

Rambachan Hardwar

Vs

The State of Gujarat

Criminal Appeal No. 23 of 1971

(CJI A. N. Ray, V. R. Krishna Iyer, Y. V. Chandrachud JJ)

04.04.1974

JUDGMENT

CHANDRACHUD, J. -

1. The appellant who was Accused No. 3 in the trial Court was put up for trial along with three others for an offence under Section 325 of the Penal Code on the charge that on July 3, 1966 he had assaulted one Gabu with a lathi. The learned Judicial Magistrate, First Class, Kalol, acquitted all the accused but in an appeal filed by the State, the High Court of Gujarat set aside the order of acquittal in regard to the appellant and two others. This appeal by special leave is directed against the judgment of the High Court convicting the appellant under Section 325, Penal Code and sentencing him to imprisonment for one year.

2. The order of acquittal passed by the learned Magistrate was largely based on the supposed contradictions in the evidence of the witnesses examined by the prosecution. The learned Magistrate fell into the error of attaching undue importance to trifling contradictions and in relying on contradictions which were not properly proved. The High Court was therefore justified in undertaking a fresh assessment of the evidence and indeed learned Counsel for the appellant was hardly able to assail the conclusion to which the High Court has come on the basis of that assessment. The evidence of Gabu leaves no doubt that the appellant inflicted several blows on his left hand with a lathi. The evidence of the complaint, Indrasan, and that of Lutawan affords ample corroboration to the evidence of Gabu. The account given of the incident by these three witnesses is fully consistent with the evidence of Dr. Mohanlal who had examined Gabu soon after the incident.

3. The only submission which the learned Counsel for the appellant has been able to pursue is that the appellant had no notice that his appeal would be taken up for hearing by the High Court on any particular date and that the learned Advocate who was appointed by the High Court to appear as an amicus curiae for him had no authority to represent him. This submission stands falsified by the record of the High Court which is before us. On February 15, 1968 the High Court issued a notice to the appellant stating that the appeal filed by the state of Gujarat against the order of acquittal passed in favour of the appellant was admitted by the High Court and that the appeal would be taken up for hearing at any time on or after the 14th day from the date of service of the notice. That notice was served on the appellant on March 8, 1968. The appellant informed the High Court by a writing of even date that he wanted to engage a pleader of his choice. The appellant, however, did not make any arrangement for defending the appeal and therefore the High Court appointed an advocate to appear for him. There is therefore no substance in the contention that the appellant had no notice of the hearing of the appeal in the High Court or that the advocate appointed by the High Court had no authority to appear for him. The authority of the learned Advocate who appeared on behalf of the

appellant cannot be put in issue because, in any event, the High Court was entitled to hear the appeal in the absence of the appellant. He was duly served with the notice of hearing but had failed to appear at the hearing of the appeal. Moreover, to erase any possible apprehension that in appeal the evidence has not been fully appreciated we have gone into the merits but find no ground to disagree with the High Court.

4. We therefore confirm the order of conviction and sentence passed by the High Court and dismiss the appeal.

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