

Shambhu Kuer

Vs

State of Bihar

Criminal Appeal No. 386 of 1974

(R. S. Sarkaria, R. S. Pathak, O. Chinnappa Ready JJ)

04.03.1980

JUDGMENT

SARKARIA, J. –

1. We have heard the learned counsel on both sides. There were three persons who were prosecuted for the murder of one Surendra Prasad Singh, a young man of about 21 years. The prosecution allegation was that Shambhu Kuer caught hold of the deceased, and Mandip gave three blows to the deceased with a knife. Out of the accused persons, one, Kailash was acquitted by the trial court, while the other two were convicted; Mandip under Section 302 and Shambhu Kuer under Section 302 read with Section 34, IPC. During the pendency of the appeal Mandip was released by Government on the ground of serious illness. Mandip's appeal was therefore dismissed as infructuous. The conviction of appellants Shambhu Kuer was upheld by the High Court, with the finding that he continued to hold the deceased till the assault was completed by Mandip. One of the three injuries on the deceased one which had pierced the right lung, was according to the medical witness, sufficient to cause the death in the ordinary course. Counsel for the appellant contends, and we think rightly, that the witness did not clearly state that the appellant continued to hold the deceased till the assault was over. All that appears in the evidence is the Shambhu Kuer caught hold of the deceased and the latter scuffled to get himself released. Immediately thereafter Mandip took out a knife and started assaulting the deceased. From the mere fact that the appellant caught hold of the deceased and scuffled with him, while Mandip took out a knife and commenced the assault, it cannot be inferred beyond reasonable doubt, that he shared the intention of Mandip to murder the deceased. At the most, he was victoriously liable for an offence under Section 326 read with Section 34, Penal Code. We therefore, partly allow this appeal alter the conviction of the appellant to one under Section 326 read with Section 34, IPC and sentence him to imprisonment already undergone, which, we are told, is about 6 1/2 years.

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