

Md. Isak Md. and others

Vs

State of Maharashtra

Criminal Appeal No. 448 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

23.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal under the Supreme Court (Enlargement of the Criminal Appellate Jurisdiction) Act, is directed against the judgment of the Bombay High Court dated June 21 21/25, 1974 by which the High Court reversed the order of the Sessions Judge acquitting the appellants under Section 302, IPC, and convicted them only under Section 304(I) and sentenced to seven years' and five years RI. Appellant 1 was sentenced to seven years' RI and the other appellants were sentenced to five years' each because of their young age. The facts have been detailed in the Judgments of the courts below and it is not necessary for us to repeat the same all over again. We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge. The occurrence in the course of which the deceased was assaulted, took place suddenly and after a hot exchange of abuses, which took place between the deceased and the appellants. The appellants are said to have assaulted the deceased with sticks. There is no evidence to show as to which of the appellants struck the fatal blow on the deceased. Having regard therefore to the circumstances of the present case and the nature of injuries sustained by the appellants, we are unable to agree with the High Court that the case falls under Section 302. There is no evidence of any intention on the part of the appellant either to cause death of the deceased or cause such injuries of which the appellant could have the knowledge that it was likely to cause death although it cannot be doubted that the appellant had the common intention to cause grievous hurt to the deceased by lathis. Thus the offence falls under Section 325/34 and not under Section 302 or 304(I). It appears that the appellants have already served their sentences or at any rate a substantial part of it. For these reasons therefore, we would allowed this appeal to this extent that the convictions of the appellants are altered from the under Section 302/34 to one under Section 325/34 and the sentences are reduced to five years in each case. As the appellants have already served out their sentences, they will now be released forthwith.

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