

PETITIONER:
JAGESHWAR AND OTHERS

Vs.

RESPONDENT:
STATE OF M.P.

DATE OF JUDGMENT: 23/04/1996

BENCH:
THOMAS K.T. (J)
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THOMAS K.T. (J)
PUNCHHI, M.M.

CITATION:
JT 1996 (6) 159 1996 SCALE (3)709

ACT:

HEADNOTE:

JUDGMENT:
(With Criminal Appeal No. 365 of 1987)
J U D G M E N T

Thomas, J.

Thirteen persons were arraigned for rioting and murdering one Ram Kumar and assaulting two others. Out of them the Sessions Court convicted only one (Damodar) of the offences Sections 302 and 323 IPC, and he was sentenced to imprisonment for life and RI for 9 months respectively. All others were acquitted. The convicted person filed an appeal before the High Court of Madhya Pradesh. The state of Madhya Pradesh filed another appeal against the acquittal of the other accused. The High Court dismissed the appeal filed by Damodar, but allowed the state's appeal and convicted three more persons of the offence of murder with the aid of Section 149 IPC, and a few other accused of lesser offences. The present appeals are at the instance of Damodar and those there others who have been convicted of the offence of murder read with Section 149 IPC.

Facts, in brief, of the case are these:

There is an Ashram owned by Baba Jagat Mohan (PW-15) situated on the bank of Narmada River. Deceased Ram Kumar, Gaurishanker (PW-13), Radheyshyam (PW-14), and Dr. N.K. Dubey (PW-12) were the disciples of Baba Jagat Mohan and were inmates of the Ashram. On 7.12.1982, Baba Jagat had a discussion with the disciples on how to check anti social elements who were trying to create in the Ashram. By 8.30 P.M., appellant Damodar accompanied by appellants Jageshwar and Durga entered the Ashram with hockey sticks and lathis and insisted on having a darshan of Baba. Radheyshyam (PW-14) objected saying that it was night time and that swamiji was taking rest but the appellants attacked PW-14. When Gaurishanker (PW-13) tried to save his colleague Radheyshyam, the appellants were reinforced as other assailants joined them. At this stage Ram Kumar came to the forefront of the Ashram and asked the assailants to stop attacking the inmates of the Ashram. Then appellant Damodar gave a blow on

the head of the deceased with a hockey stick. This was followed by the other three appellants beating him with lathis. Damodar fell down. In the meanwhile Radheyshyam went inside the Ashram and hid himself to escape from further attacks but appellants traced him out and brought him to the front and beat him again. This is in substance the version put-forth by the prosecution.

There is no scope for interfering with the fact findings that appellant mounted the onslaught on the deceased Ram kumar and his coinmates of the Ashram with hockey sticks and lathis. We are of the view that the High Court has correctly arrived at the said conclusion on facts.

Learned counsel for the appellants, however, convassed for scaling down the offence to Section 302 part II of the IPC. In the said attempt, learned counsel tried to show that none of the injuries sustained by the deceased was sufficient in the ordinary course of nature to cause death. But a perusal of the Post-mortem Certificate convinced us that the said submission of the learned counsel is unsupportable.

Dr. A.K. Yadu (PW-1) who conducted the post-mortem examination has described the ante mortem injuries in Ext. P-1. Deceased had as many as 14 injuries, out of which 4 serious lacerated wounds were on the head. Those wounds were associated with depressed fracture of right temporal bone as well as parietal bone, and fracture of fronto-parietal suture, Meninges was torn and the brain matter was depressed and was protruding out. The Doctor also noted sub-dural haemotoma all over the superior surface of cerebrum. From the above description of the wounds we find little scope for holding that the injuries were not sufficient in the ordinary course of nature to cause death. We have absolutely no doubt that the assailants who inflicted those injuries would have used the lethal weapons (here hockey sticks and lathis) and should have had the necessary knowledge that the injuries they inflicted were sufficient in the ordinary course of nature to cause death.

Learned counsel made a last bid to distinguish the individual acts of each appellant. But he did not succeed as the attack was jointly made by the appellants. Of course conviction under Section 302 should have been made with the help of section 34 IPC and not Section 149 IPC. That deficiency will stand replenished. We, therefore, dismiss these appeals.