

Sitaram and anr. Vs. the State

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Court : Rajasthan

Decided On : Oct-03-1950

Reported in : AIR1951Raj16

Judge : Nawalkishore, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 424 and 537

Appeal No. : Criminal Revn. Nos. 241 and 242 of 1950

Appellant : Sitaram and anr.

Respondent : The State

Advocate for Def. : Laxminarain, Adv. for;Government Adv.

Advocate for Pet/Ap. : Abdul Jalil, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Nawalkishore, C.J.

1. This judgment will dispose of two Cri. Revns. Nos. 241 and 242 of 1950 preferred by Sitaram and Shankardan separately against the order of the learned Sessions Judge upholding their convictions and sentences.

2. The complainant Jaskaran and the accused Shankardan and Sitaram all belong to village Bevtā Tehsil Jodhpur. There is absolutely no evidence on the record about the state of relations between them but from what follows they must have been bad. They are related to one another but there appears to have been no love lost between them. On the evening of 3-1-1948 some performance was going to be held in the village and Jaskaran was making seating arrangements for the audience in connection with it. Whether this performance was religious or otherwise, the evidence does not show. The allegation of the prosecution is that at about 9 P. M. when Jaskaran was busy making arrangements, the two accused, namely, Shankardan and Sitaram suddenly arrived. Shankardan was armed with a sword while Sitaram was carrying a lathi. Sitaram showered several lathi-blows on the face of Jaskaran with the result that he fell down and became unconscious. Thereafter, Shankardan inflicted injuries with his sword and then both of them ran away. Jaskaran was taken to the Police Thana, Jhanwar at the dead of the night in a bullock-cart by P. W. 9 Karnidan and two other persons and the first information report was lodged by him. He then came back to the Windham Hospital where his injuries were examined and he remained as an indoor patient for 37 days up to 10-3-1948. The medical report showed that he had received nine injuries in all, out of which six were contusions, one was an incised wound 4 'x 1' on the jaw and one was the fracture of this jaw. A number of witnesses were examined during the course of the investigation by the police but no particular action was taken. Accordingly the complainant filed a complaint on 5-5-1948, against both the accused under Sections 307 and 325, Penal Code in the Court of the District Magistrate, Phalodi. It was, however, ultimately disposed of by the Extra First Class Magistrate, Jodhpur. After the preliminary enquiry had been made by the Magistrate under Section 202, Criminal P. C., warrants were issued against the accused and the police was also directed to send the record of the investigation made by it after the first information report. This probably awakened the police and it not only produced the entire record but also put up a challan on 16-11-1948 but implicated only one accused, namely, Sitaram. The learned Magistrate of the trial Court consolidated the challan as well as the complaint and recorded all the evidence in the challan. Not a single witness was recorded in the complaint, and it appears that the expenses for the witnesses were also paid by the police. The

prosecution produced 9 witnesses out of which five were put forward as eye-witnesses namely, p. w. 1 Jaskaran, p. w. 3 Bhaira, P. W. 3, Baluram, P. W. 7 Ranchhor and P. W. 8, Devi Lal. Both the accused denied having committed the offence and pleaded alibi and produced three witnesses in defence. The learned Magistrate relying upon the evidence produced by the prosecution convicted and sentenced Shankardan under Section 326, Penal Code, to two years' rigorous imprisonment and a fine of Rs. 100 and Sitaram under Section 325, Penal Code, to 15 months' rigorous imprisonment and a fine of Rs. 50. On appeal the learned Sessions Judge upheld their convictions and sentences.

3. The learned counsel for the appellants has urged in the first instance that the learned Sessions Judge has not dealt with the case in a satisfactory manner. After perusing the judgment, there seems to be no doubt whatsoever that the learned Sessions Judge has turned out a very slipshod document. He has not discussed the evidence at all and disposed of the appeal with a simple observation that he did not find any sufficient reason to disbelieve the prosecution witnesses who had not been shaken in cross examination. This, I must say, is not doing justice to the case. It may be true that where the appellate Court agrees with the judgment of the lower Court and dismisses an appeal, it may not be necessary for the appellate Court to write a long and elaborate judgment but there seems to be no doubt that the judgment should be independent and self-contained so that it may indicate that the appellate Court had considered the case in a proper perspective and the High Court in revision may be able to follow it without reference to the trial Court's judgment. The Court of a Sessions Judge is a Court of first criminal appeal and its findings of fact are generally accepted in the High Court. Hence a grave responsibility rests on the shoulders of the Sessions Judge and the judgment must be such as may clearly indicate that he had fully applied his mind to the facts and circumstances of the case. Looking at the judgment, it is, however, not possible to come to that conclusion. Apart from this, there are certain matters in this case which necessitate careful consideration and could not be brushed aside as has been done by the learned Sessions Judge. He has no doubt made an observation to the effect that the case had been very badly investigated by the police but he does not discuss the details. In a simple case like this, where the first information report had been lodged so promptly, it is indeed amazing that the police indulged

in an unduly protracted investigation. Even at that, it did not result in a challan for nearly 10 months and that also was presented only after the learned Magistrate of the trial Court directed it to produce the record of the investigation made by it. In the first information report, two witnesses namely, Budha and Ladoo, were definitely mentioned as having been present at the time of the occurrence. In the challan, however, their names were not mentioned at all and instead three other persons, namely, Mukna, Berisal Singh and Girdhari were mentioned but they were not produced in Court. In Court two other witnesses, namely, P. W. 2 Bhaira and P. W. 8 Devilal were produced as eye-witnesses. The learned Sessions Judge does not deal with this aspect of the case in his judgment at all. He merely refers to the fact that some witnesses named in the first information report were not produced in Court while some entirely new witnesses were produced but what would be the effect of this on the case, he does not proceed to discuss, The learned counsel has also urged that there is a material variation in the two statements of Jaskaran made in the preliminary enquiry and in the trial but the learned Sessions Judge does not even notice it.

4. There is another grave defect which has crept into the procedure adopted by the learned Magistrate of the trial Court but that has passed wholly unnoticed. This, however, happens to be a defect which has definitely resulted in prejudice to the accused and since this case is being sent back to the trial Court for a de novo trial, it is not necessary to refer to the various points which have been stressed by the learned counsel for the accused and are mentioned in detail above. The defect in the procedure which has resulted in prejudice is this: The police had put up the challan against Sitaram only while the complainant Jaskaran had filed the complaint against Sitaram as well as against Shankardan. Since only one accused was implicated in the challan, it is obvious that the complaint which implicated both Sitaram and Shankardan could not be linked with it Further, in the challan evidence should have been confined to Sitaram alone having inflicted the injuries. It, however, turns out that the learned Magistrate did not record any evidence at all in the complaint and recorded all the evidence in the challan. This evidence implicated both Sitaram and Shankardan. The result was that while the Police had challaned only one person, the evidence produced by it implicated two while the complaint which implicated both the accused was not proceeded with at all.

Shankardan is fully justified in complaining that he has been convicted and sentenced on evidence recorded in the challan which was, however, confined only to Sitaram. There seems to be no escape from the conclusion that this procedure has resulted in grave prejudice to the accused. It is a pity that the learned Sessions Judge did not concentrate on this aspect of the case. The result is that on the record as it stands, it is not possible to uphold the convictions and sentences awarded to both the accused. The learned Public Prosecutor who appears for the State frankly concedes that the consolidation was illegal and the procedure adopted by the trial Court has resulted in miscarriage of justice. I accordingly accept both these revisions, set aside the convictions and sentences and hereby send the cases back to the trial Court with a direction that the entire evidence will be recorded over again without committing the illegality referred to above. Fines if paid will be refunded. The accused will remain in custody and it will be open to the Magistrate of the trial Court to consider whether they should be released on bail.

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