

Ram Krishan And Anr. vs State Of Uttar Pradesh on 22 July, 1977

Equivalent citations: AIR1978SC43, 1978CRILJ160, (1977)4SCC432, 1978(10)UJ234(SC)

Bench: N.L. Untwalia, S. Murtaza Fazal Ali

JUDGMENT

1. The appellants have been convicted under Section 307/34 of I.P.C. and sentenced to four years, under Section 324/34 of I.P.C. to six months and under Section 323/34 of I.P.C. to four months. All these sentences to run concurrently. The injuries were caused to the injured persons as a result of "fracas" between rival owners of a shop. The appellants were the tenants of that shop and chose to side their landlord; Munni Lal was the ring leader of the whole group. The application of Munni Lal had been dismissed by this Court and special leave was granted only to the appellants.

2. It appears that on 15th December, 1970 Manki and Sahdeo, who claim to be owners of the shop, closed the shop and went to rest. Sahdeo was sitting with his family in the upper story. Soon thereafter, Munni Lal along with the appellants appeared on the scene and there was altercation between the two, as a result of which the party of the appellants started assaulting Balkishuf, Bajrangi, Rani Bindeshwari and Madan. Accused Munni Lal was armed with pharsa. Appellants Ram Brikesh and Ram Bhigat were only armed with lathis whereas the appellant Ginesh Prasad was armed with a sword. A number of injuries were caused to the injured as a result of the quarrel. So far as merit of the case is concerned, we find that there is no case at all for our interference in this appeal by special leave. Mr D. Mookerjee submitted that so far as the appellants Ram Brikash, Ram Bhagat were concerned, there was no legal evidence to substantiate the charge of Section 34 against them. Having regard to the fact that Ram Brikash and Ram Bhagat, who were armed with lathis only and who did not take part in the assault, it cannot be said that they had any common intention to attempt of murder the injured persons. In our opinion, the contention of Mr. Mookerjee is well founded and must prevail. It is true that Ram Brikesh and Ram Bhagat had accompanied the other accused but they had not participated in the assault and there is no clear evidence to show what part they took in the said assault. There, however, cannot be any doubt that they must be constructively liable for having shared the common intention of causing assault to the injured person. The conviction of Ram Brikash and Ram Bhagat under Section 324/34 and 323/34, therefore, must be maintained, but as there is no evidence of common intention of causing an offence under Section 307/34 of I.P.C. they are acquitted of the charge under Section 307/34 of I.P.C. So far as Ganesh Prasad is concerned, he was undoubtedly armed with pharsa and in these circumstances we do not see any reason to interfere with the conviction as also the sentence passed against him. The remit is that the appeal of Ram Brikash and Ram Bhagat are allowed to this extent that their conviction as also the sentence passed under Section 307/34 of I.P.C. are set aside but the conviction under Section 324/34 of I.P.C. and that under Section 323/31 as also the sentence imposed under these counts are maintained. The appeal of Ganesh Prasad is dismissed.