

ITEM NO.101(PH)

COURT NO.8

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). 905-906 OF 2004

MUNSHI RAM & ORS.

Appellant (s)

VERSUS

STATE OF HARYANA & ANR.

Respondent(s)

(With office report)

Date: 30/03/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant(s)

Mr. B.S. Jain, Adv.

Mr. Ajay Veer Singh, Adv.

Ms. Charu Walikhanna, Adv.

Dr. (Mrs.) Vipin Gupta, Adv.

For Respondent(s)

Mr. Rajeev Gaur 'Nasee', Adv.

Mr. T.V. George, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are partly allowed in respect of A-2 and A-10 in terms of the signed order.

For the remaining accused, the appeals are dismissed as infructuous.

(RAVI P. VERMA)

(ANAND SINGH

Court Master

Court Ma

ster

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 905-906 OF 2004

Munshi Ram & Ors.

Appellants

Versus

State of Haryana & Anr.

Respondents

O R D E R

Heard the parties.

10 accused were convicted by the trial Court for offences under

Section 302 read with Section 149 and sentenced to RI for life and a fine of Rs.4,000/- each in default 6 months RI. They were also convicted for an offence under Section 148 and 323 IPC and sentenced to two years RI and 6 months RI respectively. On appeal being preferred before the High Court, the High Court set aside the conviction of the accused under Section 302/149. The High Court convicted A-10 Lal Chand and A-2 Des Raj under Section 302/34 IPC. So far with regard to the remaining accused, the High Court has maintained the conviction under Section 148 and 323. By now, they have already undergone the sentence awarded under Section 148 and 323. Their appeals are infructuous and dismissed. Before us, only two appellants A-10 Lal Chand and A-2 Des Raj.

The prosecution rest its case on the two eye witnesses PW-4 Bhajan

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Lal and PW-5 Prem Singh who were also injured witnesses. Both eye witnesses stated that A-10 Lal Chand and A-2 Des Raj gave a gandas blow on the head of deceased Wazir Chand and he fell down.

PW-6 Dr. J.S. Grewal examined the deceased Wazir Chand and found the following injuries on his body:-

1. A fresh lacerated wound of the size 4 x 1 cm on left parietal region, antero posterior direction deep upto bone. X-ray of the skull was advised.

2. Fresh lacerated wound 6 x 1-1/2 cm on midline of the scalp on vertex, antero-posterior direction with fresh bleeding. X-ray of skull was advised.

3. A fresh reddish contusion on back of chest, running from left shoulder to right scapula. 1-1/2 x 2 cm x-ray of left scapula was advised.

4. Two fresh contusions 6 x 2 cm and 8 x 2 cm on right shoulder, posterior aspect, reddish in colour. X-ray of right shoulder and right scapula was advised.

5. A fresh abrasion on left leg mid 1/3rd medially w x 1/2 cm.

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Counsel for the appellant contended that since the injury on the body of the deceased found by the doctor are lacerated wound on left parietal region and on the middle of the scalp, they could not be caused by a gadasa. According to the counsel for the appellant, if the injury is caused by a gadasa it would have inflicted an incised wound and not lacerated wound. We are unable to countenance with this submission of the counsel for the appellant. We have gone through the evidence of PW-4 and PW-5.

Both the witnesses stated that it is the appellant who dealt a gadasa blow on the head of the deceased Wazir Chand. The two eye witnesses did not state that the deceased was cut with a gadasa. Gadasa blow could be made from the blunt side of the gadasa. We do not see any infirmities in the deposition of PW-4 and 5 and the medical evidence. So far as gadasa blow made by A-10 Lal Chand and A-2 Des Raj are concerned, the testimony of PW-4 and 5 are consistent. This statement is also consistent with the FIR. Even if assuming that there appeared some inconsistency between the ocular evidence and medical evidence, the evidence of eye witnesses cannot be rejected merely because of medical evidence that injury might be caused by blunt edge and not sharp edge of axe. (See Ranmal Samat & Ors. Vs. State of Gujarat, AIR 1993 SC 1676).

In the present case, both PW-4 and 5 are injured witnesses. The fact that they are both injured would show that they were present on the spot and they receive injury in the same incident. Therefore, their presence at the place of occurrence cannot be doubted.

It is, however, noticed that the accused party also suffered as many as 20 injuries though found to be simple in the same incident. We cannot loose sight of this fact that the injury sustained by both side is preceded by a marpit. In our view, therefore, in such a situation, the appellant could not

have been convicted for an offence under Section 302/34. The appellant has also consistently taken the plea of right of private defence. Although, one could form an opinion that having regard to the nature of the injury, it could be said that they have exceeded right of private defence. It could not be said that the act is done with the knowledge that is likely to cause death.

Considering these facts, we are of the view that ends of justice would be met if the conviction of the appellant under Section 302/34 is converted to one under Section 304 para 1 read with the aid of Section 34 of the IPC. It is stated that the appellants were all along remained in the custody and by now they have undergone about eight years in prison. In our view, the eight years imprisonment is sufficient. The appellants are, therefore, convicted under Section 304 Para 1 read with Section 34 of the IPC and sentenced to the imprisonment already undergone by them. The appellants are in jail. They shall be released forthwith if they are not wanted in connection with any other case. The fined amount imposed by the trial Court and affirmed by High Court are not disturbed.

The appeals are partly allowed in the above terms.

.....J.
(H.K. SEMA)

New Delhi;

.....J.

March 30, 2006.

(DR. AR. LAKSHMANAN)

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