

SUPREME COURT OF INDIA

Arjun

Vs.

State of Uttar Pradesh

Crl.A.No.816 of 1997

(K. G. Balakrishnan and B. N. Srikrishna JJ.)

05.02.2004

JUDGMENT

K. G. Balakrishnan, J.

1. The appellants four in numbers were tried by the VIII Additional Sessions Judge, Gorakhpur for the offences punishable under section 323 and 308 IPC for having caused injury to Ramanain Prasad on 3.3.1981 at about 6.30 p.m. The Sessions Judge acquitted all the accused and aggrieved by the same, the State sought permission to file appeal against the acquittal. The High Court declined leave and the order passed by the High Court was challenged by the State before this Court and by an order passed by this Court, the matter was remitted to the High Court to be considered afresh on merits.

2. Whereafter the High Court by the impugned judgment found all the appellants guilty of the offence charged against them and sentenced them to undergo imprisonment for a period of two years for offence under section 308 and six months imprisonment for the offence punishable under section 323 IPC. The conviction and sentence is challenged before us.

3. We heard the learned counsel for the appellants and counsel for the respondent. The prosecution case is that injured Ramanain along with PW-3 was proceeding towards Gorakhpur Railway Station on a bicycle. As the railway crossing was closed, they took a short cut and on the way these appellants alleged to have caused injury to Ramanain. PW-3 took the injured Ramanain to hospital and on next day he gave the first information statement to the police. The injured was examined by the Doctor and PW-5 Doctor deposed that he had sustained various abrasions and contusions all over the body. On the side of the prosecution six witnesses were examined, out of them 4 were eye witnesses. The High Court relied on the evidence of these eye witnesses and found the appellants guilty. The High Court was of the opinion that one of the assailants stated during the course of the incident that this time injured was saved by the people and next time they would finish him and on that basis it was assumed that offence under section 308 IPC was made out. Of course, the accused armed were with lathis and dandas and the injured sustained series of injuries, mostly lacerated wounds and contusions. The Doctor stated that the injuries 1 to 17 were simple in nature and

as regards 18th injury he advised an X-ray, but unfortunately no X-ray was conducted and it is not known whether there was any fracture of any of the bones of the injured. The evidence adduced by the prosecution is not sufficient to prove that there was attempt on the part of these accused persons to commit culpable homicide and we do not think any offence under section 308 is made out.

4. As regards conviction under section 323 also the High Court went wrong in the sense that the accused were armed with lathis and dandas. Therefore, the offence committed by the accused would come under section 324 of the IPC. In the result, we acquit the accused of the offence under section 308 IPC and instead of convicting under section 323 IPC we convict them under section 324 IPC and we are told that the appellants have already undergone imprisonment for a period of 10 months. We hold that the sentence already undergone is sufficient to meet the ends of justice. The appellants are already on bail by this Court's order dt. 5.9.1997, their bail bonds are cancelled.

5. The appeal is disposed of.