

State of Rajasthan Vs. Vishan Singh

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Court : Rajasthan

Decided On : Sep-04-1996

Reported in : 1997CriLJ1443; 1996WLC(Raj)UC45; 1996(2)WLN119

Judge : D.C. Dalela and; Amaresh Ku. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 435 and 436; Code of Criminal Procedure (CrPC) - Sections 173 and 313

Appeal No. : Criminal Appeal No. 156 of 1979

Appellant : State of Rajasthan

Respondent : Vishan Singh

Advocate for Def. : B.L. Bishnoi and; Virendra Choudhary, Advs.

Advocate for Pet/Ap. : D.R. Bohra, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned Public Prosecutor for the State and the learned counsel for the respondent and perused the record.

2. The respondent-Vishan Singh was tried by the learned Sessions Judge, Balotra on charges under Sections 435 and 436, I.P.C. After trial the respondent was acquitted. The State has filed this appeal against the order of acquittal passed by the learned Sessions Judge, Balotra.

3. A first information report was lodged by Sona Ram at the Police Station, Samdari District Barmer on 19-1-1978 at 3.15 p.m. According to the first information report Lachharam and his family used to live in a hut which was constructed in the field which is alleged to be in possession of Lachharam. On the night intervening 16th and 17th January, 1978 one Jogla alias Jogaram son of Bhagwanaram Bheel was sleeping outside the hut, Lachharam and the members of his family were sleeping inside the hut. At about midnight when Jogla woke up and went towards rear side of the hut to ease himself he saw one man going towards rear side of the hut. At that time Jogla saw that the man he has seen going towards the hut, set fire to the hut and in the light of fire he recognised him as Vishan Singh. Thereafter Jogla raised an alarm and cried aloud to the effect that the hut of Lachharam was set to fire by Vishan Singh Rajput. One Sardar Singh rushed towards the place of occurrence on hearing the alarm raised by Jogla and at that time Vishan Singh fled away from the scene of occurrence. Jogla and others saved the lives of Lachharam and the members of his family by fetching them outside the burning hut. However, the goods and some cash which was placed in the hut were destroyed by fire. On the next morning the matter was reported to some villagers who came to the place of occurrence. On the basis of the report lodged by Sonaram the police registered a case under Sections 435 and 436, I.P.C. and after usual investigation submitted a report under Section 173, Cr.P.C, in the Court of Munsif and Judicial Magistrate, Balotra who committed the case to the Court of Session where the accused respondent was tried for the charges under Sections 435 and 436, I.P.C. and the trial resulted in acquittal.

4. During the trial, the prosecution examined Jora Bharti, P.W. 1, Sona P.W. 2, Sona P.W. 3, Sardarsingh P.W. 4, Jogaram P.W. 5, Ghewaria P.W. 6, Sona P.W. 7, Bhuraram P.W. 8, Lachha P.W. 9 and Bherdan P.W. 10. The accused was examined under Section 313, Cr.P.C. He did not produce any evidence in his defence.

5. The evidence on which the prosecution relied on for proving the charge against the accused consists of oral evidence of Jogla alias Jogaram P.W. 5, Lachha P.W. 9 and Sardarsingh P.W. 4. The prosecution case is that at midnight Jogaram P.W. 5 went to ease himself, he saw one man going towards rear side of the hut and setting fire to the hut and the light produced by the flames he recognised that man as Vishan Singh and Vishan Singh continues to stand there till Sardarsingh P.W. 4 arrived at the scene of occurrence on hearing the alarm raised by Jogaram P.W. 5. Lachha P.W. 9 has during his statement in the Court stated that when Jogaram told that the fire had been set by Vishan Singh, he saw towards Vishan Singh and recognised him. Sardar Singh P.W. 4 has deposed that on hearing the alarm and on seeing the flames he rushed towards the field of Lachha and saw that the hut of Lachha was burning and Lachha, Lachha's children, Jogla Bheel and Ghewaria were present there and they were trying to bring the house-hold goods from inside the hut and at that time Joga stated that Vishan Singh had set fire to the hut. Sardar Singh had not supported the prosecution version that the accused Vishan Singh, retired from the scene of occurrence after the arrival of Sardarsingh. In other words, Sardarsingh had not supported the prosecution Version. The learned Sessions Judge carefully considered the evidence of Jogaram P.W. 5 and Lachha P.W. 9. He came to the conclusion that there was no mention in the first information report that Lachharam had seen the accused Vishan Singh at the place of occurrence, and therefore, his statement in the Court that he recognised Vishan Singh soon after the hut was set to fire is unreliable. Regarding the evidence of Jogaram P.W. 5 the learned Sessions Judge came to the conclusion that his evidence is not reliable because there was no reason for him to be present at the hut of Lachharam and khat the first information report was also lodged after considerable delay and in the Ghatna Bahi of the Patwari it was not recorded that the fire had been set to the hut by Vishan Singh and, therefore, it is just and proper to infer that upto the time the Ghatna Bahi of the Patwari was written the name of the person who set fire to the hut was not known. In the above circumstances the learned Sessions Judge held that the testimony of Jogaram P.W. 5 is not reliable.

6. The learned Public Prosecutor has challenged the correctness of the findings arrived, at by the learned Sessions Judge, Balotra.

7. We have carefully considered the evidence and in our opinion the evidence of Jogaram P.W. 5 and Lachha P.W. 9 in so far as it implicates the respondent is not worthy of reliance. Lachha is an old man. At the time of alleged occurrence he was sleeping inside the hut. It is inconceivable that the accused would have continued to stand there till Lachharam came out of his hut. Therefore, the statement of Lachharam P.W. 9 that he recognised the accused on the spot is an improvement and deserves to be rejected as false. So far as the testimony of Jogaram P.W. 5 is concerned, his story is not natural. According to him he wanted to purchase she-goats and had started from his house with that purpose and Lachha had asked him to stay at his house at night and while the members of the family of Lachha along with Lachha were sleeping inside he was sleeping outside the hut. It is noteworthy that the alleged incident took place on the night intervening 16th and 17th January, 1978. In the mid of January it is quite cold and it is not believable that Jogaram P.W. 5 would have slept on a cot outside the hut particularly when he had made no special arrangements for his bedding etc. Therefore, the presence of Jogaram P.W. 5 at the scene of occurrence at midnight when the fire is alleged to have set out to the hut is open to great doubt. If he was in fact staying with Lachha P.W. 9 on that night he must have been sleeping inside the hut and not outside it. The night was dark and if Jogaram P.W. 5 went outside the hut to ease himself it is not on the rear side but on the front side of the hut and as such he has no occasion to see whether there was any person standing on the rear side of the hut. In any case his statement -that the accused-respondent Vishan Singh continued to stand there after setting fire to the hut is completely unreliable. It is also pertinent to note that the field in which the hut was standing was a field in respect of which there was a dispute between Lachha and Vishan Singh and it has come on the record that Vishan Singh was cultivating that field for the last four years. In the circumstances this possibility cannot be ruled out that the accused-respondent Vishan Singh has been falsely implicated so that he may be pressurised and forced to abandon the field which he was cultivating for several years before the occurrence. We, therefore, do not find any error in the judgment of the learned Sessions Judge, who rightly refused to place reliance on the testimony of Jogaram P.W. 5 and Lachha P.W. 9.

8. In view of the above reasons, there is no merit in this appeal and it is hereby dismissed. The bail bonds of the respondent are hereby discharged.

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