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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1274 OF 1999

ASRAF & OTHERS  
LANTS

... APPEL

VERUS

STATE OF M.P.  
NDENT

... RESPO

O R D E R

Twenty seven accused persons were tried by the Court of Session Judge,

Kannod in Madhya Pradesh for various offences. There was a counter case on the

basis of the complaint preferred by the one of the injured accused and the counter

case was also tried along with the main case. In the main case all the 27 accused were

acquitted and in the counter case they were found guilty for the offence punishable

under Section 325 read with Section 34 IPC and were sentenced to undergo R.I. for a

period of five years. Aggrieved by the acquittal of 27 persons in the main case the

State preferred an appeal as Criminal Appeal No.105/92 and against the conviction of

the accused in the counter case they preferred Criminal Appeal No.500/91. Against

the decision in the main case a revision was also filed by the aggrieved party. The two

appeals and the revision were considered by the Division Bench of the Madhya

Pradesh High Court and by the impugned judgment the present four appellants were

found guilty for the offence punishable under Section 302 read with Section 34 IPC and were sentenced to undergo life imprisonment. They were also found guilty for the offence punishable under Section 323 read with Section 34 IPC and were sentenced for a period of one year R.I. Three of the appellants were found guilty for the offence punishable under Section 452 IPC and were sentenced to undergo R.I. for a period of five years. The aggrieved by the same the four appellants have filed this appeal.

We heard the learned counsel for the appellants and also the learned counsel for the State.

The incident took place on 11.7.1984 at about 7 to 7.15 p.m. at the house of PW.4, Majid Khan in Agarda village of Madhya Pradesh. The prosecution case is that about 15 to 20 persons armed with various weapons came to the house of PW.4, Majid Khan and out of them the present appellants - Asraf, Jahangir and Balla entered the house and caught hold of Hamid Khan and dragged him out and assaulted him with Tangiya (small axe). The other accused attacked the inmates of the house and also one Babu Khan who was present in the house. In the incident two persons sustained fatal injuries, they were Hamid Khan and Babu Khan. Two others sustained injuries, they are Majid Khan and Jahangir Khan. Though prosecution has not admitted, in the present case, that any of the accused had suffered any injury but in the evidence it was proved that the appellants-Asraf, Rashid Khan, Jahangir Khan and other Habib Khan sustained injuries.

PW.1, Chand Khan lodged first statement before police at 11 p.m. and PW.18, Shiv Narayan God, Sub-Inspector of Police, took over the investigation and

he visited the place of incident and prepared Ex.P.2 scene report . He seized blood stained earth from the spot under Ex.P.4 report and three cycles were found in front of the place of incident and they were seized under PW.5 Panchnama. Blood stained cloths recovered from the accused. Various weapons such as Tangiya, stick etc. were recovered from the possession of the accused. The investigating officer with the assistance of a photographer took certain photographs and they are marked as Ext.P.87. The blood stained articles were sent for examination by the forensic laboratory and the report was produced in the case and most of the items were proved to have been stained with human blood.

The appellants in this case contended that the incident had not happened as alleged by the prosecution and they alleged that on 11.7.1984 at about 7.15 p.m. the appellants were on the way to the agriculture field, and about 11 persons belonging to the complainant's party attacked them and the appellants Asraf, Jahangir, Rasheed Khan and Habib Khan sustained injuries and, therefore, they exercised their private defence and in that way they have not committed any offence. The Sessions Judge it seems fully accepted the case set up in the counter case.

The Sessions Judge was of the view that the incident had happened in the field of Kesar Khan and not at the house of Majid Khan. The Sessions Judge was of the view that the blood stains found in the courtyard of house of Majid Khan must have been due to the fact that the two injured persons were brought from the field of Kesar

Khan to the house of Majid Khan. The High Court held that the Sessions Judge

committed a grave mistake in holding that the incident had happened in the paddy field of Kesar Khan. The High Court has also given various reasons for holding that the incident had happened at the house of Majid Khan.

The case of the present appellants depends on the fact whether the incident happened at the house of the Majid Khan or at the field of Kesar Khan. If the incident in fact had happened at the house of Majid Khan the present appellants would not be entitled to set up a plea of private defence as they had apparently no reason to go to the house of Majid Khan, armed with various weapons.

The evidence in this case clearly shows that the incident had happened at the house of Majid Khan. Immediately after the registration of the case PW.18

prepared Panchanama and he noticed the presence of blood stains in the courtyard

and he also noted the presence of blood stains on the wall of the house of Majid

Khan. Three cycles were found lying in front of the place of incident and the

Investigating Officer got the photographs taken and the chappals were found lying

around at the place of incident. These facts clearly would show that the incident had

happened at the house of Majid Khan. The learned Sessions Judge found that the

injured persons must have been brought from the field of Kesar Khan to the house of

Majid Khan and thus the blood stains must have been in the house of Majid Khan.

This finding is purely on fanciful reason and it has rightly reversed by the High

Court. The five eye-witnesses had given evidence in this case and their evidence had proved that the appellants Asraf Khan, Jahangir and Rashid Khan entered into the house and dragged the Hamid Khan and caused injuries to him. It is also found from the evidence that these witnesses had caused various injuries to the deceased persons namely Hamid Khan and Babu Khan. The postmortem report of these persons shows that they had sustained series of multiple injuries. Hamid Khan had 8 injuries and Babu Khan had as many as 19 injuries and most of them were lacerated wounds and contusions.

The learned counsel for the appellants contended that according to the prosecution these accused persons were armed with small axe but lacerated injuries were found on these persons. The evidence is to the fact that they had used blunt end of small axe and thus the injuries on the deceased happened to be lacerated and contusion. It is true that the appellants too sustained serious injuries and that is not explained by the prosecution. As it is proved that the incident had happened in the house of Majid Khan, the victims might have resisted the assault and the appellants then sustained injuries. It is proved that several persons participated in the melee and assault and failure of the prosecution to explain the injuries on the accused may not be of serious consequence as the accused were aggressors and they had no right of private defence. The High Court was perfectly justified in reversing the acquittal of these four appellants and we find no reason to interfere with the impugned judgment. The appeal is dismissed accordingly.

The appellants are on bail and they are directed to surrender to their

bail bonds for undergoing for the remaining part of the sentence.

.....J.

( K.G. BALAKRISHNAN )

.....J.

( D.M. DHARMADHIKARI )

NEW DELHI,

AUGUST 11, 2005.

ITEM NO.101

COURT NO.5

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). 1274 OF 1999

ASRAF & ORS

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report )

Date: 11/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant(s)

Mr. Anis Ahmed Khan,Adv.

Mr. Shoaib Ahmad Khan, Adv.

For Respondent(s)

Ms. Vibha Datta Makhija,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Anis Ahmad Khan, learned counsel appearing for the appellants

started his arguments at 10.35 a.m. and concluded at 12.15 p.m. Thereafter, Ms.

Vibha Datta Mikhija, learned counsel for the State argued the matter for about 15

minutes. Hearing concluded.

The appeal is dismissed in terms of the signed order. The appellants are

on bail and they are directed to surrender to their bail bonds for undergoing for the

remaining part of the sentence.

(PAWAN KUMAR)  
COURT MASTER

RT MASTER

(PUSHAP LATA BH

COU

(signed order is placed on the file)