

Dashrath Singh and Others

Vs

State of Madhya Pradesh

Criminal Appeal No. 364 Of 1974

(P.N. Bhagwati, V.R. Krishna Iyer, Syed M. Fazal Ali JJ)

08.10.1976

JUDGMENT

BHAGWATI, J. –

1. The appellants were tried before the Additional Sessions Judge, Sagar for the offence under Section 302 of the Indian Penal Code. The charge against the appellants was that they intentionally caused the death of one Mullu Singh inflicting injuries on him with kulhari and lathis. There were three eyewitnesses to the incident, but out of them only two were examined, namely, Mangal Singh and Kalloo Singh. Kalloo Singh was the son of the deceased while Mangal Singh was his nephew. Mangal Singh turned hostile and was allowed to be cross-examined by the prosecution. Kalloo Singh, however, supported the prosecution case and in clear terms implicated the appellants in the commission of the offence. The prosecution also led the evidence of Phadali Singh, Jhurre Singh and Sante Kotwar for the purpose of proving the dying declaration made by the deceased to the effect that the appellants had assaulted him with kulhari and lathis. This dying declaration was made by the deceased soon after the assault when these witnesses and others rushed to the scene of the offence in order to find out what had happened. The learned Additional Sessions Judge on the strength of the evidence of Kalloo Singh and the dying declaration made by the deceased convicted the appellants of the offence under Section 302 of Indian Penal Code and sentenced each of them to suffer life imprisonment. The appellants preferred an appeal against their conviction and sentence but the appeal was dismissed by the High Court of Madhya Pradesh. Hence the present appeal by special leave obtained from this Court.

2. We have carefully gone through the evidence of Kalloo Singh, Phadali Singh, Jhurre Singh and Sante Kotwar and we do not see any reason to differ from the concurrent view taken by the learned Additional Sessions Judge and the High Court in regard to the appreciation of the evidence of these witnesses. It is clearly established by the evidence of these witnesses that the appellants assaulted the deceased in pursuance of their common intention to cause his death. Appellant 1 was armed with a kulhari and he inflicted serious injuries on the head of the deceased, as is clear from the evidence of Dr. Khare, who performed the post-mortem examination. It is no doubt true that the other two appellants were merely armed with lathis but the medical evidence shows that lathi blows were also given on the head of the deceased and it is evidence that these two appellants shared common intention with appellant 1 to cause the death of the deceased. Each of the appellants must, therefore, be held to be guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code.

3. We accordingly convert the conviction of the appellants from one under Section 302 to that under Section 302 read with Section 34 of the Indian Penal Code and maintain the sentence of life imprisonment imposed on each of them. The appeal is disposed of accordingly.

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