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RAM AUTAR & ORS.

v.

STATE OF U.P.

(Criminal Appeal No. 1157 of 2016)

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NOVEMBER 28, 2016

[DIPAK MISRA AND AMITAVA ROY, JJ.]

Penal Code, 1860: ss.304 Part-I, 147, 148 and 149 – Fatal attack – Prosecution case was that on the morning of the incident, the cattle of the victim-deceased strayed into the field of the appellant and destroyed the crop – Accused persons abused the deceased whereafter he herded back the cattle – Later when the deceased and complainant party were sitting in their compound, altercation took place between the deceased and accused persons who resided next door – On exhortation of other accused persons, appellant brought gun and fired at the deceased and the other accused persons attacked him with lathis – Deceased died on the spot – Conviction of all accused persons u/s.302 – High Court modified conviction to one u/s.304 Part I – On appeal, held: The materials on record suggested that the deceased also contributed to the escalating tension and in the process the accused persons jointly unleashed attack on him by lathis and also shot him – In the fact situation that developed in quick succession, there was as such no pre-meditation or prior concert on the part of the accused persons to commit murder – The incident happened on the spur of the moment and in an uncontrollable, embittered and agitated state of enragement, thus depriving the accused persons of their power of self control – The evidence shows that the appellants did not have any infamous criminal background as well – Also the incident had occurred in 1982 and more than three decades have passed – In totality of circumstances, conviction of appellants u/s.304-Part 1 r/w ss.147,148,149, as recorded by High Court, is justified – However, in view of facts and circumstances, the sentence for the offence u/s.304-Part I/149 reduced to rigorous imprisonment for 7 years.

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Partly allowing the appeal, the Court

HELD: 1. The evidence of the eye witnesses showed that not only they have with noteworthy consistency and cohesion

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authenticated the case of the prosecution in all material A
 particulars, they have identified as well the appellants and their
 co-accused and also have provided graphic details of the events
 in the sequence in which the same unfolded at the place of
 occurrence. The testimony of the doctor who performed post B
 mortem on the dead body (PW-5) reveals fire arm wounds on the
 head, chest and right upper arm of the deceased together with
 the multiple abrasions and contusions on various parts of the
 body. According to this witness, death had occurred due to shock
 and haemorrhage as a result of the ante-mortem injuries. This
 witness also referred to lacerated/incised wounds and contusions C
 sustained by the appellants and the co-accused which, according
 to the medical expert, were however simple in nature. The High
 Court, noticing the injuries, which PW-5 had identified to be simple
 in nature, did conclude, had been self inflicted in order to contrive
 a defence. In view of the evidence available and the overall
 scenario, this finding cannot be repudiated to be absurd or D
 illogical. However, one cannot overlook the progression of events
 that occurred since the incident of trespass of the cattle of the
 deceased in the fields of co-accused and others leading to abuse
 and unpleasantness between them earlier in the day. The second
 bout of bickerings precipitated in the afternoon on the same day
 while the deceased, appellants and the co-accused were sitting E
 in their respective compounds, abutting each other. The
 witnesses of the incident though, at the preliminary stages, did
 advise the deceased to go in and avoid a brewing confrontation,
 he obdurately refused to do so and stoked the growing indignation
 so much so that eventually he was shot at and also assaulted by
 the appellants and their companions. The materials on record F
 do suggest that the deceased did also contribute to the escalating
 tension and in the process the accused persons jointly unleashed
 attack on him by lathis and also shot him. A sudden spurt of
 irreversible events thus got triggered thereby. [Paras 14, 15,
 17, 18] [795-C-F; 796-B-E] G

4. In the fact situation that developed in quick succession,
 there was as such no pre-meditation or prior concert on the part
 of the accused persons to commit murder. The incident happened
 on the spur of the moment and in an uncontrollable, embittered
 and agitated state of enagement, thus depriving the accused H

A persons of their power of self control. Though during the assaults, the accused persons were understandably aware of the likely results thereof, it is difficult to perceive that they had any common object of eliminating the deceased. This is more so as the evidence discloses that the accused-appellants, first informant as well as the deceased did descend from a common ancestor and that their grandfathers were real brothers. The evidence demonstrates that the accused- appellants do not have any infamous criminal background as well. The incident had occurred in the year 1982 and as on date, more than three decades have passed. The conviction of the appellants under Section 304-Part 1 read with Sections 147,148,149 IPC, as recorded by the High Court, is justified. However, having regard to the singular facts and circumstances, the sentence for the offence under Section 304-Part I/149 IPC is reduced to rigorous imprisonment for 7 years. [Paras 19-20] [796-F-H; 797-A-B]

D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1157 of 2016.

From the Judgment and Order dated 10.06.2016 of the High Court of Judicature at Allahabad in Criminal Appeal No. 958 of 1983.

E Dr. J. P. Dhanda, Ms. Raj Rani Dhanda, Vineet Dhanda, N. A. Usmani, Mohd. Shahid Hussain, Advs. for the Appellant.

Ravi Prakash Mehrotra, V. S. Shukla, Vibhu Tiwari, Advs. for the Respondent.

The Judgment of the Court was delivered by

F AMITAVA ROY, J. 1. Leave granted.

G 2. The appellants hereby assail the affirmation of their conviction under Sections 147,148, 149 Indian Penal Code (for short, hereinafter to be referred to as "IPC") as recorded by the Trial Court. By the decision impugned, the High Court, however has altered their conviction from one under Section 302 IPC to Section 304-Part I IPC. Thereby, the appellants now stand sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000/-, in default, to suffer simple imprisonment for further two months for this offence. All sentences have been ordered to accrue concurrently.

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3. We have heard Dr. J.P. Dhanda, learned counsel for the appellants and Mr. Ravi Prakash Mehrotra, learned counsel for the State. A

4. The genesis of the arraignment is traceable to the incident that witnessed the deadly assault on Lalni @ Raj Kumar, the brother of the informant Gaya Prasad, on 04.04.1982 at 1.00 p.m. within the precincts of the house of the deceased. B

5. As the first information laid at 3.15 p.m. on the same date would reveal, in the morning thereof, the cattle of the deceased had strayed into the fields of Suraj Bali and others and had allegedly destroyed the Arhar crop of the accused persons. On being abused by them (accused persons), the deceased herded back the cattle and returned home crestfallen. While he was sitting in his compound in the afternoon at about 1.00 p.m. and in the company of the informant his brother, Gaya Prasad PW-1 as well as Sitaram PW-2 and Ram Sajeewan @ Dhunna PW-4, altercation broke out between him and the accused persons including the appellants, who resided next door, on the same issue. The heated exchanges that followed escalated tempers, whereupon as per the prosecution, the appellants along with Suraj Bali and Chandra Bali pounced on the deceased, in a body. On being exhorted by Suraj Bali to eliminate the deceased, appellant Deo Munni @ Putti, at his instance, brought his gun and fired at Lalni. As Lalni fell, being injured, the other accused persons joined in the assaults with lathis. The informant and the other two witnesses though intended to intervene, they were prevented from doing so, by pointing the gun towards them. Lalni died at the spot. C D E

6. On the lodgement of the FIR with the police at about 3.15 p.m., as herein before mentioned, case was registered under Sections 302,147,148 and 149 IPC. In course of the investigation, inquest on the dead body was conducted and the sketch map of the place of occurrence was prepared. After the charge-sheet was laid against the accused persons, charge was framed under Section 302, read with Sections 147/149 IPC against them, they having pleaded "not guilty". Additionally, charge under Section 148 also framed against appellant Deo Munni @ Putti who was armed with gun, as indicated, herein before. F G

7. The prosecution examined as many as six witnesses including eye witnesses, namely; Gaya Prasad (PW-1), Sitaram (PW-2), Ram Sajeewan @ Dhunna (PW-4), besides Dr. S.C. Srivastava (PW-5) and Brahm Dev Singh, Investigating Officer (PW-6). H

A 8. On the completion of the prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C.. They also examined Shyam Lal as their witness in defence.

B 9. The Trial Court, on an exhaustive appreciation of the evidence on record, convicted all the accused persons under Sections 302,147,148 and 149 IPC as mentioned therein. They were amongst others sentenced to undergo imprisonment for life for the offence under Section 302 IPC. They were sentenced as well for the other offences.

C 10. As referred to hereinabove, the High Court in appeal sustained the conviction under Sections 147/148/149 IPC but moderated the conviction under Section 302 IPC to one under Section 304-Part I and the sentence therefor was ordained to be rigorous imprisonment for 10 years and fine of Rs.5000/-, in default, simple imprisonment for further two months.

D 11. The learned counsel for the appellants has assiduously argued that the prosecution having failed to prove that the appellants and their co-accused had been the aggressors who assaulted the deceased and that he succumbed to the injuries sustained thereby, their conviction and sentence, if allowed to stand, would signify travesty of justice. According to the learned counsel, the appellants and the co-accused, while escorting the cattle of the deceased from the fields to the nearby cattle pond, were attacked by him and his cohorts, for which DW-1 Shyam Lal had to open fire in self defence. Without prejudice to this, it has been argued that in any view of the matter, there was no pre-meditation or pre-concert on the part of the appellants and the co-accused to attack or assault the deceased and having regard to the incident that had occurred in the fields earlier in the day, the sentence awarded by the High Court is unduly harsh and is liable to be appropriately scaled down in the attendant facts and circumstances.

F 12. The learned counsel for the respondent, in refutation, has urged that it having been proved beyond all reasonable doubt by unimpeachable testimony of the eye witnesses, Gaya Prasad (PW-1), Sitaram (PW-2) and Ram Sajeewan @ Dhunna (PW-4) that the appellants and their co-accused Suraj Bali and Chandra Bali had formed an unlawful assembly and had with the intention of eliminating the deceased, had jointly launched a lethal attack by using, amongst others, a fire arm, the conviction recorded by the High Court, does not merit interference. According to him, having

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regard to the seriousness of the charges proved, the appellants have been let off lightly with the substantive sentence of ten years' rigorous imprisonment. A

13. We have lent our due consideration to the materials on record as well as the competing assertions. Noticeably, the findings on the incident are concluded by concurrent deductions of the two courts below. This notwithstanding, we have examined in particular, the evidence of the eye witnesses Gaya Prasad (PW-1), Sitaram (PW-2) and Ram Sajeewan @ Dhunna (PW-4) as well as that of the Dr. S.C. Srivastava (PW-5), who had performed the post-mortem examination on the dead body. B
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14. A close scrutiny of the evidence of the eye witnesses leaves no manner of doubt that not only they have with noteworthy consistency and cohesion authenticated the case of the prosecution in all material particulars, they have identified as well the appellants and their co-accused and also have provided graphic details of the events in the sequence in which the same unfolded at the place of occurrence. The testimony of the Dr. S.C. Srivastava (PW-5) reveals fire arm wounds on the head, chest and right upper arm of the deceased together with the multiple abrasions and contusions on various parts of the body. According to this witness, death had occurred due to shock and haemorrhage as a result of the ante-mortem injuries. D
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15. Noticeably this witness also referred to lacerated/incised wounds and contusions sustained by the appellants Deo Munni, Ram Autar and the co-accused Suraj Bali which, according to the medical expert, were however simple in nature. F

16. Though an attempt had been made at the trial by the defence to shift the place of occurrence to fit in with their version, as offered in course of the statements under Section 313 Cr.P.C., and urged in course of the arguments, the evidence of the Investigating Officer Brahm Dev Singh (PW-6), when considered along with the sketch map, Ex. A-12, the same stands belied. That the place of occurrence was, as cited by the prosecution is, also corroborated by the blood stained earth collected therefrom in course of the investigation. That the blood was human blood also stands proved by the report of the chemical analyst., These proved facts, in a way, demolish the defence version totally in all respects. G

A 17. Though, at the trial as well as before the High Court, the
prosecution case was sought to be discredited for the absence of
B explanation of the injuries suffered by some of the accused persons, in
absence of any evidence forthcoming that at the relevant time, the
deceased was armed or that the prosecution witnesses present did launch
a counter attack, the courts below rightly dismissed this plea. The High
Court, noticing the injuries, which the Dr. S.C. Srivastava had identified
to be simple in nature, did conclude, had been self inflicted in order to
contrive a defence. Bearing in mind the evidence available and the
overall scenario, this finding, in our estimate, cannot be repudiated to be
absurd or illogical.

C 18. In the ultimate analysis, however, one cannot overlook the
progression of events that occurred since the incident of trespass of the
D cattle of the deceased in the fields of Suraj Bali and others leading to
abuse and unpleasantness between them earlier in the day. The second
bout of bickerings precipitated in the afternoon on the same day while
the deceased, appellants and the co-accused were sitting in their respective
compounds, abutting each other. The witnesses of the incident though,
at the preliminary stages, did advise the deceased to go in and avoid a
brewing confrontation, he obdurately refused to do so and stoked the
growing indignation so much so that eventually he was shot at and also
E assaulted by the appellants and their companions. The materials on
record do suggest that the deceased did also contribute to the escalating
tension and in the process the accused persons jointly unleashed attack
on him by lathis and also shot him. A sudden spurt of irreversible events
thus got triggered thereby.

F 19. In the fact situation that developed in quick succession, we are
of the comprehension that there was as such no pre-meditation or prior
concert on the part of the accused persons to commit murder of Lalni.
The incident happened on the spur of the moment and in an uncontrollable,
embittered and agitated state of enagement, thus depriving the accused
persons of their power of self control. Though during the assaults, the
G accused persons were understandably aware of the likely results thereof,
it is difficult to perceive that they had any common object of eliminating
the deceased. This is more so as the evidence discloses that the accused-
appellants, first informant as well as the deceased did descend from a
common ancestor and that their grandfathers were real brothers. The
evidence demonstrates that the accused- appellants do not have any

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infamous criminal background as well. The incident had occurred in the year 1982 and as on date, more than three decades have passed. A

20. On a consideration of the totality of the circumstances attendant on the case, we are of the opinion that the conviction of the appellants under Section 304-Part 1 read with Sections 147,148,149 IPC, as recorded by the High Court, is justified. However, in our view, having regard to the singular facts and circumstances, we are inclined to reduce the sentence for the offence under Section 304-Part 1/149 IPC to rigorous imprisonment for 7 years. The other sentences are hereby affirmed. B

21. The appeal is thus partly allowed with the above modifications. The Trial Court would take the necessary follow up steps to ensure that the appellants serve out the sentence as awarded. C

Devika Gujral

Appeal partly allowed.