

Prem Singh Vs. State of Rajasthan

Prem Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/762925

Court : Rajasthan

Decided On : Aug-03-2005

Reported in : RLW2005(4)Raj2597

Judge : V.K. Bali and; Vineet Kothari, JJ.

Acts : Evidence Act - Sections 27; Indian Penal Code (IPC) - Sections 148, 326, 364A and 395; Code of Criminal Procedure (CrPC) - Sections 100(4), 313, 161 and 162

Appeal No. : D.B. Criminal Appeal No. 243 of 2001

Appellant : Prem Singh

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : N.A. Naqvi and; Mukesh Poonia and; B.M. Sharma, Advs

Judgement :

V.K. Bali, J.

1. Prem Singh and Rajendra, the appellants herein were tried with five others for offences under Sections 364A, 326, 395 and 148 and various other offences of the Indian Penal Code. The co-accused of appellants Rupa, Bahadur, Fatte, Prem

Singh son of Shridhar and Sube have been acquitted. The appellants however, been convicted under Section 364-A and sentenced to undergo life imprisonment as also to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo three months imprisonment. They have also been convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for ten years as also to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo three month imprisonment. They have also been found guilty for offence under Section 395 and sentenced to undergo seven years rigorous imprisonment as also to pay fine of Rs. 500/- and in default of payment of fine, to further undergo three months imprisonment. The appellants have also been convicted for offence under Section 148 IPC to undergo one year rigorous imprisonment as also to a fine of Rs. 100/- and in default of payment of fine, to further undergo one month imprisonment vide order of conviction and sentence dated 22.2.2001 passed by the learned Special Judge and Sessions Judge, Karauli. Whereas, appellant Rajendra has filed appeal No. 146/2001 appellant Prem Singh has filed appeal bearing No. 243/2001 against the common impugned judgment.

2. The occurrence as per prosecution version had taken place on 18.1.1997 at 04.00 p.m., whereas FIR was lodged by Bahadur Singh, Head Constable P.W. 17 on 19.1.1997 at 5.40 a.m. While unfolding the prosecution version Bahadur Singh stated that the Officers had deputed nine Constables with him to safeguard the shepherds of Dang area. They were doing their duty with the shepherds. On 6.12.1996 in area of Police Station Masalpur, today at about 04.00 p.m., in the day shepherds Ramdeo and Sukhram were captured by dacoit Prem Singh and his companions. They were caught hold in the area of Vazirpur. Jagdish was sent to meet the head of the shepherds Ram Niwas at Jhajharpura and at that time Jagdish had narrated to me the incident, whereupon I alongwith Chandagi Ram, Ganpat Singh, Hari Singh, Shri Karani Singh, Shiv Narain and Chaina Ram Constables alongwith rifles went to Jhajharpura area and surrounded the decoits at about 09.00 p.m. They started firing towards us with a view to kill us. Thereupon we also fired in our self defence. The decoits then chopped of nose and ears of Ramdeo and Sukhram and ran away after beating them. People of Khidkhadi and Village Jhajharpura number 50-60 came and pounced upon us. We started beating us with stones and sticks, whereupon we fired in air in our defence. The

people of village then by surrounding us snatched our two rifles whereas Chaina Ram Constable alongwith rifle was missing. Hari Singh, Kami Singh and Shiv Narain thereafter, brought us to Dera. Because of beating I, Ganpat Singh and Chandagi Ram had received injuries on various parts of out body.

3. During the course of trial, the prosecution proved that besides Bahadur Singh, the first informant 5-6 persons were injured in the occurrence. Ganpat Singh, Constable sustained two simple injuries with blunt weapon on his person as described in his MLC Report (Ex.P.14). Constable Chaina Ram received eight injuries on his person out of which injury No. 2 which was grievous and was caused by a blunt weapon. His MLR was proved as (Ex.P.16), whereas X-Ray Report was proved as (Ex.P.18). Rest of the injuries sustained by him were simple in nature. Chandagi Ram Meghwal as per Medico Legal Report (Ex.P. 17) had received 5 injuries out of which two were grievous and caused by blunt weapon, Whereas the rest were simple. His X-Ray Report was proved as (Ex.P.20). Ramdeo received six injuries as would be clear from MLR (Ex P.23). One injury sustained by him was grievous and caused by sharp edged weapon. Sukh Ram as per MLR (Ex.P.24) sustained two injuries, one was grievous and caused by sharp edged weapon. Bahadur Singh as per MLR (Ex.P.25) had received five injuries by blunt weapon one of which was grievous in nature. Dr. Nandlal Sharma P.W.15 proved the above mentioned medico legal reports of all the injured persons named above. He had medico legally examined them on 19.1.1997.

4. Whereas, Bahadur Singh, the first informant was examined as P.W. 17. Constable Ganpat Singh was examined as P.W. 10. Constables Chaina Ram and Chandagi Ram were examined as P.W.12 and 13 respectively. The victims of kidnapping and serious injuries of chopping off nose and ears were examined as P.W. 18 and 20 respectively. We will make a mention of witnesses and depositions made by them in the later part of the judgment while dealing with the contentions of the learned Counsel appearing for the parties.

5. When examined under Section 313 Cr.P.C. the appellants besides denying incriminating material put to them pleaded that they were innocent and had been falsely implicated.

6. Mr. N.A. Naqvi, learned Counsel appearing on behalf of appellant Rajendra in Appeal No. 146/2001 vehemently contends that the appellant has been held guilty by the learned Sessions Judge on the basis of recovery of rifles pursuant to statement made by him under Section 27 of the Indian Evidence Act. The prosecution led no evidence whatsoever to connect him with the crime. The victims of kidnapping who sustained serious injuries on ears and nose specifically stated that they had not ears and nose specifically stated that they had not named Rajendra accompanying Prem Singh decoit and others and the mention of Rajendra in their statements under Section 162 Cr.P.C. was incorrect. The recovery rifles pursuant to the statement made by the appellant Rajendra in the facts and circumstances of the present case, is a made up affair further contends the learned Counsel.

7. We have seriously pondered over the contentions raised by the learned Counsel for the appellant and find sufficient merit in the same. Rajendra is stated to have been arrested on 19.1.1997 at 07.00 p.m. as would be clear from his arrest memo. Constable Pyarelal and Constable Ram Singh are the witnesses of his arrest. His disclosure statement (Ex.P.12) was recorded within 15 minutes from the time of his arrest at 07.15 p.m. The appellant is said to have led the police party to the place of recovery at 08.00 p.m. on the very same day. There is a great deal of doubt with regard to arrest of Rajendra at 07.00 p.m. on 19.1.1997 itself. Whereas, Constable Pyarelal P.W.3 stated that the Rajendra was arrested from his house at 07.00 p.m. in the evening. Constable Ram Singh examined as P.W. 14 stated that appellant was arrested at Police Station. Investigating Officer Mr. Ram Prasad who was examined as P.W.9 however, stated that Rajendra was arrested from the forest. Totally contradictory evidence with regard to arrest of the appellant would seriously dent the recoveries of rifles made from him. It may be recalled that all P.Ws. 3, 14, and 9 are official witnesses. If Rajendra had actually been arrested in the way and manner as suggested, there could not be such a variations in the statements made by all the prosecution witnesses named above. That apart, no endeavour was made by the I.O. Ram Prasad P.W. 9 to join independent, witnesses for effecting recovery of rifles pursuant to statement made by the appellant as required to be done under the provisions of Section 100(4) of the Code of Criminal Procedure which is reproduced below:

Section 100. Person in charge of closed place to allow search: (4). Before making a search under this Chapter, upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

8. Still, further, the appellant is stated to have got recovered two rifles which were lying under the heap of cow dung in jungle of Jhajharpura. The place from where the recovery of two rifles was made, it appears was open to all and sundry and it can not be said that the appellant alone, would have exclusive knowledge of the rifles lying at such a place. In so far as the recovery of another rifle again pursuant to disclosure statement made by the appellant under Section 27 of the Indian Evidence Act, is concerned, it would be seen that the recovery witnesses Bharosi and Vijay Singh P.W. 5 and 7 did not support the prosecution version. Whereas, two rifles were recovered vide Memo (Ex.P.3) on 19.1.1997 on the date of arrest of the appellant, one rifle is said to have been recovered from him on 21.1.1997 from a room of his house. The recovery of rifle on 21.1.1997 as mentioned above, is not supported by independent witnesses Bharosi and Vijay Singh. The testimony of I.O. alone in connection with recovery of rifle from appellant on 21.1.1997, in the facts and circumstances of the present case, does not inspire any confidence. We may reiterate that if the very arrest of the appellant on 19.1.1997 is highly doubtful, it would be wholly unsafe to place reliance upon the evidence led by the prosecution with regard to recovery of rifles. There arises a great deal of doubt with regard to involvement of Rajendra appellant in the commission of crime.

9. Mr. Sharma, learned Counsel appearing on behalf of appellant Prem Singh in Appeal No. 243/2001 contends that all the witnesses have admitted in no uncertain terms that they had not seen the appellant ever before the date of occurrence and yet, the prosecution made no efforts to get the appellant identified before a Judicial Officer. This itself, should prove fatal to the prosecution case. He further contends that there was no mention in the first information report that Jagdish has been sent with a message and a written chit that an amount of Rs.

31,000/- should be given to the accused for release of Ramdeo and Sukh Ram and even the chit (Ex.P.28) was not got proved from any hand writing expert.

10. We have given our thoughtful consideration to the contention of the learned Counsel as noted above, but in the context of the facts and circumstances of the present case, do not find any merit therein. It may be recalled that Ramdeo and Sukh Ram were made hostages for ransom at about 04.00 p.m. They remained under confinement with the appellant for five hours. Ramdeo and Sukh Ram while appearing in the witness box have clearly named Prem Singh appellant as one of the person who had confined them. They also named him as person who chopped off their nose and ears. It is not a case of dacoity, robbing people of their belongings in a matter of few minutes and as mentioned above, Ramdeo and Sukhram remained with appellant and others for five long hours. They could not have made any mistake in identifying the persons who had confined them for such a long time and physically assaulted them in chopping off their ears and nose. That apart, in the first information report that came to be lodged at 05.40 a.m. on 19.1.1997 of the occurrence that ended at about 09.00 p.m. on 18.1.1997, name of Prem Singh has been mentioned. There was no question of name of Prem Singh figuring in the FIR if he had not been clearly identified either by Jagdish or two victims of a brutal attack on Ramdeo and Sukh Ram. The statements made by the witnesses, named above, inspire confidence. It is significant to mention that they denied involvement of Rajendra when they appeared in the statement made under Section 161 Cr.P.C. It was not difficult for Ramdeo and Sukh Ram to name Rajendra as one of the accused particularly, when in the statements recorded under Section 161 Cr.P.C. his name was mentioned. If, they were to secure conviction on falsehood, they could well stand to the statements made under Section 161 Cr.P.C. The prosecution, in our view, would have done better if it had arranged for a test identification parade as well but in the facts of the present case, failure of police to hold test identification parade cannot be fatal. In so far the contention of the learned Counsel that there is no mention with regard to ransom in the first information report and that chit (Ex.P.28) was not proved by the hand writing expert is concerned, we may mention that name of Jagdish carrying message of appellant Prem Singh and others with regard to confinement of Ramdeo and Sukh Ram is specifically mentioned in the F.I.R. The very sending of

Jagdish by the appellant Prem Singh and others to the village with a message of confinement of Ramdeo and Sukh Ram would suggest that the same was for a purpose. Chopping off ears and nose of Ramdeo and Sukh Ram on account of payment having not been made and rather attack on them by surrounding, further shows that Ramdeo and Sukh Ram were confined with a view to extract money for their release. The omission in the FIR with regard to message of dacoits for ransom appears to us to be insignificant. The omission however, was covered in the depositions made by eye witnesses who have in unison supported the prosecution case. Non-examination of hand writing expert, once the prosecution story is believed with regard to confinement of Ramdeo and Sukh Ram for so many hours would be of no help to appellant Prem Singh. Non-examination of Jagdish too would not make any dent the prosecution case. The prosecution led overwhelming evidence in proving confinement of Ramdeo and Sukh Ram for five hours. It also proved serious injuries sustained by them too. The prosecution, in our view, proved involvement of appellant Prem Singh in the commission of crime of various offences beyond shadow of reasonable doubt.

11. The upshot of discussions made above, whereas, results into allowing of appeal filed by Rajendra, the same results into dismissal of appeal of Prem Singh. The order of conviction and sentence recorded by the learned Sessions Judge, Karauli dated 22.2.2001 in so far as it pertains to appellant Rajendra, is set-aside but the same is maintained with regard to appellant Prem Singh. Appellant Rajendra be set at liberty forthwith, if not required in any other case.