

Mohan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-31-1994

Reported in : 1994CriLJ2229; 1994(1)WLN561

Judge : B.R. Arora, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 3, 4 and 12; [Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 452; Scheduled Caste/Schedules Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1)

Appeal No. : S.B. Criminal Appeal No. 142 of 1994

Appellant : Mohan Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : J.S. Choudhary and; H.S. Balot, Advs.; K.L. Thakur,

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 7-3-94, passed by the Judge, Special Court, S. C./ S. T. (Prevention of Atrocities) Act, Jodhpur, by which the learned Judge of the Special Court convicted the appellant for the offence under Section 323, I.P.C. and granted him the benefit of Section 4 of the [Probation of Offenders Act, 1958](#), on his furnishing a personal bond in the sum of Rs. 2,000/

- and a surety in the like amount for keeping peace and be of good behaviour for a period of two years.

2. Accused-appellant Mohan Singh, alongwith his wife Smt. Nirmala, was tried by the learned Judge of the Special Court for the offences under Sections 452 and 323, I.P.C. and Section 3(1)(x) of the Scheduled Caste/Schedules Tribes (Prevention of Atrocities) Act, 1989. The case of the prosecution is that on 12-10-91, at about 5.00 p.m., when complainant Ratan Lal came out of his house alongwith his Advocate Shri Mehta in order to show him the site where the encroachment was made by the opposite party Mohan Singh, at that time Mohan Singh and his wife Smt. Nirmala were standing out-side their house. After ten to fifteen minutes of the departure of Shri Mehtaji, Advocate, Mohan Singh and his wife started hurling the abuses by saying, ' Rataniya, you, despite being a member of lower caste, how, you dared to make a complaint against him in the Electricity Board and the Municipality.' Mohan Singh, also, said that they are the persons of social status and will throw the dust, dirt, waste etc.in his house and will make a complaint against him and would see that he should be removed from the service. They, thereafter, threw the waste etc. in his house and, also, gave beatings to him by fist blows. The prosecution, in support of its case, examined PW 1 Ratan Lal, PW 2 Asu Ram, PW3 Champa Lal, PW 4 Kunj Bihari, PW 5 Ami Chand, PW 6 Dr. M. P. Joshi and PW 7 Pankaj Kumar Singh and exhibited five documents. The accused, in their defence, examined DW 1 Jugal Kishore and exhibited four documents. The accused pleaded alibi and stated that at the relevant time he was busy in connection with Family Welfare (Planning) Camp at Osia being the Education Extension Officer posted in the Panchayat Samiti, Osia. The learned Judge of the Special Court, after considering the evidence on record, disbelieved the plea of alibi put-forth by the accused and placed reliance over the testimony of the two eye-witnesses produced by the prosecution and the medical evidence and the appellant was convicted for the offence under Section 323, I.P.C., but, however, he was of the opinion that the prosecution failed to prove the case against the appellant for the offences under Ss. 452, I.P.C. and Section 3(1)(x) of the Act, 1989, but instead of passing any order of sentence, granted the benefit of Section 4 of the Probation of Offenders Act as stated at the very out-set. The learned Judge of the Special Court, however, acquitted Smt. Nirmala of all the

offences, for which she was charged and tried. Dissatisfied with the Judgment dated 7-3-94, passed by learned trial Court, the accused-appellant has preferred this appeal.

3. It is contended by the learned counsel for the appellant that the appellant was busy in the Family Welfare (Planning) Camp, which was held on 10-10-91, at Osia and his presence at the scene of the occurrence on the same day at 5.00 p.m. was, therefore, not possible and the appellant has been falsely implicated in this case merely on account of inimical and strained relations between the accused-appellant and the complainant. His further submission is that the witnesses, produced by the prosecution, are highly interested witnesses and they do not inspire confidence. Alternatively it has been argued by the learned counsel for the appellant that though the appellant has been given the benefit under Section 4 of the Probation of Offenders Act but the order regarding removal of the disqualification clause, attaching to conviction, has not been passed by the learned trial Court and, therefore, the necessary order under Section 12 of the Probation of Offenders Act is required to be passed. The learned Public Prosecutor as well as Mr. Balot learned counsel for the complainant, on the other hand, have supported the judgment passed by the Court below and have submitted that the prosecution has proved the case against the appellant beyond a reasonable manner of doubt and the appellant has been rightly convicted. It has, also, been argued by the learned Public Prosecutor that language of Section 12 of the Probation of Offenders Act suggests that the benefit of Section 12 of the Act is not applicable where the appellant has been granted the benefit of Section 4 of the Probation of Offenders Act and it is applicable only in the cases when the benefit has been given only under Section 3 of the Act.

4. I have considered the submission made by the learned counsel for the parties.

5. PW 1 Ratan Lal and PW 2 Asu Ram are the two eye-witnesses of the occurrence. PW 1 Ratan Lal is the witness who received the injuries during this incident. He has stated that Mohan Singh and Nirmala entered into his house and on seeing them he proceeded towards the stair-case but he was caught-hold by neck by Mohan Singh, who thereafter inflicted injuries by fist blows. His wife raised

an alarm, upon which Asu Ram and Arjun Singh came there and rescued him. PW 2 Asu Ram came at the scene of the occurrence immediately after hearing the cries of the wife of Ratan Lal and when he reached at the place of the incident, he saw that the accused-appellant had caught the neck of Ratan Lal and was giving beating to him by fist-blows. Blood oozed out from the nose of Ratan Lal. A lengthy cross-examination was conducted upon these two witnesses, but nothing could be elicited from their evidence which could have shaken their testimony. PW 3 Champa Lal has stated that he reached at the place of the incident after hearing the cries and saw accused Mohan Singh and his wife Nirmala giving beatings to Ratan Lal and Ratan Lal was bleeding from his nose; but in the cross-examination he admitted that when he reached at the place of the incident, fifteen to twenty persons were standing out-side the house and he did not go inside the house. The evidence of this witness does not support the prosecution case and no reliance can be placed on the testimony of this witness and he cannot be said to be an eye witness of the incident. PW 6 Dr. M. P. Joshi examined the injuries found on the person of Ratan Lal and he has proved the injury report Ex. P. 5 which was prepared by Dr. Dharmendra Sharma - the then Medical Jurist - and has, also, stated that Ratan Lal received an injury on his nose which was the result of fist-blow given on his nose. PW 4 Kunj Bihari is the Motbir witness regarding preparation of site plan and the site-inspection note while PW 5 Ami Chand was the In-charge of Police Station, Division 'B', Jodhpur, in whose presence the First Information Report Ex. P. 1 was recorded and the case number 103 of 1991 was registered. PW 7 Pankaj Kumar Singh is the Investigating. Officer, who, after investigation, presented the challan. From the statements of PW 1 Ratan Lal, PW 2 Asu Ram and PW 6 Dr. M. P. Singh, the prosecution has been able to prove the case against the accused-appellant beyond any reasoanble manner of doubt. Regarding the question of plea of alibi, as set-forward by the accused-appellant in his defence, suffice it to say that no person, who participated in the Family Planning Camp at Osia, has been produced in the witness-box and it has, also, not been proved that up to what time the operations in the camp continued. The evidence of DW 1 Jugal Kushore, who has been produced by the accused-appellant in defence, does not inspire confidence and was rightly disbelieved by the learned trial Court. The prosecution has, therefore, been able to prove the

case against the appellant for the offence under Section 323, I.P.C. beyond a reasonable manner of doubt.

6. The next contention, raised by the learned counsel for the appellants, is that the learned trial Court, while giving the benefit of Section 4 of the Probation of Offenders Act, should have ordered for the removal of the disqualification attached to the conviction. Section 12 of the Probation of Offenders Act provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt-with under the provisions of Ss. 3 or 4 of the Act, shall not suffer the disqualification, if any, attached to a conviction for an offence under such law; provided that nothing in this Section shall apply to a person, who, after his release under Section 4, is subsequently sentenced for the original offence. The purpose for which the provisions of the Probation of Offenders Act are enacted, is the reformation and rehabilitation of the offender as an useful and self-reliant member of the society and this purpose will remain incomplete if he is only saved from the rigorous effect of remaining in jail and he be allowed to suffer any other disqualification attached to such conviction. By enacting Section 12 of the Act, the offender is not only saved from the deleterious effects of the jail-life but he will not suffer any disqualification attached to the conviction for an offence. This benefit is available to all the offenders released on probation under the Act and no distinction has been made regarding the disqualification while granting the probation under Section 3 or Section 4 of the Act. However, a proviso has been added, by which it has been made clear that the provisions of Section 12 will not be applicable to a person, who, after his release Under Section 4 of the Act, is subsequently sentenced for the original offence. The probation is a status granted to the convicted offender during the period of suspension of sentence for which he is convicted, by providing him conditional liberty on his furnishing a bond for maintaining peace and be of good behaviour for a prescribed period and during this period the State, by supervision attempts to assist to maintain peace and be of good behaviour. Keeping in mind the object, for which the provisions of the Probation of Offenders Act have been made and in view of the provisions of Section 12 of the Act. I, therefore, think it proper to direct that the conviction of the appellant will not incur any disqualification in his service career as he has been granted the benefit of Section 4 of the Probation of Offenders Act.

7. In the result, the appeal, filed by the appellant, is partly allowed. His conviction and the order granting him the benefit of Section 4 of the Probation of Offenders Act, are maintained and it is directed that his conviction for the aforesaid offences will not attach any disqualification to his service career.

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