

Joshu Khan

Vs

State of Assam

Criminal Appeal No. 178 of 1973

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

07.03.1979

JUDGMENT

FAZAL ALI, J. –

This appeal by special leave is directed against a judgment of the Assam High Court by which the acquittal of the appellant by the Sessions Judge was set aside and he has been convicted under Section 304(1) read with Section 149, IPC, and sentenced to RI for five years. There were other accused also, but this Court refused to leave to them. The short point on which the Sessions Judge acquitted the appellant was that there was no reliable evidence to show that the appellant was present at the place of occurrence. The appellant is alleged to have exhorted the other accused to assault the deceased. The learned Sessions Judge refused to accept the case against the appellant because some of the eyewitnesses had not stated in their statement before the police that it was the appellant who exhorted the accused to assault the deceased. The High Court found fault with this line of reasoning on the ground that the statement of witnesses were not properly put to the witnesses. We find that attention of witnesses had been drawn to their previous statements and the provisions of Section 145 of the Evidence Act had been substantially complied with. It appears from the evidence of PW 12 that PW Martuz and PW 1, Lebu Mian had stated before the police that one Chandu Mian had exhorted the accused and they did not mention the name of the appellant. On the basis of these material omissions, the Sessions Judge could have entertained a doubt regarding the participation of the appellant in the occurrence and it could not therefore be said that the view taken by the judgment was legally erroneous or not reasonably possible. Thus, even if the High Court did not agree with the view taken by the judge, that was no ground to reverse the order of acquittal. The Sessions Judge had also relied on the improbabilities of the case against the appellant. Having regard to the old age of the appellant who was about 80 years of age at the time of occurrence and is now about 90 years of age, it was most unlikely that he would have participated in the occurrence when he had his young sons reaping the paddy. For these reasons, therefore, we are not in a position to support the judgment of the High Court. The appeal is allowed and the judgment of the High Court is set aside and the appellant is acquitted of the charges framed against him.

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