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Cr1.A.No. 1013 OF 1998
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1013 OF 1998

Baldeo Munda. . . . Appellant(s)

Versus

State of BiharRespondent(s)

O R D E R

Heard the parties.

The sole appellant along with nine other accused persons was charged and tried for offences under Section 302/149 of the IPC. The trial court acquitted five accused persons whereas convicted the appellant and four other persons, namely, Laldeo, Arjun Singh, Padhan and Lato Oran under Section 302/149 IPC and sentenced them to undergo imprisonment for life. On appeal being preferred by the convicted accused persons, the High Court acquitted four accused persons but upheld conviction of the appellant under Section 302/149 IPC. Hence, this appeal by special leave.

It appears that in the present case, there were only ten accused persons out of whom nine other accused persons have been acquitted, but conviction of the appellant has been upheld under Section 302/149 IPC. In view of the fact that other nine persons have been acquitted, it cannot be said that the appellant could share the common object of members of unlawful assembly to commit murder of the victim. Therefore, conviction of the appellant under Section 302/149 IPC becomes unwarranted.

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Question which now arises is as to whether the appellant can be convicted under Section 302 of the IPC? In the present case, neither there is any allegation nor evidence to show that the appellant inflicted the fatal injury and this being the position, he cannot be convicted under Section 302 of the Indian Penal Code merely because specially when according to the evidence of witnesses he was identified at the place of occurrence as a member of the alleged unlawful assembly. For the foregoing reasons, we are of the view that the High Court was not justified in upholding the conviction of the appellant under Section 302/149 IPC.

Accordingly, the appeal is allowed, the impugned judgments so far as the same relate to the appellant are set aside and he is acquitted for the charge. The appellant who is on bail is discharged from the liability of bail bonds.

???.?????????????J.

[B.N.AGRAWAL]

?????.?????????????.J.

[D.M. DHARMADHIKARI]

New Delhi,
March 17, 2004.

ITEM NO.118 COURT NO.6 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.1013/1998

Baldeo Munda

Appellant (s)

VERSUS

State of Bihar

Respondent (s)

(With office report)

Date : 17/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE D.M.DHARMADHIKARI

For Appellant (s)

Mr. Binay Kumar Das, Adv. (A.C.)

Mr. Anil K. Srivastava, Adv.

For Respondent (s)

Mr. Kumar Rajesh Singh, Adv. for

Mr. B.B. Singh, Adv.

UPON hearing counsel, the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

The appellant who is on bail is discharged from the liability of bail bonds.

(Satish K. Yadav)

(V.P. Tyagi)

Court Master Court Master

(Signed order is placed on the file)