

Ummilal

Vs

State of Madhya Pradesh

Criminal Appeal No. 238 of 1979

(A.P. Sen, V.B. Eradi JJ)

12.03.1981

JUDGMENT

1. The appellant Ummilal was convicted by the learned Additional Sessions Judge, Seoni, Madhya Pradesh, under Section 302 of the Penal Code on the charge that at about 12 noon on October 20, 1977, he committed the murder of his brother's wife, Faggobai and her 9-year-old son Suresh Kumar. The sentence of death imposed upon the appellant for the aforesaid offence was confirmed by the High Court and hence this appeal by special leave.
2. There is clear and incontrovertible evidence to prove the charge that the appellant committed the murder of Faggobai and Suresh Kumar. Khilai, PW 4 and Ballu, PW 14 as also the dying declaration Ex P-17 of the deceased Faggobai, which was recorded by Dr. Jain, PW 15, leave no manner of doubt on that aspect of the matter. Shri I.U. Mehta who appears on behalf of the appellant has not been able successfully to persuade us to take a view contrary to that taken by the trial Court and the High Court on the merits of the conviction.
3. The only question which survives for consideration is as to whether the sentence of death must be confirmed. Having given our best consideration to this matter we find ourselves unable to agree that the death sentence is called for. It is the case of the prosecution itself that at about 11 o'clock on the morning of October 20, 1977 there was a quarrel between the appellant and his brother Hari Prasad, the husband of the deceased Faggobai, during the course of which the appellant was slapped by his brother. The quarrel appears to have taken place over the grazing of cattle by Hari Prasad. The appellant seems to have been incensed by the treatment accorded to him by his brother as a result of which he went home straight and committed the dastardly attack on Hari Prasad's wife and son. The appellant was just about 22 years of age and appears to have acted under a sudden impulse in a grave fit of rage. In these circumstances we are of the opinion that the ends of justice will be met by sentencing the appellant to imprisonment for life.
4. Accordingly we confirm the conviction of the appellant under Section 302 of the Penal Code but set aside the sentence of death imposed upon him and sentence him to imprisonment for life.

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