

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 192 OF 2008

DILSHAD @ BILLI

.....

APPELLANT

VERSUS

STATE (NCT OF DELHI)

.....

RESPONDENT

WITH

CRIMINAL APPEAL NO. 193 OF 2008

O R D E R

We have heard the learned counsel for the parties at length.

The primary point urged by the learned counsel for the appellant is that on the facts of the case the common intention on the part of the accused could not be discerned and only Deen Mohammad who is said to have fired the fatal shot could have been sentenced for the murder. The learned counsel has also cited several judgments in support of her case.

Undoubtedly, there are certain observations in

the cited judgments which prima facie support the argument raised by the learned counsel but it must be observed that in determining a case of common intention inter se several accused, the facts of the case have to be given primary importance. In other words, no hard and fast rule can be laid down as a legal proposition with respect to the common intention which may be shared between the accused.

In the present matter, we find that Din Mohammad alone was armed with a pistol, Dilshad-appellant was armed with an iron rod and that during the course of the robbery all the accused had tried to restrain P.W. 2 - Rekha Vij, the wife of the deceased from attempting to save her husband and had subsequently removed her forcibly as she lay on top of him and he had then been shot on the chest. It has also come in evidence that in that process the appellants had also given her a beating and also hit her with a cricket wicket on her hand. The learned counsel has, however, contended that as there was no medical evidence to show any injury on her person the story given by P.W. 2 with regard to the beating that she had received could not be believed. We

note that it is not her case that she had been given a beating that had caused any visible injury to her as she had deposed that she had been beaten up and then removed from atop her husband when she was trying to save him. To our mind, therefore, the common intention is writ large on the peculiar facts of this case.

The appeals are thus dismissed.

NEW DELHI
SEPTEMBER 17, 2009.

