

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

**CRIMINAL APPEAL NOS.529-530 OF 2019
(Arising out of SLP(Criminal) Nos.8072-73 of 2017)**

PREM SANTHI & ORS. ETC.

APPELLANT(S)

VERSUS

**THE UNION TERRITORY OF ANDAMAN &
NICOBAR ISLANDS**

RESPONDENT(S)

WITH

**CRIMINAL APPEAL No.531 OF 2019
(Arising out of SLP(Criminal) No.8074 of 2017)**

O R D E R

Leave granted.

These appeals have been filed against the judgment of the Calcutta High Court, Circuit Bench at Port Blair, in Criminal Appeal No.018 of 2015 and three other criminal appeals dated 19.06.2017. The High Court by the impugned judgment disposed of the criminal appeals giving rise to these appeals. The appellants in Criminal Appeal Nos.529-30 of 2019 have

been convicted under Sections 147, 148 and 149 IPC. Criminal Appeal No.531 of 2017, filed by Balwant Singh, is arising out of Criminal Appeal No.019 of 2015. Accused Balwant Singh has been convicted under Sections 147, 148 and 149 IPC as well as under Section 30 of the Arms Act.

The necessary facts to be noticed for deciding these appeals are; an incident occurred in the late afternoon of 11.08.1995 in which two persons Inder Nath and Surender Nath were injured. Inder Nath received pellet injuries by gun fired by Nagesh Ram who also died on the same day. The First Information Report was registered against the appellants as well as Nagesh Ram. A complaint was also filed on behalf of the appellants subsequently, which ultimately resulted in acquittal. The trial Court convicted Nagesh Ram under Section 302 IPC and awarded life sentence. Other appellants including Balwant Singh were convicted by the trial Court under Sections 307, 147, 148 and 149 IPC, Balwant Singh was also convicted under Section 30 of the Arms Act. All the accused persons have filed appeals before the High Court. The High Court by its impugned judgment has converted the sentence of Nagesh Ram from under

Section 302 IPC to Section 304 IPC. Nagesh Ram is not before us in these appeals. Appeals have been filed by other accused persons. Other appellants have also been acquitted from charge under Section 307 IPC and all the appellants have been convicted by the High Court under Sections 147, 148 and 149 IPC as well as under Section 30 of the Arms Act in so far as Balwant Singh is concerned. When these matters were heard by this Court, on 30.10.2017, following order was passed:

"Application for deletion of petitioner No.6 is allowed.

It is argued by the learned counsel for the petitioner that the maximum sentence of three years has been awarded to the petitioners without going into the mitigating circumstances.

Let a copy of the petition be served upon the counsel for the respondent-Union Territory of Andaman & Nicobar Islands.

List the matters on 06.11.2017."

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellants submitted that the case of the appellants of private defence having been accepted by the High Court, all the appellants were entitled for acquittal. It is submitted that even the main accused who is alleged to have fired gun shot has been acquitted from offence under Sections 302 and 307 IPC. The appellants ought not to have been convicted by the High Court. It is further submitted that due to the conviction of the appellants most of whom were Government servant, they have already suffered suspension and ultimate termination of their services. It is submitted that under Sections 147, 148 and 149 IPC the maximum sentence is three years. The Courts below has awarded maximum sentence of three years under Sections 147, 148 and 149 IPC and under Section 30 of the Arms Act six months sentence was awarded. It is further submitted that all the appellants were under custody ranging from the period of two months to six month.

Learned counsel for the respondent refuting the submission of the learned counsel for the appellants contends that the charges under Sections 147, 148 and 149 IPC were fully proved by the evidence and there

is no error in conviction of the appellants both by the trial Court and the High Court. It is submitted that appellants having participated in the rioting, the conviction has rightly been handed down. Learned counsel for the respondent, however, does not deny that appellants were under custody for different period.

The main accused Nagesh Ram, who was convicted under Sections 302 and 307 IPC and handed down sentence of life imprisonment, has already been got acquitted by the judgment of the High Court from conviction under Sections 302 and 307 IPC, and conviction has been converted under Section 304 IPC with imprisonment of three years. The appellants belong to one family and from the materials on record it does appear that there was an incident between two groups where deceased as well as his son were injured. It is also claimed on behalf of the appellants that on the side of the appellants also two persons suffered injuries whose injury reports were also brought on the record as exhibits. The High Court in its judgment upto some extent accepted the case of the accused of private defence. Although, High Court while considering the issue of private

defence came to the conclusion that Nagesh Ram exceeded his right of private defence in shooting the deceased on the chest. The gun, which belongs to Balwant Singh, was brought by Nagesh Ram and fired on the chest of the deceased. In the milieu several persons received injuries. From the evidences, which were before the Courts below, the offence of rioting is clearly proved and we do not find any error in the conviction, handed down by the Courts below, of all the accused under Sections 147, 148 and 149 IPC.

We, however, looking to the facts and circumstances of the case are of the view that while maintaining the conviction of the appellants under Sections 147, 148 and 149 IPC and for Balwant Singh in addition under Section 30 of the Arms Act, the sentence awarded to them which is a maximum sentence under Section 148 IPC need to be modified. We modify the sentence with sentence already undergone by the appellants for the offences they have been convicted.

Thus, we partly allow the appeals, while maintaining the conviction we reduce the sentence to the sentence already undergone by the appellants.

Appellants be released forthwith, if not required in any other case. Their bail bonds are discharged.

Appeals are disposed of accordingly.

.....J.
(ASHOK BHUSHAN)

.....J.
(K.M. JOSEPH)

New Delhi
March 26, 2019

ITEM NO.1

COURT NO.11

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI) No(s).8072-8073/2017

(Arising out of impugned final judgment and order dated 19-06-2017 in CRA No.018/2015, 19.06.2017 in CRA No.19/2015 passed by the High Court At Calcutta)

PREM SANTHI & ORS. ETC.

Petitioner(s)

VERSUS

THE UNION TERRITORY OF ANDAMAN & NICOBAR ISLANDS

Respondent(s)

WITH

SLP(CrI) No.8074/2017

Date : 26-03-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN

HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s)

Mr. Deep Kabir, Adv.
Mr. Ajith Prasad, Adv.
Mr. Saurav Gupta, Adv.
Mr. Kunal Chatterji, AOR

For Respondent(s)

Mr. Mrinal Kanti Mondal, Adv.
Mr. K.V. Jagdishvaran, Adv.
Mrs. G. Indira, AOR
Ms. Rangoli Seth, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Appeals are disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1) No(s).8072-8073/2017

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