

SUREME COURT OF INDIA

Fatta

Vs.

State of U.P.

(O C Reddy and S M Ali JJ.)

28.02.1979

JUDGMENT

S. MURTAZA FAZAL ALI, J.

1. In this appeal by special leave, the learned Counsel for the appellant has pressed the appellant only on the question of the applicability of Section 302 read with Section 149 IPC to the appellants other than Ramakant Rai. It was urged that according to the findings of the Court below, the occurrence took place in the disputed field which was claimed by both the parties. According to the prosecution case, the field in question was in the possession of the deceased Janardan and PW 1 and they had sown Arhar crop and come to harvest the same. At that time the accused in a body arrived at the scene variously armed, with a view to dispossess the prosecution party by force. There was exchange of brickbats and ultimately one of the accused Ram Sewak who was armed with a gun, fired a shot which hit the right eye of Janardan as a result of which he fell down and died instantaneously. The Appellant Ramakant Rai is said to have provided a cartridge to Ram Sewak before he fired the gun. In these circumstances, therefore, the conclusion is inescapable that Ram Sewak and Ramakant Rai had undoubtedly the common intention to cause murder of the deceased. As regards others, on the materials, we are satisfied that the occurrence took place over the possession of land claimed by both the parties. Apart from Ramakant Rai and Ram Sewak no other person of the assembly took part in the assault on the deceased. Although some of the appellants were armed with Phrasa and spear and one of the appellants with a pistol, but none of these weapons were used. In the circumstances of the present case, there can be no doubt that the appellants had gone armed in order to dispossess the prosecution party and cause such injury as may be necessary for achieving that object. But the evidence does not show that all the appellants shared the common object of committing the murder of Janardan. It is true that the mere fact that no overt act has been attributed to the members of the unlawful assembly, is not sufficient to disprove the charge under Section 149 IPC. But this question depends on the facts of each case. In the instant case, we are satisfied that at the most the appellants other than Ram Sewak & Ramakant Rai had merely the intention to cause an offence under Section 325 IPC and were, therefore, guilty of offence under Section 325/149 as also of reiting. The other question that has to be determined is as to what sentence should be awarded to the appellant. The appellants have served only 3 to 4 months and have been on bail throughout. It would not be conducive in the interest of justice to send them back to Jail after a lapse of 10 years. On the other hand, if the family of the deceased is heavily

compensated, that will serve the socio economic purpose which the modern trend of the policy of sentencing required. For these reasons, therefore, we alter the conviction of the appellant except Ramkant Rai from one under Section 302/149 to 325/149 & reduce the sentence to the period already served. In lieu of sentence remitted, we impose a fine of Rs. 5000/- on each of the appellants in default to two years R.I. The entire fine, if realised, shall be paid to PW 1, the widow of Janardan. The sentence under Section 147 is also reduced to the period already undergone.

2. As regards Ramakant Rai, there is evidence of the eyewitnesses that he was the person who supplied cartridge to Ram Sewak in order to shoot Janardan. In these circumstances, Ramakant Rai is convicted under Section 302/34 and his sentence of life imprisonment is upheld under this section. With this modification, the appeal is dismissed. Fine to be paid in six months after the fine is paid, the appellants shall be discharged from bail bonds.