

MOFIL KHAN Vs. STATE OF JHARKHAND
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LAWS(SC)-2014-10-63
Supreme Court Of India
Decided on October 09,2014

MOFIL KHAN

Appellant

VERSUS

STATE OF JHARKHAND

Respondents

JUDGEMENT

- (1.) THIS appeal is directed against the judgment and order passed by the High Court of Jharkhand at Ranchi in Death Reference No. 01 of 2008 and Criminal Appeal (DB) Nos. 1103 of 2008, dated 02.07.2009. By the impugned judgment and order, the High Court has confirmed the judgment of conviction, dated 01.08.2008 passed by the District and Sessions Judge, Lohardaga in Sessions Trial No. 128 of 2007, whereby and whereunder the learned Sessions Judge has convicted the two accused -Appellants and two others for offence Under Sections 302 and 449 read with Section 34 of Indian Penal Code, 1860 (for short, "the Indian Penal Code"). The High Court while confirming the order of death sentence, dated 05.08.2008 passed by the Trial Court in respect of the accused -Appellants, has thought it fit to modify the sentence awarded to the other two accused persons, Saddam Khan and Wakil Khan, to life imprisonment.

(2.) AT the outset, the learned amicus, Shri Bimal Roy Jad, appearing for the two accused -Appellants has only assailed the order of sentence passed by the Trial Court and confirmed by the High Court and restricted his arguments to the quantum of punishment awarded. Therefore, the scope of this appeal is restricted to the determination of appropriate sentence that requires to be awarded to the accused -Appellants. Further, since other accused persons in the instant case are not in appeal before us, the discussions hereinafter would be confined to the fact relevant for the disposal of present appeal.

(3.) THE prosecution case in brief is, on 06.06.2007 at about 8:30 p.m., one Haneef Khan (referred to as "the deceased" hereafter) was offering Namaz in the mosque at village Makandu, Jharkhand. The accused -Appellants and others who are none other than the deceased's brothers and nephews, approached him and started assaulting him with sharp - edged weapons such as sword, tangi, bhujali and spade. The deceased succumbed to the injuries inflicted by the accused persons. Leaving the deceased at the spot, the accused -Appellants and others proceeded towards the house of deceased where, upon hearing the cries of their father, the deceased's sons Gufran Khan @ Pala and Imran Khan had come out on the street. The accused -Appellants assaulted the two unarmed brothers with the

aforesaid weapons due to which the two brothers collapsed and died in front of their house. Thereafter, the accused -Appellants and others entered the house of the deceased and committed murder of Kasuman Bibi, wife of the deceased and his four sons, namely, Anish Khan (aged about 5 years), Danish Khan (aged about 8 years), Yusuf Khan (physically disabled and aged about 18 years) and Maherban Khan (aged about 12 years). After committing murder of the six persons, the accused -Appellants threatened other members of the household including their mother, Jainub Khatoon (PW -2) of meeting the same fate if they inform the police about the incident and thereafter left the house taking away certain documents relating to the lands, Pass -book, jewellery etc. On 07.06.2007, at about 6:00 a.m., father of the deceased, Gaffar Khan (PW -1) upon being informed reached the village and saw the dead body of the deceased lying at the mosque, the dead bodies of his grand sons, namely, Gufran Khan @Pala and Imran Khan were lying in front of the house and the dead -bodies of his daughter -in -law, Kasuman Bibi and her four sons were lying inside the house. There he was informed by his wife -PW2 of the manner in which the accused -Appellants alongwith others had committed the offence. Meanwhile, Chowkidar of Village had informed the Police of the incident telephonically, upon which sanha was entered on the station diary and the officer in -charge, Shambhu Nath Singh (PW -13), reached the place of occurrence and recorded the fardbeyan of the informant, PW -1. Thereafter, P.S. Case No. 80 of 2007 was registered and an FIR was drawn. The police authorities carried out the investigation and held inquest on the bodies of the eight deceased persons and prepared inquest reports, whereafter, the dead -bodies were sent for post mortem examination. During further investigation, the investigating officer found blood smeared earth at all the three places of occurrence, and recovered a plastic mat smeared with blood at the mosque and blood smeared tangi from the house of another accused person -Kariman Khan @ Kari Khan and seized them as exhibits. ;

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