

CASE NO.:
Appeal (crl.) 770 of 2004

PETITIONER:
Mangal Singh & Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 02/09/2005

BENCH:
K.G. BALAKRISHNAN & B.P.SINGH

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NOS. 849-850/2005
K.G. Balakrishnan, J.

Seven accused persons were found guilty by the Additional Sessions Judge, Gaya, for the offence of murder punishable under Section 302 read with Section 149 IPC. Some of the accused were found guilty of the offence punishable under Section 27 of the Arms Act. These accused persons filed three criminal appeals before the High Court of Patna and by the impugned judgment all the three criminal appeals were dismissed and their conviction and sentence were confirmed.

The incident happened on 15.8.1996. PW 9 Suresh Singh along with his brothers Dani Singh and PW 8 Mukhdeo Singh were carrying out agricultural work in their paddy field. PW 1 Rajendra Munjhi, a labourer too was working with them. One Kundan Kumar had brought the breakfast for them. At about 11.00 a.m., a tractor came from the southern side and stopped at a distance of 500 yards away from the field. Five to six persons got down from the tractor and came near the field and one of them, Anil Singh was armed with a gun. Some other persons came from the village side and among them included the appellants, Mangal Singh, Kali Singh, Sachitta Singh, Vidya Singh, Jai Ram Singh and Ramadhar Singh. Jairam and Ramadhar were armed with gun and Sachitta Singh and Vidya Singh were armed with countrymade pistol. The appellants then started ploughing the field. PW-9 Suresh Singh and his brothers requested them not to plough the field and there was exchange of words between PW-9 and his brothers on the one hand and appellants on the other, whereupon appellants Mangal Singh and Kali Singh exhorted other appellants to kill PW-9 Suresh Singh and his brothers. Appellant Anil Singh, Jai Ram Singh and Ramadhar Singh started firing on them indiscriminately and Kundan Singh and Dani Singh sustained injuries. PW 9 Suresh Singh and his brother Mukhdeo Singh managed to run towards east and appellant Sachitta Singh and Vidya Singh chased them but they escaped unhurt and hid themselves in a nearby place. Hearing the sound of firing, the nearby villagers came running towards the place of incident and the appellants then fled towards west. PW9 Suresh Singh and his brother PW 8 Mukhdeo Singh came out and saw their brother Dani Singh lying dead nearby in the field of Dr. Umesh Singh. Injured Kundan Singh was alive but he was in an unconscious state. He was immediately removed to the nearby hospital.

On the same day at about 2.00 p.m., the sub-Inspector of Police of Buniyaadganj Police Station recorded the statement of PW-9 Suresh Singh. A case was registered against the present appellants and the inquest over the dead body of Dani Singh was held. Injured Kundan Singh was admitted in the hospital but he later died in the hospital. On the side of the prosecution, 14 witnesses were examined. Five eye-witnesses

were examined to prove the incident. PW9 Suresh Singh is the main witness to support the prosecution. He deposed that all the appellants came to the place of incident and except Mangal Singh and Kali Singh, all were armed with firearms and they started firing and he moved towards Dr. Umesh Singh's field. Appellants Sachitta Singh and Vidya Singh chased him and when other witnesses came the accused ran away from the field. He admitted that there was some land dispute between himself and the appellants. The evidence of PW9 Suresh Singh would show that the appellants Mangal Singh and Kali Singh had not done any overt acts. He also does not speak about the exhortation allegedly made by appellants Mangal Singh and Kali Singh. He deposed only to the fact that appellants Mangal Singh and Kali Singh started abusing and said that PW9 Suresh Singh and others shall not be left and be killed. PW-8 Mukhdeo Singh is another witness who was present at the place of the incident. He would say that Kali Singh and Mangal Singh shouted that "not to leave them and kill them".

The evidence of these two witnesses by itself would not prove the real complicity of these two accused persons. Moreover, these two persons were not armed with any weapons. We do not think that there was any convincing evidence to prove that these two appellants also shared the common object of the unlawful assembly.

As regards the other appellants, there is evidence beyond reasonable doubt that they formed themselves into an unlawful assembly. PW9 Suresh Singh and others deposed that after a wordy quarrel they started using their fire arms to kill the two persons. They have been rightly convicted by the Sessions Court for the offence of Section 302 read with Section 149 IPC. The conviction of the appellants under Section 27 also was fully justifiable and correct.

In the result, we find the appellants Mangal Singh and Kali Singh not guilty of any offence punishable under law. They are acquitted of all the charges framed against them. Criminal Appeal No. 770 of 2004 is partly allowed and the appeals filed by other appellants are dismissed. Appellants Mangal Singh and Kali Singh are on bail. Their bail bonds are discharged.