

SUPREME COURT OF INDIA

Azhar Sah

Vs.

State of Bihar

Crl.A.No.604 of 2008

(S.B.Sinha and P.P.Naolekar, JJ.)

04.04.2008

JUDGMENT

P.P. Naolekar, J.

[arising out of Special Leave Petition (Crl.) No.480 of 2007]

1. Leave granted.

2. On 12.12.2005, an FIR was registered at Turkaulia P.S., District East Champaran, Bihar on the basis of a complaint lodged by the appellant Md. Azhar Sah, alleging that on that date he along with other villagers were ploughing the field at around 1.30 in the afternoon, which is the subject matter of litigation. Soon thereafter, the Sharma brothers including Sudhanshu Kumar Sharma came to the field holding guns in their hands. There were several other persons who came along with the Sharma brothers who were also armed with guns, country-made pistols and rifles. Soon after arriving at the spot, they used filthy language on the complainant. Loknath Sharma and Binda Rai ordered their men to shoot at the complainant party. Following this, Subodh Sharma fired at Ujair Sah and as a result of the injuries sustained he fell down. Further, Loknath Sharma fired at the complainant and Sudhanshu Kumar Sharma, respondent No. 4, herein fired at Aseem Sah. Other Sharma brothers fired at different persons. At the end of the fight, the complainant saw the dead bodies of four persons of the complainant party and Ujair Sah was lying badly injured. He was later on taken to the hospital where he died. Five people were brutally killed.

3. Sudhanshu Kumar Sharma moved a bail application before the High Court which was granted by the High Court on the reasoning that although the other accused persons have been refused bail the case of respondent No. 4 herein is different than that of persons who have been refused bail.

4. As per the High Court, several persons from both sides had received injuries. It appeared to the High Court, a case of free-fight wherein other persons from the Sharmas received injuries whereas respondent No. 4 did not sustain any injury. It is also the case of respondent

No. 4 that he is a Bank Manager posted at Gopalganj and was not present at the spot when the incident occurred. Submission of the counsel for the respondent was in a way accepted on the basis of the orders of the Court indicating the accused persons to be in possession of the land at the relevant time and that the informant and his other family members were aggressors. There is also the version of the eye-witnesses that the attack was made on Aseem Sah (since deceased) by different persons. On the cumulative assessment of these facts, the High Court was of the view that the case was made out by respondent No. 4 for grant of bail and he was accordingly granted bail by the High Court. Aggrieved by the said order, the appellant-complainant is before this Court by way of this appeal by special leave.

5. As per the version of respondent No. 4 from his counter affidavit, the property (agricultural land) where the incident took place was purchased by the Sharma family by registered sale deeds dated 7.8.1962, 6.8.1962, 4.10.1962 and 8.2.1963 whereby they were put in possession of the property and since then they have continuously been enjoying the property in their possession. There was a long-lasting litigation between the two groups regarding the possession and ownership of the property where the incident took place. It was the complainant and his family members who wanted to trespass over the property and take forcible possession over it. That is how the incident occurred. Several persons had assembled at the place of the incident and there was connective cross-firing and attack, as a result of which several persons sustained injuries from the side of Sharmas and Ajay Sharma, nephew of respondent No. 4, was murdered and seven other persons received grievous injuries. In the statements recorded by the police of the eye-witnesses, one Mohd. Seraz said that it was Subodh Sharma who was assailant of Aseem Sah, whereas the witnesses Abdul Khair and Abdul Wahab gave names of other accused persons, namely, Shri Ram Shrama and Kashi Rai as the assailants.

6. From the facts alleged by the appellant as well as respondent No. 4, it appears that several persons from both sides received injuries and several persons are responsible for causing injuries to each other side. Under the circumstances, if different persons have been alleged to have caused injuries to the deceased Aseem Sah, then on the face of it, it cannot be said with certainty at this stage that it was respondent No. 4 who caused injuries to the deceased or was the only person who was responsible for causing injuries resulting in death of Aseem Sah.

7. In overall view of the matter, we do not find any good or sufficient reason to take a different view in the case. The appeal is, accordingly, dismissed.