

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No 50 of 2020**  
**(Arising out of SLP(CrI) No 4638 of 2018)**

**Sankath Prasad**

**.... Appellant(s)**

**Versus**

**State of Uttar Pradesh**

**....Respondent(s)**

**J U D G M E N T**

**Dr Dhananjaya Y Chandrachud, J**

1 Leave granted.

2 This appeal arises from a judgment and order of a Division Bench of the High Court of Judicature at Allahabad dated 5 September 2017. The High Court, by its decision, dismissed Criminal Appeal No 2546 of 1987 filed by the appellant in order to challenge his conviction of an offence under Section 302 of the Indian Penal Code 1860<sup>1</sup> by the III<sup>d</sup> Additional Sessions Judge, Fatehpur in Sessions Trial No 59 of 1986. The appellant was sentenced to imprisonment for life.

3 The incident in question is alleged to have taken place at 8.45 am on 25 August 1985. Gaya Prasad (PW 1), who is the complainant, was returning home after answering a call of nature. When he reached the disputed plot while passing through the Chak road, he noticed that Durga Prasad, the brother of the appellant, was getting a mound dug with the

help of two labourers, one of whom was Ram Nath (PW 2). When the complainant objected, Durga Prasad is alleged to have stated that he was not committing any wrong. At that point, the appellant intervened in the altercation and there was an exchange of words. The appellant rushed to his house and returned with a country made pistol. While he was aiming a shot at the complainant Gaya Prasad (PW 1), Uma Shanker, the son of the complainant, caught hold of the appellant from behind. The appellant managed to free himself and shot Uma Shanker who fell down as a consequence of a fire arm injury. Uma Shanker succumbed to his injuries.

4 The eye-witness account of the occurrence was based on the depositions of the complainant Gaya Prasad (PW 1) and Ram Nath (PW 2). Both these witnesses deposed about the incident. Both the Sessions Court and, in appeal, the High Court have relied upon the evidence of PWs 1 and 2. Taking cognizance of the fact that PW 1 is a father of the deceased, the High Court, on a careful evaluation of his testimony, found no reason to discredit his account. The High Court held that the presence of PW 1 was natural, having regard to the time and place of the incident. Moreover, PW 1 did not implicate Durga Prasad in the crime despite his presence which was an indicator of the fact that he had given a truthful account of the actual incident. The ocular evidence was supported by the medical evidence and by the evidence of the doctor (PW 4) who opined that the ante-mortem injury could have been caused by a gun. The post mortem report indicated one fire arm injury, in the following terms:

“One fire arm wound of entry 1” x 1” x chest cavity deep on the sternum 3” from the right nipple at 3 o’clock position. The margins were inverted and lacerated. There was blackening and tattooing around the wound. The direction of the injury was from front to back.

He found one pellet from inside the dead body of Uma Shankar.”

On this state of evidence, the nature of the incident has been duly established. The presence of the appellant and the role of the appellant in the incident has emerged from the evidence on record.

5 While entertaining the Special Leave Petition on 18 May 2018, this Court noted the submission of the appellant that even if the entire evidence is to be accepted to be correct, the present case may fall under Section 304 IPC. In pursuance of the notice issued by this Court, the State of Uttar Pradesh has entered appearance and a counter affidavit has been filed.

6 The facts, as they have emerged from the record, indicate that the incident had taken place on the spur of the moment and was a fall out of an altercation over the excavation of a mound by the brother of the appellant. This was objected to by the complainant Gaya Prasad (PW 1). The altercation resulted in the appellant going into his house and bringing out a country made pistol. The son of the complainant – deceased Uma Shanker intervened in the course of the altercation and was fired at, resulting in a single fire arm injury leading to his death.

7 Having regard to the circumstances of the case, we are of the view that the conviction under Section 302 of the IPC should be converted to one under Section 304 Part I. We accordingly hold the appellant guilty of

an offence under Section 304 Part I of the IPC and sentence him to imprisonment for a term of ten years.

8 The appeal is allowed in the above terms.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Hrishikesh Roy]

**New Delhi;  
January 10, 2020**



ITEM NO.22

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).4638/2018

(Arising out of impugned final judgment and order dated 05-09-2017  
in CRLA No. 2546/1987 passed by the High Court of Judicature at  
Allahabad in Criminal Appeal No 2546 of 1987)

SANKATH PRASAD

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH

Respondent(s)

Date : 10-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Nirmal Kumar Ambastha, AOR  
Ms. Ashmita Bisarya, Adv.

For Respondent(s) Mr. Vishnu Shankar Jain, AOR  
Shreyas Agrawal, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed  
reportable judgment.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)  
AR-CUM-PS

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed reportable judgment is placed on the file)