

Narayan and 4 ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-22-1989

Reported in : 1989WLN(UC)118

Judge : G.K. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 135 of 1985

Appellant : Narayan and 4 ors.

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

G.K. Sharma, J.

1. This appeal is directed against the judgment date 1-3-85 passed by, Sessions Judge. Tonk where by convicting the appellants for the offences and sentences them as under:

1. Under Section 148, IPC : One years RI and a fine of Rs. 200/- in default of fine 2 months S.I.

2. Under Section 307/149, IPC : Three years R.I. and a fine of Rs. 200/-, in

default of fine, two months S.I.

2. According to the prosecution story, Mohandas and others were digging a 'Babool' tree in the agricultural field where the accused persons arrived with Lathies and sharp weapons belaboured them and inflicted simple and grievous injuries to Mohandas and Jagdish. On this report a case was registered. After usual investigation the Police submitted challan against six persons.

3. The trial court framed charges against the accused persons under Sections 147, 148, 307/149, 323, 324, 325 and 326/149, IPC. The accused persons did not plead guilty and claimed trial.

4. After concluding trial the learned trial court acquitted the accused Pratap Das and convicted and sentenced other five accused appellants as mentioned above. Three appellants were also found guilty under Sections 323, 324, 325 and 326, IPC but no separate sentence has been awarded to them.

5. Both the learned Counsel argued at length. The evidence recorded by the trial court was read over on important points. I have also perused the judgment.

6. It has been argued that the prosecution has failed to establish that the accused persons had formed an unlawful assembly. As admitted by Mohan Das PW 1. the field and the 'Med' belong to Pratap Das accused who mortgaged the field to Lal Das, brother of Mohan Das. According to Mohan Das the field has been sold to Laladas but its sale deed and the registry has not been completed. It means that the field was still in the ownership of Pratap Das. No doubt it was mortgaged with Lal Das but Lala Das does not become its owner. After the registry of the sale-deed Lala Das would be the owner but till then Pratap Das is the owner. It is also admitted that suit is pending in the Court of SDO. So it is clear that the disputed field and Med was not in the ownership of Lala Das, though it was in his possession. The possession was on account of mortgage, but this does not give right to Laladas to cut, 'Babool' tree which was on the 'Med'. Apart from this, the field was not mortgaged with Mohandas. Mohandas has no right to interfere in the field and Med. He had no right to cut the Babool on the Med. So if the accused persons asked Mohandas not to cut the tree, they had not committed any offence.

There was no bad or malafide intention in the mind of accused persons. They were original owners of the field and Med and in that right they had not committed any offence in asking Mohandas not to cut the tree. It was their bona fide intention to restrain Mohandas from cutting the tree. So there was no pre-plan or premeditation of the accused persons to form an unlawful assembly. The learned trial court did not understand this legal aspect. There was no question of forming an unlawful assembly. It cannot be said that the accused persons had any common object and in furtherance of that object they belaboured the complainant party. The common object can be said to be restraining Mohandas from cutting the tree. This common object cannot be said to be unlawful or illegal. It was the right of the accused persons to save their property. So unlawful assembly was not formed by the accused persons and they cannot be convicted with the aid of Section 149 IPC.

7. There is no proof on record as to who had inflicted which blow and to whom. So there is no evidence imposing individual liability on the accused persons.

8. I have perused the injury reports of Mohandas and Jagdish. Mohandas had seven injuries, out of which two are grievous and rest simple. The grievous injuries are not on any vital part. There is no proof that the injuries were dangerous to life. Similarly Jagdish had six injuries, out of which two are grievous and rest simple. The grievous injuries were not on vital part and it cannot be said that they are dangerous to life. In such circumstances, there is no case under Section 307, IPC made out. The conviction of the appellants under Section 307, IPC is bad.

9. It is not disputed that accused persons also had received injuries. Five accused persons were injured. Five injuries are on head. Though they are simple injuries but are on head i.e. on vital part. Two of the injuries are grievous though not on vital part. The idea of mentioning this is that the accused persons also received injuries. The prosecution has not explained how the accused persons had received these injuries. Some of the injuries were caused by sharp weapon. So non-explanation of the injuries of the accused persons is fatal to the prosecution and creates suspicion in the truthfulness of their case.

10. Pratapdas was also accused in this case. His contention was that he was not present at the time of occurrence of this incident Mohandas PW 1, complainant, stated in this respect and his statement that Pratapdas was present and he also inflicted blow. This fact is contradicted by the witness, Morpal PW 5 who in the cross examination stated that he had not seen Pratap Das at the place of occurrence. Thus Mohandas has been falsified by their own witness Morpal PW 5. This shows that Mohandas complainant is a liar and false witness. He had reported the matter falsely, not stating the correct version. Mohandas, therefore, is most untrustful and unreliable witness.

11. In view of my above discussion I am of this view that the prosecution has failed to establish its case. The learned trial court has not appreciated the evidence correctly and has committed error in convicting and sentencing the appellants. No case is made out against them.

12. Consequently the appeal is accepted. The conviction and sentence awarded to the appellants by the trial court for the offences under Section 147, 307/149, 323, 324, 325, 326/149 IPC are set aside. All the appellants are acquitted from all the charges. The appellants are on bail. Their bail bonds are cancelled. They need not surrender.