

Halke and another

Vs

State of M.P.

Criminal Appeal No. 823 of 1980

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

24.07.1992

JUDGMENT

1. There are two appellants. They along with two others were tried for offences punishable under Sections 302 and 325 in the alternative under Section 304 read with Section 34 and Section 325 read with Section 34, I.P.C. There are two injured witnesses P.Ws. 1 and 9. The accused also suffered serious injuries. Taking these aspects into consideration the Sessions Court held that the accused had the right of self-defence and accordingly acquitted them. The State preferred an appeal and the High Court negated the plea of self-defence and held that the blows inflicted by them resulted ultimately in the death of the deceased. However, they had only knowledge that beating was likely to cause the death, in that view of the matter the High Court convicted both these appellants under Section 304, Part II, I.P.C. and sentenced each of them to undergo five years R.I. and they are further convicted under Section 325 read with Section 34 and sentenced to two years R.I. for causing the injuries to P.Ws.

2. In this appeal the learned Counsel for the appellants submits that the prosecution has not explained the injuries found on the accused and the prosecution party were the aggressors and, therefore, the accused had the right of self-defence and they have not exceeded the same. Further submission is that the view taken by the Sessions Court is quite reasonable and there is no ground for the High Court to interfere.

3. We have gone through the judgments of both the Courts and the relevant evidence. It is submitted by the counsel for the appellants that the prosecution has not properly explained the injuries found on the accused persons and the circumstances show that the deceased party could have been the aggressors. The evidence of the injured witnesses also show that the two appellants with sticks inflicted some blows on the deceased as well as on the two witnesses. In this context the medical evidence becomes very relevant. The occurrence is said to have taken place on 15-4-1974. The injured deceased was admitted in the Hospital and the doctor found four contusions. One of them was on the head. The necessary treatment was given and an operation was also performed and unfortunately the deceased died on 22-4-1974. P. Ws. 1 and 9 were also examined by the doctor and similarly he found some lacerated wounds and some abrasions. Therefore to that extent the medical evidence also corroborates the evidence of P.Ws. 1 and 9. Taking all circumstances into consideration we find that there must have been a fight and it is difficult to hold that the appellants while inflicting sticks blows had the knowledge that under the circumstances they were likely to cause the death of the deceased when they themselves have received the injuries at the hands of the prosecution party. Coming to the death of the deceased as noted already the medical evidence shows

that the deceased was treated for nearly a week and an operation was also performed and he died only thereafter. No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304, Part II, I.P.C. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325, I.P.C. Having regard to the fact that the deceased died after one week the offence committed by them in respect of the deceased would also be the same, punishable under Section 325, I.P.C. in view of the peculiar facts and circumstances of this case we set aside the conviction of the appellants under Section 304, Part II, I.P.C. and the sentence of five years R.I. thereunder, instead we convict the appellants under Section 325 read with Section 34, I.P.C. and sentence each of them to undergo nine months R.I. The conviction under Section 325 read with Section 34, I.P.C. is confirmed but the sentence is reduced to nine months R.I. Both the sentences shall run concurrently. The appeal is partly allowed. Order accordingly.

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