

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**

**Cr. Appeal No. 13/2008**

**Date of decision: July 23, 2008**

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Dundayya Matt v. State

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Coram :

**Hon'ble Mr. Justice Virender Singh, Judge.**

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For the appellant : Miss Mandeep Reen, Advocate.

For the respondent: Mr. P.C. Sharma, Addl. Advocate General.

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| i)  | Whether approved for reporting<br>in Press/Journal/Media | : | <b>No</b> |
| ii) | Whether to be reported in<br>Digest/Journal:             | : | <b>No</b> |
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Appellant, Dundayya Matt, resident of Karnataka, Head Constable in RPF, 5<sup>th</sup> Bn. Coy. B, aged 42 years, stands convicted under Section 304 Part-II,, RPC, vide impugned judgment of learned 3<sup>rd</sup> Additional Sessions Judge, Jammu, dated 29-03-2008 and has been sentenced to undergo rigorous imprisonment for seven years and pay fine of Rs.5,000/-, in default thereof to further undergo simple imprisonment for two months. Aggrieved of the same, he has preferred the instant appeal through Jail Superintendent, District Jail, Jammu, which was admitted on 12<sup>th</sup> of May, 2008 and Miss Mandeep Reen was appointed as Amicus Curiae to assist this Court.

In brief, the case of the prosecution is that the appellant along with his other Company members had come to Jammu from Sikanderabad for Election Duty. All the Company was staying at Railway Platform No.1. On 30-08-2002, the appellant fired one shot from his service rifle (.303) upon Head Constable Om Parkash, who was sitting on a bed sheet laid on Platform. He was shifted to Government Medical College, Jammu. On the written application of one George Thomas, Company Commander, the Police registered the case under Section 307 RPC initially, bearing case No.16/02 of Police Station, Railway Station, Jammu. Om Parkash succumbed to his injuries on the same day and the offence was converted to Section 302 RPC. During the investigation, it revealed that deceased Om Parkash used to tease and abuse the appellant. On 30-08-2002, he was on guard duty (Sentry Duty) and after completing his duty, the deceased also came there. After taking his meals, he laid his bed on Platform No.1 and appellant had also laid his bed towards north side, as on south side the other two officials were already putting their bed. Deceased Om Parkash sat on his bed and the other two officials also sat on their bed and started discussing increment. At that time, the appellant was giving duty near the Coach from where he fired a shot from his service rifle, which hit on the right shoulder of Om Parkash.

The appellant was charged for the offence under Section 302 RPC, but after appreciating the entire evidence, the learned trial Court, returned a finding that the offence does not amount to culpable homicide amounting to murder and converted the same to one under Section 304 Part-II RPC. In support of his view, the learned trial Judge has relied upon the judgment rendered by Hon'ble Supreme Court in case **Veneet Kumar Choudhan Vs. State of U.P., AIR 2008 SC 780.**

Admitted position is that State has not preferred any appeal against the impugned judgment vide which the main offence is diluted.

I have heard Miss Mandeep Reen, (amicus curiae), learned counsel for the appellant, and Mr. P.C. Sharma, learned Additional Advocate General. I have gone through the entire record also.

Miss Reen, at the very outset, submits that she finds difficulty in assailing the impugned judgment on merits and, therefore, without joining issue on the conviction part, submits that some concessional tilt may be extended towards the appellant with regard to the sentence part. She submits that he is in custody since August, 2002 and by now he has undergone about six years out of the total sentence slapped upon him of seven years. She

then submits that at the time of occurrence, the appellant was of the age of 42 years and on account of conviction, his entire family has suffered a lot, which includes minor children also. Learned counsel then submits that the appellant is not a previous convict and even as per the finding recorded by the learned trial Court, there was no intention in the bosom of the appellant to commit murder. Therefore, he deserves a concessional; tilt vis-à-vis the sentence imposed upon him, may be the reduction to the period already undergone by him.

The learned counsel then submits that the appellant could not deposit the fine for which he has been sentenced to undergo simple imprisonment for two months. The same may also be reduced reasonably.

Mr. Sharma is not opposing the prayer of Miss Reen very strongly, may be on the ground that appellant has already undergone a considerable period of his substantive sentence by now (about six years).

Although Miss Reen has not assailed the impugned judgment on merits, yet being First Court of Appeal, I have gone through the entire evidence once again and of the opinion that the view taken by the learned trial Court in convicting the appellant for the offence punishable under Section 304 Part-II RPC does not

suffer from any perversity and illegality. It is well reasoned judgment based on appreciation of entire evidence in its right perspective. I, therefore, uphold the conviction, as already recorded by the learned trial Court.

So far as quantum of sentence is concerned, I find substance in the submissions advanced by Miss Reen with regard to its reduction.

Admittedly, the appellant is in custody for the last about six years. The exact period comes to one month less than six years. Keeping in view the totality of facts and circumstances and the fact that the appellant was of the age of 42 years, who has already lost his job, which has adversely effected his entire family, he does deserve concessional tilt vis-à-vis the sentence part. Therefore, ends of justice would be adequately met if the substantive sentence, as imposed by the learned trial Court, is reduced to substantive sentence already undergone by him. At the same time, the sentence of two months, as imposed by the learned trial Court for default of payment of fine (Rs.5,000/-), is also reduced to one month simple imprisonment. Ordered accordingly.

The next result is that the instant appeal is dismissed on merits while upholding the conviction of the appellant under

Section 304 Part-II RPC except the alteration/modification in the sentence part as indicated hereinabove.

( **Virender Singh** )  
**Judge**

**Jammu**

**July 23, 2008.**

**\*T. Arora, PS.\***