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Cr1.A.No. 828 OF 1997

ITEM No.103

Court No.10

SECTION II

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.828 of 1997

Shakoor Khan & Ors. Appellant(s)

VERSUS

State of U.P. Respondent(s).

Date : 05/02/2004: This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)
Mr. J.M. Khanna, Adv.

For Respondent (s) Ms. Alka Agrawal, Adv.
Mr. Jatinder Kumar Bhatia, Adv.

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

Ms.Alka Agrawal,learned counsel for the respondent started her arguments at 2.20 p.m. and concluded at 2.45 p.m. Thereafter Mr. J.M. Khanna, learned counsel for the appellants started his arguments and concluded at 3.00 p.m. The appeal is disposed of in terms of the signed order.

(R.K. DHAWAN) (VEERA VERMA)
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.828 OF 1997

Shakoor Khan & Ors..... Appellants.

Versus

State of U.P..... Respondent.

O R D E R

Heard learned counsel for the parties.

Seven appellants are before us challenging their conviction and sentence for the offence punishable under Section 304 Part I IPC. The prosecution case is that at 6.30 a.m. on 9.10.1978 Baboo Khan, PW-1 went on his bullock cart for collecting fodder from his field. He had to cross the field of the appellant Shakoor Khan. The later objected to the taking of bullock cart through his field and it seems there was wordy altercation between Shakoor Khan and Baboo Khan. Hearing the noise, Faiyaj Khan and Zafaruddin Khan the cousins of Baboo Khan came there to help him. The supporters of Shakoor Khan also came to the place of occurrence. According to prosecution, these appellants were armed with 'Lathi', 'Sariya', 'Kanta' and 'Baguda' and attacked Baboo Khan, Faiyaj Khan and Zafaruddin Khan and

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they sustained various injuries. Baboo Khan, Faiyaj Khan and Zafaruddin Khan were taken to the primary health centre and while undergoing treatment, Faiyaj Khan died, his postmortem was held by Dr. R.C. Maurya, P.W.3 and on the basis of first information statement given by Baboo Khan, case was registered against these appellants and the Sessions Judge found these appellants guilty of offence.

Before the Sessions Judge and the High Court, the appellants had contended that they had a right of private defence and the Baboo Khan, Faiyaj Khan and Zafaruddin Khan had attacked them and caused injuries on Shakoor Khan and Habib Khan. The Sessions Court as well as the High Court refused to accept fully the contentions urged by the appellants. Learned counsel for the appellants strenuously contended before us that these appellants Shakoor Khan and Habib Khan had sustained serious injuries on the hands of Baboo Khan and others and courts below erred in convicting the appellants.

We have carefully examined the evidence adduced in this case. As per the evidence in this case Baboo Khan went to the place of occurrence with bullock cart and his intention was to bring the grass in the bullock cart through the property of the one of the appellants. The counsel for the appellants also pointed out that Baboo Khan and others were also armed with some weapons. But overall evidence

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adduced in this case has not established that the appellants had any serious apprehension of any grievous hurt or death on the hands of the Baboo Khan and others. So this is a case where the appellants had exceeded the right of private defence. The Sessions Court and the High Court rightly found them guilty.

However, the conviction of the appellants under Section 304 Part I IPC, as such is not sustainable as the appellants also sustained some serious injuries and in the facts and evidence in this case the appellants could be attributed the knowledge that their acts were likely to cause death and the offence would come only under Section 304 Part II of IPC. Hence in substitution of conviction under Section 304 Part I IPC, we find them guilty under Section 304 Part II IPC and sentence to five years rigorous imprisonment instead of seven years imprisonment. The appellants are on bail, their bail bonds are cancelled and they are directed to surrender to undergo remaining part of the sentence. The appeal is disposed of accordingly.

.....J
(K.G. BALAKRISHNAN)

.....J
(B.N. SRIKRISHNA)
NEW DELHI;
FEBRUARY 5, 2004.