

# SUPREME COURT OF INDIA

Nanhak Singh

Vs.

State of Bihar

(G.B.Pattanaik and M. B. Shah JJ.)

14.12.1999

## ORDER

1. The appellant has been convicted under Section 302/34 IPC for having shared the common intention of murder of the deceased along with his brother, who was the main assailant, and who died during the pendency of trial. Though , the appellant is alleged to have also fired at the informant PW.6 but no charge has been framed on that score. Appellant stood charged only under Section 302/34 IPC. Mr. Mishra appearing for the appellant raises two contentions in assailing the impugned judgment of the High Court, (1) the High Court has, in fact, not discussed the evidence as a Court of Appeal would do, and after summarising the contentions raised by the prosecution and the defence, and in one paragraph jumped to a conclusion without discussing the evidence on merits as to whether they would be believed or not, and such approach of the High Court must be held to be erroneous, and not in due discharge of its jurisdiction as a Court of Appeal under the CrPC, (2) even if the prosecution case, as unfolded through the witness is believed, the appellant not having been charged under Section 307, necessarily the prosecution case that he fired at PW. 6 falls through, and therefore merely because he has accompanied his brother with a rifle in his hand, he cannot be convicted under Section 302/34 when his brother fired at the deceased. On examining the impugned judgment since we find force in the first contention, we are not inclined to consider the second submission and discuss the matter on merits. The very judgment of the High Court indicates that there has been no discussion of the evidence as an Appellate Court would do , and therefore, we think it proper to remit the matter to the High Court for re-consideration of the evidence on record, and after discussing the truthfulness of the witnesses, come to the conclusion one way or the other. We make it clear that we have not expressed any opinion on the second contention raised by the learned Counsel since the High Court itself would go into that matter. The impugned conviction and sentence passed by the High Court is set aside and the impugned judgment is set aside. The High Court is requested to re-dispose of the appeal at an early date after hearing the parties concerned. The appeal is disposed of accordingly. The High Court may consider the question of releasing the

accused on bail since it is stated while the appeal was pending, he was on bail.