

Kailash Prasad Kanodia and Another

Vs

State of Bihar

Criminal Appeal No. 385 of 1974

(Syed M. Fazal Ali, P. S. Kailasam JJ)

25.04.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, which is directed against the judgment of the Patna High Court, appellant 1, Kailash Prasad Kanodia has been convicted under Section 302 and sentenced to imprisonment for life. Appellant 2, Gatru Mal Kanodia has been convicted under Section 326 and has been sentenced to three years' RI. A detailed narrative of the prosecution case is to be found in the judgment of the High Court and it is not necessary for us to repeat the same all over again.

2. The High Court as well as the Sessions Judge have accepted the prosecution case and have affirmed the conviction of the appellants as indicated above. The only point that was urged before us by Mr. Mukherjee and Mr. Kohli appearing for the appellants, was that the entire case must fail because the statements recorded by the Officer-in-Charge D. P. Sharma (PW 19) on a rough piece of paper were not made available to the appellant at the trial which has caused serious prejudice to them. The High Court as well as the Sessions Judge considered this aspect of the matter and found that this infirmity was not sufficient to vitiate the trial. The prosecution has examined PWs. 4, 7, 10 and 12 the eyewitness of the occurrence. So far as PW 12 is concerned, he was the informant and lodged the FIR within minutes of the occurrence at the police station which is about 200 yard away from the place of occurrence. So far as the said eyewitnesses are concerned, there is no doubt that PW D. P. Sharma himself admitted that when he arrived at the place of occurrence, he recorded the statements of eyewitnesses but did not make part of the diary. This was a serious lapse on his part resulting in his immediate suspension followed by a department enquiry. It was contended by Mr. Mukherjee that if the earlier statements would have been available to the appellant, they would have shown that the true version of the occurrence was not presented before the court. Even so, we have excluded the evidence of the other eyewitnesses excepting PWs 7 and 12 and we find that there was ample evidence on record to justify the conviction of the appellants. PW 12 has clearly stated in the FIR that his father was assaulted with a bhala on the chest by the first appellant and his brother was given a blow by the second appellant. His evidence is fully corroborated by the evidence of PW 7 Bishwanath and the medical evidence fully supports his testimony. To some extent the evidence of these two witnesses is further supported by Shyam Lal Kanodia PW 2 who had also reached the police station soon after the FIR was lodged. In this view of the matter, the judgment of the courts below can be fully supported on the evidence of these witnesses even assuming that the comments made by the learned counsel for the appellants against the prosecution are correct. We have ourselves perused the statements of the two witnesses PWs 7 and 12 and are fully convinced that their testimony bears a ring of truth and is worthy of credence.

3. The next point argued by Mr. Kohli is that so far as the second appellant is concerned, the charge under Section 326 has not been proved. It appears from the medical evidence that PW Bishwanath did not sustain any grievous injury. He has not received any serious injuries on any vital part of the body. The doctor admits that he did not find any fracture of a serious nature. In these circumstances, we are satisfied that the charge under Section 326 must necessarily fail but the appellant 2 cannot escape conviction under Section 324, IPC as that has been fully proved. Having regard to the peculiar facts circumstances of this case, we do not think that this is a fit case in which the second appellant should be convicted and awarded jail sentence. We, therefore, set aside the sentence of imprisonment passed under Section 326 and convict the second appellant under Section 324 and impose a fine of Rs. 2000 in default one month's RI. Out of the fine if realized the entire amount will be paid to PW Bishwanath as compensation. Two months time is allowed for the amount to be paid as fine. With this modification, the appeal is dismissed. The bail bonds of the second appellant will be discharge only after the fine is deposited. So far as the first appellant is concerned, he must now surrender and serve out his sentence.

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