

Surjit Singh and Others

Vs

State of Punjab

Criminal Appeal No. 238 of 1983

(Syed M. Fazal Ali, M. P. Thakkr JJ)

27.04.1983

JUDGMENT

1. Appellant, Surjit Singh, has been convicted under Section 303, IPC and the other two appellants have been convicted under Sections 302/34, IPC for having committed the murder of the deceased Dhan Kaur. The facts of the case are detailed in the judgment of the High Court it is not necessary to repeat the same. According to the prosecution appellant Surjit Singh was undergoing a sentence of imprisonment for life having committed the murder of his own mother resulting from a land dispute when this offence was committed.
2. On July 6, 1979 he was released on parole on personal grounds and within about a month from that date, that is to say, on August 8, 1979 the present occurrence took place in the consequence of which Dhan Kaur was done to death. The accused pleaded innocence but the prosecution case has been established and Mr Mulla with his usual fairness did not press this appeal on facts and confined his argument only to the question of sentence upon the conviction being altered to one under Section 302, IPC. The Sessions Judge and the High Court had convicted the appellant and sentenced him to death under Section 303, IPC which has now been struck down and held to be void being violative of Article 14 and 21 of the Constitution of India. In these circumstances, his conviction under Section 303, IPC cannot stand, and must be altered to one under Section 302, IPC.
3. The next question that arises is what sentence should be awarded to him for the present occurrence. The counsel for the State submitted that as the appellant had committed the offence within a month of his having been released on parole he did not deserve mercy and he should be given death sentence even under Section 302, IPC. Although, the fact that he was released on parole only a month before the present occurrence, is admitted, we are satisfied that in the facts and circumstances of this case the extreme penalty of death is not called for. To begin with, the father of the appellant had executed a power of attorney which was sought to be assailed by his two brothers living separately, and this was the immediate cause of the assault. Secondly, it is the admitted case of the prosecution that the appellant assaulted the deceased with the blunt side of the gandasa. Having regard to these circumstances, we do not think that so far as the other appellants are concerned they should be convicted only under Section 323, IPC because once it is found that the appellants were animated by a common intention to causes the death, Section 34, IPC would be attracted particularly when the other three appellants also accompanied appellant Surjit Singh at midnight and undoubtedly shared the common intention to kill the deceased Dhan Kaur. For the reasons given above, therefore, we set aside the conviction and sentence of appellant 1 Surjit Singh under Section 303, IPC, convict him under Section 302, IPC, and impose a sentence of life imprisonment for life on him. We also confirm the sentence of life imprisonment already imposed by the trial court on the other appellant under Section 302/34, IPC. We would like to make it clear

that as the appellant 1 is already undergoing a sentence of imprisonment having regard to the length of time already spent by him in jail we consider it appropriate to direct that the present sentence of imprisonment for life will run from date of the conviction by the Sessions Court i.e. April 24, 1980 and the provisions of Section 433-A Criminal Procedure Code will apply.

4. The appeal is accordingly disposed of.

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