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Cr1.A.No. 870 OF 1998

.PL58

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 870 of 1998@@
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Kanhai Singh & Anr. ..Appellants

Vs.

State of Bihar ..Respondent

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Although 9 persons were convicted by the trial court for the offence under section 302 read with Section 149 of the Indian Penal Code for different roles in the same occurrence the High Court on appeal acquitted three of them and confirmed the conviction and sentence regarding the remaining six. Second accused-Dewan Singh filed a separate special leave petition challenging the judgment of the High Court. We are told that the said SLP was dismissed already. We are also told that A6 - Ranjit Singh did not choose to file the SLP. The remaining four persons (A1 - Pradeep Singh, A3 - Basuki Singh, A4 - Kanhai Singh and A9 - Bhudeo Mandal) filed the SLP. This Court dismissed the application for special leave as against A1 - Pradeep Singh and A3 - Basuki Singh. However leave was granted in respect of A4 - Kanhai Singh and A9 - Bhudeo Mandal.

Thus the appeal survives only in respect of the above two persons viz., A4 - Kanhai Singh and A9 - Bhudeo Mandal.

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A short description of the occurrence is useful for considering the case in respect of the two appellants.

On the night of 7.4.90 around 8.00 P.M. when Kuldip Singh (a Mukhiya of the Panchayat) was engaged in a work at the threshing ground situated a little away from his house A1 - Pradeep Singh and A4 - Kanhai Singh reached there armed with fire arms and also bundles of crops. Those two assailants shot the deceased with the fire arms. When the deceased was trying to run away he fell down, but by then the remaining seven reached there and they also joined the first two persons in attacking the deceased. The role attributed to A4 - Kanhai Singh and A9 - Bhudeo Mandal was that they inflicted blows with lathis on the head of the deceased.

The only witness who had testified to the role of the two appellants was PW2 - Subodh Kumar Singh, a sixteen year old youngster. The post mortem report had shown only one injury which can be ascribed to a lathi blow. Not even one abrasion was noticed among the injuries found by the doctor who conducted the post mortem examination. This indicates that one of the assailants alone would have inflicted the blow with a blunt object. If so the other person would not have

done anything against the deceased. When two persons are alleged to have inflicted the blow with lathi and there is corresponding injury for one alone the court is left with the task of choosing who among the two would have really inflicted the said blow with the lathi. It became a very difficult task ..3/-

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for us, particularly in view of the fact that only one witness has spoken about it. After exercising our mind we thought it more advisable to give benefit of doubt to both the persons.

In the result we allow this appeal and set aside the conviction and sentence passed on the appellants nos A4 - Kanhai Singh and A9 - Bhudeo Mandal. We acquit them and direct them to be set at liberty forthwith unless they are required in any other case.

.SP1

.....J
(K.T. Thomas)

New Delhi
July 31, 2001

.....J
(S.N. Variava)

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ITEM NO. 102 COURT NO. 5 SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G

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