

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

CRLMP NO. 663 & 735/2011 in CRIMINAL APPEAL NO(s). 1768
OF 2009

MOHD.KHALIQ & ANR. Appellant (s)

VERSUS

STATE OF J&K Respondent(s)

(for bail and office report)

Date: 15/03/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. Shakeel Bhushan, Adv.
Mr. P.D. Sharma, Adv.

For Respondent(s) Ms. Astha Sharma, Adv.
Mr. Anis Suhrawardy, Adv.

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

The appeal is allowed in terms of the signed order.

(Shashi Sareen) (Shashi Bala Vij)
Court Master Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1768 OF 2009

MOHD. KHALIQ & ANR. ... Appellant(s)

Versus

STATE OF J & K. ... Respondent(s)

O R D E R

In the case of Mohd. Khaliq -appellant No. 1 :

1. Challenge in this appeal is to the judgment dated

7.2.2008 passed by the High Court of Jammu and Kashmir in Criminal Appeal No.2 of 2005 whereby the High Court modified the judgment and order of the trial court and held Mohd. Khaliq and Mohd. Razak guilty of the offences punishable under Sections 302, 447 read with Section 34 R.P.C. and sentenced them to imprisonment for life and to pay fine of Rs. 25,000/- each. They were also convicted under Section 325/34 R.P.C and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- each.

2. The brief facts of the case are that on 22.7.1990, Mohd. Lal lodged a written report in the police station

Dharal stating therein that he along with Mujahid-ul-Hassan was repairing the fence, when accused Mohd. Khaliq, Mohd.

Razak along with other accused trespassed into their land and inflicted injuries on both of them. Accused Mohd. Khaliq inflicted injuries on his head with axe and other accused administered a beating with lathies. They also pelted stones on them. Mohd. Lal and Mohd-ul- Hassan were taken to the hospital where Mohd-ul- Hassan succumbed to the injuries.

3. Notice was issued by this Court only on the nature of sentence particularly taking into consideration the nature of injuries received by the deceased.

4. We have heard learned counsel appearing for the parties.

5. It is no doubt true that the deceased has not survived after the attack. However, the injuries suffered by him do not show any fracture though the injuries were multiple in nature. It is seen that the injuries were on the head and, therefore, the intention of the accused Mohd.

Khaliq was clear. However, it could not be said that the injuries were caused with an intention to commit murder of the deceased. Instead it can be said that those injuries

were so dangerous that it could be presumed that they were inflicted with the knowledge that the same would result in the death. We have perused the nature of injuries which are three in number. However, admittedly there was no fracture caused to the deceased Mohd-ul-Hassan.

6. Considering the overall circumstances of the case, we modify the judgment of the High Court and alter the conviction from Sections 302, 447, 325/34 to Section 304 Part-II RPC.

7. It is reported that the accused Mohd. Khaliq has already undergone seven years of imprisonment. In the circumstance, we reduce the sentence of the appellant to the period already undergone by him. The appellant shall be released from the jail immediately, if he is not required in any other case. The sentence of fine and default clause awarded by the High Court is affirmed.

8. The appeal stands allowed to the aforesaid extent.

In the case of Mohd. Razak - appellant No. 2:

1. Learned counsel appearing for the appellant argues that the accused had inflicted only one blow. We do not think that it would be a proper justification for the counsel to take a plea that accused Mohd. Razak should be dealt with differently than the other accused. It cannot be forgotten that it was a joint crime and he would be equally guilty for the said offences under Section 34 RPC.

2. In that view, we modify the impugned judgment of the High Court and alter the conviction from Sections 302, 447, 325/34 RPC to Section 304 Part-II RPC and sentence him to undergo rigorous imprisonment for seven years. The

sentence of fine and default clause awarded by the High Court is affirmed.

3. The appeal of accused Mohd. Razak is allowed to the aforesaid extent.

.....J.
(V.S.SIRPURKAR)

.....J.
(T.S.THAKUR)

New Delhi,
March 15, 2011.