

Shakti Patra and Another

Vs

State of West Bengal

Criminal Appeal No. 110 of 1975

(Syed M. Fazal Ali, Baharul Islam, A. Varadarajan JJ)

25.03.1981

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the Calcutta High Court affirming the conviction of the appellants under Sections 148 and 307/149, Indian Penal Code. The appellants were convicted under Sections 307/149 and sentenced to rigorous imprisonment for six years each and on the charge under Section 148 were sentenced to rigorous imprisonment for one year.

2. We have heard counsel for the parties and have gone through the judgment of the High Court. Both the High Court and the trial Court have concurrently found that Dakshaja Mondal (PW 1) and Girija Mondal (PW 2) had correctly identified the appellants in the light of the torch held by PW 1. The evidence of these two witnesses is corroborated by the evidence of witnesses PWs 3, 4 and 5 to whom the witnesses disclosed the names of the appellants.

3. The only point argued before us is that as there is no mention of the torchlight in the FIR or in the statements of the witnesses before the police the presence of torch was not proved hence it would not have been possible to identify the appellants. Even if this omission is there it loses its significance in view of the direct testimony of PWs 3, 4 and 7 who state that when they reached the spot they found the torch burning which clearly shows that the version of PW 1 that he had a torch with him in the light of which he had identified the appellants is correct.

4. We therefore see no merit in the contention of the counsel for the appellants and dismiss the appeal. The bail of the appellants is cancelled and they are directed to be taken into custody to serve out the remaining portion of their sentence.

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