

The State of Rajasthan Vs. Saddiq and ors.

The State of Rajasthan Vs. Saddiq and ors.

SooperKanoon Citation : sooperkanoon.com/758872

Court : Rajasthan

Decided On : Nov-11-1983

Reported in : 1983WLN(UC)443

Judge : M.C. Jain and; S.C. Agarwal, JJ.

Appeal No. : D.B. Criminal Appeal No. 528 of 1974

Appellant : The State of Rajasthan

Respondent : Saddiq and ors.

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. The respondents Saddiq, Mohammed, and Dayam were prosecuted for the offence under Section 307, IPC, and the other two respondents, namely, Sumer and Mana were presecuted for the offence under Sec. 307/302 , IPC . The learned Additional Sessions Judge No. I, Jodhpur, after trial, acquitted all the five accused-respondents of the said offences by his judgment dated 20-2-1974.

2. The prosecution case, in brief, is that a police party consisting of Head Constable Jugat Singh, Gaimer Singh, Chatar Singh and Shaitan Singh proceeded for patrolling in the night of 19 10-1972 at about 10.00, p.m At about 10.30, p.m.

near the crossing of Satto Mayajalar, they concealed themselves behind the sand dune and they spotted at about 11 or 11.30, p.m , 12 persons on the camels' back. They were proceeding in the direction, in which the police party was laying ambush. They were spotted when the police party was at a distance of about 300 steps from them. When the accused party was at a distance of 100 'Paundas', the police party stopped them by making a call exhorting that they are smugglers. It is alleged that three persons, namely, the accused persons ayam, Saddiq and Mohammed got down from the camels and they opened firing at the police party. In defence the police party also opened fire. Head Constable Jugat Singh and Guimer Singh also identified the respondents Mana and Surroaria & two Pak national Ridia and Ratania. Thereafter the accused party made good their escape leaving two camels and same goods. The police party followed them and at a distance of about 1 1/2 miles they caught hold of one camel and goods and at a further distance they seized ten bags of Bidi leaves and ten bags of Ilayachi, Jugat Singh sent a written report, through foot constable Girdhargar to the S.H.O., Police Station, Sam. The same was recorded in the Rojnamcha, as the S.H O. was not present at the Police Station and on arrival of the S.H.O., case was registered and investigation was commenced. Spot investigation was done and in the course of spot investigation 6 empties, found at the spot, were recovered, From the side of the police party 44 rounds were fired. Their empties were also recovered. The accused Dayam was arrested on 26-10-1972, Sumar was arrested on 27-10-1972. Mohammed on 12-11-1972, Saddiq on 10-12-1972 and Mana on 28-12-1972. After completion of investigation, a challan was put up against the five accused persons and the five accused persons were ultimately tried by the learned Additional Sessions Judge No. 1, Jodhpur, Saddiq, Mohammed and Dayam were charged of the offence under Section 307, IPC. and Sumar and Mana were charged of the offence under Section 307/34, IPC. They, however, pleaded not guilty to the charge and claimed to be tried. At the trial, the prosecution examined nine witnesses, namely, Jugat Singh (PW 1), Darsanlal (PW 2), Inder Singh (PW 3), Gaimar Singh (PW 4), Shaitan Singh (PW 5), Dhir Singh (PW 6), Nakhat Singh (PW 7), Mohan Maghnani (PW 8) and Chatter Singh (PW 9). The accused persons, in their statements, denied the prosecution case. The accused persons examined DW 1 Allah Bux, DW 2 Nakhat Mal, and DW 3 Sangram, in defence.

The learned Additional Sessions Judge did not place reliance on the testimony of the main prosecution witnesses relating to identification of the accused persons and consequently, acquitted the accused persons. Hence, this appeal by the State.

3. We have heard Shri Niyazuddin Khan, learned Public Prosecutor, for the State, and Shri Bhopal Singh learned Counsel for the accused persons.

4. The most material question in this case, is regarding the identification of the accused persons. The learned Public Prosecutor, on behalf of the State, vehemently urged that the accused persons were known to Jugat Singh, Head Constable, and to Gaimer Singh. It was a moon-lit night, when the encounter took place. The police party, that is, these two police personnel, grasped the identity of the accused persons, when they had concealed themselves behind the sand dune and after such concealing the accused party proceeded in the direction, in which the police party was concealing itself. The names of the accused persons, along with their parentage, finds mention in the first information report and the parentage of only the accused Dayam, is not stated. The very fact that the names of the accused persons appeared in the first information report, indicates that Jugat Singh and Gaimer Singh had grasped the identity of the accused persons. If the identity would not have been grasped, their names would not have found mention in the first information report. So, according to Mr. Niyazuddin Khan, the finding of the learned Additional Sessions Judge that the police party could not identify the accused persons, is wrong and this observation of the learned trial judge is unfounded that in the facts and circumstances of the case, identification parade was a must.

5. We have given our serious and anxious consideration to the submissions of the learned Public Prosecutor. The question of identity of the accused persons, in our opinion, needs consideration in this light as to whether the shots fired by the parties against each other could be effective. It is noteworthy that as many as 44 shots were fired by the police party and according to the prosecution evidence the firing was not aimless. When 44 shots were fired aiming at the accused party, it is unbelievable that even a single shot would not have been effective, not only on the

accused persons, but even on the camels. This circumstance that the shots of the police party were ineffective, only go to indicate that the accused party was beyond the range of shots. This shows that the accused party was at such a distance that the shots could not be effective to them. If viewed from this angle, it cannot be conceived that the police party could have grasped the identity of targets. It is true that the names of the accused persons find mention in the first information report, but whether on the basis of the names finding place in the first information, can it be found that the police party actually grasped the identity of the accused persons. It may be that the names may be introduced in the first information report on the basis that the accused persons may be known smugglers or the names of the accused persons may have been introduced on the mistaken identity. Simply because the names of the accused persons find mention in to first information report, it cannot be definitely said that it was on the basis of actual identity of them at the spot. The very material circumstance, which strengthens us in the view, we are taking, is that the police party did not disclose the names of the accused persons to the personnel of the BSF, who appeared at the spot on hearing the gun shots reports They were simply informed that they had spotted the smugglers and the names of those, who were spotted, were not given out to the members of the BSF. A reasonable doubt in any case arises when the matter is viewed considering the fact that the targets were beyond the range of the shots.

6. Apart from the question of identity, so far, as the offence under Section 307, IPC, is concerned, the matter can be viewed in this light as well that when the shots could not be effective from the either side, then the question of commission of offence Under Section 307, IPC, does not arise. What can be said, is that from both the sides, there were exchange of shots and the accused party must have opened the firing only with a view to scare away the police party and not with the intention that the shots may be effective on the police party. Viewed from this angle, as well, in our opinion, offence under Section 307, IPC, cannot be said to be made out. Thus, in any view of the matter, as considered above, the order of acquittal of the accused-respondents, calls for no interference in this appeal.

7. In the result, we find no force in this appeal, so it is hereby dismissed.

