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Cr1.A.No. 635 OF 1997
ITEM No.102

Court No. 3

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.635 OF 1997

RABI & ANR. Appellant (s)

VERSUS

STATE OF KERALA Respondent (s)

Date : 04/12/2003 This Petition was called on for hearing today.

CORAM :

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

For Appellant (s)Ms. Asha G Nair, Adv.

For Respondent (s)Mr. Ramesh Babu M.R. Adv.

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

Heard the learned counsel for the parties.
The appeal is dismissed in terms of the signed order.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.635 OF 1997

RABI AND ANR. Appellant (s)

VERSUS

STATE OF KERALA Respondent (s)

O R D E R

The above appeal has been filed against the judgment of a Division Bench of the High Court of Kerala dated 9.8.1996 in Criminal Appeal No.654 of 1993 whereunder the High Court confirmed the conviction and sentence of the appellants under Section 302 read with Section 34 of the Indian Penal Code for having committed the murder of one Dasan, whose wife and wife of A-1 are said to be sisters. The occurrence which formed the subject matter of prosecution was said to have taken place on 2.10.1991 at about 2.00 PM near the house of the accused. It appears that the deceased owed some money to A-1 which despite repeated demand was not paid and this seems to have resulted in strained relationships and at the time of the incident when the deceased was returning from his family house he was said to have been way-laid by the accused who are brothers, near their house and assaulted him with the handle of a spade and also with a chopper on various parts of body resulting in the instantaneous death of the deceased. After completion of investigation, charge sheet was filed under Section 302 read with 341 IPC. The accused pleaded not guilty. After trial the learned Sessions Judge, on the basis of the evidence of PWS 2, 4 and 5, has held that the prosecution has substantiated the charge against the accused. Consequently, the accused were sentenced to imprisonment for life.

Aggrieved, the appellants pursued the matter on appeal before the High Court, and as indicated earlier, a Division Bench of the High Court on reappreciation of the materials on record found the conclusions arrived at by the learned trial judge to be well merited and declined to interfere. Hence this appeal.

Learned counsel appearing for the appellants invited our attention to the relevant portions of the judgment as also the evidence on record and tried to urge that there was really sudden and grave provocation, which on the spur of the moment resulted in the occurrence. Even if the prosecution's case is accepted, according to the plea on behalf of the appellants, at any rate, the charge under Section 302 IPC cannot be held to have been made out. On going through the materials on record we find that the plea of an alleged attempt said to have been made by the deceased to commit an assault on the modesty of the wife of A-1 was found to be of no merit by both the courts below, on a proper appreciation of the evidence on record. We find no justifying cause or reason to take a different view in this regard, and the version of the defence relating to such a claim seems to be a pure afterthought. Consequently the concurrent findings recorded by both the courts below having not been shown to suffer any infirmity or perversity of approach, this appeal fails and is hereby dismissed. The accused-appellants shall surrender to serve the remaining period of sentence.

.....J (DORAISWAMY RAJU)

.....J (ARIJIT PASAYAT)

New Delhi,
December 04, 2003