
(2011) 08 AHC CK 0062
In the Allahabad High Court
Case No : Case No. 1013 of 2003

State of U.P.

APPELLANT

Vs

Mohd.Jakaria and Others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Penal Code, 1860 (IPC) — Section 147, 148, 302, 307

Citation : (2011) 08 AHC CK 0062

Hon'ble Judges : Virendra Kumar Dixit, J;Abdul Mateen, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the State.
2. This application u/s 378(3) Code of Criminal Procedure for grant of leave to appeal has been moved against judgment and order dated 30.04.2003 passed by learned Additional Sessions Judge, Pratapgarh in Sessions Trial No. 289 of 1994 whereby Respondents, namely, Mohd. Jakaria, Lukman, Mustaquim, Sirajul, Japharul, Mukhtar, Daud, Roshan, Qasim and Khursheed Ali have been acquitted of the charges levelled against them under Sections 147, 148, 307 & 302 Indian Penal Code.
3. We have gone through the judgment of the court below as well as lower court record.
4. It comes out that the accused-Respondents, namely, Quasim Ali, Mukhtar Ali and Khursheed, who were armed with country-made pistol, had fired upon the deceased Abad Ali while other accused-Respondents, who were armed with ballam and lathi, had given blows upon the deceased as well as upon Shamshul Qamar, Nabab Ali, Mohd. Abbas by their respective weapons and after committing murder of Abad Ali they fled away from the spot leaving behind, Mohd. Abbas (PW-1), Shamshul Qamar (PW-2) & Nabab Ali (PW-3) in an injured condition.

7. It has been submitted by learned Additional Govern Advocate that the judgment of the court below is based upon the findings arrived at on the basis of evidence led by the prosecution that the accused persons in exercise of right of private defence had opened fire and used weapons possessed by them.

8. We while going through the lower court record find in the statement of all the three above witnesses that they had deposed that when the accused persons reached the spot and started using their respective weapons, the deceased and injured persons tried to flee away from the spot. Thus the theory of right of private defence ends and thus benefit of right of private defence given by the court below to the accused persons is based upon wrong interpretation of law. It has also been argued that the testimony of three injured witnesses, who have been examined as PW-1, PW-2 & PW-3 has fully supported the prosecution story but the same has been ignored by the court below while acquitting the accused-Respondents.

9. We find force in the argument of learned Counsel for the State. Accordingly, the application is allowed and prayer for grant of leave to appeal is granted.