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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1497 of 2009

STATE OF RAJASTHAN ... APPELLANT (S)
VERSUS
KABUL SINGH & ORS. ... RESPONDENT (S)

ORDER

1. This appeal by the State of Rajasthan challenges the order of the High Court dated 12.04.2007 by which the accused-respondents 1 to 4 and 6 who had been convicted under Section 302 I.P.C. by the learned Trial Court and sentenced to undergo rigorous imprisonment for life have been acquitted. The Accused No. 5 who was similarly convicted and sentenced has been found guilty by the High Court of the offence under Section 304 Part-II I.P.C. and sentence of imprisonment for the period of

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custody suffered (six years) was imposed on the said accused by the High Court. During the pendency of the appeal the accused-respondent No. 1, Kabul Singh, has passed away. The

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appeal against the said accused-respondent has, therefore, abated.

2. The basis of the above order of the High Court appears to be the finding recorded that the incident had occurred in the course of a mutual fight and therefore culpability of the accused-respondents ought not to be judged with the aid of Section 149 I.P.C. The High Court took the view that the accused-respondents should, instead, be liable for their individual acts. As the evidence on record had disclosed that the fatal injury was caused by the pharsi blow given on the head of the deceased by accused-respondent No. 5 Madan Lal, the High

Court thought it proper to acquit the other accused while holding accused Madan Lal liable. However, taking into account that the fatal blow was inflicted in the course of a free fight, it was held that the offence committed by the said accused Madan Lal was not under Section 302 I.P.C. but would come under Section 304 Part-II I.P.C. Hence, the conviction under Section 304 Part-II and the sentence imposed, as already noticed.

3. The learned counsel appearing on behalf of the appellant-State has taken us through the evidence of PW-1 Maya, the mother of the deceased, PW-2 Manju, the wife of the deceased and PW-3 Mamraj, the father of the deceased who had lodged the F.I.R. Learned counsel has tried to convince the Court that formation of unlawful assembly by the accused-respondents is established by the evidence of the said witnesses. The accused persons had come armed with farsi, lathi etc. to the house of the complainant which fact established the common object of the unlawful assembly. No conclusion regarding mutual/free fight could have been reached as the injuries suffered by accused Madan Lal and Jai Dayal are superfluous injuries which, according to the doctors, could be self inflicted. It is, therefore, urged that the High Court had gone wrong in reaching the impugned conclusions. In any event according to the learned counsel, even if the reasoning of the High Court is to be accepted, the alteration of the conviction of accused Madan Lal from 302 I.P.C. to 304 Part-II is not sustainable having regard to the nature of the said injury which is borne out from the evidence of PW-12 Dr. Dharmendra Kumar.

4. On the other hand, learned counsel for the accused-respondents by placing before the Court the Medical Report of the injuries sustained by accused-Madan Lal and Jai Dayal has contended that the said injuries were sustained by the two accused in different parts of the body and the prosecution has not explained such injuries. In such a situation, according to the learned counsel, the conclusion that the incident occurred in a mutual fight is perfectly justified. The accused persons,

therefore, are liable for their individual acts. Learned counsel has further urged that the acts attributable to the accused-Madan Lal amount to commission of offence under Section 304 Part-II. Regarding the other accused it is submitted that there is no evidence on record to hold that they are liable for any of the injuries sustained by the deceased. The acquittal made by the High Court is, therefore, justified.

5. We have considered the submissions of the learned counsel for the parties. We have looked into the injury reports in respect of accused Madan Lal and Jai Dayal i.e. Exhibits D-5 and D-6 which go to show that several injuries were suffered by accused Madan Lal and Jai Dayal. The mere acceptance of the suggestion made to the deposing doctors that such injuries could be self inflicted, in our considered view, would not be conclusive.

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No evidence or explanation has been forthcoming on the part of the prosecution to explain the injuries on the accused. That apart, Exhibit P-37A (Copy of the General Daily Diary) noticed by the High Court indicates that the earliest information with regard to the incident was that a quarrel had taken place between two groups on the issue of right of way/passage. Taking into account the aforesaid facts, the view taken by the High Court with regard to a mutual fight between the two groups cannot be said to be so erroneous that would require interference.

6. If the culpability of the accused cannot be determined with the aid of Section 149 as we are inclined to hold, naturally, they would be liable for their individual acts. We have scanned the evidence on record including the medical reports. We do not find any injury on the deceased which could be attributed to any of the accused except accused Madan Lal. The acquittal of the said accused, therefore, appears to be a correct conclusion.

7. Exhibit P-26 (Injury Report) indicates that the following injuries were sustained by the deceased Amar Singh :

1. Incised wound 6" x 1" Brain deep over scalp extending from left front to parietal region upto right parietal region.

Date : 02/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. Milind Kumar, Adv.

For Respondent(s) Mr. Ram Niwas Buri, Adv.
Mr. Sanjeev Malhotra, Adv.

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

The appeal is dismissed in terms of the
signed order.

(MADHU BALA)
COURT MASTER
(Signed order is placed on the file)

(ASHA SONI)
COURT MASTER