

Kuleshwar

Vs

State of U. P.

Criminal Appeal No. 262 of 1972

(Syed M. Fazal Ali, O Chinnappa Reddy JJ)

28.02.1980

JUDGMENT

FAZAL ALI, J. –

1. In this appeal by special leave, the appellant has been convicted under Sections 304/149, 323/149, 324/149, 325/149 and 147, IPC and has been sentenced to 10 years' R.I. and various other terms. The prosecution case has been fully described in the judgment of the Courts below and it is not necessary for us to reiterate the same. The High Court has disbelieved the entire prosecution case and acquitted all the accused and convicted the appellant mainly because he appears to have sustained some injuries in the course of occurrence. In this connection the High Court's finding is as follows :

This clearly shows that all the prosecution witnesses who have been examined as eye witnesses went out of their way to support the prosecution case by trying to prove in the Court of Session that Dharmnath was mentioned as Kalapnath by mistake in the first information report. None of the prosecution witnesses, is a reliable witness and it is apparent that the prosecution tried to implicate falsely persons who did not take part in the incident.

2. It would appear from the finding of the High Court that all the prosecution witnesses have been disbelieved. The very basis of the prosecution case is disproved and there is no evidence to convict the appellant. The mere presence of injuries on the person of Kuleshwar would not prove his presence and unless the evidence shows the exact circumstances under which he received the injuries, he cannot be convicted. For these reasons, therefore. On the findings of fact arrived at by the High Court the logical conclusion that follows is that the appellant must be acquitted. Accordingly, the appeal is allowed and the conviction and sentence passed on the appellant are set aside and he is acquitted of the charges framed against him.

</html