

Babu and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 289 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

16.01.1979

JUDGMENT

FAZAL ALI, J. –

In this appeal by special leave the appellants have been convicted under Sections 302/34, 324/34 and 323/34 and have been sentenced to life imprisonment, one year's rigorous imprisonment and six months' rigorous imprisonment respectively. The High Court as also the Sessions Judge have given a detailed narration of prosecution case which was a result of enmity between the parties. Some litigations were pending between the deceased Jas Karan on one side and the appellants on the other side. It is said that while the deceased was going to court on September 12, 1968 he was surrounded by the appellants on the way and assaulted by them with kantas and lathis. PW 1 who was accompanying him was also assaulted. Defence of the accused was that they had been falsely implicated due to enmity. In support of its case the prosecution examined a number of witnesses of whom the eyewitnesses were PW 1 Badri, PW 3 Tiwari, PW 4 Sita Ram, PW 5 Shri Pal and PW 6 Smt. Shanti. It is true that all these witnesses were to some extent interested and inimical because they belonged to the faction headed by the deceased. But that by itself was no ground to reject their testimony in toto. The High Court rightly observed that in view of the fact that these witnesses were interested, their evidence should be scrutinized with great caution. The High Court, therefore, relied on their evidence since it was corroborated by the dying declaration which was recorded by Dr. Kapur on September 12, 1968 at 11.00 a.m. Unfortunately, however, the doctor who appears to have been transferred immediately after recording dying declaration, forgot to send the dying declaration to the police and it got mixed up his papers. It was only when the case reached the trial stage that the dying declaration was summoned from the doctor, who also appeared and proved its contents. The dying declaration has been attached to the paper book as Annexure 'A'. After perusing it, we are satisfied that this is a very short and straightforward statement which bears a ring of truth. The deceased had received as far as 18 injuries on various parts of the body at the hands of the appellants. In the dying declaration the deceased had named the four appellants as his assailants and had also mentioned that at the time when he was making the statement he was in his senses. The High Court believed the dying declaration. The only challenge to the declaration by the accused was that it was produced for the first time at the trial. The evidence of the doctor has been believed by the High Court and we see no reason to differ from the view taken by the High Court as the doctor was an independent person. The accused made a suggestion that the thumb impression of the deceased appears to have been taken by the police on a blank paper and was converted into a dying declaration. Thus impliedly the defence admitted that the thumb impression on the dying declaration was that of the deceased. Apart from the witnesses who had supported the prosecution case, PW 1 who was himself injured, was a star witness and there was no reason to disbelieve his evidence particularly when it was fully corroborated by the dying declaration. Under these circumstances,

therefore, we are not in a position to ignore it altogether as was contended by the counsel for the appellants. In this view of the matter we find ourselves in complete agreement with the view taken by the High Court. The appeal has no force and is accordingly dismissed.

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