

Kedar Prasad and others

Vs

State of M.P.

Criminal Appeal Nos. 734 of 1981 and 106 of 1982

(M. M. Punchhi, S. C. Agrawal JJ)

08.04.1992

JUDGMENT

1. Criminal Appeal No. 734 of 1981 stands listed before us today. We were told by learned Counsel that the connected Criminal Appeal No. 106 of 1982 is also be decided therewith. We have called the file of Criminal Appeal No. 106 of 1982 and have taken it on board. Fortunately both the counsel represent the respective parties in these two appeals and the matter need not wait.

2. We have heard learned Counsel for the appellant. His main prayer is that since the appellants are on bail, we may reduce the sentence of the appellants to the period already undergone. There are three appellants in these two appeals. In the dying declaration of the deceased specific roles have been ascribed to the appellants. The deceased Alafat had been attracted by a commotion in the neighbourhood where a woman was being beaten. The deceased asked the assailants not to beat that woman. Then malice was transferred to the deceased and the accused persons exhorted to each other to divert their attention to the deceased. The first blow was given by Kedar Prasad appellant with his stick which struck on the head of the deceased and another blow was given by Ramlal appellant with his spear striking at his knee and yet another one on his hand and thereafter the deceased says that he was given blow by others. By process of exclusion 12 out of 15 accused originally arraigned have been acquitted by the courts below. Out of the remaining, two appellants, namely, Kedar Prasad and Ramlal have been convicted under Sec. 304, Part 1, I.P.C. and sentenced to rigorous imprisonment for five years. All the three appellants however have been convicted under Section 323 of the Penal Code and sentenced to one year's rigorous imprisonment.

3. The dying declaration of the deceased, which was relied upon by the courts below, discloses that the deceased had positively mentioned Kedar Prasad and Ramlal to be the persons who first gave him blows one after the other and then by others who do not figure in these appeals except Ram Bali appellant. It is evident that Kedar Prasad appellant gave the head injury. According to Dr. C. L. Nigam, P.W. 12, who performed the postmortem examination of the deceased, the deceased had died on account of the severe head injury causing multiple fracture of the skull besides extradural haemorrhage which by itself was fatal. Since the fatal injury is attributed to Kedar Prasad, appellant it appeals to us that his conviction and sentence as recorded by the High Court should be sustained and we order accordingly. So far as Ramlal, appellant is concerned the injuries given by him with a spear on the knee and the arm of the deceased were simple. For these injuries Ramlal appellant cannot be convicted under Sec. 304, Part 1, I.P.C. as Section 34, I.P.C. has not been applied after setting aside conviction under Sec. 147, I.P.C. His conviction has thus to be brought down to one under Section 324, I.P.C. and we order accordingly. There is nothing which can be said about the

conviction of Rambali appellant who stands' convicted under Section 323, I.P.C. The end result is that we confirm the conviction and sentence of Kedar Prasad appellant, after the conviction of Ramlal appellant to one under Sec. 324, I.P.C. and sentence him to the period already undergone under all counts and dismiss the appeal of Rambali reducing his sentence to the period already undergone under all counts. Thus both the appeals are disposed of.

Order accordingly.

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