

Yadav Lohar and Others

Vs

State of Bihar

Criminal Appeal No. 172 of 1979

(Sabyasachi Mukharji, K. N. Singh, N. D. Ojha JJ)

30.08.1990

ORDER

1. The three appellants in the present appeal were convicted by the Additional Sessions Judge, Jamshedpur for offences under Sections 302/149, 307/149 and 147 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for life, rigorous imprisonment for ten years and rigorous imprisonment for two years respectively. The conviction and the sentences awarded by the Sessions Judge was upheld by the High Court's order dated April 6, 1978. The appellants challenged the correctness of the conviction by means of this appeal.

2. Appellant 2, Prem Chand Lahar, died during the pendency of the appeal in this Court. Thus the present appeal is confined to Yadav Lohar, appellant 1, and Khiroda Loharin, appellant 3.

3. After hearing learned counsel for the parties at length, we are of the opinion that this appeal must succeed. The Sessions Judge as well as the High Court both have recorded findings that appellants 1 and 3 were not armed with any weapons. There is further no finding that any of the two appellants committed any overt act in commission of the offences. They were merely present in a crowd of 50 to 60 persons when the fight took place and as a result of which they have been convicted by both the courts with the aid of Sections 149 and 147 of the Indian Penal Code. Having gone through the evidence on record, we do not find that any case has been made out against the appellants beyond reasonable doubt. The appellants' presence and participation in the commission of the offences for which they have been convicted is highly doubtful.

4. In the circumstances, we allow the appeal, set aside the conviction and sentences awarded to the appellants. The appellants are on bail, their bail bonds are discharged.

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