

Heersingh and ors. Vs. Raj.

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Court : Rajasthan

Decided On : Oct-25-1949

Reported in : AIR1951Raj135

Judge : Kaul, J.

Acts : [Evidence Act, 1872](#) - Sections 1; [Code of Criminal Procedure \(CrPC\)](#) , 1898
- Sections 225; Bikaner Penal Code (IPC), 1860 - Sections 147 and 325

Appeal No. : Criminal Revn. No. 28 of 1949

Appellant : Heersingh and ors.

Respondent : Raj.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : B. Kesho Pd., Adv.

Disposition : Revision allowed

Judgement :

ORDER

Kaul, J.

1. This is a revn. directed against an order of the learned Ses. J. Churu, confirming, in appeal, the convictions of the appcts. under Section 325, I.P.C. by

the Munsif-Mag. Sardarsbahi. The Mag. had convicted thirteen accused persons, including the appcts. of an offence under Section 147, I.P.C. for rioting, sentencing each to 3 months R. I. On appeal the learned Ses. J. upheld the convictions of the present appcts. only under Section 325, I.P.C. while acquitting them as well as the remaining accused persons of the offence under Section 147, B. P.C. He, however, reduced the sentences of Hir Singh & Jasia accused persons from rigorous imprisonment to simple in view of their old age.

2. The case started on a report, made at Thana Sujangath, on 30 8-47 at 4 P. M. by Ganesha Brahmin & Sukharam Jat of Malusar alleging that, on the preceding night fifteen persons (named in the report), who were armed with guns & lathies broke into the house of Ganesha informant & after one of them had injured him, demanded from him the keys of his Kotha, on pain of death. It was further alleged that having also beaten Ganesha's brother Duda & his wife & caused grievous injuries to Mangha another of his brothers, the accused person forcibly took out Rs. 5000 belonging to the informant (Ganesha) & Rs. 500 belonging to Mangha. The accused, it was said, then entered the house of Sukhram, informant 2 & after beating him, they forcibly took away cash worth Rs. 535 belonging to him. From there the accused were said to have passed due into the house of Sohanlal Brahmin from where they looted cash amounting to Rs. 200 belonging to him & Rs. 400 belonging to his son-in-law Ramlal, then the party entered successively, the houses of Bhoma Shyjama & Rekha Jats & of Malu Chamar & Amichand Brahmin & inflicted injuries on the inmates, including the wives of Bboma, Shyjama & Amichand. The Police charge-sheeted all these 15 persons, including two who were absconding, under Sections 325 & 148, I.P.C. Medical evidence was to the effect that Mangha (P. w. 2) received three grievous injuries & three simple ones, & Ganesha (p. w. 1) one grievous injury while Duda Bam (p. w. 1), Baluram (P. w. 2) & Sukhram (p. w. 2) received, respectively, five, two & two simple injuries, all by blunt weapons.

3. There was also a cross-case under Section 147, I.P.C. against twelve persons, including Ganesha & Sukhram, which was based on an almost simultaneous report by Hirsingh at the same police station in which it was alleged that the informant (Hirsingh) & two companions were attacked & injured by these 12

persons, because he was preparing to send, to the cattle pound, 50 cows, belonging to these persons, which had trespassed into Gausala land, under his charge. In this case also, the Munsiff-Mag. convicted all the twelve accused persons under Section 147, I.P.C. but the learned Ses. J. disbelieving the prosecution story acquitted eleven of the convicted persons who had appealed to him & recommended Sukhram, the remaining convict, who had not preferred any appeal to the H. C for acquittal.

4. In the present case, the Munsif-Mag. disbelieved the prosecution story, as to the alleged looting of cash from Ganesha, Duda & other persons. According to him, there was a quarrel over the cows, between Hir Singh & his companions, on the one hand & Ganesha etc., on the other in the morning, prior to the occurrence, as stated by Hir Singh, Kalu Singh, Ramzan & Jasia accused. To arrange this Hir Singh & his friends formed their plans in day time & collected their men & at night made attacks on Ganesha & others, while they were asleep in their houses. If that was so, it is strange that neither the police nor the Mag. charged the accused with the offence of house breaking or house-trespass at night. In any case the Mag's view of the facts of the occurrence, or rather occurrences, seem to have been the looting of money.

5. The learned Sess J. went a step further. He doubted if in the absence of the motive of loot which had been already discarded by the Mag. all the accused persons had any common object in furtherance of which they could have constituted an unlawful assembly & joined in beating the complainants. From the fact that some of the prosecution witnesses had not alleged the presence of some of the accused persons & others had not given evidence as to the specific part played by each accused he discarded the theory of an unlawful assembly. Sajan Singh, Jivan, Sujan Singh & Bhagwan Singh accused belonged to a different village. According to the Sess J. it was unnecessary for Hir Singh & his friends to invite helpers from outside the village when there were enough people in the village itself to help them and moreover according to him the injuries caused to the complainants, individually, would have been much more serious & numerous if so many persons had joined the attack.

6. In the face of a conflict of such magnitude between the prosecution theory on the one hand, & the findings of the Mag. & Sess. J. on the other & between the findings of the two lower Cts. themselves, it was hardly safe to convict the present three appcts. alone, out of the 15 persons originally accused, of the offence of causing grievous injuries to Ganesha & Mangha. The charge framed by the Mag. was extremely defective. As pointed out by the learned Sess. J. himself, the charge under Section 147, I.P.C. having fallen through & there being no reference, in the charge, to the furtherance of a common intention nor to the specific act of any of the accused, it is difficult to see how the conviction of the present appcts. alone under S 325, Penal Code, can be sustained, particularly when the prosecution evidence is so unsatisfactory & unreliable. The learned Sess. J has relied on the evidence of Ganesha & Macgha as supported by medical evidence, to sustain the conviction of the appcts. under Rule 325, Penal code. Ganesha, according to medical evidence, had only one injury, which was on his finger, but his own evidence is that both Mahabir Singh & Sajan Singh struck him lathi blows on his hand, fracturing a finger of his left hand. Of these Sajan Singh has been already acquitted, Mangha (p.w. 2) has given more specific evidence for he says that Hirsingh struck a lathi blow on his right arm causing fracture, while Mahabir Singh & Jasia struck lathi blows on his left arm & fractured it. This is the only direct & specific evidence of causing grievous hurt, against these appcts. In the first information report, that lodged by Ganesha, it was clearly stated he did not know which of the accused persons - & there were so many named in the report-had caused the grievous injuries to Mangha. Had Mangha known which of his assailants had caused him the grievous injuries it was not likely that Ganesha, his own brother, living with him would have been unaware of it while making the report & would have made such a specific denial of the knowledge. Then again the existence of enmity & litigation between Mangha & his brothers, on the one hand & Hir Singh & his associates, on the other is an admitted fact. In the circumstances, it is hardly safe to rely on the solitary statement of Mangha, . (p. w. 2) to sustain the conviction of the present appats. under Section 325, Penal Code. Strangely enough, the evidence of two important witnesses, namely, Sukhram D. W. 6 & Eekha Ram D. w. 8 seem to have been ignored by both of the lower Ots. Sukhram was one of the informants who signed the first information report, in which it was

alleged that the accused persons entered his house, caused him injuries & looted him of cash amounting to Rs. 535 This witness, who was not produced by the prosecution, denied in his evidence as a defence witness, that there was any occurrence in the house of Ganesha (p. W. 1) in the night as alleged in the prosecution story. According to him there was a quarrel & a fight in the morning only when Hir Singh & his associates collected the cows of Ganesha etc for sending them to the cattle pound, in the course of which Kalu & Ramjan accused caused him injuries. Rekha Ram (P. W. 8), who is also named in the F. I. R., as having been beaten by the accused persons, similarly denies this story & makes a statement similar to Sukh Ram. The evidence of these two witnesses creates further doubts, as to the whole basis of the prosecution story. The prosecution story having been disbelieved not only as to most of the accused persons & as to the nature of the effect, but also as to the motive of the crime & there being such conflicting theories even as to the time & place of the occurrence the conviction of the present appcts, cannot stand. As held in Phatali Singh v. Emperor, A. I.R. (5) 1918 Pat. 536 : (19 Cr. L J. 877), it is a recognised principle that where a party comes into Ct. with a story which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused.

7. The revn. is, therefore, accepted & the conviction & sentences of the appcts. under Section 325, Penal Code are set aside.

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