

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1411 OF 2013

State of Madhya Pradesh

.. Appellant

Versus

Kalicharan & Ors.

.. Respondents

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.11.2008 passed by the High Court of Madhya Pradesh, Judicature at Jabalpur, Bench at Gwalior in Criminal Appeal No. 43 of 1997 whereby the High Court has partly allowed the said appeal preferred by the original accused and set aside the judgment and order of conviction and sentence

16.01.1997 passed by the learned Trial Court, whereby the learned Trial Court convicted the respondent-original accused for commission of the offence under Sections 148, 302/149, 325/149, 323/149 of the IPC and altered the conviction of the accused-Ramavtar from Section 302/149 of the IPC to Section 304 Part II of the IPC and sentenced him to five years R.I. with fine of Rs.5000/- and set aside his conviction for the offence under Sections 148 and 302/149 of the IPC; altered the conviction of the accused-Kalicharan to offences under Sections 323 and 325 of the IPC and reduced the sentence to the period already undergone; set aside the conviction of the accused-Amar Singh, Kedar, Abhilakh and Ramgopal under Sections 148, 302/149, 325/149 and 323/149 of the IPC and acquitted them from the charges levelled against them; set aside the conviction of the accused-Tejsingh, Gangaram and Vedari under Sections 148, 302/149 and 325/149 of the IPC and convicted them for commission of the offence under Section 323 of the IPC and reduced the sentence to the period already undergone by them, the State has preferred the present appeal.

2. We have heard the learned advocates appearing on behalf of the respective parties at length. Having heard the learned

counsel appearing on behalf of the respective parties, the findings recorded by the High Court and considering the evidence on record, we are of the opinion that the impugned judgment and order passed by the High Court, insofar as accused Kalicharan, Amar Singh, Kedar, Abhilakh, Ramgopal, Tejsingh, Gangaram and Vedari are concerned, is not required to be interfered with. In the facts and circumstances of the case and considering the fact that there was a free fight and the role attributed to the aforesaid accused, the High Court has rightly acquitted the aforesaid accused for the offences under Sections 148, 302/149 and 325/149 of the IPC. The same is absolutely in consonance with the decision of this Court in the case of **Kanwarlal v. State of M.P.** (2002) 7 SCC 152. Therefore, the present appeal qua the aforesaid accused (except the accused-Ramavtar) deserves to be dismissed.

3. Now, so far as the impugned judgment and order passed by the High Court altering the conviction of the accused-Ramavtar from Sections 302/149 to Section 304 Part II of the IPC is concerned, it is required to be noted that the fatal blow was caused by the said accused-Ramavtar. The deceased Kalyan sustained the injury on his head which was caused by the

accused Ramavtar. The said injury caused by the accused Ramavtar was on the vital part of the body i.e. head and proved to be fatal. Merely because the accused Ramavtar caused the injury on the head by the blunt side of Farsa, the High Court is not justified in altering the conviction to Section 304 Part II of the IPC. As held by this Court in catena of decisions, even in a case of a single blow, but on the vital part of the body, the case may fall under Section 302 of the IPC and the accused can be held guilty for the offence under Section 302 of the IPC. However, in the facts and circumstances of the case, more particularly that it was a case of free fight, considering the fact that the weapon used by the accused Ramavtar was Farsa and he caused the injury on the vital part of the body i.e. head which proved to be fatal, in the facts and circumstances of the case, we are of the opinion that the High Court has committed a grave error in altering the conviction of the accused Ramavtar from Sections 302/149 of the IPC to Section 304 Part II of the IPC. In the facts and circumstances of the case and considering the evidence on record, more particularly, the medical evidence and the manner in which the incident took place, we are of the opinion that the accused Ramavtar should have been held guilty for the

offence under Section 304 Part I of the IPC. To that extent, the impugned judgment and order passed by the High Court deserves to be quashed and set aside. The conviction of the accused Ramavtar is to be altered from Section 304 Part II to Section 304 Part I of the IPC.

3.1 In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court insofar as altering the conviction of the accused Ramavtar from Sections 302/149 of the IPC to Section 304 Part II of the IPC and sentencing him to undergo five years R.I. with fine of Rs.5,000/- for the offence under Section 304 Part II of the IPC is hereby quashed and set aside. The conviction of the accused Ramavtar (respondent No. 2 herein) is altered from Section 302 of the IPC to Section 304 Part I of the IPC and is sentenced to undergo eight years R.I. with a fine of Rs.5000/- and in default to further undergo R.I. for six months. Four weeks' time is granted to the accused Ramavtar (respondent No. 2 herein) to surrender to serve out the remaining portion of his sentence. Rest of the judgment and order of the High Court is hereby confirmed.

.....J.
[M. R. SHAH]

NEW DELHI,
MAY 31, 2019.

.....J.
[A.S. BOPANNA]