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Crl.A.No. 659 OF 1998
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 659 OF 1998

State of U.P.Appellant

Versus

Mukhram & Ors.....Respondents

O R D E R

Pursuant to a dispute as to the ownership of a plot there was a fight between the complainant's group and the accused group on 11th March, 1979 in which participants on both the sides suffered injuries. A complaint was lodged by PW.2 with Police Station Bairia in regard to the injuries suffered by him, his brother Ganesh and one other person. The said complaint alleged of offence under Section 323 IPC. On 12th March, 1979, Ganesh who suffered an injury on his head and died. Therefore, the complaint was altered to include Section 304 IPC also. The trial court after trial came to the conclusion that the respondents are guilty of offence punishable under Sections 304 and 323 IPC. It awarded five years rigorous imprisonment for an offence punishable under Section 304 IPC while six months rigorous imprisonment was awarded for an offence punishable under Section 323 IPC.

In an appeal filed against the said judgment, the High Court of Judicature at Allahabad came to the conclusion that incident in question had occurred in a fight between two groups in which almost all the members of the groups were injured and unfortunately one of them died. It also came to the conclusion that the injury caused to deceased was not intended to cause his death and could at the most be punishable under Section 323 IPC. It taking into consideration the fact that the case was nearly 18 years old by the time it came up for consideration before the High Court, found it appropriate that while holding the appellants before it guilty under Section 323 read with 34 IPC to modify the sentence to the period already undergone by the appellants. It, however, enhanced the sentence of fine to Rs.1500/- plus an additional compensation of Rs.1,000/- to each of the injured person.

It is against the said modification of conviction and sentence the State of U.P. is in appeal before us. We have heard learned counsel for the parties and perused the records. On the facts and circumstances of this case we find no error in the impugned judgment of the High Court.

We agree with the findings of the High Court that the offence at the most could be one under Section 323 read with 34 IPC hence High Court was also justified in modifying the sentence of imprisonment to the period already undergone while enhancing the fine. We find no merit in this appeal. The appeal fails and the same is dismissed.

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

NEW DELHI,
APRIL 01, 2004.

ITEM No.104

Court No.4

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.659 of 1998

STATE OF U.P. Appellant (s)

VERSUS

MUKHRAM & ORS.

Respondent (s)

(with appln. for exemption from filing OT)

Date : 01/04/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s)Mr. Sahdev Singh, Adv..
Mr. J.K. Bhatia, Adv.

For Respondent (s)Mr. Syed Ali Ahmad, Adv.
Mr. Syed Tanweer Ahmad, Adv.
Mr. Awadesh Kumar Singh, Adv.
Mr. Vikas Bansal, Adv.
Mr. Rajeev Sharma, Adv.
Mr. R.D. Upadhyay, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal fails and the same is dismissed in terms of the signed order.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER
(signed order is placed on the file)