

Jagdish

Vs

State of Rajasthan

Criminal Appeal No. 150 of 1972

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

28.02.1979

JUDGMENT

FAZAL ALI, J. –

In this appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, the appellant was convicted along with other accused by the Sessions Judge under Section 304, Part I, read with Section 34 of the IPC and sentenced to five years' RI. The State filed an appeal to the High Court against the acquittal of the appellant under Section 302, IPC, and the other accused. The High Court while allowing the appeal of the other accused also allowed the appeal of the State against the appellant Jagdish and set aside his acquittal under Section 302, IPC and convicted him under Section 302, IPC and sentenced him to life imprisonment. We have gone through the judgment of the High Court which has given cogent reasons for holding that the Trial Court Judge was absolutely wrong in acquitting the appellant of the charge under Section 302, IPC. The injuries found on the deceased were very severe which resulted in fracture of the scalp on the left parietal bone and also a fracture of the temporal bone. These were the two injuries which according to the prosecution were the cause of the death of the deceased Jairam. The Sessions Judge was of the opinion that as some of the accused persons had also injuries it was a case of mutual assault and therefore, there was no intention to cause murder. The High Court has rightly pointed out that the findings of the Sessions Judge are not based on a proper appreciation of the evidence. It is true that the accused had some injuries on their persons. The injuries on their persons were extremely superficial and could be easily explained. As regards Nanda, it is true that he had five injuries out of which two are contused wounds. It was the evidence of DW 1 that he examined the injuries on June 25, 1967, i.e. two to four days after the occurrence. It has not been proved that all the injuries sustained by him were sustained in the course of altercation which resulted in the death of the deceased, so as to lay the burden on the prosecution to explain the presence of these injuries. Even the contusions are not of serious nature. It is true that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the Court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution, two conditions must be satisfied :

- (1) that the injuries on the person of the accused must be very serious and severe and not superficial;
- (2) that it must be shown that these injuries must have been caused at the time of the occurrence in question.

In the instant case, none of these conditions are satisfied. The injuries are extremely superficial and

there is nothing to show that they were caused during the altercation which resulted in the death of the deceased. Having regard, therefore, to the circumstances of the case, we find ourselves in complete agreement with the view taken by the High Court in convicting the appellant under Section 302, IPC. We find no force in this appeal. It is dismissed.

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