

Vasanta

Vs

State of Maharashtra

Criminal Appeal No. 515 of 1976

(Syed M. Fazal Ali, D. Chinnappa Reddy JJ)

02.02.1983

ORDER

The appellant in the first instance was convicted by the trial court under Section 304 Part II, IPC and sentenced to imprisonment for five years' rigorous imprisonment. In the High Court appeals were filed both by the accused-appellant as also by the State. The High Court dismissed the appeal of the accused but allowed the appeal filed by the State and altered the conviction of the appellant from one under Section 304 Part II, IPC to that under Section 302, IPC and sentenced the appellant to imprisonment for life. Hence this appeal before us. The facts have been narrated in the judgment of the High Court and it is not necessary to repeat the same. It appears that there was some verbal altercation a result of which the deceased had caught the hand of the accused, whereupon the accused assaulted the deceased with a knife with very great force according to medical evidence. In view of the medical evidence and injuries revivd by the deceased the case squarely falls within four corners of section 302, IPC. Mr Lalit, however, submits that the case falls under Section 304 Part II, IPC in view of serious altercations between the parties as held by the trial court. We are, however, unable to agree with this contention because there is nothing to show that the altercation was of such a serious nature which could cause sudden provocation. Secondly, the nature of injury, namely the stab on the chest which resulted in the fracture of the 6th rib and injured the heart and the lung and which according to the doctor was given with great force showed that it was most cruel and therefore the case squarely falls under Section 302, IPC. We are in complete agreement with the High Court that the offence falls under Section 302, IPC and the appellant was therefore, rightly convicted by the High Court. The accused, who is now on bail will be taken into custody to serve the remaining part of the sentence. There is no merit in the appeal which is accordingly dismissed.

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