

Bakhtawarsingh and ors. Vs. the State

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Court : Rajasthan

Decided On : Mar-26-1951

Reported in : AIR1951Raj145

Judge : Bapna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162

Appeal No. : Cr. Revn. No. 244 of 1950

Appellant : Bakhtawarsingh and ors.

Respondent : The State

Advocate for Def. : Sumerdan, Public Prosecutor

Advocate for Pet/Ap. : Laxminarain, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Bapna, J.

1. This is a revn. by five accused, Bakhtawarsingh, Gardsing, Tulchha, Nanura & Badri, who were convicted by the First Class Mag., Sujangarh for an offence Under Section 323, I.P.C. & sentenced to a fine of Rs. 250 each. The appeal by

the accused was disallowed by the Ses. J. at Churu.

2. The ease for the prosecution is that the complainant Surja was in possession of a field in the boundary of village Gopalpura & when he began to plough it on 17-7-1947, the five accused, who are stated to be employees of the Thakur of Gopalpura, committed trespass & assaulted Surja & his son Deepa with lathies & began to cultivate the field themselves. The occurrence took place at about 2 P. M. & a report was made at police station, Sujangarh at 6 P. M. by Surja. The police after investigation made a report to the Ct. of First Class Mag., Sujangarh that the field was in possession of the Thakur of Gopalpura & it was Surja who wanted to dispossess the Thakur & commit trespass & caused injuries to Bakhtawarsingh who acted in self-defence in causing injuries to Surja. According to the police report, no offence had been made out. The complainant Surja had, however, in the mean while, filed a complaint in the Ct. of Mag. at Sujangarh on 1-8-1947, & the trial resulted in conviction & sentence of the accused as aforesaid.

3. It was urged that the field was in the occupation of Heeralal & Jankilal under permission of the Thakur & the said Heeralal & Jankilal had taken Surja as their co tenant but that in a suit for possession filed by the Thakur of Gopalpur against Heeralal & Jankilal, a compromise had been arrived at on 30-3-1946 by which the said Heeralal & Jankilal handed over possession of the field to the Thakur of Gopalpura & that Surja complainant, who was in actual occupation prior to that date had in token of his having delivered the possession, affixed his thumb impression on the deed & that from that date onwards, it was the Thakur of the Gopalpura who was in actual possession of the field. The two Cts. did not accept this contention & have laid stress on the fact that according to the evidence, the field was in actual possession of Surja. The learned counsel for the accused has made a grievance of the fact that the accused were not allowed to cross examine Surja on the basis of his statement in the police. It appears from a perusal of the record that on 10-1- 1948, an appln. was presented on behalf of the accused that copies of the statements of the following persons who were to come as prosecution witnesses on 12-1 1948, & whose statements had been recorded by the police during the course of their investigation may be supplied to the accused for the purpose of cross examination of the said witnesses. The names of the

persons whose statements were required by the accused are Surja, Deepla, Tiloka, Doolia, Soban & Dungar. The Ct. passed an order directing the prosecuting inspector to supply copies of the statements to the accused. The prosecuting inspector, however, did not supply any copies but reported on 3-5-1948 that as the complainant being dissatisfied with the investigation & report of the police had filed a complaint in the Ct. the police had nothing to do with the case & copies could not, therefore, be supplied. It is apparent that the accused did not have the opportunity of cross-examining the prosecution witnesses Surja, Deepla & Doolia who alone out of the aforesaid six had come into the witness-box & this denial of opportunity amounts to an illegality which vitiates the trial. It is unfortunate that the prosecuting, inspector did not realize his responsibility in the matter & still more unfortunate that the Mag. did not take steps to enforce his own order. Since the case hangs on one important fact as to who was in possession of the field prior to the incident, it was very important that the accused should have the facility of cross-examining the complainant & his witnesses in as complete a manner as possible. The object of cross examination with the assistance of the earlier statement made by the complainant or his witnesses is to protect the accused against untruthful witnesses. It is clear from the language of Section 162 of the Code that if a person is examined by the police during the course of an investigation under Chap. xiv of the Code & if that person is called as a witness for the prosecution, the accused has a right to request the Ct. to refer to such writing & for an order that the accused be furnished with a copy of the statement of such person in order that any part of such statement, if duly proved, may be used to contradict such witnesses in the manner provided by Section 145, Evidence Act. It is immaterial in such cases whether the case was challaned by the police or is enquired into by the Ct. on complaint. The important fact which makes the applicability of Section 162 of the Code is that the statement was recorded by the police officer in the course of any investigation under chap, xiv of the Code. The learned counsel has relied on Hari Mahadeo v. Emperor, A.I.R. (14) 1927 Nag. 24 : (28 Cr. L.J. 14) which supports the view which is taken above. It has been held by their Lordships of the P.C. in Pulukuri Kottaya v. Emperor, A.I.R. (34) 1947 P.C. 67 : (48 Cr. L.J. (533) that the right to be furnished with copies of statements made by witnesses to a police officer given to an accused person by Section 162,

Cr.P.C. is a very valuable right & often provides important materials for cross-examination of the prosecution witnesses. However slender the material for cross examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistencies in several statements may not embarrass a truthful witness but may cause an untruthful witness to prevaricate. In the circumstances aforesaid, it cannot be said that the accused have had a fair trial. I, therefore, allow this revn. set aside the conviction & sentence passed on the accused & direct that the case be retried by the trial Ct. according to law. As the Ct. of the Mag. at Sujangarh has since been abolished, this case is sent to the Dist. Mag. at Churu who will send this case to the Ct. of a Mag. competent to try this case.

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