STATE OF U.P.

LAKHAN AND ORS.

APRIL 11, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

В

C

Α

Penal Code, 1860:

S. 302 r/w. S.34/S. 304 Part II—Murder—Accused convicted and sentenced to life imprisonment-High Court holding that the accused had no common intention to kill the deceased—Converting the offence from murder to culpable homicide not amounting to murder—On appeal held, while the deceased and witnesses were unarmed all of a sudden the accused armed with lathis attacked the deceased and caused injuries on the head and vital parts of the body-The mere fact that extensive damage has not been caused to the deceased does not establish that the offence is not one punishable under S. 302—High Court committed manifest error in converting the offence from murder to culpable homicide not amounting to murder.

D

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 461-462 of 1997.

E

From the Judgment and Order dated 18,2,91 of the Allahabad High Court in Crl.A. Nos. 1026 and 1122 of 1978.

Prashant Kumar and A.S. Pundir for the Appellant.

Manoj Prasad for the Respondents.

F

The following Order of the Court was delivered:

Leave granted.

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

The prosecution case is that on March 6, 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 H

C

D

E

F

G

- A 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. F.I.R. 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 March 8, 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 bona deep present over the left side of forehead. Left eye-bro and outer of left eye bones underneath.
 - 2. Lacerated wound 1/4" x 1/4" x bone deep present over left zygmatic bone bone underneath fractured.
 - 3. Abraded contusion 2" x 1" present 1" below the injury No. 1.
 - 4. Lacerated wound 2" x 1/4" bone deep present over the middle of the chin, bone, underneath fracture.
 - 5. Abraided contusion 1" x 1-1/4" present over the posterior aspect of lower third of right forearm, bones underneath fractured."

The question, therefore, is whether all of them shared 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 I.P.C. and accordingly the respondents came to be convicted under section 302 read with Section 34 I.P.C. 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 have no intention to kill the deceased.

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.

B

C

D

Whether the accused have intended cause death also is an inferential fact drawn from the circumstances. It is seen, as accepted by the High Court at page 20 of the paper book, that the deceased and 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 lathies lay in weight. The High Court, therefore, committed manifest error in converting the offence from murder to culpable homicide not amounting to murder punishable under section 302 Part II, I.P.C.

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 I.P.C. and they are sentenced to undergo imprisonment for life. They shall be directed to be taken into custody forthwith to undergo the sentence.

G.N. Appeal allowed.