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Court : Allahabad

Decided On : Apr-28-1982

Reported in : 1982CriLJ1818

Judge : A.S. Srivastava, J.

Appellant : Harnam Singh and ors.

Respondent : State

Judgement :

A.S. Srivastava, J.

1. This appeal is directed against the judgment and order dated 6-4-1978 of the then IV Additional Sessions Judge, Shahjahanpur by means of which each of the appellants Harnam Singh and Sarnam Singh has been convicted and sentenced to seven years, R. I. under Section 394/397, I.P.C. and each of the appellants Khanji and Jhabbu has been convicted and sentenced to four years' R. I. under Section 394, I.P.C. The appellants Harnam Singh and Sarnam Singh are real brothers and are residents of village Mathana, P.S. Jaitipur, district Shahjahanpur. The remaining two appellants Khanji and Jhabbu have been stated to be their servants.

2. The case of the prosecution is that on 22nd Oct., 1974, at about sunset these appellants robbed one Chet Ram of village Dhirpur, P.S. Tilhar, district

Shahjahanpur at a place about one and a half furlongs away from his village while he was returning from Gulria Bazar. Harnam Singh was armed with a gun; Saran Singh was armed with a tamancha and the remaining two appellants had lathis. When Chet Ram reached that place., Harnam Singh aimed his gun and asked him to part with every thing with him. Chet Ram however ran away. He had hardly gone about 10 to 12 paces when Harnam Singh fired from his gun. Chet Ram fell down after receiving injuries when Jhabbu and Khanji gave him lathi blows. On his alarm Mukut Singh, Chaturi and Virendra Singh reached there and raised an alarm. By that time Harnam Singh took out Rs. 20/- from his pocket and Khanji snatched his Jhola containing one new terricot dhoti, one piece of blouse cloth, vegetables and bananas and ran away. Chet Ram instead of going to the police station in the night, came to nis house on account of fear. He went to the police station the next morning where he lodged the report at 11-45 A. M. Sub-Inspector Balram Singh started investigation of this case but it was concluded by Sub-Inspector Ami Chand Singh who submitted a final report before the judicial Magistrate, Shahjahanpur who, instead of accepting the same, took cognizance of this case against the appellants.

3. The appellants have denied the prosecution case. They have stated to have been falsely implicated in this case on account of enmity arising out of party bandi in the village.

4. The evidence of the prosecution consists of the statements of Dr. S. P. Jaiswal (P. W. 1), H. C. Irshad Ahmad, Chet Ram and Mukut Singh. Dr. S. P. Jaiswal and H. C. Irshad Ahmad are not the eye-witnesses. H. C. Irshad Ahmad is the scribe of the F.I.R. lodged at the police station by Chet Ram and Dr. S. P. Jaiswal had examined the injuries of Chet Ram. So the only eye-witnesses of the occurrence are Chet Ram and Mukut Singh. The statement of Dr. S. P. Jaiswal shows that Chet Ram had received simple injuries from gunshot which were examined by him on 23-10-1974 at 4-35 P. M. According to him, it was possible for Chet Ram to have received those injuries on 22-10-1974 at about sunset.

5. The next question is whether Chet Ram had received those injuries as alleged by the prosecution. The learned Sessions Judge has relied upon the statements of

Chet Ram and Mukut Singh and held that those injuries were caused by the appellants in the manner alleged by the prosecution. This finding of the Sessions Judge is challenged in this appeal by the appellants.

6. It is urged on behalf of the appellants, that the place where Chet Ram had received injuries was a lonely place and he had received them when it was dark. He could not recognise his assailant or assailants but he has implicated them at the instance of their enemies. The appellants have gone to the extent of asserting that they were not even known to Chet Ram on the date when the incident is alleged to have taken place. The appellants Harnam Singh and Sarnam Singh are residents of village Mathana which is in a different police circle Jaitipur. In this connection they referred to the following statement made by Chet Ram under Section 161 Cr P.C.

Virendra Singh wa Mukut Singh Ney Mujhsey Bateya Ki Bندوق Wa Tamancha Waley Badmash Harnam Wa Sarnam They. No Unkey Gaon Mathana Key Raheny Waley Hain Wa Lathi Waley Do Badmash Mathana Key Hi Raheny Waley Jhabbu Wa Khanji Kumar They/Main Mulziman Ko Pahley Sey Nahi Janta Tha/Ujaley Men Mainey Unkey Chehrey Achchi Tarah Dekhey Hain/Samney Aaney Par Pahchan Longa/Gawahon Ney Hi Mulziman Ko Naam Sey Pah-chana Tha Isi Liye Mainey Report Men Unhen Namzad Kardiya Hai Halan Ki Mulziman Key Naam Patey Mujhey Maloom Nahin Hai.

When confronted with this statement, Chet Ram denied to have made it before the Investigating Officer. The other witness Mukut Singh has stated that he could reach the place of occurrence at the crucial time on the alarm of Chet Ram because he was then at his field. He has stated that when he reached he saw the four appellants robbing Chet Ram after causing him injuries. But he had also stated differently before the Investigating Officer. He had stated before him:

Mainey Fire Ki Aawaz Nahi Suni.... Mera Naam Gawahi Men Galat Likha Hai.

7. Like Chet Ram he has also denied to have said so before the Investigating Officer but it cannot be disputed that their statements made during investigation do not implicate any of the appellants and, if those statements are believed, the

statement made by these witnesses at the trial will have to be discarded. At least they cannot be accepted as a safe basis for connecting the appellants with the alleged crime. Unfortunately neither S. I. Balram Singh nor S. I. Ami Chand Singh has been examined in this case. When the appellants had confronted the said two witnesses Chet Ram and Mukut Singh with their aforesaid statements recorded during investigation by the Investigating Officer, it was necessary on the part of the prosecution to have examined the Investigating Officers. By not examining the Investigating Officer concerned, the prosecution has clearly prejudiced the appellants inasmuch as they have been denied an opportunity of proving the aforesaid statements of Chet Ram and Mukut Singh recorded by the Investigating Officer were in fact made by them before him. The prosecution while exempting the Investigating Officer mentioned in its application that he need not be examined as he had filed a final report in the case. It has also been contended that the act of the Investigating Officer concerned in submitting a final report in the case indicates his hostility towards the prosecution case. I am not inclined to agree with the learned Counsel for the State that the non-production of the Investigating Officer concerned can be justified on any of the said two grounds. An Investigating Officer cannot be presumed to be hostile simply because he files a final report in a case on the basis of his conclusion - arrived at after his investigation. There must be some other material from which such an inference can be drawn. Mere submission of final report by him does not lead to any such presumption. He also does not cease to be a necessary witness on that ground particularly when witnesses confronted with their statements recorded by the Investigating Officer deny the same.

The non-production of such a witness only denies an opportunity to the accused persons to prove such statement of the witnesses made during investigation. In such a case the Investigating Officer is an essential witness and his examination is absolutely necessary to unfold the narration of facts made before him by the prosecution witnesses. It is only then the Court is placed in a position to consider the effect of his testimony on the story on which the prosecution of an accused is based. In this case, the Investigating Officer was such a necessary witness which should not have been permitted to be withheld by the prosecution at the trial irrespective of the fact whether his testimony was for or against the case of the

prosecution. In the circumstances of this case the examination of the Investigating Officer concerned was essential.

8. The non-production of the Investigating Officer has, therefore, clearly affected the fair trial of the appellants in this case. Rather, they have been greatly prejudiced. It may also be noticed in this connection that when the prosecution exempted the Investigating Officer, the appellants moved an application requesting the trial court to examine him under Section 311, Cr. P.C. but unfortunately this request was also turned down. In such circumstances it is difficult to accept the plea of the learned Counsel for the State that the Investigating Officer had incorporated in the statements of Chet Bam and Mukut Singh such facts which they had not stated before him. Such an argument could be advanced only after the Investigating Officer was examined in the court and his statement tested in that light.

9. In this connection I will also refer to another conduct of the complainant Chet Ram. He has admitted that he had filed a complaint also in this case through one. Sri Khanna, Advocate. That complaint has also not been filed giving rise to two possible inferences (1) either the complaint was dismissed or (2) it has been suppressed as it also contained different version. The statement of Chet Ram is suggestive of another fact that his advocate Sri Khanna had also developed intimacy with the appellants as he has stated in this connection that when he went to the office of Sri Khanna on the next date fixed on his complaint after his examination and after the examination of his witnesses he found the four appellants sitting in his office. Then this witness stated that he does not know whether his complaint was dismissed when such a suggestion was made to him. This also appears strange that Chet Ram who had filed the complaint through an advocate does not know about its fate.

10. In the above facts and circumstances I find considerable difficulty in agreeing with the learned Sessions Judge that the statements of Chet Ram and Mukut Singh prove the case of the prosecution against the appellants beyond reasonable doubts. Consequently I am unable to uphold the order of conviction and sentence of the appellants.

11. The appeal is accordingly allowed. The order of conviction and sentence of the appellants is set aside. They are on bail. They need not surrender to their bail bonds which are hereby cancelled.

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