

Karam Singh alias Karmu

Vs

State by the Inspector of CBCID

Criminal Appeal No. 185 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

26.03.1992

JUDGEMENT

-

KULDIP SINGH, J.:-

1. Special leave granted.

2. The appellant Karam Singh alias Karmu A-6 along with A-1 Lakshman Singh alias Bhutta, A-2 Jaypal Singh alias Bali, A-3 Channan Singh alias Mangal, A-4 Gurdip Singh and A-5 Mewaram, was tried on the allegations that A-1 to A-6 armed with deadly weapons formed themselves into an unlawful assembly and committed murder of one Chandra by trespassing into his house. They were further charged with having committed dacoity by snatching away the gold ornaments from Daise Chandra daughter of the deceased. The Trial Court convicted A-1 and A-2 under Sections 302/ 34, 395, 427, 449 and 148, IPC. A-3 to A-6 were convicted under Sections 302/ 149, 336,427,449 and 147, IPC. On appeal the High Court acquitted A-3, A-4 and A-5 of all the charges. The High Court, however, maintained the conviction and sentences of A-1, A-2 and the appellant A-6 on all the counts. Three separate special leave petitions on behalf of A-1, A-2 and A-6 have been argued before us by Mr. R. K. Garg, learned senior advocate appearing for these petitioners. By separate orders we have already dismissed the special leave petitions of A-1 and A-2. This appeal against his conviction and sentence is by A-6 Karam Singh alias Karmu.

2A. Mr. R. K. Garg, learned senior advocate, has contended that there is no evidence to connect the appellant with the crime. He did not enter the house and stood outside in the compound. It is not disputed that no test-identification-parade was done in this case and Karam Singh was convicted only on the basis of court-identification. The High Court upheld the conviction of the appellant on the following reasoning:

"PW2 Radhakrishnan also deposes that when A-1 Lakshman Singh and A-2 Jaypal Singh came out of the house of the deceased three persons came running into the compound. He identifies A-6 Karam Singh alias Karmu as one of those three persons. PW3 Prabakaran had also seen three persons including A-6 Karam Singh coming into the compound. Besides he speaks about A-6 Karam Singh breaking the street-light and in our view the materials herein are sufficient to establish the participation of A-2 Jaypal Singh and A-6 Karam Singh in the occurrence."

3. We have given our thoughtful consideration to the arguments advanced by Mr. Garg and we find

force in the same. According to PW2 Radhakrishnan and PW3 Prabakaran they saw the appellant while he came running into the compound and breaking the street-light. The occurrence according to the prosecution took place at about 1.30 a.m. We are of the view that in the absence of any test identification parade, in the facts and circumstances of this case, it would not be safe to convict the appellant, specially when no overt-act has been imputed to him. The High Court acquitted A-3 to A-5 disbelieving PW2 and PW3. We see no justification for the High Court to have upheld the conviction of the appellant.

4. We, therefore, allow the appeal, set aside the conviction and sentence and acquit the appellant.

Appeal allowed.

</html