SUPREME COURT OF INDIA

Maqsood & Ors.

Vs.

State of U.P.

Crl.A.No.207 of 2011

(Ranjan Gogoi and N.V.Ramana,JJ.,)

09.10.2015

JUDGMENT

Ranjan Gogoi,J.,

1. Out of the 8 appellants who have filed this appeal challenging their conviction, inter alia, under Section 325 IPC as made by the High Court by the impugned judgment and order dated 21.05.2010, the appellant Nos.2 and 6 (Shakeel and Haneef) have died during the pendency of the present appeal. We will, therefore, be concerned with the case of the remaining appellants before us.

2. The learned trial court had convicted the appellants under different provisions of the Indian Penal Code including Section 308 thereof and sentenced the accused appellants to undergo RI for a period of 4 years under the aforesaid section of the Code. In appeal, the High Court while maintaining the conviction and sentence awarded for the lesser offences altered the conviction under Section 308/149 IPC to Section 325/149 IPC. The sentence of four years RI was also reduced to a period of one year. It is against the aforesaid order of the High Court that the appellants have filed the present appeal.

3. We have heard Shri Siddhartha Dave learned counsel for the appellants and Shri Ratnakar Dash, learned senior counsel for the respondent.

4. Learned counsel for the appellants has vehemently argued that the acts committed by the accused appellants were in the exercise of their right of self defence inasmuch as the complainant party which had comprised of as many as 8 persons had come to assert their right over the Gher (open area of land), ownership and possession of which was disputed between the parties. On the said basis it is contended that no offence can be attributed to the accused on account of the overt acts committed by them, the same being in exercise of their right of self defence. Alternatively, it is argued that if this Court is to hold that the accused appellants are guilty of commission of the offences in question the said offences may be compounded and the accused may be directed to pay compensation to the injured. Additionally, it is urged that the provisions of Section 360 of the Cr. P.C. may be invoked

and while maintaining the conviction the accused may be released on probation of good conduct.

5. The arguments advanced on behalf of the appellants have been resisted by the learned counsel appearing for the State who contends that the benefit of right of private defence would not be available to the accused inasmuch as both parties had come to the disputed Gher and there was a mutual altercation leading to a free fight between the two groups. The above is a finding of fact recorded by the learned trial court and affirmed by the High Court. Learned counsel for the respondent has urged that the offence under Section 325 IPC being grave and the sentence imposed (one year RI) by the High Court being sufficiently lenient, in the facts of the present case, the provisions of neither Section 320 or Section 360 Cr. P.C. ought to be invoked.

6. We have considered the submissions advanced on behalf of the parties. We have also looked into the evidence and materials on record. The trial court and the High Court have concurrently held that the injuries sustained by P.W.2 Musharraf and P.W.1 Ameer Ahmed have been caused by the accused in the course of a mutual fight. The said finding of fact is supported by the evidence and materials on record. This Court, therefore, will have no occasion to arrive at any contrary finding. What would follow from the above is that the accused persons must be held liable for the acts committed and the consequential injuries suffered by P.W.2. Musharraf and P.W. 1 Ameer Ahmed.

7. We have considered the medical evidence on record which shows that P.W.2 Musharraf, had suffered a fracture injury which would bring the same within the expression "grievous hurt" as appearing in Section 320 of the IPC. Punishment for the said offence would therefore be covered by Section 325 IPC which contemplates a period of imprisonment upto 7 years alongwith fine. Having regard to the above, the punishment of imprisonment of one year imposed by the High Court, in our view, is lenient enough and, therefore, will not justify our interference. The injured Musharraf (P.W.2) and Ameer Ahmed (P.W.1) who are represented in the connected appeal (Criminal Appeal No.208 of 2011) are not willing to compound the offence in question. It is also our considered view that the present case is devoid of any special circumstance which would justify invocation of the provisions of Section 320 of the Criminal Procedure Code or the release of accused appellants on probation by invoking the provisions of Section 360 Cr. P.C.

8. For the aforesaid reasons, we find no merit in this appeal. Consequently the same is dismissed and the order of the High Court is affirmed.

Criminal Appeal No.208 of 2011 –

9. This appeal is filed by the State against the alteration of the conviction of the accused respondents under Section 302/149 IPC to Section 304 Part II read with Section 149 IPC as well as the reduction of the sentence of life imprisonment to the period of custody undergone by the accused which is about 2 V2 years. There are certain other offences under the Code for which the accused respondents have been found guilty and have been accordingly

convicted and sentenced. However, the same would not be very significant and it is the conviction under Section 304 Part II and the sentence imposed which may be treated as the principal offence.

10. Shri Ratnakar Dash, learned Counsel for the appellant, has argued that the State would truncate the scope of the present appeal and not question the correctness of the alteration of the conviction from Section 302 IPC read with Section 149 to Section 304 Part II/149 of the IPC. It is urged that the only question, therefore, would be the correctness of the sentence imposed on the accused respondents (period already undergone) following the alteration of their conviction to Section 304 Part II of the IPC. Shri Dash has submitted that the accused respondent had undergone custody for a period of about 2 V2 years and as the maximum sentence imposable under Section 304 Part II is 10 years the sentence awarded in the present case is grossly inadequate.

11. For the purpose of deciding the above contention advanced on behalf of the State it is not necessary for us to enter into a detailed discussion on the nature of the sentencing power and the principles governing its exercise as also the parameters for interference in the case of inappropriate sentencing. All that would be required to be noticed is that, though not specifically mentioned in the order of the High Court, the incident had occurred in the year 1997 and that death had occurred in the course of a mutual fight. The party of the complainant had also been tried for injuries caused to some of the present accused and have been found guilty and convicted under Section 325 IPC which conviction and the sentence imposed (One year RI) has been challenged in the connected appeal (Criminal Appeal No.207 of 2011). Taking into account all the said facts and the long efflux of time that has occurred, we are of the view that no interference with the sentence imposed by the High Court would be justified. Accordingly, we dismiss this appeal and affirm the order of the High Court.