

Balkar Singh and Another

Vs

State of Punjab

Criminal Appeal No. 709 of 1979

(S.R. Pandian, Smt. M.S. Fathima Beevi, K. Jayachandra Reddy JJ)

15.11.1990

JUDGMENT

1. These two appellants have filed this criminal appeal questioning the correctness of the judgment made in Criminal Appeal No. 321 of 1978 on the file of Punjab and Haryana High Court at Chandigarh enhancing the sentence of these two appellants from five years to imprisonment for life under Section 303, IPC read with S. 34, IPC. (It be noted that in the SLP it is mentioned that the leave was sought as against Crl. Appeal No. 1181/77) instead of Crl. A. No. 321/ 78).

2. These two appellants along with one Gian Singh took their trial on the allegations that on 1-3-77 at about 2 p.m. they caused the death of one Buta Singh at Khanpur Dhada. There are three eye-witnesses to the occurrence, namely, PW 4, PW 5 and PW 6. PW 1, the Medical Officer, who examined Buta Singh and also conducted the postmortem examination found as many as 16 injuries and gave his opinion that injuries Nos. 1, 2, 4, 5 and 6 were individually and collectively sufficient to cause the death of the deceased in the ordinary course of nature. Though the trial Court found that these two appellants also caused injuries to the deceased it has observed that these two appellants could not be convicted with the aid of S. 34, IPC and consequently while convicting Gian Singh under S. 302, IPC convicted these two appellants under S. 307, IPC and sentenced each of them to undergo rigorous imprisonment for five years. Feeling aggrieved by the judgment of the trial Court, these two appellants and Gian Singh filed criminal appeal No. 1181 of 1977 and the State preferred Criminal Appeal No. 321/ 78 questioning the acquittal of these two appellants of the charge under S. 302, IPC read with S. 34, IPC. The High Court while giving the reasons mentioned in its judgment concluded :

"In these circumstances, we are satisfied that they clearly shared a common intention to cause death of Buta Singh along with Gian Singh. In the result, we convert the conviction of Amarjit Singh and Balkar Singh appellants under Section 307, Indian Penal Code to one under Section 302 read with Section 34 thereof and convict them accordingly. In lieu of the sentence of rigorous imprisonment for five years awarded to them by the learned Sessions Judge, Balkar Singh and Amarjit, Singh are awarded the sentence of imprisonment for life each in respect of the offence of which they are convicted as just above-mentioned."

3. After going through the records, we are fully convinced that the High Court has arrived at an appropriate and just conclusion that these two appellants also have shared the common intention of Gian Singh in murdering the deceased. The submission made by the learned counsel appearing on

behalf of the appellants that these two appellants cannot be convicted with the aid of S. 34, IPC cannot be accepted in view of the abandoned evidence coupled with the circumstances attending the case, leading to an inescapable conclusion that these two appellants also shared the common intention of Gian Singh.

4. In the result ,we affirm the judgment of the High Court and dismiss this appeal.

Appeal dismissed.

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