

Rewa Ram

Vs

Teja & Ors.

(G. T. Nanavati, V. N. Khare JJ)

03.03.1998

JUDGMENT

NANAVATI J

1. Even though in the Cause Title of the Appeal five persons are shown as respondents, it has to be treated as an appeal against three respondents only, as the respondent Nos. 2 and 3 had died during the pendency of the appeal before the High Court.

2. The three respondents were tried along with Jagdish Singh and Jay Narayan for the offences punishable under Sections 148 and 302 IPC for causing death of Ram Bharose on 16.2.1982 at 11.00 a.m. The trial court believed the evidence of P.W.4 Rewa Ram who was with Ram Bharose at the time of the incident and also of P.W.3 Ram Avtar who had seen the incident, while standing near the house of Kishan Lal and convicted all the five accused under Section 148, and 302 IPC. All the five convicted accused filed an appeal before the High Court. Accused Jay Narayan and Jagdish died during the pendency of the appeal and therefore, their appeal abated. The High Court on reappraisal of the evidence of P.W.3 Ram Avtar and P.W.4 Rewa Ram held that they were present at the time of the occurrence and could be accepted as truthful witnesses. The High Court, therefore, relied upon their evidence and held that the accused had assaulted Ram Bharose with different types of weapons which they were carrying. The High Court, however, did not confirm their conviction under Section 302 IPC for the reason that there was no charge against them that the death of Ram Bharose was caused, in furtherance of the common object of the unlawful assembly of which they were the members. The High Court, therefore, held that they could be held guilty only under Section 326 IPC particularly when it was stated in the charge that their common object was to assault Ram Bharose and commit rioting with deadly weapons.

3. We have also gone through the evidence of P.W.3 and 4. From their evidence it is not possible to say which fatal injury was caused by which accused. The two witnesses have specifically referred to only about 8 to 10 injuries whereas on the person of Ram Bharose as many as 51 injuries were found. As it was not possible to hold who had caused the fatal injury to the deceased, the High Court rightly convicted them under Section 326 IPC. As we do not find any substance in this appeal, it is dismissed. The bail bonds are ordered to be cancelled.