

Dhalamani Singh Vs. Jerman Singh and ors.

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Court : Guwahati

Decided On : Feb-09-1973

Judge : D.M. Sen and B. Islam, JJ.

Appellant : Dhalamani Singh

Respondent : Jerman Singh and ors.

Judgement :

Baharul Islam, J.

1. This appeal by the complainant is directed against the judgment of a Magistrate acquitting the four respondents of their charges under Sections 447 and 323 of the IPC
2. The prosecution case is that on 22-10-1968 the respondents committed criminal trespass into the homestead of the complainant and assaulted him with lathis out of previous grudge. He sustained bleeding injuries on various parts of his person.
3. The complainant examined himself and three other witnesses. P. W. 1 is the complainant himself. In his deposition he has stated that the respondents went to his home and respondent No. 1, Jerman Singh, gave him strokes with a lathi on his person causing bleeding injuries and as he shouted the other accused persons could not come to assault him. He had, however, stated in the complaint petition that all the respondents trespassed into his homestead together and assaulted

him.

P. W. 2 in his deposition stated that hearing shouts he came running to the place of occurrence from his home which was at a little distance and saw respondent No. 1 assaulting the complainant with a bamboo lathi in the courtyard of the complainant. In cross-examination he has stated that the complainant and the accused-persons were beating one another.

The complainant cited four witnesses in the complaint petition but of them, he has examined only P. W. 2 and did not examine the other three. On the other hand, P. Ws. 3 and 4 were not cited in the complaint petition. P. W. 3 in cross-examination admits that in a previous case respondent No. 1 gave evidence against him. It can, therefore, be seen that he could be easily invited by the complainant to depose against respondent No. 1. P. W. 4 does not appear to be an eye witness. He deposes that the complainant reported to him that respondent No. 1 had assaulted him in his house.

4. It is, therefore, quite clear that there is absolutely no case against respondents Nos. 2, 3 and 4 either under Section 447 or 323 of the IPC and the appeal against them is absolutely unwarranted.

5. The learned Magistrate has disbelieved P. Ws. 3 and 4 as they were not cited in the complaint petition. He has also refused to accept their evidence in view of a number of discrepancies in their evidence and evidence of P. Ws. 1 and 2 and refused to convict the respondents on such testimony of the prosecution witnesses.

6. The law is well settled that in an appeal against acquittal the original presumption of innocence of the accused continues. It is rather re-inforced by the order of acquittal but not weakened. In an appeal against acquittal, the whole case is at large and the High Court has full powers to review the entire evidence before it; the burden is upon the appellant to show that the view taken by the Magistrate of the evidence before him and his order of acquittal are unsustainable. The High Court as original Court, or another Magistrate, might have taken a different view, but that itself is not a sufficient ground for the High Court to set aside an order of

acquittal. The appellant is to show that the order of acquittal is not sustainable. In the instant case we are not satisfied that the order of acquittal passed by the learned Magistrate is not sustainable. On the contrary the assessment of the evidence before him and the view taken by him are warranted by the evidence on record.

7. In the result, this appeal has no substance and is dismissed.

D.M. Sen, J.

8. I agree.

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