

State Of Maharashtra vs Kalu Shivram Jagtap And Ors. on 16 January, 1980

Equivalent citations: AIR1980SC879, 1980CRILJ570, 1980SUPP(1)SCC224, 1980(12)UJ632(SC), AIR 1980 SUPREME COURT 879, 1980 MADLJ(CRI) 784, 1980 CRI APP R (SC) 150, 1980 SCC(CRI) 946, (1980) 2 SCJ 344, 1980 UJ (SC) 632, (1980) SC CR R 142

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Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against the judgment of the Bombay High Court dated 5-4-1973.

2 The respondents were convicted by the Sessions Judge under Section 302/149 of Indian Penal Code along with other accused persons. In appeal filed by the accused before the High Court, the High Court altered the conviction of the three respondents from one under Section 302/149 to that under Section 326/34. There were other accused persons also whose convictions were partly maintained and partly altered but we are not concerned with them because the State has filed the appeal only against respondents 1 and 2 who are accused 2 and 3 before the Trial Court.

3. The facts of the case have been detailed in the judgment of the High Court and the Sessions Judge and it is not necessary to repeat the same. It however appears that two months before the occurrence, there was some dispute between the parties which furnished the motive for the assault on the deceased, Sadashiv. According to the prosecution accused Nos. 1, 2 & 3 and others came to the place of occurrence, started abusing the deceased and respondent No. 1 opened the assault by giving a stick blow on the head of Sadashiv and he was immediately followed by respondent No. 2 who struck another blow on the head of the deceased with his stick. So far as respondent No. 3 is concerned, there is no allegation that he took any part in the assault so far as the deceased is concerned. He is said to have assaulted other persons with brick-bats. The High Court while accepting the prosecution case is toto, altered the conviction of the respondents from Section 302/149 to that under Section 326/34 mainly on the ground that the medical evidence did not clearly show as to which of the three respondents gave the fatal injury, although it clearly found that there was a concerted attack on the deceased by respondents 1 & 2. The High Court further found that the strokes given by the first two respondents were given with sufficient force which resulted in

the fracura of the skull and the brain substance. The High Court felt that as the doctor had opined that the injuries were sufficient in the ordinary course of nature to cause death, it cannot be said that the respondents 1 and 2 committed the offence of murder.

4. On the findings arrived at by the High Court, we find with due respect to the judges that the view taken by them was legally erroneous. Once the evidence established that both respondents 1 & 2 had a common intention to till the deceased, which is manifest from the fact that they were armed with sticks, participated equally in the actual assault on the deceased as also in the abuses hurled on him, having come together and having gone together clearly leaves no room for doubt about the common intention of respondents 1 & 2 to cause the murder of the deceased. Thus there can be no doubt that Section 34 clearly applied to the facts of the present case. Even the High Court it self did not dispute this fact because even while altering the conviction of respondents 1 & 2, the High Court has convicted them under Section 326 with the aid of Section 34 IPC. We are, therefore, clearly of the opinion that where a common intention of two or more persons to kill the deceased is established, the question as to who gave the fatal blow is wholly irrelevant and once the medical evidence shows that the injuries caused by one or the other of the accused was sufficient in the ordinary course of nature to cause death, that is sufficient to bring the case of the accused within the purview of Section 302/34 IPC. The view taken by the High Court on the findings arrived at by it is clearly erroneous in law and cannot be sustained,

5. Mr. Khanna, Counsel for the appellant submitted that respondent No. 3 also should be convicted under Section 302/34 because he also participated in the assault of the deceased having accompanied the first two respondents. In view of the facts of the present case, we find that although the third respondent accompanied the first two respondents, yet he did not at all participate in the assault on the deceased but on the other hand he threw back-bats on somebody, else and was not even armed with a stick which was the weapon with which the deceased was assaulted. In the circumstances therefore, so far as conviction of the third respondent under Section 326/34 is concerned, we find no reason to interfere with the same.

6. For the reasons given above, we allow this appeal and set aside the judgment of the High Court and alter the conviction of respondents Nos. 1 & 2 from one under Section 326/34 to that under Section 302/34 and sentence each of them to imprisonment for life.

7. The appeal against respondent No. 3 is dismissed.

8. The respondents will, of course, be entitled to the benefit of Section 423 of Cr.P.C.