

Asgar

Vs

State of Uttar Pradesh

Criminal Appeal No. 18 of 1975

(N. L. Untwalia, Syed M. Fazal Ali JJ)

18.07.1977

JUDGMENT

UNTWALIA, J. –

1. Appellant Asgar has been convicted under Section 302 of the Indian Penal Code for internationally causing the murder of one Ram Swarup Singh on account of an alleged dispute concerning repayment of some debt by the latter to the former which Ram Swarup is said to be owing to the appellant's father. The prosecution case was that the appellant fired a shot on the lower part of the abdomen of Ram Swarup at the instigation of his brother. His brother has been acquitted but the shot given by the appellant has been found to have caused the death of Ram Swarup. The appellant was convicted under Section 302 of the Penal Code and given the extreme penalty of death sentence by the trial Court. The High Court has confirmed the sentence. Special leave was granted by this Court limited to the question of sentence only.

2. We have heard learned Counsel for the appellant and learned Counsel for the State. The trial of this case was concluded before coming into force of the Criminal Procedure Code, 1973. Yet, the High Court while confirming the death sentence does not seem to have clearly kept in view the change of law which was brought about by the 1955 amendment of the old Code. The High Court says :

The murder was premeditated and we hardly find any extenuating circumstance in his case. He must, therefore, pay the extreme penalty of death.

3. Before the amendment of 1955 the extreme penalty of death was generally and ordinarily given unless there were any extenuating circumstances in favour of the accused. But after the amendment of 1955 this was not the law. Either sentence permissible under Section 302 of the Indian Penal Code could be given, but for giving the extreme penalty of death some case ought to have been made out by the High Court. Having appreciated the various facts and circumstances of the prosecution evidence leading to the occurrence in question, we are not satisfied that the extreme penalty of death was called for in this case. We think ends of justice would be met by imposing the lesser sentence of life imprisonment. We accordingly allow the appeal to this extent only and reduce the imposition of death sentence passed against the appellant to one for life imprisonment.

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