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State Vs. Mohd. Rafiq and ors.

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SooperKanoon Citation : sooperkanoon.com/901341

Court : Jammu and Kashmir

Decided On : Apr-26-2007

Reported in : 2008(1)JKJ551

Judge : Virender Singh and; J.P. Singh, JJ.

Appellant : State

Respondent : Mohd. Rafiq and ors.

Disposition : Appeal dismissed

Judgement :

1. In all seven accused were initially booked in this case. Saraj Din S/O Sh. Nizam-ul-Din was initially arrested and others were proceeded under Section 512 Cr.P.C. During the pendency of the trial, respondents-Mohd. Rafiq, Abdul Qayoom and Atta Mohd. (since acquitted) were also apprehended and sent for trial. On an application filed by Saraj Din, contending that he was below 15 years of age on the date of occurrence, his case was segregated and sent for trial under the special Act (Juvenile Justice Act), whereas aforesaid Mohd. Rafiq and other two (respondents herein) were charged under Sections 302/307/396/149/120B/138 RPC, 7/27 Arms Act. Vide impugned judgment of learned Additional Sessions Judge, Doda dated 22-02-2006, they have now earned acquittal.

2. In our view the accused who were not tried by the Court should not have been shown in the title of the appeal as proforma respondents.

3. The instant appeal is at its motion stage for which the trial Court records were also summoned for our perusal. With the assistance rendered by Mr. S.C. Gupta, learned Additional Advocate General, we have gone through the same minutely.

4. There is no dearth of the injured persons and the dead in this case as eight persons received injuries and as many as twenty five persons were killed. All were the members of the marriage party. On 19-6-1998 at about 12.30 PM they were attacked by the militants at Chapnari when they were boarding a bus. This resulted into registration of FIR No. 126/1998 in Police Station, Kishtwar. As stated above, Saraj Din was the first to be arrested and during the investigation, on his disclosure statement, certain arms and ammunition were recovered from a concealed place. He had disclosed that the marriage party was attacked by him and his other associates. He was also detained under Public Safety Act for two years.

5. The prosecution in support of its case has examined as many as 31 witnesses, but none of them have supported the case of the prosecution. The learned trial Court has discussed all the material witnesses in this regard and after taking into account the material evidence came to a category finding that may be several persons were killed and injured in an attack on the members of the marriage party the case of the prosecution is not proved to the hilt. Even the persons who in fact had disclosed the names of the accused did not support the case of the prosecution and specifically denied their involvement in the occurrence. They went to the extent of saying that the accused facing the trial were not the assailants. Therefore, the aforesaid three respondents have earned acquittal.

6. Mr. Gupta has not been able to pin point any infirmity in the impugned judgment en any count which would call our interference. We have also appreciated the case once again in its right perspective and find no reason to interfere with the well reasoned judgment, which is based on appreciation of entire facts. Scope of interference in an appeal against acquittal has been enumerate in a very recent judgment of Hon'ble Apex Court rendered in and we follow the same view in the case State of Madhya Pradesh v. Bacchudas 2007 Crl. L.J. 1661 in hand. Resultantly, finding no substance in the instant appeal, the same is, hereby,

dismissed.

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