

Satish

Vs

State of U.P.

Criminal Appeal No. 457 of 1979

(S. Ranganathan, K. N. Singh JJ)

09.10.1990

JUDGMENT

1. The appellant along with 11 other co-accused stood trial for various offences. The Sessions Judge convicted all the accused persons including the appellant under Ss. 148, 324/149, 302/149 and 302 of I.P.C. and sentenced them to undergo rigorous imprisonment for a period of 1 1/2 years, six months, three months and imprisonment of life. On appeal the High Court acquitted 11 accused persons but it convicted the appellant Satish for offence under S. 304, Part 1, I.P.C. and awarded him sentence of eight years rigorous imprisonment.

2. The High Court while acquitting the other accused persons recorded three positive findings. Firstly, it held that the four eyewitnesses examined by the prosecution were highly interested, partisan and inimical and their testimony did not inspire confidence. Secondly, the occurrence took place on the disputed Khaliyan land which according to the complainant Chandraka Rai belonged to him and he was in possession of the same. But, the High Court recorded findings that the disputed land had been in possession of the accused persons since long before the occurrence. Thirdly, the High Court has further recorded findings that the accused persons were in possession of the disputed land and the complainant's party was aggressor. The complainant's party wanted to take forcible possession of land. The accused persons resisted the same and in that process the occurrence took place. The prosecution alleged that the accused persons were aggressors. The defence version was that the accused persons were in possession of the disputed land. They exercised their right of defence. The High Court held that the very basis of the prosecution version falls to the ground, and there was irresistible inference that the prosecution witnesses have not given a correct account of the occurrence and there was truth in the defence version. In spite of these findings, the High Court convicted the appellant for the offence under S. 304, Part-1, I.P.C. placing reliance on the testimony of prosecution witnesses that the appellant had given spear blow to the deceased at about 75 steps to the south of the Khallyan land and thereby he exceeded his right of self defence. The High Court committed error in placing reliance on the testimony of prosecution witnesses in convicting the appellant as it had already rejected their testimony. Having regard to the facts and ' circumstances of the case, we are of the opinion that the High Court committed error in convicting the appellant. We, accordingly, allow the appeal, set aside the appellant's conviction and sentence awarded to him. The appellant is on bail, he need not surrender, his bail bonds are discharged.

Appeal allowed.

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