

Dhanna Chaudhary and Others

Vs

State of Bihar

Criminal Appeal No. 572 of 1976

(Syed . Murtaza Fazal Ali, A.Varadarajan JJ)

02.08.1985

JUDGMENT

S. MURTAZA FAZAL ALI, J. -

1. In this appeal by special leave, the two appellants, Awadesh and Biso, have been convicted and sentenced to imprisonment for life under Section 302/149 IPC and the other accused under Section 326/149 IPC. Three of the accused persons are already dead and, therefore, their appeal abates. Thus, twelve appellants are left in the field.
2. We have gone through the judgments of the courts below and we find ourselves in complete agreement with the view taken by them with a small exception, viz., that having regard to the evidence of the doctor (PW 35), it has not been conclusively proved that there was any intention to cause the murder of the three deceased persons. The doctor, while describing the nature of the injuries, has stated that there was one injury nearabout the region of the nose inflicted by a bhala and all other injuries were caused by lathis, but they were superficial. The doctor seems to be confused because he says that bhala which is a sharp cutting weapon is like a lathi. In this confused state of the medical evidence we find it wholly unsafe to uphold the conviction of Awadesh and Biso under Section 302/149 IPC and we alter their conviction to one under Section 326/149/ IPC.
3. Accordingly, we allow this appeal to the extent that the convictions of Awadesh and Biso are altered from Section 302/149 IPC to Section 326/149 IPC and we impose a sentence of rigorous imprisonment for seven years under these sections. The conviction and sentence of the other appellants shall stand.
4. Further, there is no evidence that the two dead bodies were ever found and which seem to have been disposed of by some of the accused and, therefore, we affirm the conviction of all the appellants under Section 201/149 of the Indian Penal Code and sentence them to five years' rigorous imprisonment. Both the sentences - under Section 326/149 and under Section 201/149 IPC - shall run concurrently.
5. A large volume of evidence of a number of witnesses was produced before the trial court which has been carefully considered by the High Court and except to the extent mentioned above, we do not think that the concurrent findings of the two courts should be disturbed in an appeal by special leave.
6. The appeal is allowed only to the extent of the modification in the sentence of Awadesh and Biso as indicated above and is otherwise dismissed. Bail bonds of the appellants are cancelled and they

should be taken into custody to serve out the sentences imposed.

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