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The State Vs. Takhat Singh

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Court : Rajasthan

Decided On : Apr-04-1953

Reported in : 1953CriLJ1567

Judge : Nigam, J.C.

Appellant : The State

Respondent : Takhat Singh

Judgement :

Nigam, J.C.

1. In Criminal Case No. 129 of 1951 in the Court of the City Magistrate, First Class, Ajmer, (empowered under Section 30, Criminal P.C.) Thakur Takhat Singh of Shergarh was found guilty under Section 324, Penal Code and was sentenced to a fine of Rs. 500/. with one month's-simple imprisonment in default. Against his conviction and sentence, he preferred an appeal (Cri. App. No. 37 of 1952) in the Court of the Sessions Judge, Ajmer. The learned Sessions Judge found that the prosecution story was proved but held that the appellant was entitled to a right of private defence of property and' had not exceeded that right. In the event, the learned Sessions Judge allowed the appeal and set aside the conviction and fine. Against that order of acquittal, the State of Ajmer has filed this appeal. It is prayed that the order of conviction be set aside and the accused be convicted and sentenced. In the appeal I have heard the learned Public Prosecutor and the

learned Counsel for the accused.

2. Among other arguments, the learned Counsel for the accused has argued that the trial has not been fair. The learned Counsel refers to Section 231, Criminal P.C. It appears that the date of delivery of the judgment was changed to 6.3.1952. On that date the learned Magistrate altered the charge from one under Section 307, Penal Code to that under Section 324, Penal Code. The learned trial Magistrate also recorded the opinion that the alteration in the charge framed did not render his proceeding immediately with the trial prejudicial to the accused or the prosecutor in the conduct of the case. The same day the learned trial Magistrate delivered his judgment convicting and sentencing the accused to fine. The learned Counsel for the accused argued that no counsel for the accused was present at that time and the accused was not given a chance of requesting that any witnesses already examined be recalled and cross examined with reference to the amendment of the charge and was not given an opportunity to request the Court to call further witnesses. The Learned counsel's contention is that the accused has been materially prejudiced. Looking to the nature of the amendment and the fact that the accused may have been convicted of the offence under Section 324, Penal Code, when he was charged with an offence under Section 307, Penal Code it appears to me that there was little evidence to be produced or cross-examination which the accused could have made. I am, however, of opinion that the accused had a right to request the Court to re-call such witnesses as were named by him. The provisions of Section 231, Criminal P.C. are mandatory. I am also of opinion that it is incumbent on the accused to make a request for the recall of witnesses. It, however, appears that in the present case, as alleged by the Learned counsel, the accused did not have any opportunity of making the request as immediately after the amendment of the charge, the judgment in the case was pronounced. I, therefore, hold that the accused is entitled to a trial de novo from the stage of the amendment of the charge.

3. The learned Counsel for the accused has urged that I should consider this question only if I decide to set aside the order of acquittal. I am unable to agree with the Learned counsel. It is not proper that I should give my opinion on the merits of the case if a retrial has to be ordered. Besides under Section 231,

Criminal P.C. both the prosecution and the accused are entitled to request the Court to examine further evidence. In these circumstances, I am unable to accept the suggestion of the Learned counsel.

4. I, therefore, accept the appeal and set aside the order of acquittal. I also set aside the order of conviction recorded by the learned trial Magistrate and order a trial de novo from the stage of the amendment of the charge made on 6.3.1952.

5. The accused should attend the Court of the learned trial Magistrate on Tuesday, the 14th April 1953, at 11 a.m. sharp to take a date for further proceedings. The accused is present. He and his Learned counsel have been informed of the order.

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