

Sarman and others

Vs

State of M.P.

Criminal Appeal No. 302 of 1981

(K. Jayachandra Reddy, N. P. Singh JJ)

07.08.1992

JUDGMENT

1. There are six appellants in this appeal. They were tried and convicted for offence punishable under S. 302 read with S. 149 and S. 147, IPC. On the last count no sentence was awarded. On the first count each one of them was convicted and sentenced to undergo imprisonment for life. They preferred an appeal and the same was dismissed by the High Court.

2. The prosecution case is that all the appellants were of Baiswara Community and they were all residents of village Regarh which is near to the outer signal of railway station Bandhwapara. The deceased Somali also belonged to the same village. According to prosecution one Chhutwa of Regarh village died in suspicious circumstances. P.W. 8 sent information of his death but the present accused did not permit the person to go to the police station. Consequently no further proceedings could be taken. The deceased used to say that these persons were responsible for the death of Chhutwa because of enmity between them.

3. Coming to the present occurrence on 10-8-76 at 8-30 p.m. all of them formed into unlawful assembly and surrounded and assaulted the deceased and inflicted injuries. It is stated that all of them were found with lathies. The dead body was found lying near the house of PW. 12. A report was given to the police and the case was registered. An inquest was also held. Dr. Mishra P.W. 19 conducted the post-mortem report. He found several injuries on the dead body. The prosecution examined several witnesses including P.Ws. 2, 12 and 17. The accused pleaded not guilty. The trial Court relied on the evidence of PWs. 2 and 12 and held that the prosecution established that these appellants had a common object to commit murder and therefore they surrounded and inflicted injuries on the deceased. The High Court affirmed the same. Learned counsel for the appellants submits that the evidence of PWs 2 and 12 is not reliable particularly when P.W. 12 stated that he suffers from night blindness and in these circumstances the evidence of P.W. 2 alone cannot be accepted and benefit of doubt goes to the appellants.

4. It does not appear from the record that P.W. 12 suffered from such night blindness that it was so acute as to disable the witness to identify the assailants particularly when occurrence is in front of his house. In any event he is supported by P.W. 2's evidence. P.W. 7 and 2 other witnesses were also examined.

5. Now coming to the nature of the offence it is true that the doctor found a number of injuries. However, it must be noted that even according to the prosecution all the appellants were only armed

with lathies and were charged for offence punishable u/S. 147, IPC. 'The doctor, P.W. 19 who conducted post mortem noticed 17 Injuries. Out of them injuries Nos. 1, 3, 10, 11 and 14 were described as incise wounds. Though they resulted in bleeding but no other damage was noticed. It is only injury No. 15 which resulted in a depressed fracture of paristal bone and ultimately proved in membran puncture. Though the doctor in a general way stated cause of death was due to multiple injuries but he has specifically stated that on injury No. 15 he noticed a depressed fracture of paristal bone which individually was sufficient to cause death of the deceased. In these circumstances question that arises is whether all the other accused also responsible for the death of the deceased, the prosecution has not explained, as to how the deceased received incise wounds though they are simple. The prosecution case in general is that all of them were found with lathies. Nobody has stated that which of them caused the injury No. 15 which unfortunately resulted in the death of the deceased. If anyone of the appellants had exceeded the common object and acted on his own, it would be his individual act. In this case unfortunately no witness has come forward as to which of the accused has caused which injury. In these circumstances we find it difficult to award punishment under S. 302/149, IPC.

6. Although post-mortem report says that all the injuries might have caused the death of the deceased but in as much as the accused inflicted injuries with lathies and particularly when they are simple and on non vital parts it cannot be said that their object was to kill the deceased. They may have knowledge that the blows given were likely to cause death.

7. Accordingly we set aside the conviction of the appellants under S. 302/149, IPC and sentence of imprisonment for life and instead convict these under S. 304 II/ 149, IPC and sentence them to seven years imprisonment. If they have served out the sentence of seven years their bail bonds stand cancelled.

8. Appeal is allowed subject to the above modification and in nature of the offence the appeal is dismissed. Order accordingly.

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