

Shanta Alias Sant Lal vs State Of Haryana on 14 November, 1980

Equivalent citations: AIR1981SC650, 1981CRILJ168, 1980SUPP(1)SCC353, 1981(13)UJ41(SC), AIR 1981 SUPREME COURT 650, 1981 CRIAPPR(SC) 11, 1981 UP CRIC 38, 1981 SCC(CRI) 281, 1980 SCC(SUPP) 353, 1981 UJ (SC) 41, 1980 CHANDCRIC 29 (SC), (1981) CURLJ(CCR) 56

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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 a judgment of the High Court of Punjab and Haryana. The appellant was convicted under Section 302 read with Section 149 of the Indian Penal Code and sentenced to imprisonment for life. He was also convicted of less serious offences under other sections of the Code and given different sentences to run concurrently, but we are not concerned with the same as they are not challenged before us.

2. The facts of the case have been given in the judgments of the High Court & the sessions court and need not be repeated by us here all over again. The unfortunate occurrence was the result of a fight between two factions in the village in which three persons were killed and some of the prosecution witnesses were injured. The appellant is said to have been armed with a Jaila. The short point taken by Mr. Mehta in support of his case is that there is no satisfactory evidence to show that at any stage the appellant was a member of an unlawful assembly the prosecution of the common object of which resulted in the three murders. He relied on the testimony of PW 9 Chandru, who was an important eye-witness, being a person injured in the occurrence and belonging to the faction of Tara Chand deceased. This witness has clearly stated that appellant entered the arena only after Tara Chand was fatally assaulted by some other accused. The relevant part of the evidence of this witness may be extracted thus.

On the receipt of gunshot Ram Chander also fell on the ground. Then Tara Chand came close to Ram Chander who his son, to see his condition. But he was then attacked by Jagdev and Mohinder accused. On the receipt of lathi blows he fell down. Then in self defence, myself and Bhartu wielded our lathis. Shanta accused gave lathi blow on my head. Again said he was armed with a Jaila. Bhartu was attacked and injured by Shanta and Inder accused, by means of Jaila and Gandasa respectively. Shanta accused gave a jaila blow on the chest and Inder gave Gandasa blow on his back. The lathis, which we wielded in self defence hit and injured Inder, Jagdev, Mohinder and Shanta.

3. There is no allegation by this witness that the appellant at any time intended to assault Tarachand at all. In fact Tarachand had already been assaulted and the witness and others tried to assault the appellant when the latter attacked the witness and others with his Jaily. Before the assault on Tara Chand ended, the appellant had not become a member of the unlawful assembly Mr. Bhagat appearing for the State contended that other witnesses did not support this evidence of PW 9 on this point. There is no doubt so, but when one of the important prosecution witnesses who has been relied on by both the courts below clearly exonerated the appellant of that charge under Section 302 read with Section 149 of the India Penal Code and that circumstance is sufficient to give benefit of reasonable doubt to the appellant. We may add, however, that no prosecution witness has said clearly that the appellant had actually wielded his Jaila before Tarachand was attacked. We are thus satisfied that the charge under Section 302 read with Section 149 of the Indian Penal Code against the appellant has not been proved beyond reasonable doubt. We therefore allow the appeal in part and acquit the appellant of that charge only. He has already served out the sentences imposed on him in respect of other charges and shall be released from custody forthwith.