

Yaduraj Singh and Others

Vs

State of U. P.

Criminal Appeal No. 193 of 1975

(Y. V. Chandrachud R. S. Sarkaria, P. N. Bhagwati JJ)

05.08.1975

JUDGMENT

CHANDRACHUD, J. -

1. Eight persons were convicted by the learned Sessions Judge, Kanpur, under Section 307 read with Section 149 of the Penal Code. They were sentenced to suffer rigorous imprisonment for a period of five years each. There was also a charge against those persons under Section 302, but except for Shatrughan Singh, they were acquitted of that charge. The order of acquittal under section 302 was not challenged by the State in appeal, but those who were convicted under Section 307 read with Section 149 of the Penal Code filed an appeal in the High Court of Allahabad. In so far as the four appellants are concerned, the High Court altered their conviction and found them guilty under Section 325 read with Section 149 and reduced their sentences from five years to three years. The appellants have been granted special leave to appeal to this Court from the judgment of the High Court, but the leave is limited to the question of sentence.

2. The learned Counsel appearing for the appellants argues that on August 30, 1969 when the incident took place, appellants 3 and 4 were less than 21 years of age and, therefore, they ought to have been given the benefit of the Probation of Offenders Act. This contention was neither taken in the sessions court nor in the High Court. True, that this Court has taken the view that in appropriate cases such a contention may be entertained by this Court for the first time. But the difficulty in accepting the submission of the learned Counsel is that there is no credible evidence on the record showing that appellants 3 and 4 were less and 21 years of age when the offence was committed. Counsel says that those two accused had given their ages in their statements under Section 342, Code of Criminal Procedure, and if the trial Judge doubted the correctness thereof, he could have had the two accused medically examined in order to ascertain their age. This seems to us a difficult burden for any trial judge to undertake. The age given by the two accused in their statements had no special significance in the absence of a proper plea under the Probation of Offenders Act. The trial Court had therefore no occasion or reason to have the accused medically examined. Since there is no reliable evidence to show the true ages of appellants 3 and 4, we are unable to entertain the submission of the learned Counsel.

3. It is then contended that appellants 3 and 4 were armed with lathis only, that out of the three persons who were injured during the course of the incident, only Vijay Narain Singh had received injuries with lathis, that even in regard to his injuries, only two out of the many injuries he had received were grievous and therefore the sentences imposed on appellants 3 and 4 should be reduced. Dr. B. D. Tiwari does say that out of the fourteen injuries which were found on the person of Vijay Narain Singh, except injuries 4 and 13, the rest of the injuries were simple in nature. But

then this circumstances appears to have led the High Court to reduce the offence from that under Section 307 to one under Section 325 and the sentence from 5 years to 3 years. No further indulgence is called for.

4. No case is made out for interference with the sentence imposed on the appellants by the High Court and therefore, the appeal is dismissed.

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