

Jharu and others

Vs

State of M.P.

Criminal Appeals Nos.308 and 526 of 1979

(CJI Sabyasachi Kukharji, B. C. Ray, L. M. Sharma, P. B. Sawant, K. Ramaswamy JJ)

(Ranganath Misra, M. M. Punchi, K. Ramaswamy JJ)

13.09.1990

JUDGMENT

1. On the allegation of the commission of the Murder with rioting and other cognate offences punishable under the Indian Penal Code, the appellants in these two appeals and some other accused persons who have since been acquitted were put on trial. The occurrence took place within a house and PW 1 was the only eye-witness. The trial Court convicted five persons for offences punishable under S.302/149, I.P.C. and other offences which are not relevant to be stated here while acquitting others. The convicted accused preferred an appeal to the High Court. The state of Madhya Pradesh carried an appeal to the High Court dismissed the appeal of the convicted accused person and reversed the acquittal of three persons and convicted them also in the manner as the Sessions Judge had done in respect of the five. Thus there are two appeals before us - one by those who had been acquitted by the trial Judge and have been since convicted by the High Court and the other by the accused persons who have been convicted in the trial Court whose appeal has been dismissed by the High Court.

2. We have also looked in the judgements and have also heard learned counsel for the parties. PW 1 has apparently given somewhat varying versions of the occurrence at different stages. He is, however, positive and clear that the accused Firatram was armed with a spear and the medical evidence indicates one of the injuries found on the deceased (which was fatal) to have been caused by the spear. In view of the fact that evidence indicates that he was also armed and PW 1 has implicated him consistently we are of the view that he alone should have been convicted by the Courts below for the offence of murder and in the absence of evidence, no other person could be held responsible for the murder.

3. There is clear evidence of rioting leading to causing of grievous hurt. We are not in a position to find out who exactly are the persons who caused the hurt but since there was rioting and the convicted accused persons have participated and the evidence has been accepted, we would hold that the accused persons who were convicted by the Courts below should have their conviction under S. 325 / 149 and should be acquitted of the charge under S. 302 / 149.

4. We dismiss the appeal of Firatram upholding the charge of murder against him and conviction under S. 302, I.P.C. and confirm his sentence of imprisonment for life. We set aside the conviction under S. 302/ 149, I. P.C. of the rest. All the eight shall stand convicted under S. 325/149, I.P.C.

Each of them shall be sentenced to three years' rigorous imprisonment. Though we are sustaining the conviction under Ss. 148 and 452, I.P.C., we do not award any separate sentence. Firatram's sentences under Ss. 302 and 325/ 149, I. P. C. shall run concurrently. The benefit under S. 428, Cr. P.C. shall be worked out by the trial Judge.

Appeal dismissed.

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