

Sljbash Chander Vs. State

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Court : Delhi

Decided On : Aug-08-1968

Reported in : 4(1968)DLT549

Judge : I.D. Dua, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439

Appeal No. : Criminal Revision Appeal No. 87D of 1966

Appellant : Sljbash Chander

Respondent : State

Advocate for Pet/Ap. : M.S. Joshi,; K.N. Chitkara and; V.D. Misra, Advs

Judgement :

I.D. Dua, J.

(1) Subhash Chander (Petitioner in this Court) and his fether Prem Narain were tried for offences under sections 325/451 read with section 34 I P.C. Prem Narain was alleged to have caught hold of Suresh Chander complainant P W. land Subhash Chander is alleged to have hit Suresh Chander with his head, thereby breaking Suresh Chander's nasal bone and thus causing him grievous hurt. The learned Magistrate in a detailed order discussed the main relevant evidence and held bttoh the accused poisons guilty under section 325/34 and section 451/34, I. P

C.. convicting them under these sections and sentenced them to pay a fine of Rs. 250.00 each on both the counts or in default of payments of fine, to undergo rigorous imprisonment for two months. This order was made on 18th October, 1965.

(2) On an appeal having been preferred to the Court of the learned Sessions Judge, Sri M. S. Joshi, Additional Sessions Judge, after hearing the parties, gave to Sri Prem Narain benefit of doubt and acquitted him. The conviction of Subash Chander and the sentence of fine imposed on him were maintained under section 325, 1. P. C. The complainant's application for enhancement of sentence was declined. The learned Additional Sessions Judge agreed with the trial Court in rejecting the testimony of the defense witnesses, and indeed described their evidence as biased. The statements of Amba Parshad and Avtar Kishan, who were described to be absolutely independent witnesses, was given preference over the testimony of Sham Lal and Brij Bihari.

(3) On revision before me, Sri K.N. Chitkara, the learned counsel for the accused Subhash Chander, has argued in the first instance that the acquittal of Prem Narain must automatically, and as a matter of law, entail acquittal of his son Subhash Chander as well. I am unable to agree with this broad and sweeping proposition of law. It may be recalled that Prem Narain has been allocated the role of having caught hold of Suresh Chander from behind when Subhash Chander hit him on the nose with his head. The X' ray examination revealed the fracture of Suresh Chander's nasal bone. In these circumstances if Prem Narain has been given the benefit of doubt, it cannot as a matter of law, be argued that Subhash Chander must also necessarily be acquitted. I am not aware of any principle of law on which such a submission can be sustained.

(4) The Petitioner's learned counsel then submitted that the first information report contained a different version from the one developed in Court. After hearing the learned counsel, I do not think it is possible to sustain this contention. The story is substantially same and on the basis of the first information report, the story, as given in Court, cannot be held to be unreliable.

(5) It has been next argued that the testimony of Public Witness 2 Tara Chand supports the defense version. I gave to the learned counsel the Court record to read the testimony of this witness as he had not the complete record with him. He has, however, not been able to make out a case which would justify acceptance of the defense version which has been rejected by both the Courts below. The statement of Public Witness 2 does not, in my view, support the defense version. On the contrary, this witness expressly states that Subhash Chander accused struck with his head on the nose of Public Witness 1 which began bleeding. It is not understood how this testimony can be held to support the defense version, according to which Suresh Chander is alleged to have tried to strike with his head, but having missed the target, his nose collided with the shoulder of the accused. Lastly, the learned counsel has urged that there are injuries on the accused persons and those injuries having not been explained, the prosecution story must be held to be unacceptable. Here again it is not possible to agree with the learned counsel. In such affrays, some injuries may possibly be sustained by all those who are involved in it, but merely for this reason, this Court of revision would hardly be justified in rejecting the ocular testimony which has been accepted by the two Courts below.

(6) The argument that the Court of revision must for itself go through the entire evidence to see whether the prosecution has actually discharged the onus of establishing the guilt of the accused beyond the possibility of a reasonable doubt, does not mean that the Court of revision must act as a trial Court or as a Court of Appeal. Acceptance of the prosecution evidence by the two courts below is an important factor and the court of revision does not lightly ignore and set apart the valuation of the two Courts below for the purpose of itself weighing the entire evidence as an original Court of trial or even as a Court of Appeal.

(7) The Petitioner's learned counsel has undoubtedly cited certain passages from some decided cases in support of his various submissions, but I have not dealt with those decisions because isolated passages from reported cases are of little guidance, and indeed may sometime tend to mislead. Facts in all those cases were material different and the observations taken in their own context do not support any one of the submissions made on behalf of the petitioner.

(8) For the reasons foregoing, this revision falls and is dismissed.

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