

Surajdeo Ojha and Others

Vs

State of Bihar

Criminal Appeal No. 8 of 1974

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

22.03.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, the appellants have been convicted under Sections 326/34 and 326/149 and have been sentenced to R.I. for seven years as modified by the High Court. They were also convicted under Section 148 and sentenced to three years' R.I. We have gone through the judgment of the High Court and that of the Sessions Judge and we do not find any error of law in this case.

2. The central evidence in this case consists of a dying declaration made by the deceased before the Sub-Inspector which has been treated as F.I.R. The dying declaration was made within an hour of the assault when the deceased was fully conscious. Both the Courts below have relied upon the dying declaration and have held that the dying declaration is true. All the appellants are named in the dying declaration and even the witness 1 and 3 have been mentioned clearly as having seen the occurrence, in the said dying declaration. These witness have also been believed by the Courts below.

3. Mr. Mookherjee appearing in support of the appeal submitted that having regard to the large number of injuries sustained by the deceased, he would not be in a position to speak or give dying declaration. We have ourselves examined the injuries and we find that there was no injury which may have affected the brain or the heart and the only serious injuries are on the abdomen which will not make the deceased unconscious immediately. Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself, appears to be the guarantee of its truth. Even the Doctors who examined the deceased do not say, that having regard to the injuries, the deceased would have become unconscious immediately. In this view of the matter we are fully satisfied about the truth of the dying declaration.

4. It was then argued that there was serious enmity between the parties and that is why the appellants have been implicated. The Courts below have fully considered this aspect of the matter and it was probably because of this enmity that the deceased was assaulted. We do not find any merit in this appeal which is dismissed.

</html