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Cr1.A.No. 692 OF 1999
ITEM NO. 102

COURT NO. 4

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDING

CRIMINAL APPEAL No. 692 of 1999@@
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Kallu ..Appellant

Vs.

State of M.P. ..Respondent
(With appln.(s) for exemption from filing O.T.)
(With Office Report)

Date : 27/11/2001 This/these Petition(s) was/were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. PHUKAN

For Appellant

Mr. Laxmi Arvind,Adv.

For Respondent

Ms. Vibha Dutta Makhija,Adv. for
Mr. BS Banthia,Adv.

UPON hearing counsel the Court made the following

O R D E R

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Appeal is disposed of in terms of the signed order.

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(N.K. Goel)
Court Master

(H.K. Bhatia)
Court Master

(Signed order is placed on the file)

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.PL55

.....L.....I.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 692 of 1999@@
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Kallu

Appellant

Vs.

State of M.P.

Respondent

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J

.SP2

Four persons were alleged to have attacked one Jeevandas, and of them three were armed with iron rods while one had no weapon. Jeevandas who sustained skull fractures succumbed to the injuries. All the four were charge-sheeted, tried, and convicted by the trial court under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life. All of them filed appeals before the High Court of Madhya Pradesh. A Division Bench of the High Court confirmed the conviction and sentence passed on three of them including the present appellant, but in ..2/-

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regard to the fourth person (A-4 Daya Ram) the High Court altered the conviction to Section 326 of the Indian Penal Code and sentenced him to rigorous imprisonment for seven years. It appears that the said A-4 Daya Ram and second accused - Hemraj did not challenge the conviction and sentence imposed by the High Court. A-1 Prem Narayan filed a Special Leave Petition but that was dismissed (we are told that it was dismissed for default). A-3 Kallu alias Jagmohan is the present appellant, who filed this appeal by special leave. Thus we are dealing with the case of the A-3 Kallu alias Jagmohan alone.

The prosecution case in a nutshell is the following:

A-2 Hemraj and deceased Jeevandas were at loggerheads (deceased is said to have given evidence against A-2 Hemraj in a criminal case). On 25.3.1989 deceased Jeevandas and his uncle PW-12 Balchand were returning home from a different village. They stopped for a while in front of one Marwadi Hotel presumably for taking tea or coffee. It was at that time A-1 Prem Narayan and A-4 Daya Ram confronted the deceased. A-4 Daya Ram caught hold of the collar of the deceased. A-1 Prem Narayan tried to give a blow ..3/-

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with iron rod, but he could not succeed in attacking the deceased because of the interference made by PW-12 Balchand. When A-1 Prem Narayan was moving

backwards and PW-12 Balchand stretching his arms standing in between the deceased and A-1 Prem Narayan, the two remaining accused reached the place. Present appellant Kallu alias Jagmohan had an iron rod with him. A-2 Hemraj had also an iron rod. Both of them inflicted blows on the head of the deceased. When other persons reached the spot the assailants ran away from the scene.

After arresting the accused the iron rods were recovered by the investigating officer on the strength of the statement elicited from the accused. Three iron rods were recovered and all the three were found stained with blood.

PW6 - Dr. A.K. Verma who conducted the post-mortem examination on the dead body of Jeevandas found five lacerated wounds on the head and three of them had corresponding fractures of the skull. The brain was also lacerated consequently.

PW-12 Balchand the sole eye-witness had given evidence in tune with the prosecution story as narrated above. The High Court and the trial court

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placed reliance on the testimony of PW-12 Balchand. We have no reason to take a different view from the aforesaid finding of the trial court, particularly in the light of the post-mortem finding and the recovery of blood stained iron rods at the instance of the three assailants who had, according to the prosecution version, inflicted blows with iron rods.

The above finding is not enough to dispose of this appeal, for, we have to examine as to the precise offence which can be pitted against the appellant in this case. The version of PW-12 Balchand which was found acceptability to the trial court and the High Court shows that the appellant reached the scene at a stage when already the occurrence had commenced. What was the sight which appellant would have seen on reaching the scene of occurrence? PW-12 Balchand was raising both arms and moving towards A-1 Prem Narayan who was moving backwards; A-4 Daya Ram was hold on the collar of the deceased.

Would not the above scenario have given an impression in the mind of the appellant that accused - A3 Kallu alias Jagmohan and PW-12 Balchand could as well have been the aggressors? We cannot rule out

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such a possibility so far as the appellant is concerned. Nonetheless appellant moving forward with an iron rod inflicting heavy blows on the skull of the deceased would certainly amount to culpable homicide. It might be that he was acting under an apprehension that A-1 Prem Narayan was attacked by the other side. That way thinking we entertain a reasonable doubt that the appellant thought of thwarting an aggression.

We are inclined to give the benefit of such a reasonable doubt which permeates in our mind on the question as to who, according to the appellant, would have been the aggressor. In the said situation we deem it necessary in the ends of justice to hold that the appellant had committed only an offence under Section 304 Part I of the Indian Penal Code. We,

therefore, alter his conviction to the aforesaid count.

In deciding the quantum of sentence we find that interest of justice would be met by awarding a sentence of rigorous imprisonment for seven years to the appellant - Kallu alias Jagmohan. We do so.

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It is for the jail authorities to count the period already undergone by the appellant and set him free on completion of the sentence imposed by this Court.

With the said alteration of conviction and sentence this appeal is disposed of accordingly.

.SP1

.....J.@@
BB
(K.T. THOMAS)@@
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.....J.@@
BB
(S.N. PHUKAN)@@
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NEW DELHI@@
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NOVEMBER 27, 2001 @@
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