

Rameshwar and Another

Vs

State of U. P

Criminal Appeal No. 33 of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

30.01.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment of the High Court of Allahabad confirming the sentence of death passed on 1st appellant and the sentence of life imprisonment passed on the 2nd appellant by the Temporary Civil and Sessions Judge, Banda.
2. The first appellant is the father and the second appellant is the son. They and another son of the first appellant, Lasra, were prosecuted for causing the death of one Ramji on August 22, 1969, in the village of Pachokhar in the district of Banda. On that day at about 11 a.m. P.W. 5, Uma Prasad, the son of the deceased was taking his buffalo through the fallow land of the accused for grazing. The second appellant took objection to it and beat the buffalo and when this was objected to by Uma Prasad he caused two injuries on him with the end of his lathi. Uma Prasad narrated the incident to his father Ramji and his uncle Ram Murti. P.W. 1 Ramji thereupon seems to have given a few slaps to the second appellant. Thereafter P.W. 1 and the deceased went to the house of their cousin. P.W. 2 and one Lakshmi was also there. At about 2.30 p.m. the two appellants and Lasra arrived there. The first appellant had a riffle and the second appellant a barchhi and Lasra a lathi. The second appellant and Lasra were said to have exhorted the 1st appellant to kill P.W. 1 and the deceased. Thereupon the 1st appellant fired his rifle at the deceased and fired a second shot at P.W. 1. This did not hit P.W. 1 but Ramji died on the spot. The Sessions Judge convicted all the three accused. The High Court acquitted Lasra giving him the benefit of doubt.
3. Both the Courts below accepted the evidence of P.W. 1, P.W. 2 and P.W. 3, Lakshmi, as regard the actual occurrence. They took the view that being a daylight murder there was no question of the witnesses not being able to identify the miscreants and the witnesses here being close relatives of the deceased would be most unwilling to leave the real culprits and implicate wrong persons. We see no reason to differ from the concurrent finding of the courts below as to the occurrence.
4. So far as the sentence is concerned we agree with the High Court that no indulgence can be shown to the two appellants as the crime was committed in a most high-handed and cruel manner on a mere small provocation, if at all provocation it were. It has been urged vehemently on behalf of the appellants by Mr. A. P. S. Chauhan appearing for the appellants, that the first appellant is an old man and he should not, therefore, be sentenced to death. We are not able to accept this argument. We see no circumstances which would warrant awarding of any sentence lesser than death on the first appellant. The appeal is, therefore, dismissed.

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