

Shanta Alias Sant Lal

Vs

State of Haryana

Criminal Appeal No. 281 Of 1975

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

14.11.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment of the High Court of Punjab & Haryana. The appellant was convicted under Section 302 read with Section 149 of the Indian Penal Code and sentenced to imprisonment for life. He was also convicted of less serious offences under other sections of the Code and given different sentences to run concurrently, but we are not concerned with the same as they are not challenged before us.

2. The facts of the case have been given in the judgments of the High Court and the Sessions Court and need not be repeated by us here all over again. The unfortunate occurrence was the result of a fight between two factions in the village in which three persons were killed and some of the prosecution witnesses were injured. The appellant is said to have been armed with a jaila. The short point taken by Mr. Mehta in support of his case is that there is not satisfactory evidence to show that at any stage the appellant was a member of an unlawful assembly the prosecution of the common object of which resulted in the three murders. He relied on the testimony of PW 9 Chandru, who was an important eyewitness, being a person injured in the occurrence and belonging to the faction of Tara Chand deceased. This witness has clearly stated that the appellant entered the arena only after Tara Chand was fatally assaulted by some other accused. The relevant part of the evidence of this witness may be extracted thus :

On the receipt of gunshot Ram Chander also fell on the ground. Then Tara Chand came close to Ram Chander who was his son, to see his condition. But he was then attacked by Jagdev and Mohinder accused. On the receipt of lathi blows he fell down. Then in self defence, myself and Bhartu wielded our lathis. Shanta accused give lathi blow on my head. Again said he was armed with a jaila.

Bhartu was attacked and injured by Shanta and Inder accused, by means of jaila and gandasa respectively. Shanta accused gave a jaila blow on the chest and Inder gave gandasa blow on his back. The lathis, which we wielded in self-defence hit and injured, Inder, Jagdev, Mohinder and Shanta.

3. There is no allegation by this witness that the appellant at any time intended to assault Tara Chand at all. In fact Tara Chand had already been assaulted and the witness and others tried to assault the appellant when the latter attacked the witness and others with his jaila. Before the assault on Tara Chand ended, the appellant had not become a member of the unlawful assembly. Mr. Bhagat

appearing for the State contended that other witnesses did not support this evidence of PW 9 on this point. There is no doubt so; but then open of the important prosecution witnesses who has been relied on by both the courts below clearly exonerates the appellant of the charge under Section 302 read with Section 149 of the Indian Penal Code and that circumstance is sufficient to give benefit of reasonable doubt to the appellant. We may add, however, that no prosecution witness has said clearly that the appellant had actually wielded his jaila before Tara Chand was attacked. We are thus satisfied that the charge under Section 302 read with Section 149 of the Indian Penal Code against the appellant has not been proved beyond reasonable doubt. We therefore allow the appeal in part and acquit the appellant of that charge only. He has already served out the sentences imposed on him in respect of other charges and shall be released from custody forthwith.

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