

Sudhir and Another

Vs

State of Madhya Pradesh

Criminal Appeal No. 304 of 1977

(CJI Y. V. Chandrachud, V. B. Eradi JJ)

24.01.1985

JUDGMENT

1. Five persons were tried by the learned Third Additional Session Judge, Bilaspur, M.P. under Section 307 read with Section 149 of the Penal Code. The learned Judge acquitted three out of them, namely, Premlal, Sadan and George Martin. The order of acquittal has become final. The other two, Sudhir and Amrit, who are the appellants in the appeal were convicted under Section 326 of the Penal Code and were sentenced to rigorous imprisonment for two years. The order of conviction and sentence has been confirmed in appeal by the High Court.

2. As observed by the High Court, the case against the appellants depends wholly upon the evidence of the complainant Kamal. The case of the prosecution is that on July 19, 1975 at about 6.30 p.m. Kamal was assaulted by the appellants while he was going to a pan shop. The allegation is that appellant 1 Sudhir caused two stab injuries with a knife to Kamal, one on the right scapula and the other on the lower back, while appellant 2 Amrit assaulted Kamal with a danda. Having seen the evidence of Kamal and having regard to his conduct immediately after the incident, it seems to us difficult to accept his testimony and on the basis of that testimony to uphold the conviction of the appellants.

3. Immediately after the assault Kamal went to a police station but, according to his own admission, though enquiries were made of him at the police station as to what had happened to him and how he came to receive the injuries, he did not tell the police as to who assaulted him. A few hours thereafter, he lodged his first information report which is described in the proceedings as a 'village complaint'. The story narrated by him in the FIR is that the appellants and one of the other three accused, namely, Premlal, came from behind; that appellant 1 stabbed him on his back two times; and that, appellant 2 and Premlal assaulted him with a danda. The evidence of the doctor shows that there were no injuries on Kamal's person which could be caused by a danda. In fact, Kamal admitted in his evidence that appellant 2 did not beat him with a danda and that he had only beaten him with fists. Kamal has also stated in his evidence, which is contrary to his statement in the FIR, that he had not seen as to which of the accused persons had caused the knife injuries to him. He gave a plausible explanation of his inability to identify his assailants by saying that since injuries were caused to him from behind, he could not identify the persons who caused those injuries. Surprisingly, Kamal virtually jettisoned the FIR by saying that he had stated that two persons were armed with knives while two others had lathis. He admitted that he had not mentioned their names in the FIR, and that, all that he had disclosed when the FIR was recorded was that he was assaulted with a knife.

4. In view of these infirmities in the evidence of Kamal, whose testimony alone could sustain the

conviction of the appellants, the appeal has to be allowed and the order of conviction and sentence in regard to both the appellants has to be set aside. The bail bonds of the appellants are cancelled.

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