

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. 589 OF 2000

STATE OF U.P.

Appellant (s)

VERSUS

GIRDHARI AND ANR.

Respondent(s)

(With appln(s) for cancellation of bail)

Date: 28/03/2006 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. N.S. Gahlot, Adv.

Mr. R.K. Singh, Adv.

Mr. Jatinder Kumar Bhatia, Adv. (Not Present)

For Respondent(s)

Mr. R.D. Upadhyay, Adv.

Mr. G.G. Upadhyay, Adv.

Mr. Lagnesh Mishra, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

The appeal is allowed and the impugned judgment rendered by the High Court is set aside. Respondent No.1 is convicted under Section 307 I.P.C. and Respondent No.2 is convicted under Section 307/34 I.P.C. and the sentence of imprisonment awarded by the trial court against them is reduced to the period already undergone and each one of them is directed to pay fine for a sum of Rs.5,000/-; in default to undergo rigorous imprisonment for a period of one year. The fine, if realised, shall be paid to the victim.

[Alka Dudeja]

Court Master

[Om Prakash]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 589 OF 2000

State of Uttar Pradesh

...Appellant(s)

Versus

Girdhari and Anr.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Respondent No.1 (Girdhari) was convicted by the trial

court under Section 307 of the Indian Penal Code [for short, 'the

Act'] and sentenced to undergo rigorous imprisonment for a period of four years; whereas Respondent No.2 (Packckey) was convicted under Section 307 read with Section 34 I.P.C. and sentenced to undergo rigorous imprisonment for a period of four years. The other accused-Triveni was acquitted by the trial court.

When the respondents preferred an appeal before the High Court, they have been acquitted by the impugned order. Hence, this appeal by special leave.

....2/-

- 2 -

The prosecution case in short was on 2nd June, 1977 at 6.00 p.m. accused-Triveni gave exortation, whereupon Respondent No.2 caught hold of Jagdish Dubey-P.W.4 and Respondent No.1-Girdhari assaulted him with iron rod when Jagdish Dubey was in his house, as a result of which he became unconscious and shifted to the hospital. Thereafter first information report [for short, 'F.I.R.'] was lodged on that day itself. After the case was registered at the Police Station, investigation was taken up and upon completion thereof charge sheet was submitted against all the three accused persons and they were committed to the Court of Sessions to face trial.

In the present case, prosecution has examined the two eye-witnesses, namely, Jagdish Dubey-P.W.4, who is the injured

witness and Gangajali-P.W.3, who is nobody else than the wife of P.W.4 and has lodged the F.I.R. The doctor, who examined P.W.4, found two injuries on his person and in the opinion of doctor, the injuries were dangerous to life. P.W.4 has supported the prosecution case in all material particulars and his evidence is corroborated by P.W.3, who is inmate of the house and was quite competent witness in view of the fact that the occurrence had taken place at the house of P.W.4. P.W.3 is informant herself and she has been consistent in her statement made before the police as well as in the Court. The evidence of these two witnesses are credible and corroborated by medical evidence. The High Court was not justified in acquitting these respondents principally on

....3/-

- 3 -

the ground that another accused-Triveni has been acquitted by the trial court itself on the ground of animosity. In our view, the judgment of acquittal rendered by the High Court suffers from the vice of perversity; as such is liable to be set aside on this ground alone. We are of the view that prosecution has succeeded in proving its case beyond reasonable doubt so far as respondents are concerned and the High Court was not justified in recording their acquittal.

Next question is as to what should be the punishment awarded against the respondents as the occurrence had taken place in the year 1977. The respondents have remained in custody for a few days and taking into consideration the entire matter, we are of the view that ends of justice would be met in case the sentence of imprisonment is reduced to the period already undergone and they are directed to pay fine for a sum of Rs.5,000/- each.

Accordingly, the appeal is allowed and the impugned judgment rendered by the High Court is set aside. Respondent No.1 is convicted under Section 307 I.P.C. and Respondent No.2 is convicted under Section 307/34 I.P.C. and the sentence of imprisonment awarded by the trial court against them is reduced to the period already undergone and each one of them is directed to pay fine for a sum of Rs.5,000/-; in default to undergo rigorous imprisonment for a period of one year. The fine, if realised, shall be paid to the victim.

.....J.

[B.N. AGRAWAL]

.....J.

[A.K. MATHUR]

New Delhi,
March 28, 2006.

