

NON-REPORTABLEIN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO. 1690 OF 2015

SUBHASH MAHTO

...APPELLANT(S)

VERSUS

THE STATE OF BIHAR

...RESPONDENT(S)

J U D G M E N TR.BANUMATHI, J.

1. The appellant has preferred this appeal being aggrieved by the judgment of the High Court whereby the High Court confirmed the conviction of the appellant under Section 302 IPC and sentence of life imprisonment imposed upon him.

2. On 01.10.1988 at about 10.00 p.m. the complainant -Suresh Kumar while proceeding towards his home took deceased Ramanand Mahto on the scooter along with Ram Briksh Mahto. All of them proceeded to their house. At about 10.30 p.m. to 11.45 p.m., when they reached in front of the tea stall of Lalan Mahto situated at Begampur Mandai Mohalla, accused - Ramachandra Gareri and his father Lachhu Gareri started attacking deceased Ramanand Mahto with Bhujali and Dab respectively. The appellant - Subhash Mahto and others namely, Asmani Mahto, Rishi Mahto, Uma Nath Mahto, Subhash Mahto, Rameshwar Mahto, Bijendra Mahto, Ramroop Mahto, Dukhit Mahto

are alleged to have caught hold of the deceased- Ramanand Mahto and, thereafter, Lachhu Gareri and Ramchandra Gareri chopped the head of the deceased by their weapons. On seeing PW-2 (Ram Briksh Mahto) and PW-1 (Santosh Kumar) coming to the spot of occurrence. The accused persons dragged the headless body and threw nearby ditch. The appellant-accused viz. Subhash Mahto is said to have packed the severed head in a plastic bag and ran away with the accused - Ramachandra Gareri.

3. Based upon evidence of eye witnesses Suresh Kumar (PW-5) and Ram Brikesh Mahto (PW-2), the Trial Court convicted Ramachandra Gareri and Lachhu Gareri under Section 302 IPC and others under Section 302 read with Section 34 IPC and under Section 201 IPC and sentenced them to undergo life imprisonment. In appeal, the High Court gave benefit of doubt to Anant Lal Mahto, Rishi Mahto and Asmani Mahto and confirmed the conviction of the other accused.

4. We have heard Mr. Subhro Sanyal, learned amicus appointed through the Supreme Court Legal Services Committee and Ms. Abha R. Sharma, learned counsel for the respondent-state and also perused the impugned judgment and materials on record.

5. The overt-act attributed to the appellant - Subhash Mahto is that he caught hold of deceased- Ramanand Mahto and that he put severed head of the deceased in a plastic bag and ran away with the accused - Ramachandra Gareri.

6. Learned counsel appearing for the appellant has made meticulous submission contending that the case of Subhash Mahto stood on different footing than the other accused who were alleged to have caught hold of the deceased and, therefore, the case of the Subhash Mahto ought to have been considered differently. In our view, the above contention of the appellant does not merit acceptance. The name of the appellant - Subhash Mahto and the overt-act attributed to him that he caught hold of the deceased has been specifically mentioned in the FIR.

7. In this regard, learned counsel appearing for the State has drawn our attention that the similarly situated accused, namely, Mundrika Mahto, Uma Nath Mahto, Rameshwar Mahto, Bijendra Mahto, Ramroop Mahto, Dukhit Mahto, Lachhu Gareri and Ramachandra Gareri who also caught hold of the deceased have preferred the appeal viz. Criminal Appeal No.701 of 1993 before the Supreme Court and the same was dismissed by this Court by a reasoned order. Learned counsel for the appellant has submitted that Anant Lal Mahto, Rishi Mahto and Asmani Mahto were acquitted by the High Court even though specific overt-act were attributed to them and the appeal preferred by the State of Bihar was dismissed for default by this Court. It was further submitted that when one batch of appeals preferred by one set of accused in which conviction was confirmed and appeals preferred by another set of accused similarly situated were allowed acquitting them, the Court should lean in favour of the accused. We are not inclined to

accept the submissions since criminal appeal preferred by the similarly situated accused was already dismissed by this Court, as noted above.

8. In the result, the appeal is, accordingly, dismissed.

9. We express our appreciation towards valuable assistance rendered by Mr. Subhro Sanyal, learned amicus appearing for the appellant.

.....J.  
[ R. BANUMATHI]

.....J.  
[INDIRA BANERJEE]

NEW DELHI  
19TH SEPTEMBER, 2018