

## **Dalla Singh And Ors. vs The State on 18 June, 1952**

**Equivalent citations: AIR1952ALL941, AIR 1952 ALLAHABAD 941**

ORDER

Beg, J.

1. This is a revision on behalf of three applicants, namely Dalla Singh, Ujagar Singh and Purai Singh who have been convicted under Sections 147 and 325, Penal Code, by the learned Additional Sessions Judge of Hardoi. Under the former section each of them has been sentenced to pay a fine of Rs. 25 or in default to undergo 2 months' R. I. Under the latter section each of them has been sentenced to imprisonment till the rising of the Court and to pay a fine of Rs. 40 or in default to undergo 3 months' R. I.

2. The prosecution case was that one Amar Nath, a Brahman of village Asa, was assaulted on 1-6-1950, at about 11 A. M. in village Asa by the three persons mentioned above. Two other persons named Hori and Pancham are also alleged to have arrived on the scene and incited the three applicants mentioned above to beat Amar Nath. Pancham and Hori were also convicted by the trial Court but they were acquitted in appeal by the lower Court.

3. The learned counsel for the applicants has argued that conviction of the applicants is unsustainable in law in view of the acquittal of the two accused, namely Hori and Pancham. It may be observed that in the present case there is no evidence that any other person participated in the assault or was a member of the unlawful assembly which was concerned in the offence for which the applicants have been convicted. Under the circumstances, as a consequence of the acquittal of Hori and Pancham the conviction of the applicants under Section 147, Penal Code, cannot stand. The finding of the lower Court that the case against Hori and Pancham is doubtful necessarily leads to the conclusion that so far as a Court of law is concerned it would have to be accepted that there were only three persons that participated in the offence. It would have been otherwise if the evidence of the prosecution was that there were some other unidentified persons who were acting along with the aforesaid applicants with the result that the total number of persons participating in the offence exceeded five. In *Ram Rup v. Emperor*, 1944 ALL. L. J. 447 seven persons were put on trial before the Sessions Judge for offences under Sections 147 and 323 read with Section 149, Penal Code. The Sessions Judge acquitted five persons giving them the benefit of doubt and convicted the remaining two. It was held that the remaining two persons could not be convicted under Section 147.

4. So far as the conviction under Section 323, Penal Code, is concerned, the evidence in the present case is that all the applicants participated in the assault and the conviction under this section must, therefore, be upheld. The learned counsel for the applicants contended that there was no charge

against the accused for having committed an offence under Section 325 read with Section 34, Penal Code. They were only charged under Section 325 read with Section 149, Penal Code. It seems to me, however, that in view of the evidence in the case and the finding arrived at by the Court, it is open to the Court to alter the conviction from Section 325 read with Section 149 to that under Section 325, read with Section 34, Penal Code, where such alteration does not cause any prejudice to the accused. This view is supported by a ruling reported in Sheo Ram v. Emperor, A. I. R. 1948 ALL. 162.

5. I accordingly allow this application to this extent that the conviction of the accused under Section 147, Penal Code, is set aside and the fine of Rs. 25, if paid by them, shall be refunded. So far as their conviction under Section 325, Penal Code, is concerned, their revision application is dismissed and the sentences passed against them under that section are maintained.