

(2001) 12 SC CK 0013

In the Supreme Court Of India

Case No : Criminal Appeal No: 943 of 1999

Sudina Prasad and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2002) 1 ACR 465 : AIR 2002 SC 293 : (2001) AIRSCW 5012 : (2002) 1 ALT(Cri) 189 : (2002) 1 BLJR 365 : (2002) 1 CHN 65 Supp : (2002) CriLJ 582 : (2002) 1 Crimes 212 : (2001) 10 JT 278 : (2002) 1 LW(Cri) 443 : (2002) 1 RLW 76 : (2001) 8 SCALE 376 : (2002) 1

Hon'ble Judges : S. N. Phukan, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

K.T. Thomas and; S.N. Phukan, JJ.-Ten appellants have been convicted by the trial court for the offences under Section 302 read with Section 149 of the Indian Penal Code besides Sections 147 and 148 IPC and Section 27 of the Arms Act. All of them were grievance of the appellants is that they should be heard before they are dispossessed. Learned counsel for the respondents opposes the prayer on the ground that there being encroachments on the public property, the matter should be expeditiously dealt with. sentenced to imprisonment for life on the main count and for lesser sentences for the lesser offences. The High Court confirmed the conviction and sentence passed on all of them and dismissed the appeal filed by them.

The prosecution case, in short, is the following: deceased Nathun Gope was a peon attached to a High School. He gave evidence in a criminal case in which the first appellant was on record. On 11-4-1987, when the deceased was proceeding to the school during morning hours all the ten accused waylaid him. On the exhortation made by the first appellant (Sudina Prasad) all the remaining accused showered blows on the deceased with saif, bhala and lathi etc. After

inflicting the injuries, all the assailants ran away from the scene. The deceased was taken by his cousin and others to the hospital, but on the way he succumbed to the injuries sustained by him. FIR was lodged by PW 4 Parkal Gope at about 10.00 a.m.

There is no scope for disturbing the finding of the two courts that all the ten persons were involved in the attack made on the deceased at the time and place alleged by the prosecution. PW 2 Ramdil Prasad, PW 3 Sunita Devi (daughter of the deceased), PW 4 Parkal Gope and PW 5 Ram Pari Devi are the eyewitnesses examined by the prosecution and all of them identified the accused in this case as the assailants who attacked the deceased.

The post-mortem examination conducted by PW 6 Dr. Jha showed the following ante-mortem injuries on the body of the deceased :

1. Small laceration over the root of middle finger with swelling.
2. Vertical incised injury 1/2"x 1/4" x 3/4" over back of left elbow.
3. Vertical bruise 2" x 1/3" below Injury 2.
4. Bleeding incised injury 1/2"x 1/4" x 3/4" over back of left elbow.
5. Vertical incised injury 1/3"x 1/4" x 1/3" over front of left leg 3" below knee.
6. Bruise over left leg 2" above ankle of size 1 1/2" x 1/2".
7. Cut injury 3/4"x 1/4" x 1/2" over left foot 1" behind the great toe.
8. Cut injury 2" x 1" bone-deep over back of right arm 1" above elbow.
9. Incised injury 3/4
"x 1/3"x 1/2" in first interphalangeal fold in right hand.
10. Fracture of lower end of right tibia and fibula with lacerated injury.
11. Bruise 3" *

long over inner side of right forearm above wrist.

12. Horizontal bruise, two in number over left side of back with swelling.

Internally there was blood in left pleural cavity with laceration on the left lower lobe of lung and fracture of fifth to seventh ribs.

Learned counsel for the appellants felt that it is more prudent to focus his arguments on the aspect of altering conviction from Section 302 IPC. For supporting his contention, learned counsel brought to our notice two important features in the evidence; one is that A-1 Sudina Prasad was armed with a gun which was a live gun and accused Vashisht Gope was armed with a pistol. In spite of such possession of lethal weapons neither of them used it. Learned counsel contended that if the intention was to murder the deceased at least A-1

would have fired the gun.

The second feature is that 11 out of 12 injuries did not cause any damage to the internal organs. It is the horizontal bruise on the left side of the back which possibly would have caused the fracture of the ribs.

We feel that the aforesaid arguments based on the abovementioned two broad features is a strong circumstance for us to think that the common intention of the assailants was only to thrash the deceased and to inflict him with injuries. The grievous injury caused need not necessarily have been intended by them. Nonetheless they should have been credited with the knowledge that such injuries could possibly result in his death.

For the aforesaid reasons, we are inclined to accept the arguments of the learned counsel for the appellant. We, therefore, alter the conviction from Section 302 IPC to Section 304 Part II IPC. Hence we therefore, convict the appellant for the said offence read with Section 149 IPC instead of Section 302 IPC.

Regarding the sentences we deem it necessary to impose RI for a period of 7 years to each of the appellants for the offences under Section 304 Part II read with Section 149 IPC. The sentence passed on the other counts will remain undisturbed and they will run concurrently.

The appeal is disposed of accordingly.