

CASE NO.:
Appeal (crl.) 599 of 2004

PETITIONER:
Meerza Jamshed Baig

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 08/04/2008

BENCH:
B.N. AGRAWAL & G.S. SINGHVI

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.599 OF 2004

Heard learned counsel for the parties.

The sole appellant, along with Meerza Harshad Ali Baig, Meerza Khadar Baig and Meerza Ansar Baig, was tried and by judgment rendered by the Trial Court, accused Meerza Khadar Baig and Meerza Ansar Baig were acquitted, whereas the appellant and Meerza Harshad Ali Baig were convicted under Section 302 of the Indian Penal Code [hereinafter referred to as the 'I.P.C.'] and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- each; in default, to undergo further imprisonment for a period of three months. Against the order of acquittal, the State of Andhra Pradesh filed an appeal before the High Court, whereas both the convicted accused persons, including the appellant, preferred an appeal against their conviction. The High Court dismissed the appeal filed on behalf of the State of Andhra Pradesh and confirmed the order of acquittal, whereas partly allowed the other appeal by acquitting Meerza Harshad Ali Baig of the charge. So far as the appellant is concerned, his conviction under Section 302 I.P.C. has been confirmed. Hence, this appeal by special leave.

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Against the order of acquittal of other three accused persons, the State has not preferred any appeal.

According to the prosecution case and evidence, there were only four accused persons and they indiscriminately assaulted with dagger Shaikh Abdul Azeez, who succumbed to injuries. Dr. L.C. Obulesu [P.W.11] stated that death was caused as a result of cumulative effect of all the injuries. Mohammed Syeed [P.W.1] stated, during the course of cross examination, that the appellant assaulted the deceased on the right shoulder. The doctor in his evidence, has nowhere stated that the injury on the right shoulder, i.e., injury No.1, was a fatal one. As the appellant cannot be said to have inflicted the fatal injury, the High Court was not justified in upholding his conviction under Section 302 I.P.C. The appellant could not have been convicted under Section 302/34 I.P.C., as there was nobody else with whom he could have shared the common intention in view of the fact that there were only four accused persons, out of whom, three persons have been already acquitted. In view of these facts, we are of the view that the High Court was not justified in upholding the conviction of the appellant.

Accordingly, the appeal is allowed, conviction and sentence of the appellant are set aside and he is acquitted of the charge. The appellant, who is in custody, is directed to be released forthwith, if not required in connection with any other case.