

Ram Sarup and Others

Vs

State of Haryana

Criminal Appeal No. 66 of 1973

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ)

29.10.1976

JUDGMENT

BHAGWATI, J. -

1. This is an appeal by special leave limited only to the question of sentence. Since the offence for which appellants 2 and 4 are convicted, is under Section 302 and that for which the rest of the appellants are convicted, is under Section 302 read with Section 149 of the Indian Penal Code, the special leave though limited only to the question of sentence must obviously carry with it leave also as regards the nature of the offence arising from the homicidal death of Chandu the deceased. But the special leave granted by this Court being limited to the question as to the nature of the offence, we cannot permit the appellants to go behind the findings of fact recorded by the High Court. It is only on the basis of the findings of fact reached by the High Court that it would be open to the appellants to argue that the offence committed by the appellants is not under Section 302 or Section 302 read with Section 149 of the Indian Penal Code but a lesser offence. But having regard to the facts found by the High Court we find it impossible to accept the contention of the appellants that the offence committed by them was any lesser offence than that under Section 302 or Section 302 read with Section 149 of the Indian Penal Code. The High Court found as a fact that the appellants went to the house of the deceased armed with various weapons for the purpose of giving a thrashing to Pirthi since Pirthi had caused injury to the first appellant about two hours before the incident by giving a brickbat blow on the head of the first appellant. When the appellants went armed with weapons of offence deliberately for the purpose of giving a beating to Pirthi and as soon as the deceased intervened, appellants 2 and 4 gave blows on the head of the deceased and thereafter the rest of the appellants started giving blows to the party of the complainant, the conclusion is inevitable that the common object of the appellants was to cause the death of anyone who came in the way of their giving a beating to Pirthi and in any event, killing a member on the side of the complainant party was an offence which the appellants must have known to be likely to be committed in prosecution of their common object. We do not, therefore, see any reason to interfere with the order of conviction and sentence recorded by the High Court against the appellants.

2. The appeal is accordingly dismissed.

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