

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 252 OF 2009

NOORUDDIN KHADARSAB KOTWAL

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

O R D E R

This appeal has been preferred against the judgment and order passed by the High Court of Karnataka at Bangalore on 03.12.2007 in Criminal Appeal No. 835 of 2005 whereby the High Court had confirmed the order of conviction and sentence passed by the District and Sessions Judge, presiding Officer, Fast Track Court, Gokak, in Sessions Case No. 173 of 1999, so far as Nooruddin - the appellant herein is concerned.

In a dispute with regard to a pathway between two groups, incident in question had occurred on 18.12.1998. The appellant and his other group members were claiming right of pathway for the purpose of celebration of 'Ursu' every year and it is the case of

prosecution that every year there used to be quarrel between the appellant group and the other group on this occasion. The deceased Laxmana had informed that he would go to the agricultural land in the morning to stop the other group from proceeding through the pathway for the procession. Nooruddin- appellant herein has been assigned with the role of having hit the deceased Laxmana on 18.12.1998 with wooden log on the head, because of which Laxmana received injuries and he succumbed to the said injuries on 21.12.1998.

The case of the prosecution is also that the accused no.1-Hasansab had assaulted Laxmana on the head with iron rod and it is reported that after receiving the injuries the said Laxmana had fallen down. The High Court has acquitted the accused no.1 - Hasansab and has convicted Nooruddin- appellant herein on the basis of the evidence of the Bhupal- PW7, who had turned hostile and has partially supported the case.

The submission of Mr. D. N. Goburdhan, learned counsel appearing for the appellant (who has been appointed as Amicus by this Court), is that the appellant was not involved in the incident, and if at all the role of the appellant is taken as correct, the same happened on the spur of the moment, for which

reason a case under Section 302 of the Indian Penal Code, 1860 ( in short 'the IPC') is not made out as there was no intention to kill the deceased Laxmana and at best the same could be a case under Section 304, Part II IPC, and the appellant has already undergone over seven years imprisonment when the bail was granted by this Court on 09.02.2009.

Mr. Joseph Aristotle S., learned Government Counsel appearing for the State of Karnataka, has submitted that there was regular disturbance every year between the two groups, and in fact the appellant had reached the spot with the intention to eliminate Laxmana from there; he has thus contended that the conviction of the appellant under Section 302 IPC is perfectly justified and does not call for interference.

Having heard learned counsel for the parties and also on perusing the record as well as the statement of witnesses, we are of the opinion that the incident had taken place on the spur of the moment and would not be a case of well intended and planned murder. The appellant has at best been assigned the role of having struck the deceased with a wooden log; whereas the accused no.1—Hasansab (who has been acquitted by the High Court) was assigned the role of having hit the head of the deceased

Laxmana with iron rod and had inflicted injuries.

In the aforesaid facts and circumstances, we are of the opinion that the appellant should have been convicted for culpable homicide not amounting to murder and should be convicted under Section 304 Part II of the IPC, and not under Section 302 IPC. Appellant has already undergone seven years imprisonment. We thus reduce the sentence to the period of punishment already undergone.

Appellant is on bail, his bail bonds shall stand discharged.

The appeal is partly allowed to the extent indicated above.

.....J.  
(ARUN MISHRA)

.....J.  
(VINEET SARAN)

NEW DELHI;  
SEPTEMBER 19, 2018

ITEM NO.104

COURT NO.8

SECTION II-C

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Criminal Appeal No(s). 252/2009

NOORUDDIN KHADARSAB KOTWAL

Appellant(s)

VERSUS

STATE OF KARNATAKA

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Date : 19-09-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA  
 HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s)      Mr. D. N. Goburdhan, AOR  
                                  Ms. Pallavi Chopra, Adv.

For Respondent(s)    Mr. Joseph Aristotle S., Adv.  
                                  Ms. Priya Aristotle, Adv.  
                                  Mr. Shiva P., Adv.  
                                  Ms. Anitha Shenoy, AOR

UPON hearing the counsel the Court made the following  
 O R D E R

The appeal is partly allowed in terms of the signed order.

The sentence of the appellant is reduced to the period of punishment already undergone.

Appellant is on bail, his bail bonds shall stand discharged.

Pending application, if any, also stand disposed of.

(NEELAM GULATI)  
 COURT MASTER (SH)

(JAGDISH CHANDER)  
 BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)