

Manumiya

Vs

State of Gujarat

Criminal Appeal No. 218 of 1974

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

06.02.1979

JUDGMENT

FAZAL ALI, J. –

In this appeal by special leave the appellant has been convicted under Section 333 IPC and sentenced to one year's rigorous imprisonment and a fine of Rs. 500, in default to suffer three months' rigorous imprisonment. We have gone through the judgment of the High Court and have also heard counsel for the parties. Mr. Jethmalani in support of the appeal has argued a point of law before us. He submitted that on the facts recorded by the Sessions Judge, no case under Section 333 has been made out. His contention was that according to the prosecution the appellant had merely tried to enter the bus from the driver's cabin which was not occupied by the driver who was standing near the bus and it has not been proved that the driver in stopping the appellant was acting in discharge of his duties. In our opinion the contention is to be stated only to be rejected. It is not disputed that the appellant tried to trespass into the driver's cabin which was meant for the complainant driver. While driving the bus or even while standing at the bus stand the driver was discharging his duties and if he tried to prevent the appellant from committing trespass by entering into the driver's cabin he was undoubtedly acting in the due discharge of his duties as a driver of the bus belonging to the Transport Department. If despite the attempt of the complainant to stop the appellant from entering the driver's cabin the appellant abused the complainant and gave him a kick which resulted in grievous injury, it cannot be said that Section 333 has no application. It was faintly suggested that this was not a case which ought to have been dismissed by the High Court in limine. Having regard to the clear findings given by the learned Sessions Judge and nature of the evidence we feel that the High Court was fully justified in not entertaining the appeal. For these reasons, therefore, the contention of Mr. Jethmalani is overruled. Lastly, Mr. Jethmalani submitted that a lenient view may be taken on the question of sentence and that the sentence of imprisonment should be set aside. We are, however, unable to agree with this contention fully because the appellant was not only a citizen but a Deputy Sarpanch of the village and as such a public servant and he should have known that he ought not to have interfered with another public servant in the performance of his duties. This, therefore, aggravates the offence committed by the appellant. However, in the circumstances, we feel that the sentence of one year rigorous imprisonment rather errs on the side of severity. We, therefore, reduce the sentence from one year to six months and also remit the fine. With this modification the appeal is dismissed.

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