

Surjit Singh And Ors. vs State Of Punjab on 27 April, 1983

Equivalent citations: AIR1983SC838, 1983CRILJ1111, 1983(1)SCALE699, (1983)3SCC565, AIR 1983 SUPREME COURT 838, 1983 (3) SCC 565, 1983 CRI APP R (SC) 377, 1983 SCC(CRI) 745

Bench: M.P. Thakkar, S. Murtaza Fazal Ali

JUDGMENT

1. Appellant, Surjit Singh, has been convicted under Section 303 I.C.P. and the other two appellants have been convicted under Section 302/34 I.P.C. for having committed the murder of the deceased Dhan Kaur. The facts of the case are detailed in the judgment of the High Court and it is not necessary to repeat the same. According to the prosecution appellant Surjit Singh was undergoing a sentence of imprisonment for life for having committed the murder of his own mother resulting from a land dispute when this offence was committed.

2. On 6th July, 1979 he was released on parole on personal grounds and within about a month from that date, that is to say, on 8th August, 1979 the present occurrence took place in the consequence of which Dhan Kaur was done to death. The accused pleaded innocence but the prosecution case has been established and Mr. Mulla with his usual fairness did not press this appeal on facts and confined his argument only to the question of sentence upon the conviction being altered to one under Section 302 I.P.C. The Sessions Judge and the High Court had convicted the appellant and sentenced him to death under Section 303 I.P.C. which has now been struck down and held to be void being violative of Articles 14 and 21 of the Constitution of India. In these circumstances, his conviction under Section 303 I.P.C. cannot stand, and must be altered to one under Section 302 I.P.C.

3. The next question that arises is what sentence should be awarded to him for the present occurrence. The counsel for the State submitted that as the appellant had committed the offence within a month of his having been released on parole he did not deserve mercy and he should be given death sentence even under Section 302 I.P.C. Although, the fact that he was released on parole only a month before the present occurrence, is admitted, we are satisfied that in the facts and circumstances of this case the extreme penalty of death is not called for. To begin with, the father of the appellant had executed a power of attorney which was sought to be assailed by his two brothers living separately, and this was the immediate cause of the assault. Secondly, it is the admitted case of the prosecution that the appellant assaulted the deceased with the blunt side of the gandasa. Having regard to these circumstances, we do not think that it is a fit case in which the extreme penalty of death should be given under Section 302 I.P.C. It was also contended by Mr. Mulla that so far as the other appellants are concerned they should be convicted only under Section 323 I.P.C. because they had assaulted with the blunt side of the gandasa and inflicted only simple injuries. We are unable to accept this argument because once it is found that the appellants were animated by a common intention to cause the death, Section 34 I.P.C. would be attracted particularly when the

other three appellants also accompanied appellant Surjit Singh at mid-night and undoubtedly shared the common intention to kill the deceased Dhan Kaur. For the reasons given above, therefore, we set aside the conviction and sentence of appellant No. 1 Surjit Singh under Section 303 I.P.C. convict him under Section 302 I.P.C, and impose a sentence of imprisonment for life on him. We also confirm the sentence of life imprisonment already imposed by the Trial Court on the other appellants under Section 302/34 I.P.C. We would like to make it clear that as the appellant No. 1 is already undergoing a sentence of imprisonment having regard to the length of time already spent by him in jail we consider it appropriate to direct that the present sentence of imprisonment for life will run from the date of the conviction by the Sessions Court i.e. 24th April, 1980 and the provisions of Section 433A Criminal Procedure Code will apply.

4. The appeal is accordingly disposed of.