

## **Abdur Rashid Khan And Ors. vs The State on 14 April, 1952**

**Equivalent citations: AIR1953ALL315, AIR 1953 ALLAHABAD 315**

ORDER

Kidwai, J.

1. At about 5 P.M., on 25-3-1951, an incident took place as a result of the cutting of the branch of the tamarind tree which resulted in injuries being caused to Suleman. A report was made of the incident the next day at the kotwali Eae Bareilly. After investigations the applicants and eight other persons were prosecuted under Sections 147 and 323 read with Section 149, Penal Code. The applicants were, however, convicted by the Magistrate and the other eight persons were acquitted. The applicants appealed but the learned Sessions Judge upheld their conviction. They have come up in revision.

2. The first point taken is that the evidence produced on behalf of the prosecution is partisan and should not be believed. The evidence has been believed by the two Courts. The mere fact that it is partisan does not mean that it is perjured and even partisans may deliver the truth on oath. The Courts below having believed the evidence and there being nothing inherently improbable in the acceptance of that evidence I cannot interfere in revision.

3. It was contended also in this connection that the defence evidence should have been believed. The defence evidence related to Wahab being attacked and Wahab going to the place first of all. The Courts below have rejected this evidence and have held that Wahab went there later and was not there at all at the beginning of the incident. It is on this ground that Wahab has been acquitted. Wahab having been acquitted and the defence evidence rejected it cannot be of any avail to the applicants.

4. The next contention was that at any rate the conviction both under Sections 147 and 323 read with Section 149, Penal Code, is illegal. This contention must prevail. None of the applicants have been convicted for themselves causing any injuries under Section 323, Penal Code. Their conviction under Section 323, Penal Code, is by reason of the application of Section 149, Penal Code, that is to say because they were members of an unlawful assembly. It is not their individual act for which they have been convicted under Section 323, Penal Code, but for the act of some member of the unlawful assembly of which they were the members. Their punishment, therefore, depends upon their being members of an unlawful assembly and their having committed a riot in the course of which some one or more of them caused simple injuries. Their conviction under Section 147, Penal Code, also depends upon these very facts. They cannot, therefore, be punished twice over in respect of facts which taken together constitute one offence, vide *Baldeo Singh v. Emperor*, A. I. R. 1940 Nag. 120 at pp. 122 and 123. The conviction of the applicants under Section 323 read with Section 149, Penal Code, must, therefore, be set aside.

5. I accordingly modify the order of the Court below by upholding the conviction and the sentence passed upon the accused under Section 147, Penal Code, and setting aside the conviction of the accused under Sections 323/149, Penal Code, and the sentence passed under those sections.