

Narayan Raghunath Phadke

Vs

State of Maharashtra

Criminal Appeal No. 927 of 1981

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

21.10.1992

JUDGMENT

1. The sole appellant is convicted u.s. 302 simpliciter and sentenced to imprisonment for life by the High Court for inflicting an injury on the leg which according to the High Court must have proved fatal. The appellant along with 18 others were tried for offences punishable u/S. 147, 148, 323, 302 read with 149, IPC. The trial Court acquitted 12 accused and convicted accused Nos. 1, 2, 3, 8, 13 and 14. The High Court convicted the appellant under S. 325 read with S. 149, IPC and awarded the sentence in respect of the said offence.

2. In this appeal the learned counsel submits that even if we accept the findings of the High Court there is nothing to show that the appellant caused the injury on the leg which according to the Medical evidence was one of the fatal injuries. To appreciate this submission it becomes necessary to state the facts.

3. The prosecution case is that on 15-2-78 at about 8-30 a.m. all the original accused formed into an unlawful assembly armed with different kinds of weapons. Even the appellant before us was armed with an axe. There were disputes in respect of the lands and therefore there was an animosity between the two groups. On the day of occurrence when the deceased was in the field this accused having formed into an unlawful assembly went on to attack the deceased. The prosecution case mainly rests on the evidence of P.W. 1 who also gave the FIR. According to the principal witness, P.W. 1, accused No. 1 is said to have dealt an axe blow on the leg, of course he did not say on which leg. The other accused also alleged to have dealt blows on the deceased. P.W. 1's evidence was subjected to scrutiny by both the courts below in the light of the earlier statements and in the light of the medical evidence. The doctor found as many as 26 injuries and out of those 4 were abrasions, 12 contusions and 5 lacerated wounds out of which two were on the head. In addition to these, the doctor found four incised wounds on the right knee. The doctor opined that death was due to traumatic and haemorrhage shock due to injuries to right knee joint and injury to popliteal artery and sub dural haemorrhage. The doctor noticed four injuries Nos. 9 to 12 on the leg. The injury No. 11 of these four injuries is opined to be fatal and could have caused the death in the ordinary course of nature. The doctor also added that all other injuries collectively also could have caused the death in the ordinary course of nature. The High Court having acquitted others of the murder charge, however convicted accused No. 1 on the ground that he must have caused injury No. 11 which was one of the fatal injuries. To arrive at such a finding the High Court also relied only on the evidence of P.W. 1. It may be mentioned that PW-1 admitted in his cross-examination that he had made some false statements and some true statements before the police. The High Court acquitted the other

accused on the ground that his version was not consistent. Now the question is whether the appellant (Accused-1) can be convicted u/S. 302, IPC simpliciter. PW-1 the principal witness who also gave the FIR only stated that appellant dealt a blow with axe. It is difficult to hold that accused-1 caused this particular injury No. 11. It could be any one of the four injuries. In such a situation the conviction u/S. 302 simpliciter cannot be sustained in view of the medical evidence that injury No. 11 on the leg was only injury which could be opined to be fatal injury. Even otherwise causing such an injury cannot be a ground to convict under S. 302, IPC. In any event there is nothing to connect the appellant directly with Injury No. 11. Therefore, the conviction under S. 302, IPC simpliciter is not warranted under the circumstances of the case. However, the offence committed by the appellant falls under S.326, IPC. Accordingly we set aside the conviction of the appellant u/S. 302, IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under S. 326. IPC and sentence him to 7 years rigorous imprisonment. Subject to the modification the appeal is partly allowed.

Appeal partly allowed.

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