



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

CRIMINAL APPEAL NO. 596 OF 2014

RAGHAV PRASHAD AND OTHERS

... APPELLANTS

versus

STATE OF U.P.

... RESPONDENT

J U D G M E N T

B.R.GAVAI, CJI.

FACTUAL ASPECTS

1. The present appeal challenges the final judgment and order dated 4th July 2013 passed by the Division Bench of the High Court of Judicature at Allahabad¹ in Criminal Appeal u/s 374 Cr.P.C. No. 2259 of 1989 filed by the accused appellants whereby, the High Court *dismissed* the appeal and upheld the judgment and order dated 8th November 1989 passed by the Additional District and Sessions Judge, Karvi (Banda)² in Sessions Case No. 88 of 1986 convicting the accused appellants under Section 302 read with Section 34 of the Indian Penal Code,

¹ Hereinafter referred to as “the High Court”.

² Hereinafter referred to as “the Trial Court”.

1860³. The High Court also upheld the order of sentence dated 15th November, 1989 *vide* which the Trial Court had sentenced the accused appellants to undergo rigorous imprisonment for life along with a fine of Rs.6,000/-.

2. Shorn of details, the facts leading to the present appeal are as under:

2.1. It is the prosecution case that on the morning of 6th August 1986 at 8 o'clock, complainant – Ram Gopal (PW-1) along with his father Ram Avtar, uncles Namu Shankar and Girija Shankar and two other persons had arrived at *Baruahaar Ghat* for measuring some agricultural fields for partition where they met the accused appellants – Raghav Prashad (Accused No.1/owner of adjacent land), Prem Shankar (Accused No.2/brother of Accused No.1), Dayanidhi (Accused No.3/Cousin brother of Accused No.1 and Accused No.2) and Late Ram Naresh (Accused No. 4/Father-in-law of Accused No. 2).

2.2. It is the prosecution case that the accused persons who were hiding in the *Baruahaar Ghat* suddenly came out. They

³ Hereinafter referred to as “IPC”.

had an altercation with complainant's father and his uncles over the measurement of agricultural fields and later started hitting them with pike, sticks, and spear.

2.3. Thereafter, complainant along with his injured father and uncles went to the Raipura police station in a bullock cart driven by one Kandhai Lal and an FIR No. 53/1986 came to be registered at 9:30 AM initially under Sections 307 and 308 read with Section 34 IPC. Subsequently, the injured persons were sent to the Karvi Hospital in a truck from the police station.

2.4. Injured Ram Avtar and Namu Shankar succumbed to their injuries on the same day at Karvi Hospital whereas injured Girija Shankar also died on same day while being shifted to another hospital in Allahabad. Hence, charge under Section 302 IPC was added.

2.5. The post-mortem report dated 7th August 1986 noted various ante-mortem injuries and fractures on the body of the deceased persons.

2.6. The accused appellants were arrested on 12th August 1986. The chargesheet was filed and the case being exclusively

triable by the Sessions Court was committed for Trial to the court of Additional District and Sessions Judge, Karvi (Banda) by an order dated 13th November 1986 passed by the Munsiff Court, Karvi. Thereafter, the accused appellants were released on bail on 7th January 1987.

2.7. *Vide* judgment and order dated 8th November 1989, the Trial Court convicted the accused appellants for the offence punishable under Section 302 read with Section 34 of IPC and *vide* order dated 15th November, 1989 they were sentenced to rigorous imprisonment for life alongwith a fine of Rs. 6,000/-.

2.8. Aggrieved thereby, the appellants filed Appeal being Criminal Appeal u/s 374 Cr.P.C. No. 2259 of 1989 before the High Court which was *dismissed vide* impugned judgment and order dated 4th July 2013. The High Court upheld the judgment and order of the Trial Court and directed the Trial Court to take necessary steps to ensure that the accused appellants who were out on bail are arrested and committed to custody to undergo their sentence.

2.9. Aggrieved thereby, the present appeal by way of special leave.

SUBMISSIONS

3. We have heard Shri Raj Kumar Yadav, learned counsel for the appellants and Shri Akshay Amritanshu, learned counsel for the respondent-State.

4. Shri Raj Kumar Yadav, learned counsel for the accused appellants submitted that the prosecution's case is solely based on the evidence of PW-1. It is submitted that PW-1 is a related witness and as such, the conviction cannot rest solely on the basis of his evidence. In addition, it is submitted that the offence committed by the accused appellants would not fall under Section 302 IPC and at the most, the accused appellants could be convicted for a lesser offence.

5. *Per contra*, Shri Akshay Amritanshu, the learned counsel appearing for the State has vehemently opposed the appeal. He submitted that the appellants have committed the brutal murder of three persons. It is further submitted that the testimony of PW-1 is supported by medical evidence and as such, no interference by this Court would be warranted.

DISCUSSION AND ANALYSIS

6. We have heard learned counsel for the parties and perused the material placed on record.

7. The prosecution case basically rests on the testimony of PW-1, who is the son of deceased Ram Avtar and nephew of deceased Namu Shankar and deceased Girija Shankar. PW-1 in his statement has deposed that there was a dispute over the measurement of agricultural fields between deceased Ram Avtar and accused No. 1 - Raghav Prashad. PW-1 stated that when he along with all three deceased and two other persons went to the agricultural field in *Baruahaar Ghat*, they saw that the four accused persons were hiding there and on seeing them, they came out. It is further stated that the accused persons Raghav Prashad and Dayanidhi were carrying sticks whereas Prem Shankar had a pike and his father-in-law had a spear.

8. The perusal of the evidence of PW-1 would reveal that even though the accused appellants were having sharp weapons (pike, spear, etc.), they had only used the blunt side of the said weapons.

9. It is further to be noted that PW-2 – Chandrika Prasad who is the son of deceased Namo Shankar had turned hostile.

10. Moreover, the medical evidence would also show that all the three deceased persons had lacerated and contused wounds only and there were no incised wounds.

11. As already seen above, a perusal of the evidence of PW-1 would itself reveal that the accused persons Raghav Prashad and Dayanidhi were carrying sticks whereas the other accused persons Prem Shankar and Late Ram Naresh who were carrying the sharp weapons, had only used the blunt side of the weapons.

12. In view of the evidence of PW-1, we do not find any reason to disagree with the concurrent findings of fact recorded by the Trial Court and the High Court that it was the accused appellants who caused the death of Ram Shankar, Namo Shankar and Girija Shankar.

13. However, the question that arises for our consideration is as to whether the conviction under Section 302 IPC would be tenable or whether the accused are liable to be convicted for a lesser offence.

14. We find that though the accused persons could be said to have the knowledge that the injuries would cause death of the deceased, there is no material on record to show that they had the intention to kill them. It is further to be noted that PW-1 had himself deposed that there was prior enmity between the Appellant No. 1- Raghav Prashad and deceased Ram Avtar over the measurement of agricultural fields.

15. We, therefore, find that in the facts of the present case, the conviction under Section 302 IPC would not be tenable and is liable to be converted to one under Section 304 Part I of IPC. We are, therefore, inclined to partly allow the appeal.

CONCLUSION

16. In the result, we pass the following order:

- (i)** The appeal is partly allowed;
- (ii)** The conviction of the accused appellants under Section 302 of IPC is converted to one under Section 304 Part 1 of IPC; and
- (iii)** Accused appellants have already undergone sentence of more than 12 years. We, therefore, find that the sentence already undergone by them would subserve the interest

of justice. The accused appellants are, therefore, directed to be released forthwith, if not required in any other case.

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

.....**CJI.**
(B.R.GAVAI)

.....**J.**
(K. VINOD CHANDRAN)

NEW DELHI;
SEPTEMBER 26, 2025