

ITEM NO.52

COURT NO.15

SECTION II-B

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

**Petition for Special Leave to Appeal (Crl.) No.11717/2024**

[Arising out of impugned final judgment and order date 17-02-2023 in CRLA No. 504/2022 passed by the High Court of Uttarakhand at Nainital]

**VINEET ALIAS CHOTU**

**Petitioner(s)**

**VERSUS**

**THE STATE OF UTTARAKHAND**

**Respondent(s)**

**(IA No. 189845/2024 - AMENDMENT OF THE PETITION)**

**Date : 14-11-2024 The matter was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE J.B. PARDIWALA**  
**HON'BLE MR. JUSTICE R. MAHADEVAN**

**For Petitioner(s)** Mr. Sourav Singh, Adv.  
Mr. Saurabh Mishra, Adv.  
Mr. Priyankar Tiwari, Adv.  
Mr. Sahil Tyagi, Adv.  
Mr. Aaditya Aniruddha Pande, AOR

**For Respondent(s)** Ms. Vanshaja Shukla, AOR  
Ms. Anubha Dhulia, Adv.  
Mr. Siddhant Yadav, Adv.

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

1. The petitioner herein was put to trial in the Court of the First Additional District and Sessions Judge, district Udham Singh Nagar for the offence punishable under Section 304 of the Indian Penal Code, 1860 (for short "the IPC"). The Trial Court held the petitioner guilty of the alleged crime and sentenced him to undergo

10 years of rigorous imprisonment and fine for the offence punishable under Section 304, Part I of the IPC.

2. Being dissatisfied with the judgement and order of conviction passed by the Trial Court, the petitioner has preferred Criminal Appeal No.504 of 2022 in the High Court of Uttarakhand at Nainital. In the said appeal before the High Court he prayed that the substantive order of sentence passed by the Trial Court be suspended from its operation pending the final disposal of the Criminal Appeal, and he be released on bail.

3. The High Court declined to suspend the substantive order of sentence passed by the Trial Court.

4. In such circumstances referred to above, the petitioner is here before this Court with the present petition.

5. We have heard Mr. Sourav Singh, the learned counsel appearing for the petitioner and Ms. Vanshaja Shukla, the learned counsel appearing for the State of Uttarakhand.

6. When this matter came up for hearing for the first time, and while issuing notice, we observed in our order that we are anxious to know as to on what basis the Trial Court proceeded to frame charge for the offence under Section 304 of the IPC. It is the case of the prosecution that a fight ensued between the petitioner herein and the brother of the deceased on the fateful date of the incident. The deceased intervened to save his brother. At that point of time, as per the case of the prosecution, the petitioner armed with an iron rod is said to have hit blows on the head of the deceased. The deceased succumbed to the head injuries due to excessive bleeding and shock.

7. With the aforesaid case of the prosecution, we are at our wits end to understand how the Trial Court could have framed charge in the first instance for the offence of culpable homicide not amounting to murder.

When charge sheet is filed for the offence of murder punishable U/s 302 IPC how can the Trial Court frame charge for the offence U/s 304IPC. It seems the trial court was oblivious of Section 105 of the Evidence Act.

8. We stop at this stage. We do not propose to observe anything further as the criminal appeal is pending before the High Court.

9. It was necessary for us to observe as above as we should not turn a blind eye to something which is inconceivable in law.

10. The aforesaid aspect should be looked into by the High Court when the criminal appeal of the petitioner is taken up for hearing.

11. We are informed by the learned counsel appearing for the State that the Criminal Appeal has been fixed for final hearing on 31 December, 2024.

12. In the aforesaid view of the matter, we should not interfere with the impugned order passed by the High Court. The High Court shall proceed with the final hearing of the appeal and try to dispose it of at the earliest.

13. The Special Leave Petition is accordingly dismissed.

14. Pending application(s), if any, stand disposed of.

**(CHANDRESH)  
COURT MASTER (SH)**

**(POOJA SHARMA)  
COURT MASTER (NSH)**