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Court : Rajasthan

Decided On : Dec-10-1975

Reported in : 1975(8)WLN802

Judge : P.D. Kudal, J.

Appeal No. : S.B. Criminal Appeal No. 410 of 1971

Appellant : ibrahim and ors.

Respondent : The State

Disposition : Appeal allowed

Judgement :

P.D. Kudal, J.

1. This is an appeal by the three accused appellants, viz. Ibrahim Jamal and Ridmal against the judgment of the learned Sessions Judge, Jaipur District Jaipur dated 27-4-1971, where by the accused appellant's were convicted under Section 325 and 323 read wish Section 34 IPC, and sentenced to three years rigorous imprisonment, and a fine of Rs. 200/-, each, in default thereof to one month's rigorous imprisonment under Section 325 IPC and to enc year's simple imprisonment under Section 323 IPC. Both the sentences were ordered to run concurrently.

2. The facts of the case, in brief are that the residents of villages Pigun and Surri made an application Ex. P/23 to the S.D.M Sambhar that about 5000 cows and about 14000 or 15000 goats and sheep belonging to the famine stricken area have encamped in the village of Sali, Surri, Khanpura, Pigun, Mordi Kalan, Mordi Khurd and Morda. These cattle heads were not only grazing grass, but were also damaging the crops of wheat and the crops standing in the fields. It was further contended that whenever the villagers tried to drive these cattle away from their fields, the Marwaris took to 'marpeet'. The S.D.M. Samber directed these Marwaris to leave this place within 24 hours; but these Marwaris having this large number of cattle heads, did not move away. The application Ex. P/23 was forwarded by the S.D.M. Sambhar on 10-12-1968 to the Dy. S.P., Sambhar Shri K.L. Saini, PW/18, SHO, went to the spon accompanied by two constables Ibrahim Sultan and Nanuram Sarpanch (PW 2) of Sakhun also accompanied him. The SHO, directed the Marwaris to keep on moving, and not to encamp for several days in one village. The SHO left the site after giving similar directions to the other persons; but as soon as he left the place; the villagers of Sakhun were attacked by these Marwaris. Ex. P/23 is First Information Report, which was lodged by the SHO, Shri Ram Pw/18. As result of this 'marpit' Onkar died, and the other villagers also received injured. In the First Information Report the names of the accused persons were not detailed, but it was stated that 40 or 50 persons of the camp, Jummu and Rayab got agitated and started attacking the villagers. Jammu exhorted his companions to beat the villagers to death. It is further alleged that Jammu gave a lathi tell down there. The names of other assailants have not been disclosed, but it is said that a number of villagers received injuries, and fell down there. The names of other assailants have not been disclosed, but it is said that a number of villagers receive injuries. After investigation, a challan was put up against five person viz. Ibrahim, Ridmal, Samal, Channa an Rahim. Accused Rahim died during the trial. The learned Sessions Judge held that the left hand of Channa was defective, and as such, he was acquitted. Ibrahim, Jamal and Radmal have been convicted as aforesaid.

3. On behalf of the appellants it has been confided that the learned Sessions Judge has practically upheld all the infirmities pointed nut by the defence. Inspite of this, the appellants have been convicted as indicated above. It was further

contended that, though the learned Sessions. Judge observed that all the infirmities pointed out by the defence have been disposed of, yet in the order of the learned Sessions Judge, the infirmities have not been met out in a manner which could assist the sustaining of the conviction order. It was also contended en behalf of the accused appellants that as time passed on, the prosecution has tried to change and improve the prosecution story. In the First Information Report, it was also alleged that Jammu gave the fatal blow to Onkar. It was also alleged that about 40 or 50 persons armed with lathis, took part in the 'marpeet' but, later on, the prosecution version has changed, and has confined the actual participation in the 'marpeet'; to four or five persons only. It was further contended that the place of occurrence has also been changed. The learned Sessions Judge inspected the site on 9-4-1971 in the presence of the parties, and prepared a site inspection memo. It was also contended that PW/18, Shri Ram, SHO, who deposed that Ex. D/15 was prepared at his instance and the name of the field of Onkar was not shown in the site-plan, though the occurrence cook place in the held of Onkar. Mr. Saini Dy S.P. deposed that the place of occurrence was not in the field with any crop init, and according to the site plan the 'marpeet' seems to have occurred in an open place near the field of Heera Rameshwar which is towards the north-est of the place of occurrence. It was also conceded that the occurrence took place on 12-12-1968; but the First Information Report was forwarded to the Magistrate under Section 157, Cr PC. Some days afterwards. It was therefore, contended that there are reasonable grounds for raising suspicion against the contents of the First Information Report. It was also contended that the identification proceedings were of a sham character and fake in nature, and could not inspite the confidence of the Court when only seven persons were mixed with the five accused. It was further contended that if the prosecution version is found to be false in substance and material particulars then the entire prosecution story has to be discarded. It was further contended that the prosecution has utterly failed to bring the guilt home to the accused-persons; and that no link has been established with each accused to the injuries caused by him.

4. On behalf of the State, it was contended that in a melee of this type, it is not possible to establish the direct link of each accused with the injuries caused by him. It was further contended that a number of prosecution witnesses have been

injured, as would be evident him the statements of Hardev PW/1, Nenu Ram PW/2, Jagannath FW/3, Sua PW/4, Ram Lal PW/5, Heera PW/6 Hardev PW/7, Chokha Rim PW/8, Nathu PW/9, Kalyan PW/10, and Vijai Lal PW/11. It was also contended on behalf of the State that there are contradications in the version of the prosecution witnesses and white the prosecution version has changed at a latter stage as compared of the version given by the witnesses before the police, the Court should evaluate the evidence, separate falsehood from truth and having done so convict the person found responsible for causing the injuries as a result of which Onkar died, and the other persons were seriously injured.

5. The respective contentions of the learned Counsel for the accused-appellants and the learned Public Prosecutor have been considered and the record of tin case carefully perused. In this case, the First Information Report has been lodged by Shri Ram, SHO, PW/18. He was present at the site when it is alleged Jammu gave the fatal blow on the head of Onkar. Sbri Ram adhered to his statements given before the trial court Mr. Saini Dy. S.P. deposed that there was no person by the name of Jammu, & that this fact was brought on record the next day of the occurrence Inspite of these observations of Mr. Saini, Dy. S.P. the S.H.O. Shri Ram deposed that Jammu gave the fatal blow to Onkar. These persons, ba were present in the Cburt, did not include Jammu, The other set of witnesses produced on behalf of the prosecution further alleged that the fatal blow was given by Ibrahim. The learned Sessions Judge has believed the oral testimony of the other eyewitnesses, but has discarded the testimony of the SHO, who had lodged the First Information Report, So far as the place of occurrence is concerned, the learned Sessions Judge has relied on the oral testimony of the SHO, and has discarded the evidence of the eye witnesses whose version has been accepted so far as the assault by Ibrahim was concerned.

6. The identification proceedings also do not inspire any confidence of the Court, as only seven persons were mixed with five accused persons. The descriptions were not given by these witnesses before they were sent for identification. The specific features of the accused-persons were not concealed or wrapped by any cloth. The prosecution story, as contained in the First Information Report lodged by Shri Ram PW/18 reveals that 40 or 50 people started assaulting with iathis. In a

melee of this type, it is exceedingly difficult to pick out only four or five persons and then to level the entire blame on them. To over come this difficulty, the prosecution improved its version by alleging that only five or seven persons participated in the actual beating, and the others were merely spectators from a distance. It is exceedingly difficult to behave that a person of the status of SHO who himself has eye-witnessed the occurrence, would lodge a totally false complaint. The difficult stems to have arisen as either Jammu could not be apprehended or that there was nobody by the name of Jammu, and the First Information Report was lodged by the SHO on incomplete and defective information. The provisions under Section 157, Cr.P.C. are intended to obviate any chances of manipulation of the faces contained in the First Information Report. The First Information Report was not for varied to the Magistrate concerned upto 2-1-69. The SHO and Dy S.P.M. Saini, though, appeared in the witness-box, but have not offered any explanation as to why the First Information Report was not sent to the Magistrate cone raised forthwith, and was kept back almost for 33 days. In K.N. Virji v. State of Gujarat : 1970 CriLJ363 , it has been held that where the prosecution story has been found to be false on basic particulars, and it is difficult to separate falsehood from truth, the entire prosecution story has to be discarded. In the present case, the name of Ibrahim has been transplanted in the place of Jammu; the place of occurrence has been changed; the identification proceedings have been conducted in a manner which did not inspire confidence of the Court the First Information Report was not seen to the Magistrate concerned as provided under Section 157, Cr.P.C. and the prosecution witnesses have totally changed their version before the Court of Sessions from the earliest statements before the police. Under such circumstances, having given my most anxious consideration to the evidence on record, I have no hesitation in holding that the prosecution has utterly failed to bring the guilt home to the accused The learned Sessions Judge after considering the evidence on record, ultimately came to the conclusion that it was a case of free fight of both the sides and the villagers wire determined to prevent the accused from passing with the cattle towards Pagun and the marwaris were trying lo force their way through their fields. Surprisingly enough, the enure so ailed eye witnesses have been disbelieved by the learned Session Judge; to far as Channa is concerned. Channa has been acquitted OD the personal observations of the

learned Sessions judge to the effect that his left hand was defective, and with such a defective hand he could cot have weeded a lathi stroke, la view of these circumstances, the accused-appellants are entitled to the benefit of doubt.

7. For the reasons stated above, the appeal filed by the accused-appellants is hereby allowed. The accused-appellants are on bail. They need not surrender. Their convictions are set aside, and their bail bonds are hereby cancelled.

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