

Mannalal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-22-1982

Reported in : 1982WLN(UC)158

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Appeal No. 90/77

Appellant : Mannalal

Respondent : The State of Rajasthan

Judgement :

Kanta Bhatnagar, J.

1. Appellant Mannalal was tried for the offence under Section 333 LP C. by the learned Sessions Judge, Udaipur. By the judgment dated 15-1-77 the learned Judge held the appellant guilty for the aforesaid offence and sentenced him to two years' rigorous imprisonment and a fine of Rs. 500/-, in default to undergo six months rigorous imprisonment.

2. Briefly, stated the facts of the case giving rise to the trial of the appellant are as under: Puranchand (P.W. 1) was Forest Guard, Nanga (P.W. 2) was Cattle Guard and Kishora Singh (P.W. 3) was the Fire Watehar of Padok Kokar Forest. On 22-5-76, all the three had gone on partoling duty. When they reached near village

Kunde, they found certain teak trees recently cut. They found 45 logs of teak wood in the fencing and outside the house of appellant Mannalal. They called Mannalal from his house and inquired about the wood. He admitted to have brought the wood from the forest. As that was the reserved forest, Puranchand (P.W. 1) asked Nanga to bring motbirs from the village so that necessary proceedings may be taken regarding the seizing of the logs. Nanga called Kesar singh (P.W. 7) and Kanji from the village. Puranchand prepared the pancha nama Ex. P. 1 and seized the logs vide memo Ex. P. 2. The statement of the appellant Ex. P. 3 was recorded. Report Ex P. 4 about this preliminary proceedings was prepared by Puranchand. Puranchand and Nanga asked the appellant to furnish bail. The appellant hurled abuses and took the spade lying near by and inflicted a blow to Nanga causing the fracture of his cleivle bone and went away from there. Puranchand (P.W. 1) went to Range Office, Kherwara and on the next day lodged report at police station Rishabhdev. The police inspected the site and got the injury of Nanga examined by Dr. Harisingh (P.W. 4). The Doctor examined Nanga and prepared the report Ex. P.8. He advised x-ray. Dr. Mahendra Singh Tyagi (P.W. 6) took the x-ray and detected fracture on the right side of cleivle bone.

3. Upon completion of necessary investigation, charge-sheet against the appellant was filed in the court of Judicial Magistrate, Dungarpur, who finding a case exclusively triable by the court of Sessions committed the appellant to the court of Sessions Judge, Udaipur to stand his trial. The learned Sessions Judge charge-sheeted the appellant for the offence under Section 333 I.P.C. The appellant denied the indictment and claimed to be tried. Prosecution examined nine witnesses in all. The appellant in his statement under Section 313 Cr. P.C. denied the allegations levelled against him and stated that Nanga wanted him to furnish surety and he prayed for some-time. Nanga insisted upon bringing the surety immediately and threatened him to take the ladies of his house. That there was not altercation between the two and they scuffled and fell down. That, Nanga was over the body of the appellant and sustained injuries on the shoulder from the nail for tying the cattle. One defence witness was examined to state that he had cut the wood from the grazing ground of the appellant and had brought the same at his house. The learned trial Judge placed reliance on the prosecution evidence and convicted the appellant and sentenced him as stated earlier.

4. Being aggrieved by his conviction and sentence, the appellant has preferred this appeal in this Court.

5. Mr. U.R. Tatia, the learned Counsel for the appellant has assailed the findings of the learned trial Judge on a number of grounds. It has been strenuously contended by Mr. Tatia that learned Judge has legally erred in not placing reliance on the probable defence story put forward by the accused. Another contention raised is that there is no convincing evidence to establish that injured Nanga was a public servant at the relevant time and was discharging his duties as such so as to bring the case within the ambit of Section 333 I.P.C. yet another point raised is that the inordinate unexplained delay of one day in filing the First Information Report is fatal for the prosecution. Mr. Tatia also urged that the fact of Nanga being examined at Kherwara instead of of Rishabhdev, which fell in way to Kherwara, throws doubt on the truthfulness of the prosecution case.

6. Controverting these contention, Mr. M.C. Bhati, learned Public Prosecutor submitted that Puranchand Nanga and Kishoresingh are forest officers and at the time of the incident were on patrolling duty. That, they were in uniform. That, there was every justification for them to ask the appellant to furnish surety concerning the offence of cutting wood from the reserved forest. It has also been stressed by the learned Public Prosecutor that the defence theory is unbelievable and the case does not fall within the preview of right of private defence.

7. At the very outset, I may observe that so far as the injury caused to Nanga on the date of the incident outside the house of appellant is concerned there is no dispute. The case of the appellant is that the injury was sustained from the peg meant for tying cattle, when in a scuffle he and the injured fell down. This defence theory has been suggested to all the prosecution witnesses and all of them have denied the same. The independent witness motbir Kesar Singh (P.W. 7) has also denied that suggestion. Similarly the defence version that Nanga threatened the appellant to take the ladies of his house in case he would not bring the surety immediately does not find support from any witness. No witness has been examined from the defence side to substantiate this plea. There is cogent, consistent evidence of Puranchand (P.W. 1), Nanga (P.W. 2), Kishore Singh (P.W.

3) and Kesar Singh (P.W. 7) that the appellant has hurled abuses and inflicted the blow on the cleivle bone of Nanga with the spade lying there. The medical evidence also does not support the defence contention. Dr. Hari Singh (P.W. 4) has of course admitted that in case a person falls with face downwards on some wooden jog or stone, the injury of the nature which Nanga had sustained can be caused. At the same time the witness opined that there was only one injury on the person of Nanga and in case a person falls on the ground with face downward and other part of body coming in contact with some hard substance such injury could be caused, otherwise the injury could be on the face itself. The Doctor stated that there was only one injury on the person of Nanga. The location of injury does not point out the possibility of of Nanga sustaining injury from the peg. In the absence of any evidence regarding Nanga and the appellant scuffling the defence story has been rightly rejected by the learned trial Judge.

8. The pertinent question in the case is whether at the relevant time Nanga was a public servant and it was in discharge of his duty as a public servant that he had asked the appellant to furnish surety. Two documents have been produced by the Laxman Singh (P.W. 5), the Forest Ranger, Kherwara, in whose circle Toker Forest was. He has stated that Nanga was posted as Cattle Guard there. According to him Puranchand, Nanga and Kishore Singh posted in that circle were on 24 hours duty. According to the witness Nanga was appointed on 8-6-75 and continued in service upto 30-1-76. He proved Ex. P. 10 for the initial appointment of Nanga as cattle Guard for two months. He also proved Ex. P. 9 by which the period of service of Nanga was extended from 1-4-75 to 30-6-76. The contention of Mr. Tatia is that Ex. P. 9 is dated 15-5-76 and, therefore, could not be effective from 1-4-76. He also laid stress on the point that no order has been produced for the extension of service of Nanga after the expiry of the initial period of two months till 1-4-76. Laxman Singh (P. W. 5) has stated that the order of extension of service between the issuance of order Ex. P. 10 & Ex. P. v was in the Department but the copies of the same have not been produced. He denied the allegation that in October, 1975, Nanga was removed from service and was not re-employed. The learned trial Judge has discussed this point and has rightly arrived at a conclusion that even on taking the date of Ex. P. 9 to be 15-5-76. Nanga was in service on 22-5-76 In this view of the matter, prosecution has duly established

that Nanga was in Government Service on the relevant date.⁹ Another relevant question is whether Nanga being a cattle guard falls in the definition of a forest employee having anything to do with the duties entrusted to a forest officer and it was in discharge of that duty that he had gone to the house of the appellant where the incident had taken place.

10. The definition of Forest Officer given in Section 2(2) of the Rajasthan Forest Act, 1953, is 'A Forest Officer means any person whom the State Government or any officer empowered by the State Government in this behalf may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule there under to be done by a Forest Officer'. Section 70 of this Act makes Cattle Trespass Act, which deals with cattle tres-passing in reserved forest or in any portion of a protected forest which has been lawfully closed to grazing applicable to this Act. The learned Public Prosecutor therefore has rightly contended that Cattle Guard was an employee of the Forest Department and falls within the definition of a public servant. All the three persons were on patrolling duty as stated above and in uniform on that day. The appellant has of course denied this fact but there is nothing to substantiate that plea. No suggestion was made even to the Motbir Kesar Singh, an independent person of the village in this regard.

11. The fact of Nanga being in service on the relevant date and being in uniform having been proved, the next question emerging for determination is whether he had accompanied Puran Chand in discharge of any duty. This has come on record that Puran Chand, Nanga and Kishore Singh were on the patrolling duty in the forest and the suspected stolen wood was seized from the house of the appellant. These three persons were posted in the same jungle and all the three going on patrolling duty for the protection of that reserved forest have rightly been considered to have gone for discharging duty. Assuming for the sake of agreement that the protection of the trees was the duty of Forest Guard only, still the two other Officers entrusted with the duty of the protection of that forest from cattle etc. would also be considered to be attending help to Puran Chand & any injury caused to any one of them while on patrolling duty would be considered to be an injury caused to a public servant. The case of Kishori Lai and Anr. v. Emperor AIR

1934 Allah 1016 is of no help to the learned Counsel for his contention that the act of the three forest employees was illegal. In that case an execution warrant was held to be bad because it did not comply with the mandatory provisions of Order 21, rule 24 (3) C.P.C. As the warrant was considered to be illegal the applicant was held to have committed no offence in resisting the same. Mr. Tatia also referred to the case of *Nakula Sarik and Ors. v. The State* A.I.R. 1967 Ori. 1 to substantiate the argument that Forest Guard of a Beat alone is entitled to seize the wood out from the reserved forest. In that case the victim of the grievous hurt was the forest officer of a Beat who while patrolling in uniform found accused person tying bundle of pieces of wood already out from the reserved forest. The act of apprehending of the accused by the forest guard and the seizing the bundle of wood by him was considered to be in discharge of his duties as a Forest Guard. The accused causing simple and grievous injuries to him were held to be guilty for the offences under Sections 332 and 333 I.P.C. This authority does not help the appellant because it does not speak that except the forest guard no body is entrusted with the protection of the forest.

12. The contention of the learned Counsel for the appellant, that why Nanga should have insisted upon the appellant to furnish surety and make a hurry when Puran Chand was already there, has no force. Puran Chand had asked the appellant to bring the surety and Nanga also repeated that direction. There was nothing wrong in any of the three persons on patrolling duty asking the appellant to bring surety. The appellant causing grievous hurt to Nanga, a public servant in discharge of his duty as such, has therefore rightly been held guilty for the offence under Section 333 I.P.C.

13. The learned Counsel has laid much emphasis on the delayed First Information Report and Nanga not being examined at Rishabhadev Hospital.

14. The importance of lodging the F. I. R. at its earliest need not be over-emphasised. Courts have always looked with caution the delay in lodging the F.I.R. for the reason that delay in lodging the information may lead to embroidery and improvement in the real story. At the same time if proper explanation for the delay comes forth, it is not considered to be fatal. In the present case the learned

trial Judge has considered this aspect of the argument and has rightly concluded that if the forest employee thought it proper first go to the Range to appraise the Officer about the incident and then to lodge the report, there was nothing wrong and the suspicion about the false implication of the accused can not be raised. In the given circumstances of the case when the fact of the demand of surety and Nanga sustaining injury has not been disputed even from the defence side, the delay cannot be said to have damaged the prosecution case as stated above. The only dispute was about the manner in which the injury was sustained. The cogent, convincing evidence of four witnesses including Kesar Singh (P.W. 7), the independent motbir of the village, who had no enmity with the appellant to state against him, is of the type that the delay of one day can not be said to be an inordinate unexplained delay. As regards the medical examination of Nanga at Kherwara instead of Rishabhdev is concerned, there is specific evidence of Puran Chand that as Doctor was not available at Rishabhdev, the injured was taken to Kherwara hospital. There is no rebutting evidence to it.

15. From the above discussion, I am inclined to hold that the charge under Section 333 I.P.C. against the appellant has been duly established by the prosecution and the finding of the learned trial Judge calls for no interference.

16. Mr. Tatia inter alia argued that in case his arguments about the innocence of the appellant do not appeal the Court, he may be given benefit under the Probation of Offender's Act. He referred to the case of In re. L.N. Srinivas Chetty : AIR1970 Mad359 , where the accused being first offender was given benefit under the Probation of Offender's Act for the offence under Section 332 I.P.C. In that case the Municipal Inspector detained the cycle of the accused for want of licence. The cycle had the licence but the disk was not displaced on the cycle. The accused slapped the Inspector and took away the cycle. It was held that the Inspector was acting in a capacity of a public servant and in discharge of his official duty had seized the cycle. The offence committed by the accused was held to be under Section 332 I.P.C. & not under Section 323 I.P.C. as his counsel pleaded The gravity of offence under Section 333 I.P.C. in comparison of Section 332 I.P.C. requires no discussion. The appellant in the present case had inflicted spade blow, causing fracture on the cleicle bone of Nanga and, therefore, it is not

a fit case in which he may deserve the benefit under the Probation of Offender's Act. However, in view of the young age of the appellant which age in his statement recorded under Section 313 Cr. P. C. in the trial court on 4.12.76 is recorded to be 22 years, a lenient view is called for as far as the sentence awarded to him is concerned.

17. Consequently, the appeal is partly allowed. The conviction of appellant for offence under Section 333 I.P.C. is maintained. The substantive sentence of two years rigorous imprisonment is reduced to one year's rigorous imprisonment. The sentence of fine of Rs. 500/- in default to undergo six months rigorous imprisonment is maintained. The order for giving amount of fine, if recovered, to Narga is also maintained. The appellant is on bail. The Chief Judicial Magistrate, Dungarpur is directed to effect the arrest of the appellant and send him to custody to suffer the sentence awarded to him.

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