

Vencil Pushpraj

Vs

State of Rajasthan

Criminal Appeal No.653 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

01.11.1990

JUDGMENT

1. This appeal is preferred by the appellant who was arrayed as accused No. 2 before the Trial Court. This appellant along with one Kannu was tried for an offence u/ S. 302 read with S. 34 IPC on the allegation that on 17-8- 72 at about 9-00 or 9-30 p.m. he plucked the deceased and pinned him down by catching hold of his hands from behind and thereby facilitated the first accused (Kannu) to stab the deceased.

2. The Trial Court not accepting the evidence adduced as against this appellant acquitted him holding:

"It is, therefore, held that the prosecution could not bring home the guilt against the accused Pappu alias Rajesh beyond reasonable doubt and he deserves to be given benefit of doubt."

3. However, the Trial Court convicted Kannu u/ S. 302 simpliciter. The convicted accused Kannu preferred an appeal in C.A. No. 472 / 74. The State on being aggrieved by the acquittal of this appellant, filed an appeal challenging the order of his acquittal in C.A. No. 446 of 1975. The High Court dismissed the appeal of Kannu and allowed the State appeal and convicted the appellant u/ S. 302 read with S. 34 IPC and sentenced him to life imprisonment. Hence this present appeal by the appellant. It seems that Kannu has not preferred any appeal before this Court.

4. The only question that arises for consideration is whether the facts and circumstances of the case unerringly fasten the appellant with the criminality in question so, as to robe him with the aid of S. 34 IPC. The High Court disagreeing the review of the Trial Court found the appellant guilty holding thus:

"We are fully convinced that Pappu caught hold of Durga and kept him pinned down till Kannu had stabbed him five times over on the chest, and abdomen region. Pappu's conduct in running away from the scene of occurrence also lends corroboration to the conclusion that he participated in the murder of Durga by Kannu....."

5. Admittedly, Kannu at time of his arrest by the SHO on the morning of the very next day i.e. 31-8-72 was having injuries on his person namely on the fingers of his hands. feet, back and left thigh

which injuries are not explained by the prosecution. The evidence of PW-22 indicates that the deceased and the appellant were very close friends and that this itself annoyed Kannu who found fault with the appellant and questioned him as to why he was having friendship with his enemy, namely, the deceased. These facts indicate that the occurrence had happened not in the manner as put forth by the prosecution but under different circumstances.

6. Further a scrutiny of the materials placed before us does not spell out that the appellant had shared the intention of Kannu in murdering the deceased and that he held the deceased in order to facilitate Kannu to stab the deceased. There is no material worth mentioning even to draw an inference that the appellant and Kannu had acted in concert and/ or there was existence of a prearranged plan to commit the murder of the deceased. Therefore, we are unable to infer the common intention on the part of this appellant with Kannu.

7. For all the reasons stated above, we are of the view that the present appellant at any rate is entitled to the benefit of doubt and consequently for an acquittal. In the result, we set aside the conviction recorded by the High Court u/ S. 302 read with S. 34 IPC and the sentence of imprisonment for life imposed therefore and acquit him.

8. The Appeal is allowed accordingly.

Appeal allowed.

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