

Raman Kalia and Another

Vs

State of Gujarat

Criminal Appeal No. 183 of 1974

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

31.01.1979

JUDGMENT

FAZAL ALI, J. –

1. The appellants have been convicted under Section 323 IPC and sentenced to nine months' RI by the High Court, which set aside the order of acquittal passed by the trial magistrate on appeal to it by the State. The judgment of the High Court and that of the trial Court, contain a detailed narrative of the prosecution case. On the day of occurrence the complainant Raghia Surji was assaulted by Raman Kalia and Khalpa Kalia in front of the house of Lallu Ram who was also assaulted. It was also alleged that the two accused assaulted Mohan Raghia, the son of the complainant also. The magistrate acquitted the accused on the ground that no sufficient evidence was led before the court. In acquitting the appellant Khalpa Kalia the magistrate was swayed by the circumstance that his name was not at all mentioned in the FIR although FIR was lodged by Raghia Surji who had seen the entire occurrence and still he never indicated in the FIR that the second appellant Khalpa had assaulted anybody. Even the fact that Lallu Ram was assaulted by the appellants was not mentioned in the FIR. Furthermore while the complainant mentioned the presence of his son Mohan Raghia in the FIR, he did not mention that Mohan Raghia was also beaten. In his statement in the court the complainant had categorically stated that the police had recorded the complaint according to what he stated and it was read over to him and signed by him. He also admitted that he had lodged complaint only against Raman Kalia and not against Khalpa Kalia. The High Court appears to have completely overlooked this important circumstance, which was sufficient to throw serious doubt on the truth of the prosecution case, by a bare statement that it was impressed with the evidence given by Lallu Ram and others. At any rate, the very fact that the presence occurrence was not mentioned by the complainant who was a full-fledged eyewitness is sufficient to raise a doubt regarding the complicity of the accused Khalpa Kalia or even Raman Kalia so far as these two persons are concerned and this doubt could not be displaced by the oral evidence of witnesses examined long after the occurrence at the trial. No explanation has been given by the complainant why the name of appellant Khalpa Kalia was not mentioned in the FIR which he tacitly admits. In these circumstances, we are satisfied that the prosecution has not proved the participation of Khalpa Kalia in the occurrence nor it has been proved that Mohan of Lallu Ram were beaten by the appellants. For these reasons, therefore, Khalpa Kalia is entitled to an acquittal. So far as Raman Kalia is concerned there is overwhelming evidence to prove that he had assaulted the complainant Raghia Surji and this fact is mentioned in the FIR and supported by a number of witnesses. The only comment against the witnesses was that they were inimical to the accused but that by itself was not a sufficient ground for rejecting their testimony. Having, however, regard to the injuries sustained by the complainant which were simple in a nature and more or less superficial we think that a sentence of nine months imposed by the High Court errs on the side of severity. We would,

therefore, while upholding the conviction of Raman Kalia under Section 323 IPC reduce the sentence to the period already served, which we understand is about a months and a half. The appellant Raman Kalia will now be discharged from his bail bounds. The appeal of Khalpa Kalia is allowed. His conviction and sentence are set aside and he is acquitted of the charge framed against him. The appellants will now be discharged from the bail bonds.

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