

CASE NO.:
Appeal (crl.) 1284 of 2001

PETITIONER:
Basisth Roy & Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 06/02/2003

BENCH:
N Santosh Hegde & B P Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The eleven accused whose appeal before the High Court of Judicature at Patna came to be dismissed, have preferred the special leave petition before this Court from which this appeal arises. On 7.12.2001, this Court dismissed the appeal of Kamala Roy, petitioner No.6 in the said SLP since he did not surrender before preferring the SLP. This Court granted leave to appeal in regard to the other 10 appellants, hence, this appeal is now confined to the said 10 appellants only.

Before the learned Additional Sessions Judge, Buxar in Sessions Trial No.438/92, 13 persons including 10 appellants herein, were charged for offences punishable under Section 302, Sec. 302 read with Sec. 149 for having caused the death of one Rajendra Kanu on 24.6.1991 at village Dhobahi, Police Station Dhansoi, Buxar. During the pendency of trial, one of the accused persons Govind Rai died, hence, the proceedings against him abated. Learned Sessions Judge convicted one Sohail Lohar under Section 302 IPC while other 11 persons including Kamala Roy whose appeal has since been dismissed by this Court, were convicted under Section 302 read with Sec. 149 IPC. The High Court in the appeal filed by Sohail Lohar dismissed the same and the said accused has not preferred any further appeal against his conviction and sentence. As stated above, the other 11 accused persons whose conviction and sentence was confirmed by the High Court, have preferred this appeal out of which the appeal of Kamala Roy has since been dismissed by this Court.

Brief facts necessary for disposal of this appeal are as follows :

There was a certain dispute in regard to the possession of the Government land situated opposite the house of Matwar Kanu, PW-3. While the accused party headed by Govind Rai claimed possession of the same, the complainant party headed by PW-3 was contending that the land in question was in their possession. On 24.7.1991 at about 6 p.m. when the family members of PW-3 including his two brothers and his son, i.e. the deceased Rajendra Kanu, were planting bamboos on the land in question, all the accused persons allegedly came to the spot and attacked the complainant's family who were present on the said land. In the course of the said attack, the accused Govind Rai assaulted PW-1 and the deceased with stick which

caused bleeding injuries to the said victims. The prosecution then states that on being so attacked, the members of the complainant family ran away while so running, the accused Sahai Lohar allegedly shot Rajendra Kanu on his back with a countrymade pistol (Katta), consequent upon which said Rajendra Kanu fell down dead. It is based on a complaint lodged by PW-3 and after investigation, a chargesheet was filed against all these persons. In the trial before the learned Sessions Judge, the accused persons took the contention that the land in question was in their possession and while protecting the same, the incident in question had happened. Be that as it may, the only allegation made by the prosecution in the course of the trial is that it was Govind Rai who attacked some of the witnesses with a stick and Sahai Lohar shot the deceased with a Katta. Said Govind Rai is stated to have died so the proceeding against him has abated while Sahai Lohar who has been convicted for his individual act under section 302 IPC has preferred no appeal, therefore, the matter stands concluded in regard to these two accused persons against whom the above stated overt acts have been attributed by the witnesses. Though in the complaint, it is generally stated that all the other accused persons were armed with lathis and took part in the attack, in the examination of the prosecution witnesses before the court, no overt act of any sort has been attributed to the other accused persons. Surprisingly, both the courts below without properly considering the material on record, by the aid of Sec. 149 have convicted all these appellants of offences punishable under Sec. 302 read with Sec. 149 IPC, and sentenced them to undergo imprisonment for life. We have very carefully gone through the material on record with the help of the learned counsel for the parties, and we find no material whatsoever to hold that any one of these appellants shared any common object of either Govind Rai, the deceased accused, or Sahai Lohar who is convicted under Section 302 for committing the murder of the deceased. Though in the complaint, there is an omnibus statement that these appellants also attacked with lathis. The medical evidence does not support this case nor in their evidence before the court the prosecution witnesses have attributed any overt act to these appellants. Learned counsel appearing for the State very fairly conceded that there is no material whatsoever to hold these appellants guilty of sharing the common object of either Govind Rai, the deceased accused, or Sahai Lohar. Therefore, we are of the opinion that the conviction recorded against these appellants is totally uncalled for and without any material hence, this appeal has to succeed and the conviction and sentence imposed on these appellants by the courts below are set aside, and the appellants are directed to be released forthwith, if not wanted in any other case.

However, learned counsel for the appellants relying on the judgment of this Court in Dandu Lakshmi Reddy v. State of A.P. (1999 (7) SCC 69), Raja Ram & Ors. v. State of M.P. (1994 (2) SCC 568), Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra (2002 (2) JT SC 158) and Harbans Singh v. State of U.P. & Ors. (1982 (2) SCC 101) contends that since we are allowing the appeal of these appellants on the ground that there is no material against any accused except the deceased accused Govind Rai and convicted accused Sahai Lohar, the benefit of the same should also go to Kamala Roy whose appeal has been dismissed at the stage of SLP for his non-surrender. We do not think on facts of this case at this stage, we should extend that benefit to the said accused Kamala Roy, leaving open such remedy as is available to him in law, we reject this request at this stage.

Accordingly, the appeal of the appellants now before us stands allowed.

JUDIS