

Kailash Prasad Kanodia And Anr. vs State Of Bihar on 25 April, 1979

Equivalent citations: AIR1980SC106, 1980CRILJ190, 1980SUPP(1)SCC372, AIR 1980 SUPREME COURT 106, (1982) PAT LJR 14, 1981 SCC (CRI) 285, 1976 CRILR(SC MAH GUJ) 522

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Bench: P.S. Kailasam, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. In this appeal by special leave, which is directed against the judgment of the Patna High Court, the appellant No. 1, Kailash Prasad Kanodia has been convicted under Section 302 and sentenced to imprisonment for life. Appellant No. 2, Gatri Mal Kanodia has been convicted under Section 326 and has been sentenced to three years R.I. A detailed narrative of the prosecution case is to be found in the judgment of the High Court and it is not necessary for us to repeat the same all over again.

2. The High Court as well as the Sessions Judge have accepted the prosecution case and have affirmed the conviction of the appellants as indicated above. The only point that was urged before us by Mr. Mukherjee and Mr. Kohli appearing for the appellants, was that the entire case must fail because the statements recorded by the Officer In-charge D. P. Sharma (P.W. 12) on a rough piece of paper were not made available to the appellant at the trial which has caused serious prejudice to them. The High Court as well as the Sessions Judge considered this aspect of the matter and found that this infirmity was not sufficient to vitiate the trial. The prosecution has examined P.Ws. 4, 7, 10 and 12, the eye-witnesses of the occurrence. So far as P.W. 12 is concerned, he was the informant and lodged the F.I.R. within minutes of the occurrence at the Police Station which is about 200 yards away from the place of occurrence. So far as the said eye-witnesses are concerned, there is no doubt that P.W., D.P. Sharma himself admitted that when he arrived at the place of occurrence, he recorded the statements of eye-witnesses but did not make it a part of the diary. This was a serious lapse on his part resulting in his immediate suspension followed by a departmental enquiry. It was contended by Mr. Mukherjee that if the earlier statements would have been available to the appellant, they would have shown that the true version of the occurrence was not presented before the Court. Even so, we have excluded the evidence of the other eye-witnesses excepting P.Ws. 7 and 12 and we find that there was ample evidence on record to justify the conviction of the appellants. P.W. 12 has clearly stated in the F.I.R. that his father was assaulted with a bhala on the chest by the first appellant and his brother was given a blow by the second appellant. His evidence is fully

corroborated by the evidence of P.W. 7 Vishwanath and the medical evidence fully supports his testimony. To some extent the evidence of these two witnesses is further supported by Lal Kanodia P.W. 2 who had also reached the Police Station soon after the F.I.R. was lodged. In this view of the matter, the judgment of the Courts below can be fully supported on the evidence of these witnesses even assuming that the comments made by the learned Counsel for the appellants against the prosecution are correct We have ourselves perused the statements of the two witnesses P.W. 7 and 12 and are fully convinced that their testimony bears a ring of truth and is worthy of credence.

3. The next point argued by Mr. Kohli is that so far as the second appellant is concerned, the charge under Section 326 has not been proved. It appeared from the medical evidence that P.W. Bishwanath did not sustain any grievous injury. He has not received any serious injuries on any vital part of the body. The Doctor admits that he did not find any fracture of a serious nature. In these circumstances, we are satisfied that the charge under Section 326 must necessarily fail but the appellant No. 2 cannot escape conviction under Section 374, I.P.C. as that has been fully proved. Having regard to the peculiar facts and circumstances of this case, we do not think that this is a fit case in which the second appellant should be convicted and awarded jail sentence. We, therefore, set aside the sentence of imprisonment passed under Section 326 and convict the second appellant under Section 324 and impose a fine of Rs. 2,000 in default one month's R.I. Out of the fine if realized the entire amount will be paid to P.W. Bishwanath as compensation. Two months' time is allowed for the amount to be paid as fine. With this modification, the appeal is dismissed. The bail bonds of the second appellant will be discharged only after the fine is deposited. So far as the first appellant is concerned, he must now surrender and serve out his sentence.