

SUPREME COURT OF INDIA

Muni singh

Vs.

State of Bihar

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

14.12.1999

JUDGMENT

G. B. PATTANAİK, J.

1. The two appellants along with accused Kapil were convicted under Section 302/149, I.P.C. by the High Court Application for grant of special leave by Kapil stood rejected, but the application of these two appellants were entertained to consider the limited question as to the nature of offence is said to have been committed by them. Be it be stated, originally 8 accused persons stood charged under Section 302/149. Learned Sessions Judge acquitted two of them. Out of the rest 6 accused persons, the High Court has given benefit of doubt to 3 other persons but maintained the conviction of 3 others including the present two appellants. The prosecution case hinges upon the oral testimony of PWs. 1,3,4,6 and 8. On an analysis of the aforesaid evidence, the High Court has recorded the conclusion that accused appellants came inside the inner court yard of the house of the informant, chasing the informant, and thereupon the appellants made assaults causing injury to the informant Ambika, his wife Sakuna Devi as well as to the deceased Daya Shankar. From the evidence of Doctor, who conducted the autopsy over the dead body of the deceased, it transpires that there was a sharp cut wound 4" x1/2 " scalp deep on the occipital region, and that injury proved to be fatal. The said injury is attributed to the assault given by Kapil by means of a self in his hand. Out of the two appellants, Maheshwar Singh appeared to have given a lalkara and Muni appeared to have assaulted the deceased by means of a barrel of his gun after chasing him inside his house.

2. It is contended on behalf of the appellants that the fact that Maheshwar was having a gun in his hand and yet did not utilise the same would indicate that he never shared the common intention with Kapil, who in fact gave the fatal blow on the occipital region of the deceased, and further the fact that Muni Singh gave a lalkara would not indicate that he also shared the common intention with Kapil, who gave the fatal blow, and therefore, the conviction of these two appellants, namely, Muni Singh and Maheshwar under Section 302/34 is not sustainable in law. To appreciate this contention, we have gone through the impugned judgment as well as the evidence, on analysis of which the High Court has recorded the conclusion as already stated. The fact that Kapil, Muni and Maheshwar came together, and chased the informant and the deceased from the scene of occurrence, and persued them even to the house, and assaulted inside the house, Kapil by means of a saif and Muni by means of barrel of the gun, which he was holding, and Maheshwar Singh gave the lalkara would make each one of them liable for action of the other. The fact that the blow given by Maheshwar was not fatal, will not be of any significance in finding out whether he shared the common intention with the other assailant Kapil, who gave the fatal blow on the occipital region of the deceased. In this view of the matter, we see no infirmity with the conviction of the two appellants along with Kapil, who was the main assailant, and whose application for grant of special leave has already been dismissed. Needless to mention that the impugned judgment convicting the appellants under Section 302/149 may not be sustainable in view of the acquittal of the 5 other accused persons but the conviction can be altered to one under Section 302/34. The appeal is dismissed accordingly.