

PETITIONER:
BHAWAN SINGH & ANR.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 05/11/1997

BENCH:
G.T. NNAVATI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.T. NANAVALTI, J.

The two appellants in this appeal were convicted by the trial court along with accused Bishwanath Singh for committing the offence punishable under Section 302 read with Section 34 IPC. In the appeal filed by them the High Court altered their conviction from under Section 302 read with Section 34 IPC. In the appeal filed by them the High Court altered their conviction from under Section 302 read with Section 34 IPC to one under Section 326 read with Section 34 IPC. Both the appellants were sentenced to suffer rigorous imprisonment for 7 years and accused Bishwanath Singh was awarded rigorous imprisonment for 3 years. All the three convicted accused applied to this Court for special leave to file an appeal. Leave was granted to all of them. Bishwanath Singh's appeal being Criminal Appeal No.356/88 came up for hearing earlier and it was dismissed by this Court on January 18, 1995. The appeal of the present two accused as unfortunately not listed for hearing along with that appeal and therefore it is now heard by us separately.

At the outset, the learned counsel for the appellants stated that appellant Bhagwan Singh has died and therefore his appeal/has abated. Therefore the appeal filed by Raj Nath Singh alone now survives.

Both the courts below have held that Raj Nath Singh had given a sphere blow on the chest of Brijlal. The courts have also held that injuries were caused to Brijlal in furtherance of the common intention of all the three accused. The reason why the High Court altered the conviction of Raj Nath Singh from that under Section 34 IPC is that according to the evidence of Dr. C.B. Tripathi who had held the post mortem examination 8 injuries on the person of the deceased were medically interferred with and the death was caused due to pus in the brain. The High Court was, therefore, of the view that the death of Brijlal was not the direct result of the injuries caused by the accused.

What is contended us by the learned counsel for the appellant is that in view of the said finding recorded by

the High Court the appellant Raj Nath Singh could not be convicted under Section 326 read with Section 34 IPC. We are of the opinion that the said finding of the High Court is not correct. Nothing was brought out in the cross examination of the doctor to indicate that any external factor had contributed to the formation of pus justifying the view that the death of Brijlal was not the direct result of the injuries caused to him by the accused. That apart, what we find is that Dr. Rajendra Singh (P.W. 12) has clearly stated in his evidence that injury which was found on the abdomen of Brijlal was a grievous injury and on that evidence alone conviction of the appellant under SECTION 326 read with Section 34 IPC is justified. As we do not find any error in the judgment of the High Court this appeal is dismissed. The appellant is on bail. So he is ordered to surrender to custody to serve out the remaining portion of his sentence.