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Court : Rajasthan

Decided On : Jan-07-1987

Reported in : 1987(2)WLN427

Judge : Milap Chandra Jain, J.

Appeal No. : S.B. Cr. Appeal No. 271 of 1978

Appellant : Umesh Chandra

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. N.N. Mathur

Judgement :

Milap Chandra Jain, J.

1. These two appeals arise out of the judgment dated 22-7-1978, whereby the learned Additional Sessions Judge, Udaipur convicted the appellant Umeshchandra in Appeal No. 271 of 1978 under Section 307, I.P.C. and sentenced him to three years' rigorous imprisonment and to pay a fine of Rs. 1000/-, in default of payment of fine to further undergo six months' simple imprisonment and he further convicted the appellant Manju in Appeal No. 275 of 1978 for the offence under Section 324, I.P.C. and sentenced him to one year's rigorous imprisonment and to pay a fine of Rs. 500/-. in default of payment of fine

to further undergo three months simple imprisonment.

2. The occurrence in this case is stated to have taken place on 3-5-1977 between 9-30-10.00 p.m. near the police station Surajpol in the city of Udaipur. It is said that some incident had taken place with the complainant Jabbar Khan's son Nawab Khan, which was reported by Nawab Khan to his father Jabbar Khan. Thereupon, Jabbar Khan is to said have proceeded from his house to lodge the report at the police station, Surajpol. He went on the Motor Cycle driven by Ashok Kumar. It is urged that the Motor cycle was got stopped by the accused-persons viz Umeshchandra, Chunnu Khan, Majid. Manju and Hamid Khan. They were armed with 'dbariyas, lathis' and knife. It is stated that the accused Manju inflicted a 'Dhariya' blow on the head of Jabbar Khan and Umeshchandra inflicted a knife blow on his right scapular region and the other accused persons gave fist blows. A written report of the incident was lodged at 10.20 p.m. Thereupon, a case under Section 307, I.P.C. was registered against the accused-persons, Jabbar Khan was medically examined. After necessary investigation, the charge-sheet was presented against five accused-persons who were committed and ultimately tried by the Additional Sessions Judge Udaipur. Three accused-persons namely; Chunnu Khan Majid and Hamid Khan were acquitted and the remaining two accused-persons; Umeshchandra and Manju were convicted and sentenced as a aforesaid.

3. I have heard Mr. N.N. Mathur learned Counsel for the appellants and Mr. R.K. Soni, learned Public Prosecutor for the State and have gone through the evidence recorded at the trial. It may be stated that the learned Additional Sessions Judge, Udaipur found the testimony of PW 2 Jabbar Khan and PW 3 Ashok Kumar credible. He however, did not place any reliance on the testimony of Nasir Khan (PW 4) and Sher Buland Khan (PW 9). He has dealt with their testimony. On the grounds, considered by the learned Additional Sessions Judge, in my opinion, their testimony was not rightly relied upon. The learned Additional Sessions Judge while placing reliance on the testimony of Jabbar Khan and Ashok Kumar recorded that from their testimony it is amply proved that a 'Dhariya' blow was inflicted by Manju on the head of Jabbar Khan and a stab wound was inflicted by the accused Umeshchandra on his right scapular region. He them proceeded to

consider the nature of the injury on the right scapular region and also came to the conclusion that it was a grievous injury endangering to life, so, he found the accused Umesh Chandra ability for the offence under Section 307, I.P.C.

4. Umesh Chandra is the Fisheries Project Officer. He had taken the plea of alibi and produced proceedings of the meeting convened on 3-5-1977 at 8.30 p.m. at Jaisamand. The prosecution case in respect of Shri Umesh Chandra is to be examined in the light of the plea of alibi taken by him Apart from, the plea of alibi, some documents have been filed by Shri Pathak to establish how and in what manner Jabbar Khan was conducting. In connection with fisheries complaints were lodged against Shri Jabbar Khan by him and on the complaint of one Majid case was also instituted against Jabbar Khan. This would be evident from the reports lodged by Shri Pathak which are Exhibits D/7, D/8 and E/12. The Assistant Fisheries Officer also complained about the conduct of Shri Jabbar Khan. Those have also been placed on record and Majid Khan's report has also been placed on record. It is true that the accused Pathak has been named in the FIR and specific injury was attributed to him but in my opinion, no recovery has been effected from him and besides that the prosecution has also not explained as to from whom the report was scribed. The case of prosecution so far as Umesh Chandra is concerned, on this score has to be viewed with great circumspection. There could be a motive of Jabbar Khan against Pathak but there could be no motive with Pathak against Jabbar Khan. If the plea of alibi is viewed in this back ground, then it would appear that it may be that the accused Pathak was not present on the place of occurrence. The case of Pathak is seriously prejudiced. The proceedings of the meeting held at Jaisamand on 3-5-977 at 8.30 p.m. were admitted by the then Addl. Public Prosecutor Shri N.L. Kachhara. On his admission, the document was exhibited as Ex. D/9. When the document was admitted, it was not necessary for the accused to prove that particular document but on the day of the final arguments that is, on 21-7-1978 another Addl. Public Prosecutor Shri B.L. Asawa submitted an application stating that the endorsement of admission was made on the document by slip of pen, so it was prayed that the document may be read as 'not admitted'. The learned Addl. Sessions Judge on this application treated the admission as nullified, and after hearing the argument, pronounced the judgment on the next day i.e. on 22-7-1978. In this connection, it may be stated that it was

not open to Shri B.L. Asawa to submit that by slip of pen, the document was admitted. Only Shri N.L. Kachara could have said that under what circumstances the endorsement of admission was made by him The application about non-admission could have been presented by Shri B.L. Asawa but that should have been accompanied with the affidavit of Shri N.L. Kachara. The court should have insisted for the same but instead of acting in that manner the court proceeded to treat the admission as nullified. It was not legal and proper for the court. Even if the admission was allowed to be withdrawn or nullified still it was the duty of the court to have afforded an opportunity to the accused to prove that document but it appears that no such opportunity was given. Although in the judgment it was recorded that the witnesses were not produced in the court. The learned Addl. Sessions Judge proceeded to examine the original Register and observed that such proceedings can be created at any time In the absence of the evidence of the witnesses who signed the proceedings, it was not proper for the learned Additional Sessions Judge to have made such an observation after looking into the original register. Three independent witnesses representing various Sahkari Samities were persons, who appended their signatures If the document was not admitted then the accused could have examined them. There was no occasion for him to keep those witnesses present for recording their evidence. Admittedly, on 21-7-1978 no further opportunity was given by the court to the accused to produce those witnesses. When admission could not be nullified, then the document will be considered as duly admitted and on that basis, it can be found that the accused Pathak was present at the meeting held on 3-5-1977 at 8 30 p.m. and so, reliance can be placed on the proceedings Ex. D 9. On that basis the prosecution case with regard to the participation of the accused Pathak, cannot be believed and as such he deserves to be acquitted of the offence under Section 307, I.P.C.

5. So far as the accused Manju is concerned, the testimony of PW 2 Jabbarkhan & PW 3 Ashok Kamar appears to be quite credible. Their testimony gets corroboration from the medical evidence and so far as his part is concerned, there are no reasons to discredit the prosecution case. He has been rightly convicted of the offence under Section 324, I.P.C.

6. Coming to the question of sentence, it may be stated that he has remained in custody for about 1-1/2 months and after lapse of about 10 years it would not be proper to send him behind the bar. It would be proper to reduce his sentence to the period of his custody.

7. Accordingly the appeal of Umeshchandra is allowed and he is acquitted of the offence of which he was convicted. He is already on bail, so, he need not surrender to his bail bonds. His bail bonds are hereby discharged.

8. The appeal of Manju is partly allowed. His conviction for the offence under Section 324, I.P.C. is maintained. His sentence, however, is reduced to the period of his custody. His sentence of fine is remitted.

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