

Karamat Ali and Others

Vs

State of Assam

Criminal Appeal No. 256 of 1973

(P. N. Singhal, Jaswant Singh JJ)

16.02.1978

JUDGMENT

FAZAL ALI, J. -

In this appeal by special leave the appellants namely Karamat Ali, Hashmat Ali, Kasam Ali and Sharafat Ali have been convicted under section 302/34, I.P.C. and sentenced to imprisonment for life by the High Court of Assam, who affirmed the judgment of the Sessions Judge. There were eight accused before the trial Court, who were convicted under Section 302/49, I.P.C. but on appeal filed before the High Court, the High Court acquitted four of the accused and altered the conviction of remaining four accused from Section 302/149, I.P.C. to that under Section 302/34, I.P.C. maintaining the sentence of life imprisonment. The detailed narrative of the prosecution case is contained in the judgment of the High Court and it is not necessary for us to repeat the same all over again. It appears that on December 14, 1968 the deceased Najimuddin alongwith his brother Abdul Kadir was going to Moirabari market to sell brinjals belonging to their family. At the place of occurrence, which seems to be near the house of Niamet Ali, the appellants who were lying in ambush in some of the bushes, came out on seeing the deceased Najimuddin and started assaulting him. The four appellants were variously armed. According to the prosecution appellant 1 Karamat gave a spear blow on the mouth of the deceased Najimuddin, which resulted in his death. The deceased has also received some lacerated injuries. Kasim is said to have ordered the assault and Hasmat assaulted the deceased with the handle of the spear. Sharafat tried to assault P.W. 2 but before he could do so, PW 2 pulled out a stick and assaulted Sharafat as a result of which he got some minor injuries. Thus from the evidence adduced by the prosecution and accepted by the Sessions Judge and the High Court it is absolutely clear that all the four appellants clearly participated in the assault on the deceased. It is also established that four appellants had been lying in ambush to pounce upon the deceased in order to assault him. Having regard to the facts and circumstances there is no doubt that all the four appellants had shared the common intention to kill the deceased Najimuddin. Mr. Mukherjee submitted that Sharafat's case is distinguishable because he did not commit any overt act against the deceased. We are, however, unable to agree with this argument because Sharafat's participation in the occurrence is very much there and but for the promptness, shown by PW 2 Abdul Kadir, Sharafat would have also assaulted the deceased. In these circumstances, therefore we feel that the High Court was right in convicting the appellants under Section 302/34, I.P.C. Having heard the Counsel for the parties and having gone through the evidence, we do not find any error in the judgment of the High Court. The appeal accordingly fails and is dismissed.

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