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Line no 1600/96



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माननीय हाईकोर्ट ऑफ़ मद्रास जलपुर

Single Bench (Criminal)

क्रिमिनल अपील क्रमांक 49 /96

खीकराम पिता उदयराम नाई

उम्र लगभग 55 साल, साकि- ग्राम धुवन

पुलिस थाना बल्ला तहसील जिला रायपुर----- अभियुक्त/अपील टि

न्यायिक अभिरक्षा में

13/3/93 से

विस्द

सरकार जिरये पुलिस

रिस्पाहेंट

दण्ड उम्र 304 भाग 2 भाग 1

अभियुक्त/अपील टि माननीय श्री छगेन्द्र सिंह अपर सत्र न्यायाधीश

महामुन्द द्वारा सत्र वाद क्र 231/1993 निर्णय दि. 30.12.95

से द्रुष्ट होकर माननीय हाईकोर्ट में अपील प्रस्तुत करता है-अल

जाफ़ 374 जाफ़ा क्रमांक

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9.1.96

Filed on

by Shri P. Singh

Advocate

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R. to D. R.

9.1.96

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HIGH COURT OF MADHYA PRADESH AT JABALPUR

JUDGMENT

Kheek Ram Vs. State of M.P.

( Criminal Appeal No.49/96 )

Date of Order : 12/8/1996

PRESENT

HON'BLE SHRI JUSTICE S.K.KULSHRESTHA

Shri O.P. Singh for the appellant

Shri R.K.Khare, G.A. for the State.

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The Appellant Kheek Ram & has preferred this appeal against his conviction for an offence u/s 304 Part II of the I.P.C. and sentence of 5 years rigorous imprisonment thereunder awarded by judgment dated 3.12.95 in Sessions trial No.231/1993 passed by the learned Additional Sessions Judge, Mahasumand.

2. The appellant was prosecuted along with six others for offences u/s 147, 148, 307/149, 302/149 on the allegation that on 12.3.93 at about 10 a.m. in Madhuban, the appellant along with the said co-accused had formed an unlawful assembly which had armed itself with deadly weapons with a view to use criminal forces against Nakul, Kamalabai and Baijnath. It was further the case of prosecution that in pursuance of the common object of this assembly, these accused persons on account of some previous disputes had proceeded to the field of Ishwar Prasad and had assaulted Nakul

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with the sticks(Lathi). The prosecution further alleged that when hearing the alarm raised by Nakul, his wife Kamala bai and son Baijnath rushed to save him, they were belaboured by the accused persons with the result they also sustained injuries. The report of the incident was lodged by Mst. Kamala bai at Police Station Basna and offence was registered at the Police Station u/s 302,307 read with section 34 of the I.P.C.

3. The appellant along with other accused were arrested by the Police and it is alleged that weapons were seized at the instance of these accused persons. The appellant was thus tried along with the said co-accused for the aforesaid offences.

4. The learned trial court on consideration of the evidence adduced by the prosecution came to the conclusion that initially the grappling has started between the present appellant and deceased Nakul and the other accused ~~who~~ were attracted to the scene of the occurrence, on hearing the commotion. It was later that these accused had also engaged in the quarrel which included involvement of Kamala bai and Baijnath from the side of the complainant. The learned Judge, therefore, held that the accused had not formed any unlawful assembly and therefore negatived the contention of the prosecution in so far as the committing of offences u/s 147 and 148 of the I.P.C. was concerned. The learned trial court thereafter proceeded to consider the nature of the act of the individual participants from amongst the accused persons. On finding reached by the learned trial court that it was a case where

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deceased Nakul and the appellant Keekram had initially engaged in grappling and others were attracted later on, the learned Judge held that the participants could be held liable only for their individual acts and could not be fastened any constructive liability. On the basis of the evidence of Baijnath(P.W.4), the learned trial court came to the conclusion that in so far as the injuries inflicted upon Kamala bai was concerned only co-accused Madhv and Bihari were responsible and in this view of the matter, and finding, it was not a case for an offence u/s 307 I.P.C. the learned Judge convicted the co-accused Madhav and Bihari for offence u/s 323 and sentenced each of them to rigorous imprisonment of one year and fine of Rs.1000/-. It was stated at the bar that the two co-accused had not preferred any appeal against their conviction and sentence.

5. Considering the case with reference to charge u/s 302 of the I.P.C. for the murder of Nakul, the learned Judge found that since the ~~x~~ weapon used was merely a lathi and the accused appellant had also received injuries, it appears that the accused had used his weapon with some force. The learned trial court, therefore, ruled out any intention to commit murder and, instead, found that the act of the accused responsible for the death of Nakul fell u/s 304 Part-II of the I.P.C.

6. In dealing with the assault upon deceased Nakul, the learned trial court has placed reliance solely on the

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evidence of P.W.6 Ishwar Prasad, as the other witnesses examined by the prosecution merely referred to the general participation of the accused persons. P.W.6 Ishwar Prasad stated in his deposition that the accused Kheekram during the course of the grappling dealt a blow over Nakul and Nakul also beat Kheekram. It is on the basis of this story that the learned trial court has held that the present appellant was responsible for causing the death of Nakul. From the testimony of P.W.6 Ishwar Prasad, it would appear that Ishwar Prasad had not disclosed this fact in his statement u/s 161 of the Cr.P.C. (Ex.D-3) that <sup>the accused</sup> had assaulted the deceased. Though the learned counsel for the appellant on the basis of the statement made by other witnesses has greatly stressed that Ishwar Prasad could not have witnessed the incident as the other witnesses had not deposed to about his presence, even/otherwise going by the statement, it is clear that the testimony of P.W.6 Ishwar Prasad especially account of the omission of this fact in his statement to the Police, cannot safely be acted upon to found a conviction. Under these circumstances, the very foundation on which the conviction is based becomes shaky and benefit of doubt must go to the appellant. Accordingly we find that the prosecution has failed to establish the offence <sup>against</sup> the present appellant. In the result this appeal is allowed. The conviction and sentence passed against the appellant are set aside. The appellant be set at liberty if not required in any other case.

Sd/-

JUDGE

12-8-96