2019 INSC 902

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2267-2268 OF 2009

UDIYA ….. APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH ….. RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

By the impugned judgment dated July 07, 2006, the High Court of Madhya Pradesh, affirming the judgment of the trial court, has upheld conviction of the appellant – Udiya under Section 302 of the Indian Penal Code, 1860 (for short, 'IPC') for murder of his brother – Nakuda and sentenced him to imprisonment for life and fine of Rs.1,000/-, in default of which he is to undergo rigorous imprisonment for one month.

2. Having considered the testimony of Jeevni (PW-1), wife of deceased Nakuda and sister-in-law of the appellant, who is an eye-witness, we have no hesitation in affirming conviction of the appellant for having caused death of Nakuda. Jeevni (PW-1) has testified that on July

10, 1999, at about 10.00 p.m., while she was in her house, she heard her husband raising alarm. Her husband was returning from work and was at a short distance from home. She had seen the appellant assaulting Nakuda with a stone. Nakuda had also told her that the appellant had assaulted him with a stone. Jeevni (PW-1) had thereupon proceeded to the house of one Laxman and took him to the place of incident. Villagers had thereafter gathered at the place of incident. PW-1 had lodged the police report Exhibit P/1. In fact, while issuing notice in this appeal vide order dated February 23, 2009, the same was confined to the nature of offence and quantum of punishment only. We would, therefore, now address the question on nature of offence and quantum of punishment.

3. Medical evidence in the form of Post Mortem Report (Ex.P/8), proved by Dr. Nirmal Kumar Chaudhary (PW-6), opines that the deceased had suffered contusions and a fracture on the left temporal and maxillary bones, and that the death was on the account of the head injuries.

4. However, we are inclined to accept the plea and contention that the present case would fall under Exception 4 of Section 300 IPC. This is not a case of premeditated attack or violence actuated by a motive and previous feud. It was a case of sudden fight in which the two brothers got involved and in the grapple the appellant had picked up

a stone and had hit the deceased Nakuda. Birji (PW-3) has testified that Jeevni (PW-1) had come to his house and stated that the appellant and Nakuda were fighting. Similar assertion was made by Laxman (PW-4) who has stated that Jeevni (PW-1) had informed that the two brothers were fighting and that they must separate them. Appellant had not come armed to the spot with a weapon of offence. No witness has testified as to any past enmity and acrimony between the two brothers. In fact, Jeevni (PW-1) had stated that earlier a civil suit had been filed by her deceased husband and the appellant against two other persons and that there was no previous enmity between the two brothers though they sometimes used to quarrel and thereafter would become friendly. When Jeevni (PW-1) had approached the deceased Nakuda, he was in a position to speak and had stated that the appellant had given him a beating with a stone, albeit he did not give any reason for the violence. Post Mortem Report no doubt refers to fracture of the third and fourth rib but these could have been caused when Nakuda had fallen down. No external injuries were present and noticed in the rib area. Laxman (PW-4) has deposed that they had proceeded to the appellant's house. Appellant, who was present, was asked to come out and was thereupon confronted and informed that Nakuda had expired and they would be filing a police report. Then, the appellant on the pretext of easing himself had fled from the spot. This would

indicate that the appellant was not aware that he had killed his brother, Nakuda. (Even otherwise, there is hardly any evidence to suggest and show that the injuries caused were intended, so as to indicate intention of causing bodily injury as is sufficient in the ordinary course of nature to cause death).

5. Accordingly, for the reasons stated above, we would convert the conviction of the appellant from Section 302 to Part-I of Section 304 IPC. On the question of sentence, we are informed that the appellant has already undergone rigorous imprisonment for over six years, prior to his release on bail, as directed vide order dated November 30, 2009. The offence was committed in the year 1999. In the aforesaid circumstance, we are inclined to modify the sentence to the period already undergone, which would include default rigorous imprisonment for a period of one month in lieu of fine of Rs.1,000/-.

6. The appeals are partly allowed in the aforesaid terms.

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

NEW DELHI;
AUGUST 14, 2019.