

(1998) 09 SC CK 0036

In the Supreme Court Of India

Case No : Criminal Appeal No. 2007 of 1996

Ajay Sharma

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (1998) 1 ACR 485 : (1998) 6 AD 610 : AIR 1998 SC 2798 : (1998) AIRSCW 3160 : (1998) CriLJ 4590 : (1998) 6 JT 378 : (1998) 5 SCALE 276 : (1999) 1 SCC 174

Hon'ble Judges : Syed Shah Mohammed Quadri, J; M. K. Mukherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Quadri, J.—The appellant and two others, namely, Daljeet Singh and Ganeshi were for offences, u/s 302 and Section 302 r/w Section 34 I.P.C. 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 motor cycle; Ganeshi and the other caught hold of Kailash Soni and exhorted Daljeet Singh to strike him. On that Daljeet Singh gave 2-3 blows with his kripa 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 u/s 302; appellant and Ganeshi u/s 302 read with Section 34 I.P.C. and sentenced each one of them to life imprisonment and 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 March 17, 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 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 u/s 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 F.I.R. reads as follows:

'At this both Pappu (appellant) and Ganeshi said - strike at his Daljit'. PW-1 deposed before the Court, 'When we raised the alarm, both Pappu Pandit and Ganeshi instigated Daljit Singh 'Strike'. They exhorted him to strike at Kailash. At this Daljit took out a short kripa 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 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 u/s 302 read with Section 34 IPC is not sustainable. [See *Jai Narain Mishra and Others Vs. State of Bihar*, and *Matadin Vs. State of Maharashtra*, The conviction of the appellant u/s 302/ 34, IPC is, therefore, set aside; instead he is convicted u/s 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.