

PART-II

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO. 1302 OF 2009

MOHD. RUSTAM ALI

.....

APPELLANT

VERSUS

STATE OF ASSAM

.....

RESPONDENT

O R D E R

In the light of what we intend holding in this matter the detailed circumstances leading to the incident need not be given. Suffice it to say, that 17 persons in all were sent for trial for offences punishable under Section 302, 323, 324 and 34 Indian Penal Code. During the course of the trial two of the accused Siraj Ali and Mohammed Hanif died whereas Moniruddin defaulted and was declared to be an absconder. The trial court on the basis of the evidence before it convicted the remaining fourteen

accused and sentenced them to various terms of imprisonment. The matter was thereafter brought to this Court by way of a special leave petition by six of the accused. The Special Leave Petition of five of them was dismissed outright and leave was granted with respect to only one, the present appellant.

We have heard the learned counsel for the parties with respect to his role and involvement in the incident.

Mr. Parthiv Goswami, the learned counsel for the appellant has argued that no role whatsoever has been attributed to the appellant and that his case was at par with the four accused who have been acquitted by the High Court and he was, accordingly, entitled to the same benefit. He has taken us through the evidence of the five primary witnesses P.Ws. 1,3,5,8 and 10 and also the medical evidence and submitted that the appellant, in fact, had caused no injury to the deceased and that the allegation of P.W. 5 that some injury had been caused to one of the witnesses was also unsubstantiated on record.

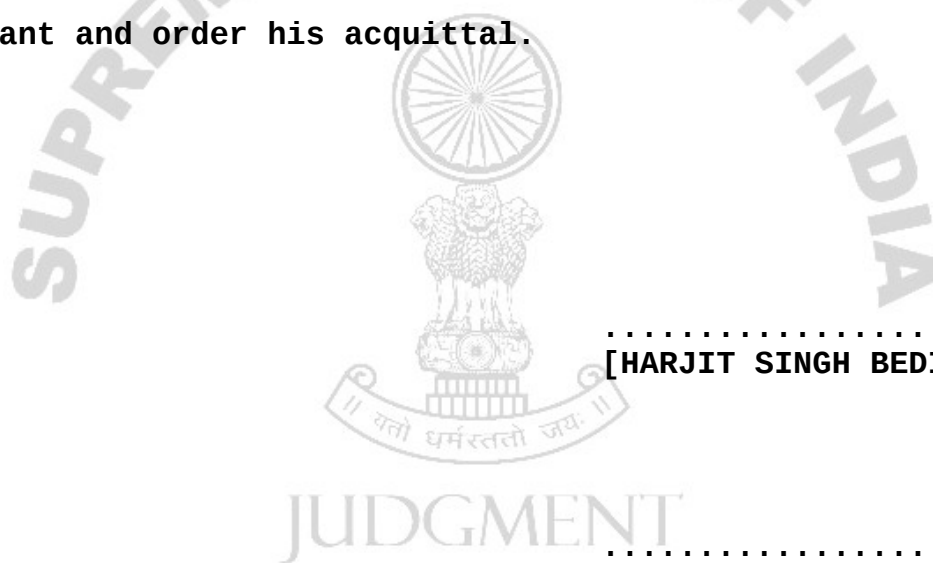
Mr. Avijit Roy, the learned counsel for the

State of Assam has, however, pointed out that the appellant had been roped in with the aid of Section 149 IPC as he had been present when the incident happened and as he had along with others had way laid the deceased and the injured witnesses when they were returning home, the common object of the assembly appeared to have been made out. He has also submitted that P.W.1 had a given specific role to the appellant inasmuch that he had caused an injury to the deceased on his neck with a dao.

We have heard the learned counsel for the parties. P.W. 1 Miya Box undoubtedly did say that the appellant had caused an injury with a dao on the neck of the deceased, Jha Box. The medical evidence, however, does not support this plea as only two injuries, none of them on the neck, were found on the dead body. The other three witnesses P.Ws. 3, 8 and 10 had either attributed a general role to the appellant along with others who have been acquitted or no role at all to the appellant in the incident.

Mr. Roy's argument with respect to the evidence of P.W. 5 is also not worthy of belief for the reason that he alone out of the five witnesses who have been

referred to above deposed that an injury had been caused to one of the witnesses and he did not state that any injury had been caused to the deceased. In view of the ambivalent nature of the evidence and the fact that a very large number of accused were involved and the parties having serious animosity with each other, we are of the opinion that Rustam Ali, the appellant, herein ought to have been acquitted by the High Court with the benefit of doubt. We, accordingly, allow this appeal, set aside the conviction of the appellant and order his acquittal.



.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
OCTOBER 07, 2009.

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We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeal and set aside the conviction of the appellant and ordered acquittal.

It is stated by Mr. Parthiv Goswami, the learned counsel for the appellant that the appellant is in jail. We direct that the appellant shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[R.M. LODHA]

NEW DELHI
OCTOBER 07, 2009.

