

Ram Krishan and Another

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 378 and 461 of 1976

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

22.07.1977

JUDGMENT

FAZAL ALI, J. -

1. The appellants have been convicted under Section 307/34 of IPC and sentenced to four years, under Section 324/34 of IPC to six months and under Section 323/34 of IPC to four months. All these sentences to run concurrently. The injuries were caused to the injured persons as a result of "fracus" between rival owners of a shop. The appellants were the tenants of that shop and chose to side their landlord, Munni Lal who was the ring leader of the whole group. The application of Munni Lal had been dismissed by this Court and special leave was granted only to the appellants.

2. It appears that on December 15, 1970 Manki and Sahdeo, who claim to be owner of the shop, closed the shop and went to rest. Sahdeo was sitting with his family in the upper storey. Soon thereafter, Munni Lal along with the appellants appeared on the scene and there was an altercation between the two, as a result of which the party of the appellants started assaulting Balkishun, Bajrangi, Rani Bindeshwari and Madan. Accused Munni Lal was armed with a sword; whereas the appellant Ganesh Prasad was armed with pharsa. Appellants Ram Brikesh and Ram Bhagat were only armed with lathis. A number of injuries were caused to the injured as a result of the quarrel. So far as merit of the case is concerned, we find that there is no case at all for our interference in this appeal by special leave. Mr. D. Mookerjee submitted that so far as the appellants Ram Brikesh, Ram Bhagat were concerned, there was a no legal evidence to substantiate the charge of Section 34 against them. Having regard to the fact that Ram Brikesh and Ram Bhagat, who were armed with lathis only and who did not take part in the assault, it cannot be said that they had any common intention to attempt to murder the injured persons. In our opinion, the contention of Mr. Mookerjee is well-founded and must prevail. It is true that Ram Brikesh and Ram Bhagat had accompanied the other accused but they had not participated in the assault and there is no clear evidence to show what part they took in the said assault. There, however, cannot be any doubt that they must be constructively liable for having shared the common intention of causing assault to the injured person. The conviction of Ram Brikesh and Ram Bhagat under Sections 324/34 and 323/34, therefore, must be maintained, but as there is no evidence of common intention of causing an offence under Section 307/34 of IPC they are acquitted of the charge under Section 307/34 of IPC. So far as Ganesh Prasad is concerned, he was undoubtedly armed with pharsa and in these circumstances we do not see any reason to interfere with the conviction as also the sentence passed against him. The result is that the appeal of Ram Brikesh and Ram Bhagat are allowed to this extent that their conviction as also the sentence passed under Section 307/34 of IPC are set aside but the conviction under Section 324/34 of IPC and that under Section 323/34 as also the sentence imposed under these counts are maintained. The appeal of Ganesh Prasad is dismissed.

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