

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.96 OF 2007

PRABHU & ORS.

APPELLANT (S)

VERSUS

STATE OF RAJASTHAN

RESPONDENT (S)

O R D E R

Heard Mr. Amarendra Saran, learned senior counsel appearing for the appellants who was requested by this Court to assist in the appeal as an Amicus Curiae. None present for the respondent/State.

This appeal is directed against the judgment of the Division Bench of High Court of Rajasthan, Bench at Jaipur dated 15.2.2006.

As the narration goes, as many as 60 persons were named in the FIR for killing of four persons. However, the charge-sheet came to be laid as against 48 persons. Out of 48 persons, during trial one person died.

In respect of two accused, the case was separated and tried, two persons were acquitted, three of the accused persons were juvenile

and therefore, they were also dealt with

separately. Ultimately, 40 persons came to

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convicted for offence under Section 302 read with Section 149 as well as Section 148 IPC, Section 323 read with Section 149 and 447 IPC. They were imposed with a sentence of imprisonment for life for Section 302 read with Section 149 IPC and imprisonment for ten years for offences under Section 307 read with Section 149 IPC, three years for offences under Section 447 IPC. Thirteen persons were convicted for offences under Section 325 read with Section 149 and 148 and under Section 323 read with Section 149 and 447 IPC. The sentences ranged from three months to three years rigorous imprisonment apart from fine with usual default sentence.

All the 40 persons challenged their

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Narendra Prasad
Date: 2015.07.24
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Reason:

conviction and sentence and by the impugned judgment the High Court confirmed the conviction in respect of 15 persons out of 27 accused, who were convicted for offences under Section 302 read with Section 149 and Section 307 read with Section 149 etc., and the 13 accused, who were convicted for lesser offences were all acquitted by the High Court.

The genesis of the case as culled out from the judgment of the High Court goes to state that on 30.12.1998 the accused persons as well as the deceased persons along with the other victims/injured persons, some of whom were also examined as eye-witness to the occurrence were all engaged in the activity of pathargadhi i.e.

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fixing of stones in the agricultural field, apparently to demarcate the lands belonging to different persons who were in possession of the fields. Around 12.30 P.M. while four of the deceased were having hukka which is otherwise called hubble-bubble, the persons from the accused party stated to have been enraged by their conduct in not participating in the pathargadhi activity which ultimately resulted in a clash, wherein the deceased came to be killed apart from several other persons having been injured including many from the accused side. The nature of weapons used have been stated to be pharsi, lathi, jelly and axe.

However, we find from the impugned judgment no reference to the specific overt act attributed to such of those accused persons with reference to the concerned deceased or for that matter all other material evidence which weighed with the Trial Court to find the accused persons solely responsible for the killing of the deceased and for the High Court to have ultimately reached a conclusion for affirming the conviction as against the present 15 appellants.

In spite of our best efforts, we are not able to discern from the judgment any detailed reasoning for affirming the view of the Trial Court for confirming the conviction as against the appellants. We also notice that as against the acquittal of the rest of the accused also,

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the State has not come forward with any appeal. We, however, find that the High Court has noticed the nature of injuries sustained by the members of the accused party and the number of such persons is not less than 8 on the side of the accused. There is also no discussion relating to the explanation offered for such serious injuries sustained by the accused party in a clash that occurred in an open filed. The impugned judgment does not disclose whether the accused persons were duly represented by any counsel on their side.

Having noted the genesis of the case, the number of persons died who were killed and the number of injured persons as well as serious injuries sustained by many of the accused, we are of the considered opinion that the High

Court ought to have examined in detail the correctness or otherwise of the judgment of the Trial Court, insofar as it related to the conviction of the appellants by giving adequate reasons. We are, therefore, constrained to set aside the impugned judgment in so far as the appellants herein are concerned without making any reference to the acquittal part of it, inasmuch as there was no challenge to the same at the instance of the State and remit the case back to the High Court for deciding the appeals on merits as regards the involvement of the appellants in the offence. As the occurrence took place in the year 1998, we also request

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the High Court to dispose of the appeals expeditiously, preferably within three months from the date the records are received back in the High Court.

When this appeal was entertained by this Court, we granted protection by way of bail to the three accused, namely, A1, A26 and A27 considering their advance age i.e. all of them were in the age group of 86 to 92 years.

Amarendra Saran, learned senior counsel appearing for the appellants, submitted before us based on the instructions, as well as the record that the other accused were not granted bail by the High Court as well as by this Court and that they have been in jail for more than 15 years as on date.

In the said circumstances, we are convinced that the accused/appellants can also be extended the same benefit of grant of bail as was extended to A1, A26 and A27, pending the appeals to be decided by the High Court, as observed in this order. Ordered accordingly.

That apart, while perusing the judgment of the Division Bench, from the cause title as well as the body of judgment, as far as Criminal Appeal No.647/2001 was concerned, the same was preferred by Gyarsa & 35 others i.e.

36 appellants and in Criminal Appeal No.685/2001, there were four appellants. Altogether all the 40 persons who were convicted by the Trial Court preferred the

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above two appeals. However, we find reference to one other criminal appeal i.e. Criminal Appeal No.1469/2002 and the appellants in the said appeal were represented by counsel. However, in the body of judgment we find reference only to Criminal Appeal Nos.647/2001 and 685/2001 which covered all the 40 convicts who were convicted by the Trial Court. Therefore, while deciding the appeals now remitted back, it will be appropriate for the High Court to also ascertain as to how another appeal i.e. Appeal No.1469/2002 also came to be considered in the impugned judgment.

In order to ensure due representation on behalf of the appellants before the High Court, it will be appropriate for the High Court to appoint an Amicus Curiae for conducting the appeals.

We must also place on record our appreciation for the assistance rendered by Mr. Amarendra Saran, learned senior counsel who very fairly stated that he is not inclined to accept any remuneration for the services rendered. We place on record such a high gesture offered by learned senior counsel. Ms. Liz Mathew, learned counsel, also acted as an Amicus Curiae. We direct the Supreme Court Legal Services Committee to pay to Ms. Liz Mathew, Advocate an amount of Rs.10,000/- as remuneration for the assistance rendered to this Court.

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With the above observations and directions, the appeal stands disposed of.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[UDAY UMESH LALIT]

NEW DELHI;
JULY 21, 2015.

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ITEM NO.102

COURT NO.7

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(s). 96/2007

PRABHU & ORS.

Appellant(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date : 21/07/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Amrendra Sharan, Sr. Adv. (A.C.)
Ms. Aparajita Mukherji, Adv.
Ms. Liz Mathew, Adv. (A.C.)

For Respondent(s) Mr. Milind Kumar, Adv. (N.P.)

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

The appeal is disposed of in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(SHARDA KAPOOR)
COURT MASTER

(Signed order is placed on the file)