

Mohan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-16-1990

Reported in : 1990(1)WLN307

Judge : N.C. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 451 of 1982

Appellant : Mohan and ors.

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.C. Sharma, J.

1. Out of the seven appellants in this appeal, while Mohan appellant No. 1 was found guilty for offences Under Sections 323, 149, 148, 324 and Section 324 read with Section 149 IPC, the rest of the appellants were found guilty Under Sections 323, 147, 324 read with Section 149 and Section 325 read with Section 149, IPC. How ever, instead of being sentenced for imprisonment, all the appellants were given benefit of Section 4 of the Probation of Offenders Act and they were released upon entering into a bond for a period of 3 years. Yet the appellants have come in an appeal to this Court.

2. The main argument advanced by the learned Counsel for the appellants was that the prosecution had not come with a true version about the origin of the fight and the manner in which the incident took place. The appellant Mukh Ram has come forward with a counter version and his version is more probable on account of the existence of injuries on his body which remained unexplained by the prosecution. It was urged that the prosecution did not explain the injuries sustained by Mukh Ram and that there is a counter case against the complainant-party in that respect. The submission was that the appellants were not aggressors.

3. An unlawful practice has become rampant with the Rajasthan Police that it investigates two criminal cases out of one incident without applying its mind simply on account of the fact that two First Information Reports of the same incident were lodged at the Police station by rival parties. That happened in the present case also in accordance with the mal-practice of the Rajasthan Police which has assumed dimensions. The First Information report Exhibit P-5 was lodged by Jagdish PW 5 at Police Station Roopwas on September 26, 1981 at about 8 or 9 A.M. of that day. A Criminal Case No. 131/1981 was registered at Police Station Roopwas of the same incident. There was a counter First Information Report Ex. D4 which was lodged by Nathi Singh on the same day at 9. P.M. an another Criminal Case No. 132/1981 was registered at the same Police Station. The incident was one and the same. To me, the law appears to be very clear. Cross criminal cases, can arise only when either there is a free fight or there are two independent incidents. In no other case there can be cross cases. In the present case there were two counter versions one version was that which was put forward by Jagdish PW 3, as regards bodily hurt inflicted by the appellants on Paras Ram brother of Jagdish, by the appellants by 'Farsi' and Lathi on agricultural field comprised in Khasra No. 574 situated in the vicinity of village Dahina. The counter version was that put forward by Mathi Singh in his First Information Report Exhibit-D.4 in which it was mentioned that Chena Ram PW 4 had inflicted injuries on Mukh Ram appellant as evidence by injury report Exhibit D-6. None of the sides alleged any free fight or two independent incidents and the Investigating Officer has also not come to either of the conclusions. The simple conclusion was that one of the sides was aggressor and the other exercised right of private defence. How can there be two charge sheets on the basis of the two First Information

Reports lodged by rival sides and how can the investigation, in such circumstances, lead to a result which could justify initiation of two cross-cases. However, Rajasthan State Police had become addicted to it. It takes pleasure and reaps advantage by investigating a single incident as cross cases without assigning any reason at its own whims and caprice. The court strongly deprecates the incompetency and motives of the Rajasthan Police when it does so. The investigation resulting in initiation of two cross cases was frivolous. Chena Ram, uncle of Paras Ram, injured had clearly an axe to grind against the appellants' party. It is clear from Exhibit D-7 that on September 24, 1981 cattle of Chena Ram was alleged to have been entered into a cattle pond by the accused party and Chena Ram got them released from the cattle pond on that date. The present incident took place on September 26, 1981 i.e. two days after the cattle of Chena Ram was got released by him from the cattle pond. Yet very Chena Ram was mentioned by Jagdish, brother of Paras Ram, as eye witness to the incident in the First Information Report Exhibit-5. Mukh Ram appellant definitely sustained an incised wound 3.5X1.5X1 c.m. deep, obliquely placed on left shoulder anteriolateral aspect. This injury was caused by sharp weapon. Apart from that he had also swelling and bruise. But the prosecution has not at all explained as to how Mukh Ram appellant received these injuries. In the circumstances of the case, this non-explanation of injuries on Mukh Ram gives rise to the inference that he and appellants acted in the exercise of their right of private defence of the person of Mukh Ram while they inflicted injuries on Paras Ram. A perusal of the note given below the site inspection note Ex. P. 7 would go to show that the Investigating Officer himself noted the place of the incident in Exhibit P-7 and had pin-pointed it as place 'X'. At that place, there were no signs of incident and no bloodstains. This clearly goes to show that the incident did not take place in the filed bearing Khasra No. 547 and it took place somewhere else. That probalised more the defence version and nullified the theory of prosecution. It leads to the conclusion that Chena Ram and his party were aggressors and the appellants were acting in exercising of their right of private defence of person and did not exceed that right.

4. Consequently, the conviction of the appellants for the offences charged deserve to be set-aside and all of them deserve to be acquitted. The Rajasthan State Police should learn a lesson for further and The State Govt. should effectively

control its Police administration by giving clear guidelines to the Investigating Machinery to correctly investigate the incident and uphold the criminal law of the land and ought not to misuse it for ulterior ends.

5. I, therefore, allow this appeal, set-aside the conviction recorded by the learned Sessions Judge, Bharatpur against the appellants and acquit them of the charges for which they have been found guilty.

6. A copy of this fragment be sent to the Chief Secretary to the Government of Rajasthan and Director General of Police, Rajasthan for necessary action and information.

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