

Tirath Ram

Vs

State of U. P.

Criminal Appeal No. 395 of 1974

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

06.04.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, the appellant has been convicted under Section 302/149 and 302/109 and sentenced to imprisonment for life and under Section 147, he has been sentenced to one year's RI. A detailed narrative of the prosecution case has been given in the judgment of the High court and it is not necessary for us to reproduce the same. According to the allegations made by the prosecution, the appellant is said to have incited other accused persons to assault the deceased Ram Kumar, an Advocate. He was assaulted by spears and pistols and died as a result of the injuries received. FIR was lodged very promptly by Ram Autar.

2. We have heard learned Counsel for the parties and have gone through the judgments of the courts below. We find that the judgment of the High Court is clearly concluded by concurrent findings of fact. Mr. Mulla appearing for the appellant submitted that the name of the appellant has not been mentioned in the dying declaration proved by Ram Autar and on that ground the appellant is entitled to the benefit of doubt. We have perused the evidence of Ram Autar and we find that this point has been considered by the court below. Ram Autar has stated that the deceased was very seriously injured and no other name was given by the deceased except name of the appellant, because after naming the appellant the deceased became speechless. Nevertheless the name of the appellant as having instigated the assault on the deceased is clearly mentioned in the FIR which was lodged within an hour of the occurrence and we are not inclined to distrust the statement of the informant Ram Autar. It is true that there is enmity between Ram Autar and the appellant but that may be as much a ground for committing the assault as for implicating the appellant. Apart from this, there is the sworn testimony of PW 2 Sampat, PW 6 Panchu, PW 7 Brahma and PW 8 Dhani Ram. They are very natural witnesses and have been believed by both the courts. PW 7 and 8 are independent witnesses and their testimony is corroborated by other witness. The High Court was right in accepting their testimony. In the circumstances, therefore, we do not find any merit in this appeal which is accordingly dismissed. The bail bonds of the appellant will now be cancelled and he will now be taken into custody and serve out the remaining portion of the sentence.

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