

State of Bihar

Vs

Brahmdeo Prasad and Others

Criminal Appeal No. 264 of 1973

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

16.01.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Patna High Court dated March 13, 1973 acquitting the respondents of the charges framed against them.
2. The respondents were convicted by the 3rd Additional Sessions Judge, Patna under Section 302/149 Indian Penal Code and also other sections of IPC. As the Sessions Judge had sentenced Brahmdeo Prasad and Hari Lal Prasad to death, a reference was made to the High Court for the confirmation of the sentence of death.
3. The facts of the case have been detailed in the judgment of the High Court and it is not necessary to repeat the same.
4. Mr. D. P. Singh, counsel appearing for the State took us through the judgment of the High Court as also through the evidence of the main identifying witnesses. The High Court has detailed the infirmities which were found in the identification of the accused and has acquitted the respondents mainly on the ground that the identification of the accused was not free from doubt. Admittedly the occurrence took place during night and all the identifying witnesses appeared to have seen the accused from quite a long distance. Some of them did not know the accused and identified them in the court for the first time. Other witnesses who knew the accused did not disclose their names before the S.D.O. at the first opportunity. There were other set of witnesses who failed to identify the respondents at a T. I. Parade and identified them for the first time by face in the court. The High Court has in a very scientific fashion categorised the identification of witnesses and given cogent reasons for not acting upon the identification of witnesses. Although Mr. Singh argued the case with great vehemence, yet after going through the judgment of the High Court and Sessions Judge, we are satisfied that it cannot be said in the circumstances that the view taken by the High Court was not reasonably possible. In fact, on the other hand, we find ourselves in complete agreement with the view taken by the High Court in the facts and circumstances of the case.
5. In the above circumstances the appeal fails and is therefore dismissed.

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