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Cr1.A.No. 430 OF 1997

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 430 OF 1997

Surjan & Ors.Appellant (s)

Versus

The State of HaryanaRespondent (s)

O R D E R

This appeal was filed by 9 persons who were convicted in the manner hereinafter set out by the trial court and affirmed by the Punjab & Haryana High Court by the impugned judgment. During pendency of the appeal before this Court, the accused Surjan(A-1) died so the appeal has abated so far as he is concerned. Initially 11 persons faced trial and during trial one Kishori Lal(A-4) died. It is reported that subsequently one Bhartu (A-5) also died before the appeal was filed before this Court.

The prosecution version giving rise to the trial is essentially as follows:

On 14.6.1985 around 3.15 A.M. information was lodged before the police officials that on the previous evening around 7.30 P.M. while the informant Kanshi Ram, PW-5 along with his brother Rajbir, PW-6, sisters Krishna, Champa and Maya Devi (hereinafter referred to as the deceased) and father Molhar Singh were present in their house and were taking food, all of a sudden the accused Kishori gave a lalkara that Kanshi Ram and others should be totally eliminated and taught a lesson for defaming his brother's wife Gindori. All the accused persons reached the place of occurrence armed with lathis. They dealt several blows on the above-named persons and as a result, the deceased having received blow on her head fell down. The incident was also seen by Ramesh (PW-9) and one Hardawari Lal. These two persons rescued the complainant party from the clutches of the accused, who left the place of occurrence. Information was lodged with police. Investigation was undertaken. Deceased breathed her last at the Civil Hospital, Gurgaon. Before her death, the deceased made a statement which was treated as a dying declaration implicating the accused persons. On completion of investigation, accused persons were charged for commission of offence punishable under Sections 302, 325, 323, 506, 148 read with 149 of the Indian Penal Code Act, 1860 (in short the 'IPC'). All the 11 accused persons were arrested and as afore-noted charged and brought to trial.

Prosecution to substantiate its version examined several witnesses including the three eye witnesses - PWs 5, 6 & 9. The accused persons pleaded innocence. According to them there was a marriage fixed on 17.6.1985 of two daughters of accused Har Nath. They were enraged as the complainant party had not invited them though closely related, and on account of this on 13.6.1985 at about 7.00 p.m. Rajbir PW-6 armed with jaily and others armed with lathis came in front of the house of accused Harnath and raised a lalkara that he and his family members be killed for not inviting them to the marriage and on hearing this the accused Ram Chander, Ranjit and Dharam Pal came out of their houses followed by Jawala Devi and Chhutia and were assaulted by the complainant party with their respective weapons. In order to protect their lives and in exercise of the right of private defence, the accused persons also caused injuries on the complainant party. The other accused persons were not present. Kishori Lal, accused who died during the pendency of the trial took the plea that he was away at Faridabad at the relevant time in connection with his service and was falsely implicated. The accused persons examined three witnesses to further substantiate their stand. The trial court referred to the evidence of the witnesses and placing reliance on the eye witnesses more particularly that of PW-9 who was treated to be an independent witness held that the accused persons were aggressors. Reliance was also placed on the statement of the deceased which was treated as a dying declaration.

But so far as the nature of the offence is concerned, it was held that accused Har Nath was guilty of offence punishable under Section 304 Part II read with Section 149. He was sentenced to undergo 5 years rigorous imprisonment for the offence relating to Section 325/149, 323/149 and 148 IPC custodial sentence of two years, 1 year and six months respectively were awarded. So far as the other accused persons are concerned, it was held that the sentence so far as it relates to Section 304 Part II read with Section 149 is concerned, the sentence was to be three years while it was at par with accused Har Nath for other offences. Convicted accused persons preferred appeal before the Punjab & Haryana High Court which endorsed the conclusions of the trial court but while maintaining the conviction and sentence imposed for accused appellant Har Nath, the others were sentenced to undergo imprisonment for two years instead of three years as awarded by the trial court.

As noted above, during pendency of the trial are before this Court three of the accused persons have already died.

Mr. U.R. Lalit, learned senior counsel for the appellants submitted that this is a case where the genesis of the dispute has not been established. The High Court has acted erroneously by referring to the site plan to find out the place of occurrence. It was his stand that the accused persons have also suffered injuries and the defence version is more plausible than the prosecution version. Additionally, the motive for the crime as stated has not been established except making a statement about it. Application of Section 149 IPC is questioned on the ground that there is nothing to show that even if there was any assembly the common object was assault on the deceased. On the other hand, as the evidence on record goes to show some minor injuries on them were attributed to the accused persons except Har Nath who is supposed to have been given the fatal blow to the deceased. The conviction under Section 325 has also been questioned on the ground that there was no injury which can be termed as a grievous injury and all the injuries found except that on the deceased Mayadevi were simple injuries.

Learned counsel for the respondent-State however, submitted that both the High Court and the trial court have analysed the evidence and came to the right conclusions. The conclusion about the place of occurrence was not only with reference to the site plan, but also with reference to the evidence on record, and the evidence of the deceased i.e. dying declaration. Merely because the accused persons have suffered some injuries it is really of no consequence as the injuries were simple in nature. Section 149 IPC according to him has been rightly applied and there is no scope for taking a different view.

So far as the plausibility of the evidence is concerned, we find that both the trial court and the High Court have analysed the evidence with care and caution in view of the fact that two of the witnesses were related to the deceased. Both the courts have placed reliance on the evidence of PW-9 who was held to be an independent witness and has no grudge against the accused persons. The evidence so far as the conviction of accused Har Nath is concerned is cogent and trust-worthy. After analysing the factual situation, the trial court convicted him for offence punishable under Section 304 Part II which was maintained by the High Court. We find nothing infirm in the conclusions to warrant any interference so far as his conviction is concerned.

So far as the applicability of Section 149 is concerned, we find his evidence is not adequate to bring out the requisite ingredients of Section 149 IPC. Therefore, the conviction of the accused persons by application of Section 149 so far as Section 304 Part II is concerned cannot be maintained.

Har Nath has been rightly convicted under Section 304 Part II. Coming to the question whether any grievous hurt was caused, the injuries as indicated by medical evidence does not establish any grievous injury, except on the deceased which is attributable to Har Nath alone. Therefore, the conviction for 325 read with 149 so far as all the accused persons are concerned cannot stand but the evidence clearly establishes commission of offence under Section 323 read with Section 149 IPC. While maintaining the sentence awarded to Har Nath for 5 years for the offence related to Section 304 Part II, the sentence in respect of 323/149 is reduced in the peculiar circumstances of the case to three months rigorous imprisonment. With the aforesaid modifications, the appeal is disposed of.

.....J
(DORAISWAMY RAJU)

.....J
(ARIJIT PASAYAT)

New Delhi,
November 19, 2003

ITEM No.101(Part-Heard) Court No.5 SECTION IIA

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

CRIMINAL APPEAL NO.430 OF 1997

Surjan & Ors. Appellant (s)

Versus
State of Haryana Respondent (s)
(With office report)

Date : 19/11/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE DR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. U.R.Lalit,Sr.Adv.
Mr.B.K. Satija, Adv.

For Respondent (s)Mr. Vinay Kumar Garg, Adv.

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

Heard parties for about an hour.

With the modifications as indicated in the signed order, the appeal is disposed of.

(SHEETAL DHINGRA) (VIJAY AGGARWAL)
COURT MASTER COURT MASTER
[Signed order is placed on the file]