

Nathu and Another

Vs

State of Uttar Pradesh

Criminal Appeal No. 38 of 1973

(N. L. Untwalia, Syed M. Fazal Ali JJ)

11.01.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Allahabad dated March 3, 1970 by which the High Court has upheld the conviction of the appellants Nathu and Swanti under Section 201 of the Indian Penal Code and the sentence of nine months imposed on them. The judgment of the courts below contain the detailed narrative of the prosecution case. It appears that on October 16, 1967 accused Siya Ram, who is not before us, had given a beating to his wife as a result of which she died. Siya Ram was convicted under Section 325 and sentenced to three years' R.I. but his special leave petition was dismissed and leave was granted only to the appellants Nathu and Swanti. The appellants are stated to have carried the dead body of the deceased Mahadevi to the cremation ground for the purpose of cremation. There is absolutely no direct evidence to show that either of the appellants were present at the time when the beating was being given by Siya Ram to his wife. Nor was there any circumstantial evidence to show that Mahadevi had been killed by her husband in the presence of or to the knowledge of the appellants. According to the learned Sessions Judge, the appellants were not even residing in the house of Siya Ram but they were living in the same village. From that alone, the Sessions Judge drew the inference that the appellants must be presumed to have the knowledge that the deceased Mahadevi did not die a natural death. The High Court also came to the same finding while upholding the conviction of the appellants. Before a conviction under Section 201 can be recorded, it must be shown to the satisfaction of the court that the accused knew or had reason to believe that an offence had been committed and having got this knowledge, tried to screen the offender by disposing of the dead body. There is absolutely no evidence in this case to prove that any of the appellants had either any knowledge or reason to believe that any offence was committed in respect of Mahadevi. Merely because they are brothers, it cannot be presumed as a matter of legal proof that they must be deemed to have the knowledge of the murder of Mahadevi by her husband. There must be direct and legal evidence to prove the charge under Section 201 which is wholly wanting in the present case. For these reasons, therefore, we allow the appeal, set aside the conviction and sentences passed against the appellants and acquit them of the charges framed against them. They shall be released forthwith and be discharged from their bail bonds.

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