

Prabhu Rashu Machhi and Chunnilal Maganlal

Vs

State of Gujarat

Criminal Appeals Nos. 11 and 111 of 1974

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

23.01.1980

JUDGMENT

FAZAL ALI, J. –

1. The appeal by A-1 under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 and of A-2 by special leave are directed against a judgment of the Gujarat High Court by which the High Court set aside an acquittal passed by the Sessions Judge and convicted appellant 1 under Section 307/34 to 10 years' and appellant 2 under the same section to 7 years' RI. The facts of the case have been detailed in the judgment of the High Court. It appears that PW 3 Amarnath was being taken from jail to the court and he had just boarded the van when appellant 1 fired a shot at Amarnath by his pistol and ran away. A-2 who was just behind the constable Malji had fired but the constable sat down and the shot missed. Thereafter the constable also fired at accused 2 and he was injured.

2. Mr. Khanduja appearing for the appellants has pressed this appeal mainly on the question of sentence, and has submitted that in the facts and circumstances of the present case the sentence imposed by the High Court errs on the side of severity. We have gone through the judgment of the Sessions Judge and the High Court and we find ourselves in complete agreement with the view taken by the High Court that the prosecution case is fully proved.

3. Coming now to the question of sentence we think that there is some room for a substantial reduction in the sentence imposed by the High Court, particularly having regard to the nature of the injury received by Amarnath. In the peculiar facts and circumstances of this case while maintaining the convictions of the appellants under Section 307, IPC we reduce the sentence of appellant 1 from 10 years' to 5 years' RI and of appellant 2 from 7 years' to 4 years' RI. The appellants will be entitled to the benefit of Section 428 of the CrPC. With this modification the appeal is dismissed.

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