

ITEM NO.101 (Part-II)

COURT NO.9

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(s). 1302 OF 2009

MOHD.RUSTAM ALI

Appellant (s)

VERSUS

STATE OF ASSAM

Respondent(s)

(With appln(s) for bail and office report)

Date: 07/10/2009

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s)

Mr. Parthiv Goswami, Adv.
Mr. Ahanthem Henry, Adv.
Mr. Rajiv Mehta, Adv.

For Respondent(s)

Mr. Avijit Roy, Adv.
For M/S Corporate Law Group, Adv.

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

We heard the learned counsel for the parties.
Vide our separate brief order, while allowing the appeal, set aside the conviction and ordered his acquittal with reasons to follow, we had directed that the appellant shall be set at liberty forthwith if not required in connection with any other case. The reasons thereof are in terms of the detailed order.

(KALYANI GUPTA)
SR. P.A.
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(VINOD KULVI)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

PART-II

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1302 OF 2009

MOHD. RUSTAM ALI

.....

APPELLANT

VERSUS

STATE OF ASSAM

.....

RESPONDENT

O R D E R

In the light of what we intend holding in this

matter the detailed circumstances leading to the incident need not be given. Suffice it to say, that 17

persons in all were sent for trial for offences punishable under Section 302, 323, 324 and 34 Indian

Penal Code. During the course of the trial two of the

accused Siraj Ali and Mohammed Hanif died whereas

Moniruddin defaulted and was declared to be an absconder. The trial court on the basis of the

evidence before it convicted the remaining fourteen

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accused and sentenced them to various terms of imprisonment. The matter was thereafter brought to

this Court by way of a special leave petition by six of

the accused. The Special Leave Petition of five of

them was dismissed outright and leave was granted with

respect to only one, the present appellant.

We have heard the learned counsel for the parties with respect to his role and involvement in the incident.

Mr. Parthiv Goswami, the learned counsel for the appellant has argued that no role whatsoever has been attributed to the appellant and that his case was at par with the four accused who have been acquitted by the High Court and he was, accordingly, entitled to the

same benefit. He has taken us through the evidence of the five primary witnesses P.Ws. 1,3,5,8 and 10 and also the medical evidence and submitted that the appellant, in fact, had caused no injury to the deceased and that the allegation of P.W. 5 that some injury had been caused to one of the witnesses was also unsubstantiated on record.

Mr. Avijit Roy, the learned counsel for the State of Assam has, however, pointed out that the

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appellant had been roped in with the aid of Section 149 IPC as he had been present when the incident happened and as he had along with others had way laid the deceased and the injured witnesses when they were returning home, the common object of the assembly appeared to have been made out. He has also submitted that P.W.1 had a given specific role to the appellant inasmuch that he had caused an injury to the deceased on his neck with a dao.

We have heard the learned counsel for the parties. P.W. 1 Miya Box undoubtedly did say that the appellant had caused an injury with a dao on the neck of the deceased, Jha Box. The medical evidence, however, does not support this plea as only two injuries, none of them on the neck, were found on the dead body. The other three witnesses P.Ws. 3, 8 and 10 had either attributed a general role to the appellant along with others who have been acquitted or no role at all to the appellant in the incident.

Mr. Roy's argument with respect to the evidence of P.W. 5 is also not worthy of belief for the reason

that he alone out of the five witnesses who have been referred to above deposed that an injury had been caused to one of the witnesses and he did not state

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that any injury had been caused to the deceased. In view of the ambivalent nature of the evidence and the fact that a very large number of accused were involved and the parties having serious animosity with each other, we are of the opinion that Rustam Ali, the appellant, herein ought to have been acquitted by the High Court with the benefit of doubt. We, accordingly, allow this appeal, set aside the conviction of the appellant and order his acquittal.

.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
OCTOBER 07, 2009.

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ITEM NO.101 (Part-I) COURT NO.9 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(s). 1302 OF 2009

MOHD.RUSTAM ALI Appellant (s)

VERSUS

STATE OF ASSAM Respondent(s)

(With appln(s) for bail and office report)

Date: 07/10/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE R.M. LODHA

For Appellant(s) Mr. Parthiv Goswami, Adv.
Mr. Ahanthem Henry, Adv.
Mr. Rajiv Mehta, Adv.

For Respondent(s) Mr. Avijit Roy, Adv.
For M/S Corporate Law Group, Advs.

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

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeal and set aside the conviction of the appellant and ordered acquittal.

It is stated by Mr. Parthiv Goswami, the learned counsel for the appellant that the appellant is in
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jail. We direct that the appellant shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

(KALYANI GUPTA)
SR. P.A.

(VINOD KULVI)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]
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PART-I

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1302 OF 2009

MOHD. RUSTAM ALI APPELLANT

VERSUS

STATE OF ASSAM RESPONDENT

O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeal and set aside the conviction of the appellant and ordered acquittal.

It is stated by Mr. Parthiv Goswami, the learned counsel for the appellant that the appellant is in jail. We direct that the appellant shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J

[R.M. LODHA]