesis of the occurrence and the single assault by the Appellant, coupled with the duration of the entire episode for 1½ to 2 minutes. Had there been any intention to do away with the life of the deceased,

nothing prevented the Appellant from making a second assault to ensure his death, rather than to have run away. The intention appears more to have been to teach a lesson by the venting of ire by an irked neighbour, due to loud playing of the tape recorder. But in the nature of weapon used, the assault made in the rib cage area, knowledge that death was likely to ensue will have to be attributed to the Appellant.

8. In the entirety of the evidence, the facts and circumstances of the case, we are unable to sustain the conviction of the Appellant under Section 302 I.P.C. and are satisfied that it deserves to be altered to Section 304 Part-II I.P.C. It is ordered accordingly. Considering the period of custody undergone after his conviction, we alter the sentence to the period of custody already undergone. The Appellant may be released forthwith if not required in any other case.

9. The appeal is therefore allowed in part with the aforesaid modification of the conviction and sentence.

.....J.
[**RANJAN GOGOI**]

.....J.
[**R. BANUMATHI**]

.....J.
[**NAVIN SINHA**]

NEW DELHI
AUGUST 01, 2018