
(2014) 10 AHC CK 0057

In the Allahabad High Court

Case No : Criminal M.A. (Leave to Appeal) No. 329 of 2014

Irshad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372 — Penal Code, 1860 (IPC) -
Section 147, 148, 149, 304, 308

Citation : (2015) 89 ALLCC 200

Hon'ble Judges : Rakesh Tiwari, J;Vijay Lakshmi, J.

Bench : Division Bench

Advocate : Pawan Kumar Shukla, for the Appellant

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J. Heard learned Counsel for the appellant and perused the impugned judgment. Criminal Misc. Application under section 372 Cr.P.C. (Leave to appeal) has been filed along with memo of criminal appeal challenging the validity and correctness of judgment and order dated 17.7.2014 passed by Additional Sessions Judge, Court No. 1, Moradabad in Sessions Trial No. 375 of 2003 (State v. Anwar and others), whereby accused persons Anwar, Abrar, Iqbal, Nawab, Ansar, Mehndi Hasan, Irshad, Murad Ali and Naushad have been acquitted of the charges levelled against them under sections 147, 148, 452, 308, 304/149, 323/149, 504 IPC.

2. Facts that as unfolded from record are that on 11.8.2002 an F.I.R. was lodged by the applicant/informant at Police Station Civil lines, District-Moradabad against the accused persons Anwar and others/respondent No. 2 to 11 at P.S. Civil Lines, District-Moradabad which was registered as Case Crime No. 2064 of 2002 for the offence under sections 147, 148, 452, 308, 323, 504 IPC.

3. In the said FIR it has been specifically stated by the informant/applicant that there is an old civil litigation regarding dispute of shop pending in civil Court. On

11.8.2002 the accused persons namely Anwar, Abrar, Iqbal, Nawab all sons of Shehzadey, resident of Chakkar Ki Milak, near Water Tank, who were armed with lathi danda and saria etc., have committed house trespass by entering into the shop and attempting to take possession over it forcibly.

4. It is stated that aforesaid accused persons started abusing and did marpeet with the complainant and others. At the same time their companions namely, Ansar son of Abrar, Mehndi Hasan son of Kallu, Naushad son of Chiragh Ali, resident of Chakkar ki Milak, having lathi dandas and iron rods etc., also came there and started abusing and beating the complainant. All of them along with the accused persons caused hurt to the father of complainant Munnan by saria and other weapons in their hands by which Munnan, Sartaj, Dilshad, Shamshad, Irfan and Aijaz sustained several injuries.

5. On a hue and cry made by the injured, the witnesses namely Mehraj Nabi son of Ashfaq Hussain and Shri Maggu son of Matloob Ahmad, resident of Chakkar Ki Milak, P.S. Civil Lines as well as several other persons of locality came there and saw the occurrence.

6. The judgment impugned is assailed on the ground that it is based on conjectures and surmises; that the Court below has not properly considered the evidence on records; that it is against the weight of evidence on record; that the Court below has erred in fact and law while passing the impugned judgment. It is also assailed on the ground that the Trial Court on one hand believed the medical evidence/medical report, but on the other, overlooked the statement of eye-witnesses P.W. 2 and 3 who specifically stated that they were present at the time of incident and granted acquittal of the accused persons though the informant and the witnesses for the prosecution fully established the place of occurrence as the place where the deceased was attacked.

7. From perusal of judgment impugned in the appeal, it is apparent that the Trial Court after discussing the evidence produced before it has come to the conclusion that in view of totality of circumstances the prosecution is established as aggressor party. The prosecution has not given any satisfactory explanation of injuries on the body of accused persons as well as on the lady who was neither the aggressor nor the defender.

8. Admittedly, right of private defence under IPC is valuable right of every citizen. The Court has found the appellant to be aggressor and that none of the member of the assembly had premeditated superior weapons in comparisons to each other. So far as the velocity and force of inflicted blow is concerned, it can never be individually regulated considering prevailing & surrounding conditions and circumstances of group/mob fighting with each other, also exercising right of private defence with equally equipped similar arms (lathi/danda/saria), but not superior to each other.

9. On the basis of the above, the Trial Court has come to the conclusion that the accused persons had been acting under the capacity of defenders and

complainants including deceased Munnann was amongst the aggressors. None of the accused was found to be in possession of fatal and dangerous weapons, nor this fact could be established by the prosecution evidence. The investigating officer has not recovered or prepared any recovery memo with regard to alleged iron rod or wooden sticks from the possession of accused persons. It was a sudden fight without premeditation on the part of accused persons. Under such conditions the injuries inflicted upon all the victims of both the parties were on almost on vital part of the body i.e. head. The prosecution has failed to establish any motive on the part of accused persons for causing fatal injuries on the body of deceased Munnann and other victims on the complainant side. Under such conditions, it is not clear that who inflicted the specific wound by wooden stick blows by lathis on specific injured person. Hence, the accused persons are entitled for acquittal after affording them benefit of doubt.

10. For the reasons stated above and in view of the facts and circumstances of the case, we affirm the view taken by the Court below in the impugned judgment and order. There appears to be no infirmity or illegality in the conclusions drawn by the Trial Court in the impugned judgment and order and in our opinion it is not a fit case for grant of leave to appeal. The application for leave to appeal is accordingly rejected. As a consequence, appeal also stands dismissed.