

(2017) 07 SC CK 0089

In the Supreme Court Of India

Case No : ?Crl.A. No. 2115 of 2008 with Criminal Appeal Nos 2113 and 2114 of 2008

State of Rajasthan

APPELLANT

Vs

Hazi Khan & Ors

RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 302](#), [Section 34](#), [Section 324](#), [Section 307](#), [Section 323](#), [Section 326](#), [Section 148](#), [Section 149](#) - Punishment for murder - Acts done by several persons in furtherance of common intention - Voluntarily causing hurt by dangerous weapons or means - Attempt to murder - Punishment for voluntarily causing hurt - Voluntarily causing ievious hurt by dangerous weapons or means - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object

Citation : AIR 2017 SC 4001 : 2017 AIR (SC)(CRI) 1466 : 2017 AIR (SCW) 4001 : (2018) 15 SCC 328

Hon'ble Judges : Ranjan Gogoi, J;L. Nageswara Rao, J;Navin Sinha, J

Bench : Full Bench

Advocate : Shiv Mangal Sharma, Puneet Parihar, Sitesh Narayan Singh, Prachi Priyadarshani, Milind Kumar, Ruchi Kohli, K.K. Tyagi, Iftekhar Ahmad, Anoop Kumar, Brijesh Yadav, P. Narasimhan

Final Decision : Allowed

Judgement

1. These appeals by the State of Rajasthan are against the acquittal of the accused respondents of the charges framed against them under Sections 148, 302, 307, 323/149, 324/149, 326/149, 324, 326 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). The judgment of the High Court of Rajasthan impugned herein is in reversal of the conviction recorded by the learned trial Court against each of the ten (10) accused for the aforesaid offences.

2. We have heard the learned counsels for the parties.

3. The incident had occurred in the middle of the night of 7th/8th October, 1998. While six (06) of the accused i.e. Jusub Khan, Khania, Dite Khan, Taj Mohd., Nabu Khan and Illamdin were armed with lathis four (04) of them i.e. Muse Khan, Hazi Khan, Bariyam and Shafi Mohammad were armed with sharp weapons. Consequent to the assault allegedly committed by the ten (10) accused respondents on the deceased, the following injuries were caused to the deceased out of which injury No.1 in the opinion of Dr. Dinesh Kumar (PW 21), who examined the deceased, proved to be fatal. "(1) Small sharp ends cut injury of 13 cms x 2 cms where there was in the middle 13 cms x 3 cms wide round on the frontal bone from which blood was pouring out, this wound was sustained in middle of left eye brow towards right side of the head, it was caused by dangerous sharp weapon and is fresh injury which has been caused within one or two hours;

(2) side cut injury on lower lips right side going upwards and outside left side having 6 cms x 1 cms x skin diameter, muscles, lower bone and nerves of teeth were cut to the depth and this left side injury was 1 cm inside the skin in the form of line, which was moving towards bone of jaws in the form 2 cms x half cms x jaws and nerves of teeth were cut, due to this injury premolar right side teeth both pre-molar, and first molar left side both canine and four incisor of lower jaws in total 10 teeth were cut from the jaws out of which blood was pouring profusely these are serious sharp heavy weapon injury, these are fresh injuries sustained within 1 or 2 hours time;

(3) Injury No.3 injury on the left side of the head with cut mark 5 cms x 3 ml. Metre scalp depth along with parietal bone line fracture, this has been caused by dangerous heavy sharp weapon which is fresh injury caused within 1 or 2 hours;

(4) Injury No.4 cut injury 5 cms x 3 ml. Metre scalp depth right side of the head and on the right side upper portion of the ear along with outer table fracture of temple bone, it has been caused with heavy sharp weapon within above mentioned time period;

(5) Injury No.5 straight shape side lined cut injury between the neck at the left side towards jaw angle 5 cms long x half cms wide x 1 cms deep above and cutting starno mastabeen muscle. This is serious injury caused with sharp weapon, time period as above;

(6) Injury No.6 below the injury No.5 sharp ends 13 cms x 1 cms x 2 cms depth side lined straight shape, moving towards right side of the neck towards right from the front. It has been caused with heavy sharp weapon, time period as above;

(7) Injury No.7 exactly below the injury No.6 straight shape 6 cms x half cms x 1? cms straight shape sharp ends between the neck moving towards left side in depth at the breathing pipe which has been caused by heavy sharp weapon time

period as above;

(8) Injury No.8 1 cms x 3 ml. Metre x skin depth cut wound left side of the neck which has been caused by simple sharp weapon, time period as above;

4. The order of acquittal passed by the High Court is based on the fact that as the injuries on the deceased were caused by sharp weapons the accused who had allegedly committed the assault with lathis would not be liable for the offence under Section 302 IPC in the absence of any charge framed against any of the accused under Section 302 IPC either with the aid of Section 34 IPC or Section 149 IPC. Coming to the four (04) accused who had committed the assault with sharp weapons, the High Court thought it proper to acquit two of them (i.e. Shafi Mohammad and Muse Khan) on the ground that they had not been named in the FIR, a fact which the High Court did not accept as the informant admittedly knew the aforesaid two accused. The remaining two accused (i.e. Hazi Khan and Bariyam) were found by the High Court to be entitled to an acquittal on an appreciation of the evidence of P.W.1 (Rajak Khan), P.W. 2 (Lakha), P.W. 3 (Sayabdeen), P.W.4 (Noor Mohd.) and P.W.7 (Sadik). According to the High Court, the scrutiny of the evidence of the aforesaid witnesses does not reveal any injury which can be attributed to any of the accused that can have any nexus with the fatal injury caused to the deceased i.e. injury No.1, as noted above.

5. We have considered the matter. Insofar as the participation of the accused in the assault on the deceased is concerned, we have the evidence of P.W.9 (Jamiyat) who had named all the ten (10) accused and also the evidence of P.W.2 (Lakha) and P.W.4 (Noor Mohd.). P.W.2 (Lakha) and P.W.4 (Noor Mohd.) though do not name all the ten (10) accused, they have implicated some of the accused [P.W.2 (Lakha) had implicated six (06) accused whereas P.W. 4 (Noor Mohd.) had implicated four (04) accused]. The evidence of P.W. 9 (Jamiyat) has not been shaken in cross-examination and we can find partial corroboration of the evidence of P.W. 9 (Jamiyat) from the deposition of P.W.2 (Lakha) and P.W.4 (Noor Mohd.). We are, therefore, inclined to accept the evidence of P.W. 9 (Jamiyat) read with the evidence/deposition of P.W.2 (Lakha) and P.W.4 (Noor Mohd.) on the aspect of participation of all the ten (10) accused in the alleged assault on the deceased, a fact which is also proved by the evidence on record.

6. No charge insofar as the substantive offence under Section 302 IPC or under Section 307 IPC with the aid of either Section 34 IPC and Section 149 IPC had been framed. The evidence on record is not sufficient to attribute any specific injury suffered by the deceased to any particular accused. In such a situation, the High Court was perfectly justified in acquitting the accused of the offences under Section 302 IPC or under Section 307 IPC.

7. However, we have noticed that charge was also framed against the accused respondents under Section 326 read with Section 149 IPC. If all the accused were present at the place of occurrence and had participated in the assault on

the deceased as we are inclined to hold, regardless of the weapon that the accused were carrying, all the accused would be liable with the aid of Section 149 IPC. In the present case, there is no doubt that consequent to the assault committed by the accused, the injuries, already noticed above, had been caused to the deceased. If that is so, all the accused can be held to be constructively liable with the aid of Section 149 IPC. A reading of the medical evidence would go to show that serious injuries i.e. injury Nos.4,5 and 6 had been caused to the deceased. In such situation, we will have no hesitation to hold all the accused respondents liable for the offence under Section 326 read with Section 149 IPC.

8. Having regard to the circumstances in which the crime was committed; the fact that ten (10) persons had assaulted the deceased in the middle of the night with dangerous weapons we are of the view that the ends of justice would be met if each of the accused respondent is sentenced to suffer rigorous imprisonment for a period of seven (07) years and to pay a fine of Rs.2000/- each. We order accordingly. The accused respondents shall surrender before the learned trial Court to serve out the sentence in terms of the present order. Each of the accused respondents would, naturally, be entitled to set off the period of custody suffered by each one of them.

9. With the aforesaid modification of the order of the High Court, the appeals are allowed to the extent indicated above.