

PETITIONER:  
SWARAN SINGH

Vs.

RESPONDENT:  
STATE OF J&K

DATE OF JUDGMENT: 28/07/1998

BENCH:  
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

#### J U D G E M E N T

Nanavati. J.

This appeal arises out of the judgement and order passed by the High Court of Jammu and Kashmir in Criminal Appeal No. 15 of 1985 and Criminal Reference for Confirmation Case No. 15 of 1985.

The appellant - Swaran Singh was tried alongwith Mohinder Singh for causing death of Kesar Singh and injuries to Man Singh. The trial court convicted Mohinder Singh under Section 302 and 307 RPC. Swaran Singh was convicted under Section 302 and 307 both read with Section 109 RPC.

The High Court confirmed the conviction and sentence of both the accused. Both of them then filed Special leave petition in the court. Special leave petition of Mohinder Singh was rejected and only Swaran Singh was granted leave to file an appeal.

The only reason why Swaran Singh has been convicted is that he had exhorted Mohinder Singh to fire his gun and finish Kesar Singh and Man Singh and it was pursuant to this exhortation that Mohinder Singh had fired shots and killed Kesar Singh and injured Man Singh. What is urged by the learned counsel for the appellant is that no eye-witness in his statement before the Police had stated that Swaran Singh had exhorted Mohinder Singh to kill either Kesar Singh or Man Singh. The trial court did not attach any importance to this omission on the ground that it was on a minor point and in spite of it thought it fit to rely upon the evidence of the eye-witness that Swaran Singh had exhorted Mohinder Singh to act like that. The High Court also considered it as a minor omission and agreeing with the trial court confirmed the finding recorded against him.

It is difficult to appreciate how this omission can be regarded as a minor omission. Swaran Singh has been convicted only on the basis of the said exhortation. There is no order evidence to show that he had taken any part in the killing of Kesar Singh and in injuring Man Singh. It was material improvement made by the eye-witness on an important point and this aspect deserved to be given the due weight by both the court below. If really Swaran Singh had exhorted Mohinder Singh like that and then the witness would have

failed to say so in their statements before the police. It is a consistent improvement made by the eye-witnesses while giving their evidence. It was obviously made with a view to make Swaran Singh also responsible for the murder of Kesar Singh and injuries caused to Man Singh. In view of this serious infirmity, their evidence regarding involvement of Swaran Singh ought not to have been accepted.

We, therefore, allow this appeal and set aside the conviction and sentence of Swaran Singh. His bail bonds are ordered to be cancelled.

JUDIS