

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 1610 OF 2005

MOHD. ASLAM

Appellant (s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

O R D E R

The present appeal is directed against the judgment of conviction and order of sentence passed by the High Court of Judicature of Rajasthan at Jaipur Bench dated 22nd December, 2004. The High Court affirmed the judgment of the trial court dated 30th June, 2000 and convicted the accused Guddu under Section 302 read with Section 34 of the IPC and awarded him the sentence for life imprisonment with fine. Similarly, Mohd. Aslam was also found guilty of offences under Sections 307, 324 and 302 read with 34 IPC and was sentenced to undergo life imprisonment and the substantive sentences were directed to run concurrently.

2. This Court vide its order dated 21st April, 2005 directed

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the Special Leave Petition preferred by Guddu to be dismissed while issuing notice on the petition of Mohd. Aslam, limited it to the nature of the offence committed by the said accused.

Thus the scope of the present appeal is very limited.

We have

to only examine whether on the basis of the evidence on record and role attributable to Mohd. Aslam, his conviction under Section 302 IPC should be maintained or he could be punished for any other offence in accordance with law.

3. As per the story of the prosecution on 19th February, 1998, Dinesh Sharma (PW-14) recorded parcha byan (Ex.P1), Salim had informed to Shakil Ahmed (PW1) that a quarrel had been going on between Guddu and Aslam on the one hand and Mohammad (now deceased) on the other. When these persons went to the site, they saw that the deceased was being inflicted injuries by Aslam and they also inflicted injuries to others. After inflicting a fatal blow on Mohammad, they ran away and Mohammad fell down on the ground unconsciously. The appellants thus were charged for the offences under Sections 302, 307, 326, 326/34 and 324 IPC. Upon trial they were convicted and sentenced by the trial court, which judgment was affirmed by the High Court as afore noticed.

4. The main plea of the accused in the present appeal is that

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he inflicted injuries upon one of the injured persons, namely, Shakil Ahmad, father of the deceased, none of these injuries have been described in the medical evidence as grievous in their nature. Five injuries were inflicted out of which 3 are abrasions.

5. There is participation by the appellant which had helped the accused Guddu to freely assault the deceased. But it is difficult to come to the conclusion that the appellant had common intention to kill the deceased. However, the intention might have been to cause such an injury, which may result in death. He had neither inflicted any injury upon the deceased nor he had helped the deceased to facilitate the inflicting of injuries by Guddu upon him. This fact is not even disputed before us. Obviously the intention of the appellant was to cause hurt. It was one blow of Guddu which proved fatal resulting in the death of the deceased.

6. In the facts and circumstances of this case, we are of the considered view that it will be just and fair and ends of justice

would be met if we permit the conversion of offence against the appellant Md. Aslam from Section 302 read with 34 IPC to 304 Part-I read with 34 IPC and convict him to undergo rigorous imprisonment for a period of ten years with fine of Rs.5000/-.

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In the event of default of payment of fine, he shall undergo six months further imprisonment.

7. The appeal is partially accepted/allowed, without any orders as to costs.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(SWATANTER KUMAR)

NEW DELHI,
June 07, 2011.

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ITEM NO.104

COURT NO.2

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). 1610 OF 2005

MOHD. ASLAM

Appellant (s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

(With appln(s) for exemption from filing O.T., early hearing and accepting English translation and office report)

Date: 07/06/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE SWATANTER KUMAR
[VACATION BENCH]

For Appellant(s)

Mr. Sushil Kumar Jain, Adv.

Ms. Pratibha Jain,Adv.

For Respondent(s) Mr. Amarjit Singh Bedi, Adv.
Mr. Milind Kumar,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is partially accepted/allowed, without
any orders as to costs in terms of the signed order.

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(Sheetal Dhingra) (Indu Satija)
Court Master Court Master
[Signed order is placed on the file]