

Pyare Singh

Vs

State of Madhya Pradesh

Criminal Appeal Nos. 258-59 of 1979 and SLP (Crl.) No. 1496 of 1979

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

25.09.1991

ORDER

1. The three appellants in Criminal Appeal No. 259 of 1979 and the sole appellant in Criminal Appeal No. 258 of 1979 along with two others were indicted of the offences punishable under Sections 147, 148, 302 read with Sections 149 and 325 read with Section 149 IPC on the allegations that they all formed themselves into unlawful assembly and in prosecution of the common object of that assembly they committed murder of Preetam Singh and caused grievous hurt to PW 4. As the appellant in Criminal Appeal No. 258 of 1979, namely, Pyare Singh was absconding, the case as against the three appellants in Criminal Appeal No. 259 of 1979 was split up and the three appellants along with two others were tried for the above-said offences and convicted under Section 302 read with Section 149 IPC and Section 325 read with Section 149 and sentenced to undergo imprisonment for life and 3 years' rigorous imprisonment respectively and further the appellants 1 and 3 and another were convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for one year and appellant 2 and another under Section 147 IPC to undergo rigorous imprisonment for one year with a direction that all the sentences imposed on each of the appellants are to run concurrently.
2. The appellant in Criminal Appeal No. 258 of 1979, namely, Pyare Singh was separately tried and convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of 10 years, under Section 326 read with Section 149 IPC to undergo rigorous imprisonment for 5 years and under Section 148 IPC for two years' rigorous imprisonment by the Additional Sessions Judge, Gwalior.
3. Aggrieved by the judgment of the trial court the appellants in both the Criminal Appeal Nos. 258 of 1979 and 259 of 1979 preferred their respective appeals before the High Court. It may be stated that Criminal Revision No. 239 of 1973 was preferred by one Harnam Singh not only for enhancing the sentence in respect of Pyare Singh for the offence under Section 304 Part II read with Section 149 IPC, but also against the acquittal of Pyare Singh under Section 302 IPC. The High Court altered the conviction of all the appellants as one under Section 304 Part I IPC and sentenced each of them to undergo rigorous imprisonment for life besides confirming the convictions and sentences for the other offences. Hence these two appeals.
4. After hearing the learned counsel for the respective parties and perusing the entire records, we are of the view that the conviction recorded by the High Court under Section 304 Part I IPC does not call for interference. However, we are not going into the question of the legality of the judgment made by the High Court (giving rise to Criminal Appeal No. 258 of 1979) in altering the conviction and enhancing the sentence, at the instance of a private party as well as in the appeal preferred by

the appellant against his conviction when the State has not preferred any appeal.

5. Now coming to the question of sentence we, having regard to the facts of the case and the attending circumstances indicated above feel that the sentence of life imprisonment is not called for and the ends of justice will be met by reducing the sentence to 7 years' rigorous imprisonment for the conviction under Section 304 Part I IPC.

6. In the result, while confirming the conviction, we set aside the sentence of life imprisonment imposed for the offence under Section 304 Part I IPC awarded to all the appellants and instead sentence each one of them to undergo 7 years' rigorous imprisonment. The convictions and the sentences imposed for other offences are confirmed, but the sentences are directed to run concurrently. Both the appeals are dismissed accordingly subject to the modification of the sentence as indicated above.

7. In view of the above order no separate order is necessary in SLP (Cri.) No. 1496 of 1979, which is preferred by the three appellants in Criminal Appeal No. 259 of 1979.

8. As we have pointed out above the two other accused, namely, Chhotelal Singh s/o Dungal Singh and Bhajju Singh s/o Man Singh who were arrayed as accused 4 and 5 took their trial along with the appellants in Criminal Appeal No. 259 of 1979 and stood convicted under Section 302 read with 149, 325 read with 149, in addition to the convictions under Section 148 as against Bhajju Singh and Chhotelal Singh under Section 147 for which the same sentences were awarded as in the case of appellants in Criminal Appeal No. 259 of 1979. Though they are not before us presumably due to their poverty or to any other reason, in our considered view those two accused are also entitled to the benefit of the modification of sentence, otherwise there will be a gross injustice in the case of those two accused persons who stand in the same footing as other accused/the appellants herein. It is not known and in fact there is absolutely no record to show as to whether those two accused preferred any appeal before the High Court against their convictions and sentences passed by the trial court. Had they preferred any appeal, their conviction might have been altered as one under Section 304 Part I IPC. Therefore, we, in view of the alteration of the conviction by the High Court in respect of the appellants, alter the conviction of these two accused under Section 302 read with Section 149 IPC as one under Section 304 Part I IPC or in case they had preferred an appeal and their convictions have been altered already by the High Court under Section 304 Part I IPC, it shall remain to continue, but inasmuch as now we have found that those two accused who are not before us are also entitled for the benefit of reduction of sentence as in the case of the appellants before us, we reduce their sentence also to 7 years' rigorous imprisonment and direct those two accused, namely, Chhotelal Singh and Bhajju Singh, if they are still in jail, to be set at liberty forthwith unless their detention is required for any other cause.

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