

Anant Kumar and another

Vs

State of M.P. Respondent.

Criminal Appeal No. 825 with 826 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

17.07.1992

JUDGMENT

1. These appeals arise out of the same judgment. In Sessions Trial No. 42/77 on the file of the Sessions Court, Sessions Division Camp, Seoni, seven accused were tried for offences punishable under Ss. 147, 148 and 302 read with S. 149, I.P.C. The prosecution case was that they surrounded the deceased Ashok Karosia on 31-5-77 and among them A-3 Mohan Sahu, A-5 Noora and A-6 Prakash were armed with knives and they caused injuries which resulted in death subsequently. The prosecution examined four eye-witnesses and also relied on the dying declaration Ex.P.22. The trial Court acquitted A-7 and convicted the rest. The High Court dismissed their appeals.

2. A-2 and A-4 were convicted under Section 147, I.P.C. and sentenced to one year's R.I. A-1, A-3, A-5 and A-6 were convicted under S. 148, I.P.C and sentenced to two years' R.I. All the appellants were convicted u/S.302 read with S. 149, I.P.C. and each of them was sentenced to undergo imprisonment for life. The sentences were directed to run concurrently. A-1 Uttamchand, A-2 Anant Kumar, A-3 Mohan Sahu and A-5 Noora preferred S.L.P. (Cri.) No. 2923/80 in this Court which was granted as against A-1, A-2 and A-5 and rejected as against A-3 Mohan Sahu. The appeal pursuant to this S.L.P. is numbered as Criminal Appeal No. 825/80. During the pendency of the appeal A-1 Uttamchand died and the appeal abates as against him. A-4 Dhanendra Kumar and A-6 Prakash filed another Special Leave Petition No. 2108/80 which was granted in respect of A-4 and rejected in respect of A-6 Prakash. In the result we are left with A-2 Anant Kumar and A-5 Noora in Criminal Appeal No. 825/80 and with A-4 Dhanendra Kumar in Criminal Appeal No. 826/80.

3. We have gone through the judgments of both the courts below and also the relevant evidence as well as the dying declaration. Now the question is whether the prosecution has made out the case against all the accused under S. 302 read with S. 149 I.P.C.?

4. According to the prosecution P.W. 1 Vinod Kumar got the deceased seated on the back of Scooter and was going to his house from the bus-stand, They reached the corner of the road going towards Barghat in front of the Petrol Pump of Netrapal and at that stage the accused prevented P.W. 1 by surrounding and among them Mohan Sahu, A-3 dealt with a knife blow on the right elbow of P.W. 1 and then accused Uttamchand got deceased pulled down by putting a cycle chain around his body and then Mohan Sahu A-3 gave a knife blow in the stomach of the deceased and Prakash, A-6 dealt with a knife blow on his left cheek and it has been further alleged that A-5 Noora dealt with a knife blow on his left ear. These are all the injuries attributed to the accused. The Doctor, who conducted the post-mortem, found six injuries and only one injury was attributed to Noora. Even in the dying

declaration no specific act is attributed to A-2 and A-4. We have a genuine doubt whether A-2 and A-4 also shared the common-' object. There is material to show that A-3, A-5 and A-6 were concealing the weapons and therefore it is difficult to hold that A-2 and A-4 had knowledge that others were armed with knives and they were likely to cause injuries to the deceased. If this element becomes doubtful, then S. 149, I.P.C. cannot be invoked against A-2 and A-4. So far as A-5 Noora is concerned there is direct evidence as well as dying declaration to the effect that he, armed with knife, caused injury No. 6. Therefore his participation is established.

5. Accordingly, we set aside the conviction of A-2 Anant Kumar and A-4 Dhanendra Kumar under Ss. 147 and 302 read with S. 149, I.P.C. and sentences awarded thereunder against them. From the records we are satisfied that at least five persons participated. Therefore the conviction of A-5 Noora under Section 302 read with S. 149, I.P.C. can be maintained.

6. In the result Criminal Appeal No. 825/ 80 is allowed so far as A-2 Anant Kumar is concerned and dismissed as against A-5 Noora. Accordingly Criminal Appeal No. 826/ 80 filed by A-4 Dhanendra Kumar is allowed. A-2 Anant Kumar and A-4 Dhanendra Kumar are on bail and their bail bonds stand cancelled. Order accordingly.

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