

Mohinder Singh and Another

Vs

State of Delhi

Criminal Appeal No. 77 of 1972

(M. H. Beg, A. Alagiriswami JJ)

11.02.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal by special leave is confined to the question of nature of the offence committed by the accused. The facts giving rise to this appeal are as follows :

2. Ram Sarup, Jot Ram and Prabhu were three brothers. Ram Sarup had three sons. Layak Ram, Dhani Ram and Chatru. Appellant Umed Singh is Dhani Ram's son. Appellant Mohinder Singh is the son of Sultan, son of Prabhu. Jot Ram who died issueless gave half of his property to Layak Ram's son Daya Nand (now deceased) and half to Umed Singh. After the death of Layak Ram his widow Rissalo, who has been examined as PW 1 in this case, married Chatru. As Mohinder Singh had been given no property disputes arose and as a result the two appellants and Dhani Ram were involved in an incident on September 8, 1968 in which Daya Nand lost his life. Soon after, for reasons which it is not possible to guess, Dhani Ram committed suicide by lying under a running train. taking advantage of this fact it was urged on behalf of the appellants that it was Dhani Ram who was responsible for Daya Nand's death and they pleaded alibi. The plea of alibi was disbelieved and the two appellants have been sentenced to life imprisonment for the murder of Daya Nand. It was also suggested that the injuries found on the legs and ankles of Dhani Ram were sustained when he grappled with Daya Nand. We are in agreement with the learned Judges of the High Court that this cannot be accepted. Evidence establishes that Umed Singh hit Daya Nand with a brick and also with the back side of an axe which he carried, as a result of which Daya Nand's skull cracked and he died though there were other injuries also. We are in agreement with the finding of the trial Judge and the learned Judges of the High Court that the fractures in the skull of Daya Nand were caused not only by a brick but also by the blunt side of a the Kulhari. The injuries caused by Mohinder Singh were not such as to cause the death of Daya Nand.

3. We are, therefore, of opinion that while Umed Singh has been rightly convicted of the offence of the murder of Daya Nand, Mohinder Singh could not be so convicted unless it could be established that he shared a common intention with Umed to cause the death of Daya Nand or at least to cause such an injury as would lead in the usual course of nature to Daya Nand's death. We are not persuaded that the three men who were involved in the occurrence went there with the intention of causing Daya Nand's death though there is evidence that they said they would kill him. That is probably an exaggeration. If the intention were to kill the wrong side of the axe would not have been used. While the knowledge that the injury he was causing would in the ordinary course of nature lead to Daya Nand's death might be attributed to Umed Singh, it is not possible to attribute such knowledge to Mohinder Singh. It is not, therefore, possible to ascribe to Mohinder Singh a

common intention along with Umed Singh to cause to Daya Nand such injury as would lead in the ordinary course of nature to his death. We are, therefore, of opinion that Mohinder Singh cannot be convicted of murder of Daya Nand under Section 302, I.P.C., read with Section 34. The result would be that he could be convicted only of causing hurt or at the most of grievous hurt to Daya Nand. We would, therefore, allow his appeal in part and convert the sentence passed on him to one under Section 325, I.P.C. As he has been in prison since shortly after the occurrence the sentence will be restricted to the period already undergone. He is directed to be released forthwith. The appeal of Umed Singh is dismissed.

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