

Harbans Nonia and Another

Vs

State of Bihar

Criminal Appeal No. 762 of 1989

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

27.09.1991

ORDER

1. These two appellants by name Harbans Nonia and Sheobali Nonia have preferred this criminal appeal against the judgment rendered in Criminal Appeal Nos. 331 and 366 of 1983 by the High Court of Patna confirming their conviction under Section 302 read with 34 IPC and the sentence of imprisonment for life imposed therefor. The crux of the prosecution case is that on November 25, 1980 while these two appellants caught hold of the left and right hands of Kailash Nonia (deceased herein), Shyambali Nonia on being instigated by his father Sita Ram Nonia, gave one stab with a dagger and inflicted a stab wound, with the result of which the deceased died.

2. Admittedly, these two appellants did not have any weapon and attacked the deceased. Nor did they even by words express this intention to cause the death of the deceased. The father of Shyambali Nonia, namely, Sita Ram Nonia, who instigated the offence died even before the committal proceedings of the case. Shyambali Nonia who actually stabbed and murdered the deceased is not before us. Further there is no evidence indicating that there was any preconcert of mind of all the four accused persons including these two appellants in perpetrating the offence of murder.

3. Shyambali Nonia has been convicted under Section 302 IPC which is not under challenge before us. Therefore, we have to examine as to what is the nature of the offence these two appellants committed in the circumstances of the case. The various circumstances attending the prosecution which we have pointed out above show that these two appellants did not have any intention to participate with Shyambali Nonia to cause the death of the deceased. At the same time it is, however, absolutely impossible to relieve them of any liability whatsoever in connection with the stab injury which was facilitated by their catching hold of the deceased when Shyambali Nonia was inflicting the stab wound. Hence, there is no escape for the conclusion on the evidence available that these two appellants shared at least the common intention with Shyambali Nonia to cause grievous hurt punishable under Section 326 read with Section 34 IPC vide State of U.P. v. Ram Kishun [(1976) 3 SCC 449 : 1976 SCC (Cri) 443]. For all the reasons stated above, we set aside the conviction of these two appellants under Section 302 read with Section 34 IPC and the sentence of imprisonment for life, instead convict them under Section 326 read with Section 34 IPC.

4. Coming to the question of sentence, the learned counsel appearing for the appellants stated that these two appellants have served for nearly 9 years of their substantive sentence and they are still in jail. Having regard to the submission we, while convicting them under Section 326 read with Section 34 IPC, reduce the sentence of imprisonment to the period already undergone. These two appellants are directed to be set at liberty forthwith unless their detention is required for any other

cause.

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