

## Karamat Ali And Ors. vs State Of Assam on 16 February, 1978

**Equivalent citations: AIR1978SC1392, 1978CRILJ1412, (1978)3SCC132, 1978(10)UJ217(SC), AIR 1978 SUPREME COURT 1392, 1978 ALLCRIR 342 1978 SC CRI R 217, 1978 SC CRI R 217**

**Bench: P.N. Shinghal, S. Murtaza Fazal Ali**

### JUDGMENT

Fazal Ali, J.

1. In this appeal by special leave the appellants namely Karamat Ali, Hashmat Ali, Kasam Ali and Sbarafat Ali have been convicted under Section 302/34 I.P.C. and sentenced to imprisonment for life by the High Court of Assam, who affirmed the judgment of the Sessions Judge. There were eight accused before the trial Court, who were convicted under Section 302/149 I.P.C. but on appeal field before the High Court. The High Court acquitted four of that accused & altered the conviction of remaining four accused from Section 302/149 I.P.C. to that under Section 302/34 I.P.C. maintaining the sentence of life imprisonment. The detailed narrative of the prosecution case is contained in the judgment of the High Court and it is not necessary for us to repeat the same all over again. It appears that on 14.12.1969 the deceased Majimuddin along with his brother Abdul Kadir was going to Moirabari market to sell brinjils belonging to their family. At the place of occurrence, which seems to be near the house Niamet Ali the appellants who were lying in ambush in some of the bushes, came out on seeing the deceased Najimuddin and started assaulting him. The four appellants were various armed according to the prosecution appellant No. 1 Karamar gave a spear blow on the mouth of the deceased Mdjimuddin, which resulted in his death. The deceased has also received some lacerated injuries Kasim is said to have ordered the assault and Hamat assaulted the deceased with the handle of the spear. Sharafat tried to assault P.W. 2 but before he could do so, P. W. 2 pulled out a stick and assaulted Sharafat as a result of which he got some minor injuries. Thus from the evidence adduced by the prosecution and accepted by the Sessions Judge and the High Court it is absolutely clear that all the four appellants clearly participated in the assault on the deceased. It is also established that the four appellants had been lying in ambush to pounce upon the deceased in order to assault him. Having regard to the facts and circumstances there is no doubt that all the four appellants had shared the common intention to kill the deceased Majimuddin Mr. Mukherjee submitted that Sharafat case is distinguishable because he did not commit any overt act against the deceased. We are, however, unable to agree with his argument because Sharafat's participation in the occurrence is very much there and but for the promptness, shown by P.W. 2 Abdul Kadir, Sharafat would have also assaulted the deceased. In these circumstances therefore we feel that the High court was right in convicting the appellants under Section 302/34 I.P.C. Having heard the counsel for the parties and having gone through the evidence, we do not find any error in the judgment of the High Court. The appeal accordingly fails and is dismissed.