

Supreme Court of India

Hari Shankar Alias Hari Shankar ... vs State Of Mysore on 20 April, 1979

Equivalent citations: AIR 1979 SC 157, (1979) 4 SCC 501, 1979 (11) UJ 659 SC

Author: S M Ali

Bench: P Kailasam, S M Ali

JUDGMENT S. Murtaza Fazal Ali, J.

1. This appeal under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act is directed against the judgment of the Mysore High Court convicting the appellant under Section 302 and sentencing him to imprisonment for life. Detailed facts of the case have been narrated in the judgment of the High Court and it is not necessary for us to reproduce the same here. The main allegation against the appellant was that he had shot deceased Nazirunnisa and Killadher. So far as the facts are concerned both the Sessions Judge and the High Court have concurrently found that the case was fully proved. The Sessions Judge was of the opinion that the first appellant wanted to kill PW 15, but as PW 15 was not available at that time, Nazirunnissa come in between and she was shot, therefore the appellant could be guilty of an offence under Section 304(A) or under Section 307 IPC. This view of the learned Sessions Judge was legally erroneous as rightly pointed out by the High Court. Section 331 furnishes a complete answer to the view taken by the Sessions Judge. It is obvious that the appellant has the intention to kill PW 15 and if with this intention, he kills somebody also, he is undoubtedly guilty of committing murder. There is evidence of PW 13, 14 and 15 to show that Article 1 fired that shot and killed the deceased. There is no escape from conclusion that the appellant committed an offence under Section 302 of the IPC. In these circumstances, the High Court was right in correcting the error of law committed by the Learned Sessions Mrs. Udayarathnam, tried to bring the case of the appellant within the ambit of Section 304(a) or Section 307 but on the fact found it is not possible for us to accede to her contention. For the reasons given above, there is no merit in the appeal which is accordingly, dismissed.