

Sivan

Vs

State of Kerala

Criminal Appeal No. 34 of 1972

(Syed M. Fazal Ali, P. N. Shinghal JJ)

03.03.1978

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Kerala High Court. The appellant was convicted under Section 302/34, I.P.C. along with accused 1 to 3 whose appeal by special leave had been dismissed by this Court at the time when the special leave was granted to the appellant. We have heard learned Counsel for the parties and have gone through the judgment of the courts below. It appears from the perusal of the judgments of the High Court and the Sessions Judge that the case against the appellant is in no way distinguishable from that of the accused 1 to 3. The appellant participated in the assault on the deceased in the verandah of the courtyard and in fact, inflicted lathi injuries on the deceased while A-1 had inflicted sword injuries on vital parts of the body.

2. The only point that was argued before us by Mr. Sarathi, the learned Counsel for the appellant, was that the evidence does not show that the appellant had a common intention to cause the death of the deceased. In the circumstances of this case, however, we are unable to accept the argument of the learned Counsel for the appellant. The accused knew well that A-1 and others were armed and that A-1 had caused sword injuries on vital parts of the body of the deceased in the verandah of courtyard and he himself aided accused A-1 by giving blows to the deceased on some vital parts of the body like chest. Not content with this the appellant also participated in chasing the deceased where further injuries were given to the deceased after a call by A-2 to kill the deceased. In these circumstances, we are satisfied that the appellant clearly shared a common intention to cause the death of the deceased along with accused 1 to 3. In these circumstances we find no merit in this appeal which is accordingly dismissed.

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