

PETITIONER:
AJAY SHARMA

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 15/09/1998

BENCH:
M.K. MUKHERJEE, SYED SHAH MOHAMMED QUADRI, .

ACT:

HEADNOTE:

JUDGMENT:
JUDGEMENT
QYADRI, J.

The appellant and two others, namely, Daljeet Singh and Ganeshi were tried for offences, under Section 302 and Section 302 r/w Section 34 I.P.C. by the learned Additional Session 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 kripan 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 Session Judge convicted Daljeet Singh under Section 302; appellant and Ganeshi under Section 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 order of the High Court, by special leave the appellant has filed this appeal.

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 under Section 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 kripan 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 under Section 302 read with Section 34 IPC is not sustainable. [See Jai Narain Mishra vs. State of Bihar (AIR 1972 SC 1764) and Matadio vs. State of Maharashtra (Jt 1998 (5) SC 264)]. The conviction of the appellant under Section 302/34, IPC is, therefore, set aside; instead he is convicted under Section 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.