

Ajay Sharma

Vs

State of Rajasthan

Criminal Appeal No. 2007 of 1996

(M. K. Mukkherjee, S. M. Quadri JJ)

15.09.1998

JUDGMENT

QUADRI, J. -

1. The appellant and two others, namely, Daljeet Singh and Ganeshi were tried for offences under Section 302 and Section 302 read with Section 34 IPC by the learned Additional Sessions Judge No. 1, Sri Ganganagar. The gravamen of the charge against them was that the said three persons came on a motorcycle; Ganeshi and the others caught hold of Kailash Soni and exhorted Daljeet Singh to strike him. On that, Daljeet Singh gave 2-3 blows with his kripaan to Kailash Soni which resulted in his instantaneous death (hereinafter referred to as "the deceased"). On considering the evidence produced by the prosecution, the learned Additional Sessions Judge convicted Daljeet Singh under Section 302; the appellant and Ganeshi under Section 302 read with Section 34 IPC and sentenced each one of them to life imprisonment and a fine of rupees five hundred, in default thereof to further undergo rigorous imprisonment for six months. Against their conviction and sentence, they filed appeal in the High Court. By judgment and order of 17-3-1992, the High Court upheld the conviction and sentence of the appellants. Aggrieved by the judgment and order of the High Court, by special leave the appellant has filed this appeal.

2. Mr. Jayant Bhushan, the learned counsel for the appellant, submitted that as the only overt act attributed to him was that he caught hold of the deceased and exhorted Daljeet by saying "maro", so it cannot be said that there was a common intention to kill the deceased; the appellant only said "maro", which did not mean "to kill", therefore, he ought not to have been convicted under Section 302 read with Section 34 IPC. To examine the contention of the learned counsel, we have perused the first information report and the statement of Mohan Mujral (PW 1). The relevant allegation in the FIR reads as follows :

"At this, both Pappu (appellant) and Ganeshi said - 'strike at him, Daljeet'.

PW 1 deposed before the Court :

"When we raised the alarm, both Pappu Pandit and Ganeshi instigated Daljit Singh to "strike". They exhorted him to strike at Kailash. At this Daljit took out a short kripaan from under the stockings he had worn. He, then, in a jiffy, struck at Kailash 2-3 blows on the left portion of his body."

Thus, from the averments in the FIR as well as from the statement of PW 1, it cannot be said that the appellant had shared a common intention to kill the deceased. The appellant might not have been

known that Daljeet Singh was having a kripa under his stockings. The instigation was only "to strike" and as such, his conviction under Section 302 read with Section 34 IPC is not sustainable. (See *Jai Narain Mishra v. State of Bihar* [(1971) 3 SCC 762 : 1972 SCC (Cri) 40 : AIR 1972 SC 1764] and *Matadin v. State of Maharashtra* [(1998) 7 SCC 216 : JT (1998) 5 SC 264].) The conviction of the appellant under Sections 302/34) IPC is, therefore, set aside; instead, he is convicted under Section 324 read with Section 110 IPC and sentenced to the period already undergone. His bail bonds shall stand cancelled and he be released forthwith unless he is required to be incarcerated in any other case. The appeal is accordingly disposed of.