

Dharamvir and Another

Vs

The State of Madhya Pradesh

Criminal Appeal No. 15 of 1970

(H. R. Khanna, A. Alagiriswami JJ)

08.08.1973

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave by two brothers, Dharamvir and Satvir, against the judgment of the Madhya Pradesh High Court, affirming on appeal the conviction of the appellants under Section 325, read with Section 34 Indian Penal Code and the sentence of rigorous imprisonment for a period of one year imposed on each of them. Mangilal and Babulal, who had also been convicted along with the appellants by the trial Court were acquitted by the High Court.

2. The prosecution case is that on September 8, 1967, at about 3 p.m. Head Constable Karar Ahmed of Government Railway Police seized 33 kilograms of opium from the latrine of a first class compartment at Ratlam railway station. Karar Ahmed suspected that the said opium belonged to the two appellants who in the meantime slipped away. Karar Ahmed came the same evening by Janta Express from Ratlam to Nagda in search of the two appellants. As soon as Karar Ahmed got down from the train at Nagda railway station at about 10.20 p.m. it is stated, he was attacked by the two appellants. Satvir gave a first blow on the face of Karar Ahmed, as a result of which one of his lower molars got dislocated. The two appellants at the time of the assault were also accompanied by Mangilal and Babulal. The accused ran away after the assault. Karar Ahmed made a report about the occurrence of Head Constable Ramgopal of Government Railway Police at 10.30 p.m. Karar Ahmed was thereafter got examined from Dr. Shiv Dayal. The doctor found five injuries on the person of Karar Ahmed. One lower last molar tooth was found by the doctor to have been knocked out.

3. Satvir accused, it is further stated, was arrested by Sub-Inspector Sardar Singh at Shamgarh railway station at about 12 midnight when Satvir got down from Janta Express. The other three accused were subsequently arrested.

4. At the trial the plea of the accused appellants was denial simpliciter. According to them, they had been falsely involved in this case. The trial Court and the High Court accepted the prosecution allegation that the two appellants had assaulted Karar Ahmed as a result of which he received grievous injury.

5. We have heard Mr. Nuruddin on behalf of the appellants and are of the opinion that there is no merit in this appeal. Karar Ahmed has deposed that he was assaulted by the two appellants at Nagda railway station as a result of which he lost his molar tooth. The evidence of Karar Ahmed in this respect was accepted by the trial Court as well as by the High Court. Nothing cogent has been

brought to our notice as would justify interference with the appraisal of the evidence.

6. Mr. Nuruddin has urged that Karar Ahmed could not have been in a position to fix the identity of the two appellants. In this respect we find that Karar Ahmed has stated that he was assaulted by the two appellants. The names of the appellants were mentioned by Karar Ahmed in the first information report as those who had been responsible for assaulting him. The fact that Karar Ahmed stated at one place in the course of his deposition that he did not know the appellants and stated at another place that he knew them for about two or three years, would not go to show that Karar Ahmed's evidence was false. The question, which has also been adverted to during arguments of holding an identification parade in which Karar Ahmed might have been called upon to identify the appellants would have arisen only if the names of the appellants had not been mentioned in the first information report. We also see no particular reason as to why Karar Ahmed should falsely involve the two appellants for the assault which was made on him at Nagda railway station.

7. It has then been argued by Mr. Nuruddin that there is no cogent evidence on the record to prove that the opium which had been seized by Karar Ahmed belonged to the appellants. The absence of such an evidence, in our opinion, is not very material for the purpose of the present case. All that we are concerned with in the present case is as to whether the two appellants caused injuries to Karar Ahmed as a result of which his molar tooth was dislocated : The question as to whether the opium belonged to the appellants or not is hardly of any significance for the present case. Another matter to which reference has been made on behalf of the appellants is that in letter page 6 which was sent by Head Constable Ramgopal to the doctor for the medical examination of Karar Ahmed, the names of the appellants were not mentioned. The High Court, it would appear from its judgment, was under the impression that the aforesaid letter contained the names of the two appellants. This fact, in our opinion, does not in any way justify interference with the appraisal of the evidence of Karar Ahmed by the High Court. Ahmed had already given the names of the assailants in the first information report and the fact that their names were not mentioned in the letter sent by Head Constable Ramgopal to the doctor would go to show that the version of Karar Ahmed regarding the actual occurrence is not trustworthy and reliable.

8. There is, in our opinion, no valid ground as may justify interference with the judgment of the High Court. The appeal fails and is dismissed.

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