

PETITIONER:
BADRUDDIN

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 21/09/1998

BENCH:
D.P. WADHWAR, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
QUADRI, J.

This criminal appeal, by special leave, is directed against the judgment of the High Court of Allahabad in Criminal Appeal No. 878 of 1977 dated 24th July, 1984, confirming the conviction and sentence of the appellant for offences under Sections 302/34 and 323/34, TPC and sentencing him to life imprisonment and rigorous imprisonment for six months respectively for the said offences. The appellant and three others (Nizamuddin, Hafiz and Siddiqui), on their denial of charges, were tried for offences under Sections 302, 302/34 and 323/34, TPC by the learned IInd Additional Sessions judge, Azamgarh, for committing the murder of Shaukat Ali (hereinafter referred to as 'the deceased') on March 19, 1976 at 2 p.m.

The gravamen of charge against the appellant is that the said persons of whom Nizamuddin was armed with knife and the appellant Hafiz and Siddiqui were armed with lathis, beat the deceased and killed him. PW-1, Mohammad Umar, PW-3, Ali Hamza and PW-5, Mohammad Hanif are eye witnesses. Their statements before the court show that Nizamuddin dealt blows with knife and Siddiqui dealt blows with lathi, Nigd, Yarnam Migd, Gabuf and Ali Hamza tried to intervene but they were attacked with lathis by the appellant and Hafiz. It is thus clear that no overt act in regard to assaulting the deceased is attributed to the appellant. In the F.T.R. also, no overt act is attributed to the appellant.

Dr. G.S. Chaturvedi, Senior Physician, who conducted the post-mortem examination on the dead body of the deceased found the following ante-mortem injuries on the body of the deceased :

1. Incised wound oblique 2cm x 1/4cm x muscle deep over left arm below parts 6 cm below top of shoulder.
2. Incised wound oblique 4cm x 1cm x scalp deep over the left side of back of head 12cm back (back) and above left ear.
3. Stab wound oblique 2cm x 1cm x chest cavity deep over left back of chest 2cm below inferior angle of left scapula. Direction of wound from behind forward and medically cutting the muscle and soft tissues. It had also cut pleurae and

lower and of left lung through and through 1-1/4cm x 1/4cm.
4. Incised wound vertical 1-1/4cm x 1/4cm x muscle deep over left side of striver.

5. Incised wound 2cm x 1/4cm x muscle deep oblique over left side back chest 24cm below the angle of left scapula." (Quoted from the parer book)

The death was caused due to the said injuries. All these injuries were caused by a sharp edged weapon. None of the injuries can be said to have been inflicted with a blunt weapon like lathi.

The High Court noted that the relations between the deceased and others were strained on account of dispute with regard to 'Sahan' (open Yard) of the Mosque of Shah Bhukhari and that after Friday's prayer, there was some altercation between the two groups; the one consisting of the said four persons and other consisting of the deceased and PW-1. Thereafter, the appellant and the said three persons came armed with Knife and lathis, as noted above, surrounded the deceased near his door while Nizamuddin dealt blows to him with knife Siddiqui beat him with lathi. P.Ws. 3 & 5 stated that the appellant, Hafiz and Siddiqui inflicted blows to the said three eye witnesses with lathis. From the above facts, it is difficult to sustain the conclusion that there was common intention between the appellant and other persons to kill the deceased. Though establishing common intention is a difficult task for the prosecution yet, however difficult it may be the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of mind of all the assailants to commit the offence be it pre-arranged or on the spur of the moment but it must necessarily be before the commission of the crime. Where direct evidence is not available, it has to be inferred from the circumstantial evidence. In the instant case, it is stated that the deceased alone was assaulted by Nizamuddin with knife and Siddiqui with lathi. The appellant dealt blows with lathi not to the deceased but to other witnesses. There is no case nor evidence of exhortation by him or of the fact that with a view to keep the said witnesses away from interfering and to facilitate Nizamuddin to kill the deceased the appellant assaulted the said witnesses. Having regard to the facts and circumstances of the case, it is not possible to arrive at the conclusion that the appellant and others shared common intention to kill the deceased Shaukat Ali. Consequently we are unable to sustain the conviction of the appellant for the offence under Section 302/34, IPC. However, on the facts, we confirm the conviction and sentence under Section 323/34 PTC awarded by the courts below. As the appellant has already served out the sentence for the offence convicted, therefore, he is directed to be released forthwith unless he is required to be detained in any other case. The appeal is accordingly allowed.