

Chote Lal and Another

Vs

State of Haryana

Criminal Appeal No. 28 of 1973

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

11.01.1979

JUDGMENT

UNTWALIA, J. -

1. Seventeen named persons were challaned by the police in this case as having committed various offences of assault and abduction. Nine of them were acquitted by the trial Court. Eight were convicted under Sections 325, 323 and 366 with the aid of section 149 of the Indian Penal Code. They were also convicted for rioting. Various sentences were imposed on them. On appeal, the High Court acquitted six more out of the named persons maintaining the conviction of appellant Chote Lal under Sections 325 and 323 simpliciter. It also maintained the conviction of Chote Lal and Hira Lal under Section 366 simpliciter. They have obtained special leave from this Court and hence this appeal.

2. Having appreciated the entire facts and circumstances of this case, we are of the view that the conviction of neither of the appellants on any of the counts can be maintained. The High Court has failed to record any finding which was necessary to be recorded for the purpose of maintaining their conviction under Section 366, Indian Penal Code. By merely finding that they abducted Lajwanti, the charge under Section 366 could not be held to have been proved. It was further necessary to find that they abducted the woman for any of the purposes mentioned in Section 366. In the absence of such a finding that charge fails against both the appellants.

3. So far as the charge against the appellant Chote Lal for assault is concerned, it relates to the causing of grievous hurt on Kishori Lal by a 'Dang' and causing some hurt to his wife by a push. The occurrence related to the dispute which was there between Ajmer Singh, husband of Lajwanti and daughter-in-law of appellant Hira Lal. Ajmer Singh was examined as DW 2 on behalf of the defence. He stated that he went to rescue or take his wife from the custody of Kishori Lal as he did not like that Lajwanti should remain in his company. Since Kishori Lal resisted, he gave 'Dang' blow to him. He also admitted that he caused some injuries to his wife. The High Court failed to consider the evidence of DW 2. In our opinion on the facts of this case, failure of the High Court to consider the evidence of DW 2 has resulted in miscarriage of justice. Coupled with that, the High Court found that Chote Lal had taken part in the Panchayat relating to the dispute between Lajwanti's husband and Kishori Lal but he was not the type of person who had such a grudge against Kishori Lal that he would take a 'Dang' in his hand and cause a fracture of his leg. It was not natural and reasonable to believe the prosecution story that it was Chote Lal alone who caused the injury to Kishori Lal and his wife. We are, therefore, of the opinion that so far as the conviction of Chote Lal for assault is concerned, it was vitiated because of non-consideration of evidence of DW 2 and the other relevant circumstances in favour of Chote Lal. We do not feel persuaded to uphold his

conviction, as in our opinion there seems to be miscarriage of justice in the matter of his conviction under Section 325 and 323 simpliciter.

4. For the reasons stated above, we allow the appeal and set aside the conviction and sentence of both the appellants and acquit them of all the charges. They are discharged from bail bonds.

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