

Munir Khan

Vs

State of Uttar Pradesh

Criminal Appeal No. 203 of 1967

(I. D. Dua K. S. Hegde JJ)

17.08.1970

JUDGMENT

HEGDE, J. -

1. This an appeal by special leave. The appellant and two others were tried for various offences before the learned Sessions Judge, Rampur. The appellant was convicted under Section 304(1)/149, 307/149 and 323/149, I.P.C. We are not concerned with he conviction of the other accused. The sentences imposed on various counts were ordered to run concurrently. The maximum sentence imposed on the appellant is 10 years rigorous imprisonment under Section 304(1). In appeal the appellant was acquitted under Section 304(1), I.P.C. The sentence imposed on him under Section 307/149, was reduced from five years to two years rigorous imprisonment. His conviction under Section 323 was maintained for which a sentence of one year rigorous imprisonment had been awarded by the Trial Court.

2. The incident giving rise to this prosecution took place on May 7, 1964 at about 10 p.m. The complainant as well as the appellant were having cycle stands near the exhibition grounds, Rampur. The appellant and another had taken a cycle stand on contract from the municipal council. They were permitted to charge for each cycle 12 N.P. whereas the complainant was having a private cycle stand. It is said that he was charging only 5 N.P. per cycle. As a result of this, the prosecution case is that there was a trade rivalry between the appellant and his men on the one side and the complainant and his men on the other. It was further stated that on the date of the occurrence the appellant and several others went and attacked the complainant's party as a result of which several persons sustained injuries and one Anwarul Hasan died.

3. The defence admitted that there was trade rivalry between the appellant's party and the complainant's party. Their case was that it was the complainant's party who came suddenly and attacked the appellant's party as a result of which there was Marpit in which both sides sustained injuries. The appellant's party pleads self-defence. The Trial Court after carefully examining the evidence came to the following conclusions :

(1) that the Marpit was not pre-planned. It developed suddenly as a result of some abuses given by P.W. 1.

(2) that the Marpit took place near the second gate of accused and not in front of the cycle stand of the complainant.

4. In effect the learned Trial Judge accepted the defence version that it was the complainant's party

which started abusing the appellant's party as result of which a sudden fight developed in front of the second gate of the appellant's cycle stand. On the facts found by the Trial Court, it follows clearly that there was a mutual fight between the parties. In that view, the Trial Court was not justified in convicting any of the accused by having recourse to Section 149, I.P.C. In a mutual fight, there is no common object. But the Trial Court arrived at the conclusion that the appellant was one of the persons who stabbed the deceased Anwarul Hasan. It did not give any finding as regards the nature of the injuries caused by the appellant.

5. In appeal the learned Appellate Judge on the erroneous basis this in the First Information Report, there is no reference to the appellant's stabbing Anwarul Hasan, acquitted the appellant under Section 304(1), I.P.C., but sustained his conviction under Section 307/149 and Section 323/149, I.P.C. We have gone through the First Information Report. Therein it is clearly stated that the appellant was one of the persons who stabbed Anwarul Hasan; but there is no evidence as to the nature of the injury caused by him. We have earlier come to the conclusion that injuries to deceased were caused during the course of a mutual fight. Hence on the basis of the evidence on record, the appellant can be convicted only under Section 324, I.P.C. His convictions under Section 307/149, I.P.C., as well as under Section 323/149, I.P.C., are clearly unsustainable.

6. In the result we allow the appeal, set aside the conviction of the appellant under Section 307/149, I.P.C., as well as under Section 323/149, I.P.C. But he is convicted under Section 324, I.P.C. and for that offence we sentence him to suffer rigorous imprisonment for one year. The appellant is on bail. He shall forthwith surrender and serve out the remaining portion of his sentence, if any.

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