

Ramesh

Vs

State of U.P

Criminal Appeal No. 26 of 1980

(Kuldip Singh, R.M. Sahai JJ)

29.11.1991

JUDGEMENT

R. M SAHAI, J.:-

1. The appellant along with two others was tried and convicted under Section 307 / 34, Penal Code and sentenced to undergo rigorous imprisonment for four years. The other two were acquitted by the High Court.

2. The incident took place at 10.00 p.m. on 4th December 1973. Enmity between appellant and complainant is found established. Prosecution relied on evidence of the injured, his father and a family friend Budh Singh examined as P.W. 4. The trial Judge did not attach much weight to the evidence of Bharat Singh, P.W. 3, father of the injured. The conviction was, mainly, based on testimony of Budh Singh, P.W. 4. The High Court while appreciating the evidence of Budh Singh observed that in cross-examination he admitted that the complainant did not disclose any name, immediately. He even could not disclose whether they were known persons or outsiders. But later on he gave out the name of the accused.

3. The learned, counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution that the complainant was, bitten by Jagat Singh and there being no injury of hitting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal-Code. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs. 3,000/- as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged. Appeal allowed partly.

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