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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.665 OF 2005

PRAKASH PUNDALIK PATIL ... APPELLANT

VERSUS

STATE OF MAHARASHTRA ...
RESPONDENT

O R D E R

Heard learned counsel for the parties.

This Appeal has been directed against the order

passed by the High Court of Judicature at Bombay,

Bench at Aurangabad, dated 15th January 2004 whereby

the High Court has converted the conviction of the

accused-appellant from Section 307 IPC to Section

302 read with Section 34 IPC and sentenced him to

imprisonment for life.

It is not necessary to go into detail of the

facts as we are concerned with the conviction of the

present Appellant only.

All the 8 accused-persons were put on trial before the trial court for having committed offences punishable under Sections 147, 148, 302, 307, 324, 323 read with Section 149 of IPC. The trial court convicted 7 accused-persons (A-1 to A-7) for different offences whereas A-8 was acquitted from all the offences. All the accused-persons were convicted and sentenced under Sections 147, 148, 307 and 323 read with Section 149 of IPC. Accused-Prakash was convicted and sentenced for an offence under Section 307 IPC. The trial court convicted accused- Bhagwan Baburao Patil (A-4) for the offence punishable under Section 302 IPC in addition to the conviction under Section 307 read with Section 149 IPC.

As all the accused except Bhagwan Baburao Patil

(A-4) have been acquitted under Section 302 IPC, the

State filed appeal (Criminal Appeal No.222/99)

against acquittal of these persons whereas another

Criminal Appeal No.224/99 was filed for enhancement

of sentence punishable under Section 307 read with

Section 149 of IPC against accused Nos.1 to 7.

The High Court, after considering the State's

appeal, converted the conviction of the appellant-

Prakash under Section 307 IPC to that of Section 302

read with Section 34 IPC for causing the death of

Raju and sentenced him to rigorous imprisonment for

life and to pay a fine of Rs.1000/- in default to

undergo further R.I. for six months. Criminal Appeal

No.222 of 1999 was allowed in respect of Accused

No.2-Prakash (appellant herein) to that extent.

Against the conviction of the accused-appellant

under Section 302 IPC passed by the High Court, the

present appeal has been preferred by accused-

Prakash.

We have heard learned counsel for the parties and perused the record. The High Court has examined the statements of PWs. 8, 9 and 11 and came to the conclusion that the Trial Court did not appreciate the testimony of the aforesaid three witnesses and had wrongly acquitted the accused-appellant under Section 302 IPC.

We ourselves have gone through the evidence of the aforesaid three witnesses. So far as PWs.9 and 11 are concerned, they did not involve the accused-appellant for causing any injury to the deceased Raju before police. Only PW. 8 deposed against the accused Prakash. That after the injury received by Raju, he fell down and some injuries were caused on the back of the deceased with Axe by accused

appellant. We have examined the injury report of the

deceased on his back and found that none of the

injuries received by the deceased on the back

appears to have been caused by Axe. There is no

incised wound on the back of the deceased Raju.

After considering the statements of PWs. 8, 9 and

11, we are of the opinion that the High Court has

not correctly appreciated the testimony of the

aforsaid three witnesses. So far as PWs. 9 and 11

are concerned, they did not state before the police

that the accused-Prakash caused any injury to the

deceased. Therefore, their testimony cannot be

accepted when they have, for the first time, deposed

in the Court. This leaves us to the statement of

PW.8. PW.8, as mentioned above, has alleged that the

deceased received injuries with an Axe caused by the

accused-Prakash but the injuries which have been

received on the back of the deceased, none of them

are incised wound. Thus, it is very difficult for us

to accept the testimony of PW.8. The trial court

has also held that the cause of death of the

deceased was head injury.

In this view of the matter, we are of the

opinion that the conviction of appellant-Prakash

under Section 307 IPC by the trial court appears to

be just and proper. There was no compelling reason

for the High Court to take a different view in the

matter after appreciating the evidence of PWs. 8, 9

and 11. Hence, we allow this Appeal and set aside

the order of conviction of the appellant from

Section 307 to 302 IPC and maintain the conviction

of the accused-Prakash under Section 307 IPC and

confirm the sentence awarded by the trial court.

Hence, the appeal filed by the appellant is allowed

to this extent only.

.....J.

(A.K. Mathur)

.....J.

(Lokeshwar Singh Panta)

New Delhi;

September 21, 2006.

ITEM NO.102

COURT NO.10

SECTION IIA

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). 665 OF 2005

PRAKASH PUNDALIK PATIL

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With appln(s) for permission to place addl. documents on record and with office report)

Date: 21/09/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. Sudhanshu Choudhari, Adv.

Mr. Naresh Kumar, Adv.

For Respondent(s) Mr. Sanjay V. Kharde, Adv.

Mr. Aniruddha P. Mayee, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed to the extent indicated in the signed order.

(K.K. Chawla)

(Radha R. Bhat

ia)

Court Master

Court Mas

ter

[Signed order is placed on the file]