

Achhey Lal

Vs

State Of U. P.

Criminal Appeal No. 223 of 1976

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

21.02.1978

JUDGMENT

FAZAL ALI, J. -

1. This appeal by Special Leave is directed against the judgment of the Allahabad High Court upholding the conviction of the appellant Achhey Lal under Sections 302/149, 325/149 and 147 of the Indian Penal Code. The detailed narration of the prosecution case is contained in the judgments of the Courts below and it is not necessary for us to repeat the same all over again particularly when, in our opinion, this appeal must succeed on a short point. According to the prosecution as many as 15 named persons had taken part in the assault on the deceased. Of these 15 persons, 14 have been acquitted by the High Court, but the appeal of Achhey Lal was dismissed conviction and sentences assured by the Sessions Judge were upheld. Mr. Goel, appearing for the appellant, submitted that in view of the acquittal by the High Court of 14 named persons, the charge under Section 149 I.P.C. must fail because there could not be an unlawful assembly where the number of person raised by the learned counsel is well founded and must prevail. There is no finding by the High Court that after the acquittal of the 14 accused the unlawful assembly consisted of five persons or more, known or unknown, identified or un-identified. In these circumstances, therefore, it is absolutely clear that on the facts of the present case the provisions of Sections 149 and 147 IPC cannot be invoked.

2. For these reasons the appeal is allowed. The appellant is acquitted of all the charges and he is directed to be released forthwith, as no individual act has been assigned to him.

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