

# SUPREME COURT OF INDIA

Parshuram Singh

Vs.

State of Bihar

(K Thomas and S Phukan JJ.)

16.01.2002

## ORDER

1. There were 11 accused before the sessions court who were charge-sheeted for the murder of one Tribuna Singh on the allegation that those 11 persons formed themselves into an unlawful assembly with the object to murder him. Although the sessions court convicted all the 11 persons under Section 302 read with Section 149 (besides some other lesser offences) a division bench of the High Court of Patna had acquitted six out of the 11 persons. In regard to the present four appellants the High Court convicted them for the offence under Section 302 read with Section 34 of the IPC although the High Court confirmed the conviction of the offences under Section 147 and 148 etc. of the IPC also. These appeals are filed by special leave by those four persons.

2. The four persons were arrayed in the trial court as A1-Rameshwar Singh, A2-Anil Kumar Singh, A3-Devender Singh and A4-Parashuram Singh.

3. According to the prosecution version the motive for the incident was a dispute over a timber tree which stood almost on the boundary of the lands belonging to the family of A3-Devender Singh and that of the deceased. Perhaps many skirmishes would have taken place on account of the said dispute. On 17.11.87 around 2.00 p.m. all the 11 persons, variously armed, went to the field of one Mangal Kumar as the deceased Tribuna Singh was then found at that spot. According to the prosecution version A1-Rameshwar Singh made an oral exhortation and A2-Anil Kumar Singh inflicted cut blows with a Farsa and then the deceased fell down. At that time A3-Devender Singh inflicted three or four cut injuries on the deceased and one of them was on the neck. A4-Parashuram Singh had a pistol with which he hurled threats at the incoming persons. The deceased on sustaining injuries died at the spot itself.

4. Five witnesses were examined to speak to the occurrence as eye-witnesses. We are told that all the said vive witnesses have implicated the above four appellants in the manner in which the prosecution has narrated the case. It is too late in the day for disbelieving the testimony of the five witnesses, particularly when the trial court and the High Court have placed reliance on their testimony.

5. Nonetheless, we have to evaluate the role played by A1-Rameshwar Singh and A4-Parashuram Singh in order to ascertain whether they would have entertained a common intention to murder the deceased. Neither of them had inflicted any injury on the deceased. A1-Rameshwar Singh had a Lathi with him and in spite of that he did not choose to give even a minor assault on the deceased. All that is said against him is he ordered the killing of the deceased. It is not shown that A1 had any particular reason for taking up the leadership of the gang. On the other hand the genesis of the quarrel was the dispute regarding the timber tree which stood on the boundary of the lands belonging to A3 on the one side and the deceased on the other. For convicting a person merely on the basis of the oral statement made at the spot the Court must have other surrounding circumstances to ensure the confidence that he made such an exhortation. If A1 had really any intention to participate in the occurrence, much less any common intention to murder the deceased, it is difficult for us to conceive as to why he did not use the weapon which was handy with him then.

6. The role attributed to A4-Parashuram Singh is that he had a pistol with him and he threatened the other persons who reached the scene. Here also, if A4-Parashuram Singh had the common intention to murder the deceased it is highly improbable that he would have refrained from using the inherently lethal weapon like the pistol which was in his possession. He would have threatened others from coming into the fray perhaps as a measure adopted by him to save them from receiving injuries.

7. For the aforesaid reasons we have difficulty to confirm the finding that A1-Rameshwar Singh and A4-Parashuram Singh really entertained common intention with the other assailants to murder the deceased. The benefit of the reasonable doubt emanating from the broad features of the case must be extended to those two accused.

8. In the result, we set aside the conviction and sentence passed on A1-Rameshwar Singh and A4-Parashuram Singh who are the appellants before us. We acquit them and direct them to be set at liberty forthwith unless they are required in any other case. We do not interfere with the conviction and sentence passed on the appellants A2-Anil Kumar Singh and A3-Devender Singh.

9. The appeals are disposed of accordingly.