

Prabhu Prasad Sah

Vs

State of Bihar

Criminal Appeal No. 189 of 1976

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

09.08.1976

JUDGMENT

BHAGWATI, J. -

1. The appellant was tried for an offence of intentionally causing the death of one Misri Lal Rai before the Sessions Judge, Saran. The learned Sessions Judge found the appellant guilty of the offence of intentionally causing the death of Misri Lal Rai and convicted him under Section 302 as also under Section 302 read with Section 149 I. P. C. along with other accused and sentenced him to life imprisonment. The appellant and the other accused appealed to the High Court. A Division Bench of the High Court acquitted the other accused but came to the conclusion that so far as the appellant was concerned, he had exceeded the right of private defence to his property in causing the death of Misri Lal Rai and it accordingly altered the conviction of the appellant from Section 302 to one under Section 304 Part I and sentenced him to undergo rigorous imprisonment for ten years. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

2. The appeal, by the terms of the special leave, is limited only to the question of sentence and the nature of the offence committed by the appellant and hence it is not necessary for us to go into the facts of the case bearing on the question of guilt. We must proceed on the basis that the appellant had the right of private defence of property but he exceeded that right in causing the death of Misri Lal Rai. Having regard to the nature of the injury caused to Misri Lal Rai which was on a vital part of the body, namely, chest, we think that the High Court was right in bringing the case under Section 304 Part I. We accordingly confirm the conviction of the appellant under Section 304 Part I. The only question is as to what should be the sentence to be imposed on the appellant in the circumstances of the case. The appellant was admittedly a young boy of 15 years at the time when he shot Misri Lal Rai and killed him. He acted in exercise of the right of private defence but exceeded it. In view of these circumstances we think it would be fair and just if the sentence of imprisonment imposed on the appellant is reduced to the period already undergone by him, since we are told that he has already suffered imprisonment for a period of about two years. The requirement of social justice demand that a heavy fine should be imposed on the appellant in lieu of reduction of sentence so that the children of Misri Lal Rai may be compensated. We accordingly impose a sentence of fine of Rs. 3000 on the appellant and direct that the amount of fine when recovered should be paid over to the children of Misri Lal Rai in equal shares. In default of payment of fine, the appellant will undergo further rigorous imprisonment for a period of one year.

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