

Mahadeo and Others

Vs

State of Maharashtra

Criminal Appeal No. 348 of 1974

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

26.04.1979

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, the appellants have been convicted under Section 302/34 IPC for having caused the murder of one Shanker Khond. 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 reproduce the same here.

2. The High Court has based the conviction of the appellants on the uncorroborated testimony of a single witness, namely, C. W. Markande. We have gone through his evidence and we are not at all impressed with his statement. Evidently, the witness kept quiet for about six months and did not disclose the incident to anybody. The excuse he puts forward is that he was threatened by the accused persons not to disclose what he had seen. Apart from that even from his evidence, it appears that he has made wholly discrepant statements which are irreconcilable. Having regard to the number of infirmities appearing in his evidence, we find it wholly unsafe to found the conviction of the accused on the single testimony of markande. We might mention that before the committing Court, the witness was declared hostile by the prosecution and thus the prosecution did not choose to rely upon him in support of the prosecution case. In the Sessions Court, he was not examined as a witness, but was later called as a court witness. In these circumstances, therefore, his testimony does not inspire much confidence. Mr. Bhandare drew our attention to a report given by one of the witnesses, Mahadeo, stating that the deceased had gone into the well but did not come out. This report was in the nature of an admission and if taken as a whole, it does not incriminate the appellants at all.

3. Thus, the position is that there is no legal evidence on the basis of which the appellants can be convicted. For these reasons, therefore, the appeal is allowed. The conviction and sentence passed on the appellants are set aside and they are acquitted of the charges framed against them.

4. The appellants will now be discharged from their bail bonds.

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