

JHAPTU RAM

v.

STATE OF HIMACHAL PRADESH  
(Criminal Appeal No. 1223 of 2012)

FEBRUARY 26, 2014

**[DR. B.S. CHAUHAN AND J. CHELAMESWAR, JJ.]**

*Penal Code, 1860: s.302 - Murder - Altercation between the appellant and his son - Intervention by the deceased-victim and his mother staying next door - Gun shot fire by appellant at the deceased resulting in his death - Conviction u/s.302 by trial court, upheld by High Court - On appeal, held: Undoubtedly, it was a case wherein the deceased and his mother were called to intervene and pacify the matter - An altercation took place between the appellant and the deceased - No evidence to show that there was any prior intention of the appellant to kill the deceased - As per the medical and ocular evidence, there was only one gun shot fired by the appellant which proved to be fatal for deceased - More so, prosecution failed to marshal any evidence to show that the gun was in the hand of the appellant when the deceased entered his house - In such peculiar facts and circumstances of the case, conviction u/s.302 is set aside and appellant is convicted u/s.304 Part-I and awarded sentence of ten years.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1223 of 2014.

From the Judgment and Order dated 04.12.2009 of the High Court of Himachal Pradesh, Shimla in Criminal Appeal No. 104 of 2007.

T.V.S. Raghavendra Sreyas, Urmila Sirur for the Appellant.

A Ajay Marwah, Pragati Neekhra for the Respondent.

The following Order of the Court was delivered

ORDER

B 1. This criminal appeal has been preferred against the  
impugned judgment and order dated 4.12.2009 passed by the  
High Court of Himachal Pradesh at Shimla dismissing the  
Criminal Appeal No. 104 of 2007 and affirming the judgment  
and order of Fast Track Court, Mandi (H.P.) in Session Trial  
C Nos. 32 of 2004 and 80 of 2005 by which and whereunder, the  
appellant stood convicted under Section 302 of Indian Penal  
Code, 1860 (hereinafter referred to as the 'IPC') and has been  
awarded life sentence alongwith a fine of Rs. 10,000/-, in default  
of payment of fine, to further undergo one year imprisonment.

D 2. Facts and circumstances giving rise to this appeal are  
as follows:

A. As per the prosecution, an altercation took place  
between the appellant and his son on 14.6.2004 at about 9.00  
E P.M. The daughter of the appellant named Shukari Devi called  
Devinder Kumar (deceased) and his mother Bhagti Devi  
(PW.1), who were the next door neighbour. Devinder Kumar  
(deceased) and Bhagti Devi (PW.1) reached the house of the  
appellant and some altercation took place between the  
F appellant and the deceased. The accused fired at him and after  
receiving a gun shot injury, he fell down and died. The incident  
was witnessed by Bhagti Devi (PW.1) and Dina Nath (PW.3),  
son of accused/appellant. After hearing the noise of the gun shot  
other neighbours also reached the spot. An FIR was lodged at  
G Police Station: Joginder Nagar on 15.6.2005 under Section  
302 IPC and the appellant was arrested.

B. After investigation of the case, a chargesheet was filed  
and as the appellant denied his involvement, the trial  
commenced. After conclusion of the trial, placing reliance on  
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the evidence of PW.1 and PW.3, the trial court convicted the appellant and sentenced as referred to hereinabove.

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C. Aggrieved, the appellant preferred appeal before the High Court which has been dismissed vide impugned judgment and order dated 4.12.2009.

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Hence, this appeal.

3. Shri T.V.S. Raghavendra Sreyas, learned counsel appearing on behalf of Ms. Urmila Sirur, learned Amicus Curiae, has submitted that the prosecution has not led any evidence to show that the offence committed by the appellant was pre-mediated. Nor it has been established by leading an evidence that after picking an altercation with the deceased, the appellant gone into the house and brought a gun. In this respect, there is no evidence on record and it is a case wherein the appellant could be convicted under Section 304 Part-I IPC.

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4. Per contra, Shri Ajay Marwah, learned counsel appearing on behalf of the State, has opposed the appeal contending that as the court below has concurrently held that it is a case of simple murder, therefore conviction under Section 302 IPC to be upheld and it is not a case where the conviction may be converted into Section 304 Part-I IPC and sentence may be reduced.

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5. We have considered the matter, undoubtedly, it was a case wherein the deceased and his mother Bhagti Devi (PW.1) had been called to intervene and pacify the matter. It is also clear from the evidence on record that an altercation took place between the appellant and the deceased. There is no iota of evidence to show that there was any prior intention of the appellant to kill the deceased. As per the medical and ocular evidence, there was only gun shot fired by the appellant which proved to be fatal for deceased. More so, the prosecution failed to marshal any evidence to show that the gun was in his hand when the deceased entered his house. In such peculiar

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A facts and circumstances of the case, we agree with the submissions advanced by Shri Sreyas, learned counsel for the appellant.

B 6. In these facts and circumstances of the case, we are of the considered view that the appeal deserves to be allowed partly. Hence, the conviction of the appellant is set aside under Section 302 IPC and is convicted under Section 304 Part-I IPC and award sentence of ten years. However, the amount of fine remains intact. With these observations, the appeal stands disposed of.

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D.G.

Appeal disposed of.