

Jawahar

Vs

State of U.P.

Criminal Appeal No. 565 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

06.11.1990

JUDGMENT

S. RATNAVAL PANDIAN, J.:-

1. This appeal is directed against the judgment made in Criminal Appeal No. 984 of 1974 on the file of the High Court at Allahabad. The appellant stands convicted under Section 302 read with S. 34 IPC, on the allegations that he put his arm around the neck of the deceased and pressed, thereby facilitating Kamta (who stands convicted under Section 302 IPC simpliciter and who is not before us) to inflict all the three injuries with a knife on the deceased as a result of which the deceased died. PWs 1 and 2 speak about the part played by the appellant herein. This Court while granting the leave, has limited the question only to the nature of the offence and quantum of sentence. The High Court accepting the testimony of PWs. 1 and 2 found the appellant guilty of having shared the common intention of Kamta in murdering the deceased. It is pertinent to note that in the First Information Report, it has been averred that all the appellants namely this appellant and four others caught hold of the deceased. There is no specific averment in the First Information Report that it was only this appellant who put his arm around the neck of the deceased. The witnesses, for the first time, had changed their version from the one given in the FIR and made embellishment stating that it was only this appellant who put his arm around the neck of the deceased. Further, it is borne out from the evidence that even prior to the occurrence, there was a quarrel between the deceased on the one side and the appellant and his associates on the other relating to the purchase of cinema tickets and selling them in the black market. Taking the totality of the evidence the accused if at all -is to be found guilty, he would be guilty of the same offences under which the rest of the accused barring Kamta stand convicted. The High Court has found the other three accused except Kamta and the appellant guilty only under S. 323 read with S. 149 IPC and sentenced each of them to undergo one year rigorous imprisonment. Inasmuch as we have come to the conclusion that this appellant also would be guilty of the same offence as in the case of that accused except Kamta, the appellant is liable to be convicted only under S, 323 read with S. 149 IPC.

2. In the result, we set aside the conviction of the appellant under S. 302 read with S. 34 IPC and the sentence of imprisonment for life, instead convict him under S. 323 read with S. 149 IPC and sentence him to undergo imprisonment for a period of one year. The conviction under Section 147 and the sentence of one year rigorous imprisonment are confirmed. Both the sentences are directed to run concurrently.

3. Accordingly, the appeal is disposed of as indicated above.

Order accordingly.

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