

A. Mohanam

Vs

State of Kerala

A. Murukan

Vs

State of Kerala

Criminal Appeal Nos. 107-08 of 1989

(S. Natarajan, A. M. Ahmadi JJ)

13.02.1989

ORDER

1. Special leave granted in both the matters. Heard counsel for the appellants and the state.
2. Having regard to the evidence in the case, we are of the view that the appellants (accused 2 and accused 3) cannot be said to have shared a common intention with accused 1 to commit the murder of the deceased. Their attack on the deceased was only with sticks and it had caused only simple injuries to the deceased. It was thereafter accused 1 had come with a chopper and inflicted several injuries on the deceased which had brought about his death. In such circumstances, the common intention has to be gathered from their overt acts and not from what accused 1 did subsequently and hence they can be convicted only under Section 323 read with Section 34 IPC, 1860.
3. Accordingly we set aside that conviction of these appellants (accused 2 and 3) under Section 302 read with Section 34, IPC, 1860 and the sentence of life imprisonment awarded therefore and instead award them conviction under Section 323 read with Section 34, IPC. AS the appellants have already been in jail for more than four years, the appellants are ordered to be released from custody. Accordingly, the appellants will be set at liberty forthwith unless their confinement is required in connection with some other case against them. To the extent indicated above, the conviction and sentence of the appellants are modified and their appeals will stand allowed in part.

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