

Mulla Singh and ors. Vs. the State

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Court : Allahabad

Decided On : Mar-02-1966

Reported in : AIR1968All132; 1968CriLJ435

Judge : G.D. Sahgal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 54(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 149, 234, 332 and 426

Appeal No. : Criminal Appeal No. 655 of 1964

Appellant : Mulla Singh and ors.

Respondent : The State

Advocate for Def. : K.N. Kapoor, Adv.

Advocate for Pet/Ap. : S.C. Das, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

G.D. Sahgal, J.

1. Mulla Singh, Bhabhuti Singh, son of Lalita Singh, Ram Bharosey Singh, Mangal Rai. Badri Bhurji. Debi, Ganga Prasad, Jagmohan, Bhabhuti Singh son of

Himanchal Ram Charan. Prahlad Singh. Sriram. Surian Singh, Moti and Nanha have all been convicted by the IInd Additional Sessions Judge of Unnao of an offence under Section 147 Indian Penal Code i.e. rioting and have each been sentenced to rigorous imprisonment for a period of one year Out of them Moti has been convicted of an offence under Section 234 of the Indian Penal Code i.e. for resisting or obstructing his lawful apprehension and sentenced to one year's rigorous imprisonment. The other appellants except Moti have been convicted of an offence under Section 225 of the Indian Penal Code read with Section 149 of that Code i.e. for resisting or obstructing lawful apprehension and sentenced to two years rigorous imprisonment each. They have all been convicted under two counts under Section 332 read with Section 149 of the Code and sentenced each to two years rigorous imprisonment under each of the two counts under this provision of law. They have further been convicted of an offence under Section 426 read with Section 149 and sentenced each to one months' rigorous imprisonment. All the sentences have been ordered to run concurrently.

2. Bindeshwari Prasad (P.W. 2) and Bhagwati Prasad (P.W. 3) are Constables who were posted at police Station Bangarmau in the district of Unnao at the relevant time. On the 4th of February, 1964 they left the police station at 4.05 P.M. on patrol duty. Moti appellant was wanted at police station Bangarmau in connection with an offence under Section 459 of the Indian Penal Code. Sub-Inspector Rameshwar Singh (P.W. 8), Station Officer of the police station had asked these Constables to arrest Moti. Both these constables during the course of their round reached Gan.i Muradabad. There they received information that Moti was in his village Khushrajpur and could be arrested. They proceeded on their bicycle to that village and from village Ganj Muradabad they took along with them one Buddha (not examined as a witness in the case) and Ali Hasan (P.W. 6). They arrived in front of the shop of Bhabhuti Singh son of Lalita Singh appellant.

Then they saw Moti coming in that direction, according to the prosecution case, they arrested Moti and informed him that he was an accused under Section 459 of the Indian Penal Code. It was about 6 P.M When these constables arrested Moti he began to raise alarm crying for help. All the other 14 appellants and Chunni who is a brother of Moti then rushed to his help They are said to have asked the

constables to set Moti free but the Constables informed them that they would take him to the Police Station because he was an accused. Four or five persons from out of these 15 persons were armed with dandas. They then rescued Moti from the detention of the Constables. Moti also made an attempt to get himself extricated. Some of the appellants are said to have dealt danda blows on the persons of the two Constables. They also tore the shirts of the uniform which they were putting on and were instrumental in rescuing Moti.

On the raising of the alarm by the Constables, Kundan (P.W. 9) and Kuber (P.W. 5) and many others arrived on the scene. The Constables then went to the police station and lodged the information Ex. Ka 1 there. They were examined by Dr. I.C. Dixit, Medical Officer-in-charge Bangarmau Dispensary the next day at 9.40 P.M. The following injury was found on the person of Bindeshwari Prasad (P.W. 2).

contusion 2' x 1' on the back of left thigh 12' above the left knee.

Following injuries were found on the person of Bhagwati Prasad (P.W. 3) who was examined ten minutes earlier by the same doctor:

1. Lacerated wound $1\frac{1}{4}'$ x $\frac{1}{4}'$ x scalp on the front of the Head $3\frac{1}{2}'$ above the bridge of the nose.
2. Abrasion $\frac{1}{2}'$ x $\frac{1}{4}'$ on the top of right knee.

These injuries appeared to the doctor to be fresh and were caused by some blunt weapon. It is in these circumstances that the appellants were prosecuted for the various offences referred to above, of which they have been found guilty.

3. The appellants pleaded not guilty to the charge framed against them. They denied that the incident took place in front of the shop of Bhabhuti Singh. On the other hand they contended that it took place at the residence of Moti. One of the appellants Mangal contended that the police took a large number of residents of the village to the police station and he also was taken to the police station. Several persons were set free while the rest were detained. The plea of Ganga Prasad was that on the next day the police came in the village and all the villagers were taken to the police station. The villagers who gave money were released and the

rest were challaned. The case of the appellants would further appear from the statements of the two defence witnesses produced in the case, Lal Singh and Badri According to that case it was Chunni brother of Moti who ran away from his house as the Constables came to arrest him. He was chased by these two Constables but they could not catch him whereafter they left the village saying that the whole village would be burnt the next day.

4. Nine witnesses in all were produced on behalf of the prosecution, out of whom Bindeshwari Prasad and Bhagwati Prasad re the two Constables as P.Ws. 2 and 3 while Kundan, Kuber Ali Hasan P. Ws. 4, 5 and 6 are the three eye witnesses. All Hasan (P.W. 6) is the person who was taken by these Constables along with them from Ganj Muradabad to the village where they had proceeded to arrest Moti.

5. There is no doubt that the two Constables Bindeshwari Prasad and Bhagwati Prasad received minor injuries described above. Their shirts also were torn it would appear from their statements confirmed by the first information report lodged by them. The question is whether for doing so any of the appellants can be convicted. It is the case of the prosecution that the appellants other than Moti were attracted on the scene at the alarm raised by Moti. Obviously, the injuries that have been caused on the persons of Bindeshwari Prasad and Bhagwati Prasad could not have been caused by all of them. When an alarm is raised people in the vicinity are naturally attracted by the alarm and as a result of the alarm if the prosecution case is true, all the appellants except Moti who it is said, was arrested by the two Constables were attracted. We cannot presume simply because these fourteen persons were attracted by the raising of the alarm of Moti that they must have arrived there with a view to get him rescued from the arrest.

Subsequent events no doubt show that some out of these fourteen persons did cause injuries to the two Constables and in the process even their shirts were torn. There is no evidence to show as to who out of these fourteen persons actually did the beating or tore the shirts. Can it be said in these circumstances that all these fourteen persons had the common object of rescuing Moti? it was but natural that persons in the vicinity would be attracted by the alarm. Some of them may have been actuated on seeing Moti under arrest to get him released but how can it be

said that all the fourteen who were attracted at the alarm were actuated by that motive. We do not know who out of these fourteen persons actually caused injuries to the two Constables and who tore their shirts. We cannot, therefore, fix the responsibility of beating the two Constables and tearing their shirts on all the fourteen accused

We have it from the statement of Ali Hasan (P.W. 6) that these Constables were beating Moti when he raised the cry and the appellants other than Moti arrived at the scene at the raising of that alarm. If these fourteen persons saw Moti being beaten and they only rescued him from being beaten, it cannot be said that they were guilty of any offence. Even if the two Constables had authority to arrest Moti and Moti was lawfully arrested by them they were not entitled to beat him and if these fourteen persons only rescued Moti from being beaten it cannot be said that they were guilty of any offence, in any case even if Moti had been lawfully arrested and these persons knew that he had been lawfully arrested it cannot be said that each among them was responsible for getting him released or actuated with the motive to get him released and for that purpose used force against the Constables. In that view of the case, therefore, none of the fourteen appellants other than Moti could be convicted

6. We have now to see as to whether Moti also could be convicted of the offence under Section 224 of the Indian Penal Code i.e. for offering resistance or illegal obstruction to his lawful apprehension or even attempting to rescue himself from custody in which he was lawfully detained. Can he also be convicted vicariously for causing injuries to the two Constables or tearing their shirts? Learned counsel for the appellants has pointed out that as the arrest of Moti was not lawful he could resist his arrest and could get himself released and use reasonable force for doing so. He could even be helped by others for doing so and if he got himself released or anyone helped him in getting him released from the custody of the two Constables no offence has been committed

7. As already pointed out the prosecution case was that these two Constables had been asked by the Officer-in-charge of the police station to arrange for the arrest of Moti. This he could do under Section 56 of the Code of Criminal Procedure in

the manner provided in that section. Sub-section (1) of Section 56 provides :--

'When an officer in charge of a police-station or any police officer making an investigation under Chapter XIV requires any officer subordinate to him to arrest without a warrant otherwise than in his presence any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made. The officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and. If so required by such person, shall show him the order.'

Rameshwar Singh (P.W. 8) was the officer-in-charge of Police Station Bangarmau. He required the two Constables who were subordinate to him to arrest without warrant Moti who was required in connection with a cognizable offence. Under Sub-section (1) of Section 56 which is just quoted, he should have delivered to these two Constables an order in writing specifying the name of Moti as the person to be arrested and the offence for which the arrest was to be made. It is not denied that no such order was delivered in writing. The two Constables, therefore, were not authorised under Section 56(1) to make the arrest.

8. Let us see whether the arrest could be made under Section 54. Section 54 of the Code of Criminal Procedure in so far as it is relevant provides :--

'Any police-officer may, without an order from a Magistrate and without a warrant, arrest -- first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;
.....

ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued therequisition.'

9. The question is whether after the Sub-Inspector in charge of Police Station Bangarmau asked the police to arrest Moti who was required in connection with an offence under Section 459 of Indian Penal Code can it be said that they had credible information or reasonable suspicion on Moti having been concerned with the offence and could they under the first clause of Sub-section (1) of Section 54 arrest Moti. Can it also be said that by the Station Officer asking them orally to arrest Moti a requisition had been received by them from another police officer specifying the person to be arrested and the offence for which the arrest was to be made and whether it appeared therefrom that the person could be lawfully arrested without a warrant by the officer who issued the requisition. In other words whether clause ninthly of Section 54 was attracted. If the provisions of Sub-section (1) of Section 54, clauses first and ninthly are made applicable to such cases where an oral order has been given by an officer of police station to the subordinate Constables to make the arrest, then in every case we can ignore the provisions of Section 56 and rely on the provisions of Sub-section (1) of Section 54.

A similar point seems to have come before a Division Bench of this Court in *The State v. Ram Chandra* : AIR1955 All438 . Therein it has been pointed by Chowdhary J. at page 440 that the essential difference between Sections 54 and 56 Criminal Procedure Code is that while the former lays down in what cases may a police officer arrest a person without warrant, the latter prescribes the procedure to be followed in those cases when instead of making the arrest himself, the police officer, provided he is an officer in charge of a police station or a police officer making an investigation under Chapter 14 of the Code, deposes an officer subordinate to him to do so. Thus in the matter of making arrest without warrant a police officer may in one case derive his authority under the one but not the other of the two sections while in another case he may derive it under both the sections, depending upon the circumstances of each case.

If he acts on his own initiative and not in execution of an order from one of the officers mentioned in Section 56 he acts within the four corners of Section 54 and the legality or otherwise of his action must be judged in accordance with the provisions of that section and that section alone. If, on the other hand, he acts in

execution of an order of the said nature without being possessed of the requisite information or requisition to enable him to act on his own under Section 54, he can only act legally if he complies with the provisions of Section 56. There may, however, be a class of cases where besides being armed with an order contemplated by Section 56, a police officer may also be possessed of the requisite information or requisition under Section 54, in which case his act will be supportable if it could assume legality under either section. A Bombay case was cited before the Bench, namely, *Keshavlal Harilal v. Emperor* AIR 1937 Bom 56 and it was pointed out that in that case the police officer had such a dual authority.

10. in the instant case the authority that was derived by the two Constables to arrest Moti was derived from the oral order or instruction communicated to them by the officer in charge of the police station. The facts of the case do not show that the two Constables were possessed of any credible information or had any reasonable suspicion of their own against Moti enabling them to arrest him on their own responsibility. There is no material to show that the provisions of Clause (1) of Section 54 were attracted at all

11. As to the clause ninthly of Sub-section (1) of Section 54 it appears from the words of that clause that the requisition in that case also has to be in writing because it has to be received by one police officer from the other. It has to specify the person to be arrested. It has also to specify the offence or any other cause for which the arrest has to be made and it should appear also from the requisition that the person might lawfully be arrested without warrant by the officer who issued the warrant. All these conditions can well be complied with by a written requisition and what is contemplated by this clause is that there should be a written requisition. There is no written requisition in this case

12. in the same Division Bench case which has been referred to above, Desai J., (as he then was) considered the wordings of this clause and was of the opinion that the word 'requisition' was of wide import and he doubted if it included a verbal order. He had no hesitation in conceding that it included a written order in whatever form it may be. He further considered the words 'it appears therefrom' in the clause and was of the opinion that they indicated that the requisition must be in

writing. The words as a whole do not go well with a verbal requisition. With these observations T respectfully agree.

13. There is yet another case of this Court viz., Mahadeo Rai v Emperor, AIR 1924 All 201 from which it may be inferred that the provisions of Section 54 of the Code of Criminal Procedure were attracted to the circumstances similar to those in this case. That is a single Judge case and in preference to that the Division Bench case has to be followed. Moreover, the point that has been raised in this case does not seem to have been raised in that case and it was perhaps assumed that the Constables were acting under Sub-section (1) of Section 54 of the Code of Criminal Procedure even though they had been deputed by the Sub-inspector to arrest him. In any case in view of what has been said above that case appears to have been wrongly decided.

14. Altogether, therefore, this was not a case to which the provisions of Section 54 Sub-section (1) clauses first and ninthly applied and as the provisions of Section 56 (1) only applied to the case, the order of the officer in charge of the police station being not in writing, any arrest made under the oral orders was illegal and if it was resisted, the person resisting it did not commit any offence nor did other persons, if any, who helped in the rescuing of Moti by causing the least possible injuries to the Constables commit any offence. The conviction of the appellants has not been correctly recorded and the appeal should be allowed,

15. The appeal is accordingly allowed and the conviction of and the sentences passed against the appellants set aside. They are on bail. They need not surrender to their bails. Their bail bonds are discharged.

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