

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. 1842 of 2012

THE STATE OF UTTAR PRADESH

.... Appellant(s)

Versus

FAQUIREY

....Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Respondent was convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo life imprisonment by the Trial Court. The High Court converted the conviction to an offence under Section 304 Part I, IPC and sentenced the Respondent to 10 years rigorous imprisonment. Aggrieved thereby, the State of Uttar Pradesh is in appeal before us.

2. PW-1, Bahadur lodged an FIR on 22.03.2000 in which it was stated that a Panchayat was held at the residence of one Kanhai, at noon on 22.03.2000. There was a dispute between his nephew Nokhey and the Respondent. During the course of the Panchayat, Rakesh, son of the complainant arrived at 3.30 p.m. from his agricultural field. The

Respondent saw Rakesh and stated that he will kill him prior to the settlement of the dispute before the Panchayat as Rakesh had an evil eye on his wife and was visiting his house. Santosh, the younger brother of the Respondent also arrived at the spot and exhorted the Respondent to kill Rakesh. When Rakesh tried to run to save himself, the Respondent took out a pistol and fired at Rakesh. Rakesh succumbed to the fire arm injury. The inquest was conducted on the next day i.e. 23.03.2000 and the dead body of the deceased Rakesh was sent for post-mortem examination. As per the post mortem certificate (Ex.Ka.11), the following injuries were found on the deceased:

“Gunshot wound of entry on right side back level of T/10 and T/11, 2 cm lateral to spine size 2 x 2 cm x chest cavity. Blackening, tattooing present, margins inverted. Direction backward to forward.
On the internal examination Doctor recovered 33 small metallic pellets and wadding pieces from the chest cavity lower part. The 10th and 12th thoracic vertebra found fractured on right side. 10th and 12th ribs were found fractured on right side. Blueria was lacerated. Right lung was lacerated. 1.2 lt. blood was found in chest cavity. Right chamber of the heart was full and left empty. The stomach was empty. Small intestine contained gases. Large intestine contained faecal matter and gases. Spleen, kidney were pale. 50 ml. Urine was present in bladder. In the opinion of the Doctor deceased had died due to shock and hemorrhage as a result of ante mortem injuries. He had prepared the post mortem report in his own hand writing at the time of post mortem examination which is Ex.Ka.11 on the record.”

3. A charge under Section 302 IPC was framed against the Respondent and Santosh was charged under Section 302 read with 34 IPC. After a detailed consideration of the material on record including the oral testimonies of PW-1 and PW-2 who were the eye witnesses, the Trial Court held that the Respondent had fired at the deceased from his pistol as he had a doubt that the deceased was visiting his house with an evil eye on his wife. While the Trial Court acquitted Santosh, the Respondent was convicted under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.5,000/-.

4. In the appeal filed by the Respondent, against the conviction and sentence, there was no contest on merits. The only submission made on behalf of the Respondent was that he could not have been convicted under Section 302 IPC. According to the Appellant, his conviction should have been under Section 304 IPC as the case is covered under Exception I to Section 300 IPC. The High Court observed that the intervention of the deceased in the quarrel between the two factions led to the Respondent losing his self control. The High Court was of the opinion that this resulted in grave and sudden provocation. Observing so, the High

Court converted the conviction of the Respondent from Section 302 IPC to Section 304 Part I IPC. The Respondent was sentenced to suffer rigorous imprisonment for 10 years.

5. Mr. V. Shekhar, learned Senior Counsel appearing for the Appellant submitted that the High Court committed an error in converting the conviction of the Respondent from under Section 302 IPC to Section 304 Part I, IPC. He further submitted that the case of the defence that Exception I to Section 300 IPC is applicable is not correct. The Respondent was enraged at the sight of the deceased in view of the doubt he had in his mind about the deceased having an evil eye on his wife. The learned Senior Counsel relied upon the First Proviso to Exception I of Section 300 IPC to submit that the accused is not entitled to claim that the crime was committed due to grave and sudden provocation. Mr. D. K. Garg, learned counsel appearing for the Respondent submitted that the judgment of the High Court does not deserve any interference as the High Court was right in recording a finding that the Respondent lost his self control due to grave and sudden provocation which resulted in his shooting the deceased. He further submitted that the incident occurred almost 18 years ago and the Respondent

has undergone the sentence of 10 years which is an additional reason for us not to reverse the judgment of the High Court.

6. After examining the matter carefully, we are of the opinion that the judgment of the High Court is liable to be set aside and the judgment of the Trial Court to be restored. There is no dispute that the shot fired from the pistol by the Respondent is due to the grudge that he had against the deceased. Immediately after the deceased arrived at the place of incident, the Respondent's attention was diverted from the dispute that was being settled in the Panchayat. He turned to the deceased and shot him in view of his past conduct relating to the visit of the deceased to his house to become close with his wife.

7. According to Exception I to Section 300 IPC, culpable homicide is not murder if the offender causes the death of the person who gave the provocation, whilst deprived of the power of self-control by grave and sudden provocation. It would be relevant to refer to the First Proviso to Exception I which provides that the provocation should be one which is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. No overt

act is alleged against the deceased by which it can be stated that the Respondent was provoked. From the proved facts of this case it appears that the provocation was voluntary on the part of the offender. Such provocation cannot come to the rescue of the Respondent to claim that he is not liable to be convicted under Section 302 IPC.

8. The High Court committed a serious error in converting the conviction of the Respondent from under Section 302 IPC to under Section 304 Part I IPC, without proper appreciation of the scope of Section 300 IPC. There was no submission made on behalf of the Respondent before the High Court on the merits of the matter. If the offence committed by the Respondent is murder, he has to undergo the imprisonment provided under Section 302 IPC. Though the Respondent has undergone imprisonment for a period of 10 years, we are of the opinion that the Respondent is liable to go back to jail to undergo the remaining sentence on being sentenced to life imprisonment.

9. For the aforementioned reasons, the judgment of the High Court is set aside and the judgment of the Trial Court convicting the Respondent under Section 302 IPC and sentencing him to life imprisonment is restored. The

Respondent is directed to surrender within a period of four weeks to serve the remaining sentence.

10. Accordingly, the appeal is allowed.

.....J
[L. NAGESWARA RAO]

.....J
[SANJAY KISHAN KAUL]

New Delhi,
February 11, 2019