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Cr1.A.No. 33 OF 1998  
ITEM No.102

Court No.8

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No.33 of 1998

Askrit Singh & Ors. Appellant.

VERSUS

State of Bihar Respondent.

( With office report)

Date : 24/03/2004: This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant (s)  
Mr. Debasis Misra, Adv.

For Respondent (s)  
Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Mr. Debasis Misra, learned counsel for the appellants started his arguments at 2.00 p.m. and concluded at 2.40 p.m. Thereafter Mr. B.B. Singh, learned counsel for the respondent started his arguments and concluded at 3.20 p.m.  
The appeal is disposed of in terms of the signed order.

(R.K. DHAWAN) (VEERA VERMA)  
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 33 OF 1998

Askrit Singh & Ors..... Appellants.

Versus

State of Bihar.... Respondent.

O R D E R

Six persons were found guilty of offence punishable under Section 302 IPC read with Section 149 IPC and they filed special leave to appeal before this Court. Out of them only three appellants alone surrendered and the remaining three appellants namely Bal Narain Singh, Suresh Singh and Surendra Singh did not surrender and their application for leave to appeal was dismissed. Other three appellants Chand Govind Singh, Gutuk Singh and Askrit Singh are before us. The prosecution case is that on the night between 16-17 May, 1988, the appellants along with the co-accused formed themselves into unlawful assembly and trespassed in the house of Bhikhari Singh. Bhikhari Singh was sleeping on a wooden chowki in the courtyard of his house. His sons Prabhunath Singh (P.W-6) and Krishna Singh (P.W-4) were sleeping on the roof of the house. P.Ws. 6 & 4 heard the sound of commotion and PW-6 flashed a torch and found his father Bhikhari Singh being surrounded by the appellants and

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other co-accused. Bhikhari Singh had been pleading to them not to cause any injury but the appellant Chand Govind Singh exhorted other accused to finish off Bhikhari Singh. There upon co-accused Suresh Singh and Surendra Singh fired shots in the chest of Bhikhari Singh from the guns held by them. PW-6 and PW-4 made a hue and cry, then Chand Govind Singh and co-accused Bal Narain Singh who were holding guns fired shot at these witnesses but that did not hit them. Hearing the sound PW-2 and other neighbours came to the place of incident and by that time all the assailants escaped from the scene of occurrence. PW-6 Prabhunath Singh later went to the police station and gave the FI statement in the early morning of the next day. There were disputes between Bhikhari Singh and the accused persons and it is alleged that the first appellant Askrit Singh had cut the ridge of the paddy field which was constructed by Bhikhari Singh and water was drained out to his field and there were quarrels between these two groups on previous occasions.

PW-8 the Assistant Sub-Inspector of police registered a case and took over the investigation. He held inquest report of the dead body of Bhikhari Singh and later the body was sent for post-mortem examination. Dr. S.P. Srivastava, PW-7, examined the dead body and found one multiple lacerated of semicircular shape on the right side of chest and another lacerated wound on the right thigh. On

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dissection the doctor found three pellets in the abdominal cavity. He opined that the injuries were ante-mortem caused by fire arms and they were sufficient to cause death of the deceased Bhikhari Singh.

On the side of the prosecution Pws. 6 and 4 were examined as eye witnesses. Pws. 6 and 4 had given evidence to the effect that they had seen that their father being killed by the assailants. PW 5 Chinta Devi saw the assailants at the scene of occurrence. The counsel for the appellant contended that the investigation of the case was not properly done and the appellants are not guilty of the offence charged against them. It was submitted that no blood stains were found at the place of occurrence and that the weapons allegedly carried by the appellants were not seized by the police during the course of investigation. It was also contended that the appellants Askrit Singh and Gutuk Singh were only armed with 'Bhala' and they did not use their weapons and there was no intention on their part for causing death of Bhikhari Singh. We have carefully gone through the prosecution evidence. It is held that Askrit Singh and Gutuk Singh were allegedly armed with 'Bhala' and 'Bhala' was not recovered by the police. It is alleged that appellant Chand Govind Singh was allegedly carrying a country made gun that was also not recovered in the course of investigation. From the evidence on record it is difficult to draw a reasonable conclusion that the appellants

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Askrit Singh and Gutuk Singh were aware that their co-accused were armed with deadly weapons and that there was no overt acts attributed to these two appellants. There is also no evidence to show that there was any conspiracy or that these appellants wanted to kill Bhikhari Singh. It appears that at the time of incident one of the accused exhorted and Suresh Singh and Surendra Singh fired gun shots and caused his death. Therefore the conviction of Askrit Singh and Gutuk Singh under Section 302 IPC read with Section 149 IPC is not justified in the circumstances as they did not use 'Bhala' which were allegedly held by them. No motive is attributed to these two appellants. We do not find any justifiable reason to convict them under Section 302/149 IPC and they are acquitted of the offence under section 302/149 IPC. They are found guilty by Sessions Court under Sections 458 and 452 IPC. We see no reason to interfere with the conviction on those counts.

As regards Chand Govind Singh, it is alleged that he was armed with a country made pistol. He fired at Pws. 6 and 4 but it did not hit them. These eye witnesses were relied on by Sessions Court as well as the High Court. We also do not find any reason to disbelieve it. From the evidence it is clear that Chand Govind Singh made an attempt on the lives of Pws. 6 and 4. Therefore he is liable for conviction under Section 307 IPC. Therefore his conviction under Section 302/149 IPC is set aside and he is convicted

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for the offence punishable under Section 307 IPC. We are told that the appellant Chand Govind Singh had been in jail for a period of two years. That would meet the ends of justice for offence under Section 307 IPC. All the appellants were released on bail by this Court. Their bail bonds are cancelled. The appeal is disposed of accordingly.

.....J  
(K.G. BALAKRISHNAN)

.....J  
(B.N. SRIKRISHNA)

NEW DELHI;  
MARCH 24, 2004.