

State of U. P.

Vs

Lakhan and Others

Criminal Appeals Nos. 461-462 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

11.04.1997

ORDER

1. Leave granted.

2. These appeals by special leave arise from the judgment of the Division Bench of the Allahabad High Court, dated 18-2-1991 in Criminal Appeals Nos. 1026 and 1121 of 1978.

3. The prosecution case is that on 6-3-1977, while the deceased Sukhuwa and his sons and his younger brother were returning from the Holi festival and reached the house of the accused, suddenly all the three accused armed with lathis attacked the deceased on the head and other parts of the body. When the sons and brother of the deceased raised alarm, all of them ran away. The deceased had fallen on the ground. He was taken on a cot to his house. Thereafter, he breathed his last. An FIR came to be filed on the same day at about 10.30 p.m. Investigation started and the doctor M.M.S.A. Khan, who conducted the post-mortem on 8-3-1977, opined that the injuries were sufficient to cause death in the ordinary course of nature. The Autopsy Surgeon found the following ante-mortem injuries :

"1. Lacerated wound 2" x 1" x bone-deep present over the left side of forehead, left eyebrow and outer of left eye bones underneath.

2. Lacerated wound 1/4" x 1/4" x bone-deep present over left zygomatic bone, bone underneath fractured.

3. Abraded contusion 2" x 1" present 1" below Injury 1.

4. Lacerated wound 1" x 1/4" bone-deep present over the middle of the chin, bone underneath fractured.

5. Abraded contusion 2" x 1-1/4" present over the posterior aspect of lower third of right forearm, bones underneath fractured."

4. The question, therefore, is whether all of them shared the common intention to cause death of the deceased or the offence was one under Section 304 Part II as found by the High Court ? The Sessions Judge after recording the evidence and on the nature of the evidence concluded that the offence is one of murder punishable under Section 302 IPC and accordingly the respondents came to be convicted under Section 302 read with Section 34 IPC and were sentenced to undergo imprisonment for life. On appeal, the High Court while accepting the evidence of the direct

witnesses, the sons and brother of the deceased, PWs 1 to 3, and accepting the evidence of the doctor came to the conclusion that the prosecution has proved the case beyond reasonable doubt, but suddenly jumped to the conclusion that the accused had no intention to kill the deceased.

5. Learned amicus curiae for the respondent has contended that the accused had no motive and intention to kill the deceased. We find no force in the contention. The motive is locked up in the heart of the accused and therefore, it is to be adjudged from the circumstances available on record. Whether the accused had intended to cause death also is an inferential fact drawn from the circumstances. It is seen, as accepted by the High Court at p. 20 of the paper-book that the deceased and the witnesses were unarmed and when they were returning from the Holi festival and reached the stated place, all of a sudden the accused in concert armed with lathis attacked the deceased and caused injuries on the head and other vital parts of the body, as noted above. The mere fact that extensive damage has not been caused to the deceased does not establish that the offence is not one of murder punishable under Section 302. All the accused armed with lathis lay in wait. The High Court, therefore, committed manifest error in converting the offence from murder to culpable homicide not amounting to murder punishable under Section 304, Part II, IPC.

6. The appeals are accordingly allowed. The judgment of the High Court converting the offence stands set aside. The accused stand convicted for an offence under Section 302 read with Section 34 IPC and they are sentenced to undergo imprisonment for life. They shall be directed to be taken into custody forthwith to undergo the sentence.