

ZAHOOOR & ORS.

v.

STATE OF U.P.

(Criminal Appeal No. 1331 of 2008)

APRIL 26, 2011

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860 – s. 304 (I) read with s. 34 – Death due to gunshots – Three accused – Conviction u/s. 302 and sentence of life imprisonment by the trial court – However, the High Court modified the conviction to one u/s. 304 (I) read with s. 34 on the ground that the matter related to a sudden quarrel without pre-meditation – On appeal held: As regards two of the accused no overt act has been attributed to them – They did not cause any injury to the deceased or to anybody else and the only allegation against them is that they had exhorted their co-accused to shoot at the deceased – Thus, their conviction is set aside – Conviction of the third accused u/s 304(Part-1) does not call for interference – However, he was of tender age on the date of the incident and at present he is 60 years of age – In the interest of justice, his sentence is reduced from 10 to 5 years – Sentence/Sentencing.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1331 of 2008.

From the Judgment & Order dated 08.10.2007 of the High Court of Allahabad in Criminal Appeal No. 2630 of 1982.

J.P. Sharma, Naresh Bakshi for the Appellants.

R.K. Gupta, Pradeep Misra, Suraj Singh, Sandeep Singh for the Respondent.

The following order of the Court was delivered

A

ORDER

In this appeal for the reasons mentioned hereunder, no detailed facts are necessary.

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Suffice it to say that the appellants before us Zahoor, Subrati and Babu were brought to trial for an offence punishable under Section 302 of the IPC for having committed the murder of Mahipal Singh @ Puttan on the 18th May, 1979. The Trial court convicted them under Section 302 of the IPC and sentenced them to life imprisonment. The High Court has by the impugned judgment held that the appellants were liable to conviction under Section 304 (I) of the IPC read with Section 34 as the matter related to a sudden quarrel without premeditation and that a fine of Rs.5000/- would meet the ends of justice.. The matter is before us after the grant of special leave at the instance of the accused.

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We have heard the learned counsel for the parties and find no reason to interfere with the conviction recorded by the High Court in so far as the appellant-Babu is concerned. However, in the light of the fact that the other two appellants i.e. Zahoor and Subrati have been brought in with the aid of Section 34 of the IPC, their conviction and sentence cannot be maintained as the vicarious liability under Section 34 cannot be fastened as Section 34 deals with common intention which presupposes some prior planning or pre-concept of minds even during the incident. Moreover, we find that Zahoor and Subrati had not caused any injury to the deceased or to anybody else and the only allegation against them that they had exhorted their co-accused to shoot at the deceased Puttan. In other words no overt act has been attributed to them.

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We also see from the record that the appellant-Babu was of tender age on the date of the incident. The incident happened in the year 1979 which would now make him about 60 years of age as of now. We quite appreciate that one man

has been shot dead but in the overall picture we feel that the ends of justice would be met if the sentence is reduced from 10 to 5 years under Section 304 Part-I of the IPC. The appeal against Zahoor and Subrati is allowed in toto but insofar as the appellant-Babu is concerned, the appeal is dismissed with the reduction in the sentence.

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In the meantime, we direct that the appellants-Zahoor and Subrati, who are in custody, shall be released forthwith if not required in connection with any other case. The appellant-Babu be released on the completion of his sentence of 5 years.

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The appeal is disposed of accordingly.

N.J.

Appeal disposed of.