

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1522 OF 2007

STATE OF U.P.

.....

APPELLANT

VERSUS

GARIBUDDI @ GARIBUDDIN & ORS.

.....

RESPONDENTS

O R D E R

1. This appeal by way of special leave has been filed by the State of U.P. impugning the judgment of acquittal rendered by the High Court reversing the judgment of conviction of the Additional Sessions Judge, Allahabad dated 30th November, 1981, whereby the three accused respondents had been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life. It is by now well-settled that interference by this Court in an order of acquittal should be minimal and only in the circumstance that the judgment of the High Court was completely perverse and did not arise out of the evidence.

2. We have perused the judgment of the High Court very carefully. Several reasons have been given by the High Court for its decision. They are:

(i) that the identity of the assailants could not be established as the incident had taken place at night and though the oral evidence did indicate the presence of lantern in the premises but the said lantern had neither been shown in the site plan nor seized by the police, and though the P.Ws. had deposed in their evidence in Court that the accused had covered their heads only whereafter they had been confronted with their statements under Section 161 Cr.P.C. that the full faces had been muffled;

(ii) that the incident had been seen by a large number of persons and that too from a distance of 20 paces and as P.W. 2 Ram Niwas was living at some distance e he could not have reached the place of incident to become an eye witness as the incident had lasted for only 2 minutes;

(iii) that there was a gross enmity between the parties as Garibuddin had lodged a report under Section 354 of the IPC against the two eye witnesses viz. P.W. 1 Ram

Shankar and P.W. 2 Ram Niwas; and

(iv) that the medical evidence did not support the ocular version as pointed out by Dr. M.A. Haq who had conducted the post mortem examination on the dead body.

3. We are, therefore, of the opinion that the High Court's opinion that the accused were entitled to the benefit of doubt cannot be faulted in the circumstances. We, accordingly, dismiss the appeal.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

**NEW DELHI
AUGUST 25, 2011.**

JUDGMENT