

(2018) 12 RAJ CK 0220

In the Rajasthan High Court

Case No : Criminal Leave To Appeal No. 581 Of 2018

Kamlesh

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307
Code of Criminal Procedure, 1973 — Section 319

Citation : (2018) 12 RAJ CK 0220

Hon'ble Judges : Banwari Lal Sharma, J;M.N. Bhandari, J

Bench : Division Bench

Advocate : Abdul Kaleem Khan, Sonia Shandilya

Final Decision : Dismissed

Judgement

This leave to appeal has been filed against the order dated 19th September, 2018, whereby, Hariom s/o Bani Singh was acquitted for the offence while convicting Munim and Bani Singh.

Learned counsel for the complainant-appellant submits that learned trial Court has acquitted Hariom ignoring the statements of eye-witnesses showing his presence with a "Lathi". It was recovered at his instance. A case is made out with the aid of Section 34 IPC, as the accused came with a common intention to cause the incident wherein Munim and Bani Singh opened fire on the deceased and injured. Hariom came along with other accused, namely, Ramgilas, Rupe and Santosh. Three accused were not charge-sheeted. An application for summoning of the additional accused was moved by the complainant-appellant. It was, however, dismissed by the trial Court but since the charge-sheet was filed against Hariom, he should have been convicted and sentenced for the offence under Sections 302 and 307 with the aid of Section 34 IPC. In view of the above, leave to appeal may be granted.

We have considered the submissions made by learned counsel for the

complainant-appellant and perused the record.

As per the statements of eye-witnesses as well as injured witnesses, the allegation for opening fire is against Munim and Bani Singh. So far as Hariom is concerned, his presence has been shown along with Ramgilas, Rupe and Santosh. They said to have come along with Munim and Bani Singh. Learned Public Prosecutor has admitted that charge-sheet against Ramgilas, Rupe and Santosh was not filed by the police and even application under Section 319 Cr.P.C. was dismissed by the trial Court.

In view of the above, the complainant had named many persons but it is by way of over implication. When the trial Court dismissed the application under Section 319 Cr.P.C. against three accused, though, all the witnesses have shown their presence, there is no reason to convict Hariom, who stands similar to three other accused, namely, Ramgilas, Rupe and Santosh. Mere filing of the charge-sheet does not mean that he should have been convicted. It is moreso when, his overt act in the occurrence has not been shown. The recovery of "Lathi" cannot be a ground to convict Hariom with the aid of Section 34 IPC. The common intention of the said accused has not been proved by the prosecution.

In view of the above, we do not find any ground to grant leave to appeal, hence, it is dismissed.