

Dhondey and Others

Vs

The State of U. P.

Criminal Appeal No. 80 of 1971

(K. S. Hegde, A. N. Grover JJ)

07.05.1971

JUDGMENT

HEGDE, J. -

1. The appellants have been convicted under Section 326 read with Section 34 of the Indian Penal Code and for that offence, each one of them has been sentenced to suffer rigorous imprisonment for four years.
2. The prosecution case was that the first appellant who is a Chamar was in the service of Khelari, PW 3, an Ahir. PW 3 developed intimacy with the wife of the first appellant. This was resented by the first appellant. Because of that enmity on January 14, 1967 at about 9.00 p.m. the appellants caught hold of Kamla, the wife of the first appellant and cut her nose. On hearing her cries PW 3 came near the house of the first appellant. The appellant caught hold of him and cut his nose as well.
3. The appellants other than the first appellant denied their presence at the time of the occurrence. According to appellant I when he came back to his house at about 9.00 p.m. on that day he found his wife in the company of PW 3 and on seeing them together, he completely lost his temper, caught hold of both of them and cut their noses. Both the Courts below have come to the conclusion that all the appellant had joined together in cutting the noses of Kamla and Khelari and we agree with that finding. But coming to the circumstance under which their noses were cut, we are more inclined to accept the version given by the first appellant. His version is not only a probable one but is also fully corroborated by the testimony of PW 4 Maula. PW 4 admitted during the course of cross-examination that when he came to the scene of occurrence on hearing cries, he saw both Kamla and Khelari inside the house and they came out from the house sometime later. It is further seen from the evidence that Kamla told him on that night that when she and Khelari were inside her house, the appellants came and cut their noses. Both the Courts below have completely overlooked the significance of the evidence of PW Maula.
4. In the result we partly allow the appeal, set aside the conviction of the appellant under Section 326/34, IPC but convict them under Section 335/34, IPC and sentence each of them to suffer rigorous imprisonment for two years. The appeal is allowed to the extent mentioned above. In other respects it is dismissed.

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