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SLP(Crl.)No. 3186 OF 2000

ITEM No.5

Court No. 9

SECTION IIA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 3186/2000

(From the judgement and order dated 31/03/2000 in CRLA. 69/99  
of The HIGH COURT OF PATNA)

NIHORE KOERI & ORS

Petitioner (s)

VERSUS

STATE OF BIHAR

Respondent (s)

( With Appln(s). for bail )  
( With Office Report )

Date : 10/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH  
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Petitioner (s) Mr. PS. Mishra, Sr.Adv.  
Mr. Vishnu Sharma, Adv.  
Mrs. T. Swarupa Reddy, Adv. for  
Mr. Rajesh Prasad Singh,Adv.

For Respondent (s) Mr. B.B. Singh,Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave is granted.  
The appeal is allowed and disposed of.

.SP1

(S.Thapar)

(Kanwal Singh)@@

AA  
PS to Registrar Court Master@@  
AA

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
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(Arising out of SLP(Crl.)No.3186/2000)

Nihore Keori & Ors.

Appellant (s)

Versus

State of Bihar

Respondent (s)

O R D E R@@  
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Leave granted.

Being aggrieved and dissatisfied by the judgment and order dated 5th April, 1999 passed by the VII Additional Sessions Judge, Rohtas, at Sasaram, convicting the appellants for the offence punishable under Section 304 Part I, read with Section 149 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for 10 years, the appellants preferred Criminal Appeal No.69 of 1999, before the High Court of Judicature at Patna. By the impugned judgment and order dated 31st March, 2000, the High Court dismissed the appeal and confirmed the judgment and order passed by the learned Sessions Judge.

At the time of hearing of this matter the learned counsel appearing on behalf of the appellants contended that the judgment and order passed by the High Court, is on the

face of it, illegal and erroneous and that the High Court has failed to discharge its function of re-appreciating evidence led by the prosecution before confirming the conviction. He pointed out that this Court has repeatedly drawn the attention of the High Court to their essential duty re-appreciate the evidence in a conviction appeal.

We agree with the learned counsel that in this case the High Court has failed to discharge its duty of re-appreciating the evidence but as submitted by the learned counsel for the appellants, we were taken to the entire evidence and thereafter we have issued notice limited to the nature of the offence.

In the present case the prosecution witnesses admitted that the accused side was making wall over the land in dispute. There was dispute between the accused side and the complainant side. Because of the said dispute the accused assaulted the deceased and other witnesses. In the assault by

the accused to the deceased as well as other witnesses the prosecution has led necessary evidence and the trial court after appreciating the same has arrived at a conclusion that all the accused armed with gandasa, bhala and lathi reached at

the place of incident and on instigation of Nihore Koeri and Kharpute Keori gave two lathi blows of bhala on the head of the deceased Nizamuddin, as a result of which, the deceased had a fracture on his head which likely caused his death. Kashi Sahu also gave blow with lathi portion of gandasa on the eye brow of the deceased. Other accused persons also assaulted on his head and palm when he fell down. The manner of assault on the hands by the accused clearly establish that the accused caused the death of Nizamuddin without any intention or to cause such bodily injury which was likely to cause death.

Without considering these findings rendered by the learned Session Judge, the High Court observed that Sessions Judge was lenient in awarding sentence to the appellants only under one Section leaving aside other sections for which they were charged. The Court also observed thus:

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"All the appellants were sentenced to undergo rigorous imprisonment for ten years under Section 304 Part I of the Indian Penal Code. The charge under Section 302 may be reduced under minor section, if the evidence on the record proves the same. This can be done within the provision of Section 222(2) of the Code of Criminal Procedure. So I do not think, the sentence awarded to the appellants also suffers from any illegality."

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP2

It appears that as the aforesaid findings given by the

High Court clearly reveals non-application of mind by the learned Judge, the High Court was required to consider at once the Sessions Judge's findings arrived at that there was no intention on the part of the accused to cause the death or of causing such bolidy injury as was caused. There was no question of convicting the appellants under Section 304 Part I of the Civil Procedure Code. In this view of the matter the conviction of the appellant under Section 304 Part I cannot be sustained.

The learned senior counsel appearing on behalf of the appellants submitted that considering the facts, particularly, the Protest Petition which was filed by the complainant, it appears that the main accused at whose instance this incident took place, is not prosecuted. For this purpose he has referred to the Protest Petition which is produced on record.

It is true that in the Protest Petition, which is produced on record, the complainant has stated that on the day of incident one Parasnath Tiwari and Rajeshwar Tiwari caught hold both the hands of his brother and dragged him out from the Dalan and thereafter Ramdhar Tiwari gave a gandasa blow on the head of his brother Nizamuddin. Thereafter accused

Kharpatu Keori and other accused assaulted on the deceased.

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In our view, if it is a say of the witnesses that Tiwari brothers were concerned with the offence and they were required to be prosecuted, would hardly be a ground disagreeing with the consistant evidence which was led by the prosecution witnesses to establish that accused assaulted the deceased at the relevant time. They came jointly with arms and all of a sudden attacked the deceased. Hence, the Protest Petition filed by the complainant would not, in any way, falsify the say of the witnesses that the accused also participated in the offence.

In this view of the matter, even though we have issued notice for the limited purpose, we have considered some part of the evidence which was brought to our notice by the learned counsel for the appellants and it cannot be said that conviction of the appellants is, in any way, illegal or erroneous. However, as stated earlier, the appellants cannot be convicted for the offence punishable under Section 304 Part I, as convicted by the learned Sessions Judge and hence, they are convicted under Section 304 Part II read with Section 149 of the Indian Penal Code accordingly.

In the result, the appeal is partly allowed. The appellants are convicted for the offence punishable under

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Section 304 Part II, read with Section 149 and are sentenced to suffer rigorous imprisonment for 5 years.

The appeal stands disposed of accordingly.

.SP1

.....J  
M.B. Shah)

New Delhi,  
April 10, 2001

.....J.  
(K.G. Balakrishnan)