

Omkar Namdeo Jadhao and Others

Vs

Second Additional Sessions Judge, Buldana and Another

Criminal Appeal No. 36 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

04.01.1996

ORDER

1. Leave granted.

2. In this case we are concerned with the notice issued by the Second Additional Sessions Judge, Buldana, on 3-12-1990 to the appellants for prosecution under Sections 194 and 195, IPC for alleged fabrication of the record and setting up a case said to be false against two ladies, Jamman and Laxmi said to be aged about 60 and 80 years respectively. The Additional Sessions Judge had stated that they are infirm persons; unable to walk and stand without the support of others. Consequently, it would be difficult to believe the version of the police that they pelted stones and kicked the police officers while the latter were discharging official duty in apprehending Latur Hasan. While setting aside the charges framed against them, notice was issued under Section 340, CrPC for prosecution of the appellants under Sections 194 and 195, IPC.

3. It is seen that the observation made by the Sessions Judge, as confirmed by the Bombay High Court, Nagpur Bench in the impugned judgment dated 10-3-1992 made in Criminal Application No. 20 of 1991 is based on Section 161 statements recorded during the investigation. Admittedly, no evidence has been recorded. The court should not come to the conclusion on the basis of Section 161 statements which are not evidence. It can be used at the trial only for contradictions or omissions when the witness was examined. Nor could it be contradicted by looking at the physical features of the accused even before they are examined. The Additional Sessions Judge had discharged them concluding that the police officers had fabricated the record. It would appear that the learned Sessions Judge had overstepped his jurisdiction in recording a finding, while looking at the physical features of the accused, that the police had fabricated the record. The High Court has also not properly considered the matter while going into the question regarding discharge of the accused for other offences. Under these circumstances, we hold that in view of the finding recorded by the Sessions Judge of fabrication of the record and that the case is a false one, issuance of notice under Section 340, CrPC is wholly unjustified. The said order of the Sessions Judge is accordingly quashed.

4. The appeal is accordingly allowed.