

SUPREME COURT OF INDIA

State of U.P.

Vs.

Irban

CrI.A.No.1045 of 1997

(Doraiswamy Raju and Arijit Pasayat JJ.)

22.01.2004

JUDGMENT

Doraiswamy Raju, J:-

1. The above appeal has been filed by the State of Uttar Pradesh against the judgment of a Division Bench of the High Court of Allahabad dated 06.09.1996 in Criminal Appeal No.538 of 1980 whereunder, though, the High Court affirmed the findings relating to the involvement and role of the accused in the occurrence altered, at the same time, the nature of offences committed individually by the respondents who stood charged before the Court in respect of the same. So far as accused Nos.1 and 10, who were arrayed as respondents 1 and 10 in the appeal are concerned, when the special leave petition came up before this Court on 07.11.1997, learned counsel for the appellant represented that the names of respondents 1 and 10 "Irban and Pratap" have been wrongly included in the special leave petition and inasmuch as no relief has been claimed against these respondents, their names may be deleted from the array of parties. Consequently, while granting leave in the special leave petition on that day, the names of respondents 1 and 10 were ordered to be deleted. So far as the the remaining respondents/accused are concerned, R-2/A-2, by name, Ram Dutt is represented by Shri Dinesh Kumar Garg, learned counsel. But the other respondents, Nos.3 to 9, though were duly served, has not chosen to enter appearance to contest the claim in the appeal.

2. Heard the learned counsel appearing on either side. The learned Trial Judge, on a consideration of the materials placed on record, found A-1 guilty of offence under Section 302 IPC for the murder of Sohan, in addition to, holding him guilty under Section 148 IPC. He was also found guilty of the offence punishable under Section 302 read with Section 149 IPC for the murder of Gulfam as well as under Section 307 read with Section 149 IPC for the injuries and hurt caused to Jhumak and one Ranvir. So far as accused No.10 Pratap is concerned, he was found guilty under Section 302 IPC for the murder of Gulfam and under Section 302 read with Section 149 IPC, for the murder of Sohan, besides being convicted under Section 307 read with Section 149 IPC for having caused injuries and hurt to Jhumak and Ranvir. The charge under Section 148 IPC was also held proved and he was convicted therefor. So far as A-9, by name, Hardwari, 9th respondent is concerned, he was found guilty

under Section 307 IPC for causing injuries to Jhumak and Section 148 IPC, in addition to, being convicted under Section 307 read with Section 149 IPC for having caused hurt to Ranvir. For the murder of Sohan, A-9 was also convicted under Section 302 read with Section 149 IPC. A-11, the 11th respondent was found guilty under Section 307 for causing hurt to Ranvir, in addition to his conviction under Section 307 read with Section 149 IPC for having caused hurt to Jhumak and under Section 302 read with Section 149 IPC for the murders of Sohan and Gulfam. So far as respondents/A-2 to A-8 are concerned, they were found guilty under Section 147 IPC and under Section 302 read with Section 149 IPC for the murders of Gulfam and Sohan, besides being convicted for offences under Section 307 read with Section 149 IPC for the injuries caused to Jhumak and Ranvir.

3. When the accused pursued the matter on appeal before the High Court, as noticed earlier, though the findings as to their participation in the occurrence and the guilt was affirmed, the High Court altered the nature of the offences found committed and their conviction as well the sentences therefor, in respect of some of them, as may be noticed hereinafter. The conviction of A-1 and A-10 under Section 302 IPC as well as under Section 148 IPC was upheld. So far as the conviction of A-9 and A-11 are concerned, their conviction under Section 307 IPC was altered into one under Section 324 IPC upholding, at the same time, their conviction under Section 148 IPC. So far as the remaining respondents/accused were concerned, their conviction under Section 302 read with Section 149 and 307 read with Section 149 IPC were set aside and instead, they were convicted under Section 324 read with Section 149 IPC, while upholding, at the same time, their conviction under Section 147 IPC. Aggrieved, against such altered nature of offences under which some of the respondents were convicted with appropriate modification of their sentence, according to the revised nature of convictions, this appeal has been filed by the State. Learned counsel appearing on either side invited our attention to the relevant portions of the judgments of the courts below to substantiate their respective stand. On a consideration of the materials on record and on going through the reasons assigned by the High Court, in the light of the evidence on record, we find that the High Court was justified in making a fresh and independent consideration of the nature of the materials on record as also the manner in which the occurrence seems to have taken place involving mutual fight with claims and counter claims on self defence. The manner of appreciation undertaken by the High Court in ascertaining the genesis of the occurrence in adjudging and altering the nature of the respective offences found committed seems to be well merited and fully justified and are not shown to be vitiated in any manner whatsoever.

4. Consequently they do not warrant our interference in this appeal. The appeal, therefore, fails and shall stand dismissed.