

Karnel Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-03-2002

Reported in : RLW2003(1)Raj305; 2002(3)WLC169; 2002(2)WLN660

Judge : Sunil Kumar Garg, J.

Acts : Indian Penal Code (IPC) - Sections 307, 332 and 333

Appeal No. : S.B. Criminal Appeal No. 360 of 1985

Appellant : Karnel Ram

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : M.D. Purohit, Adv.

Disposition : Appeal allowed

Judgement :

Garg, J.

1. This appeal has been preferred by the accused appellant against the judgment and order dated 10.10.85 passed by learned Additional Sessions Judge, Raisinghnagar in Sessions Case No. 28/83 by which he while acquitting the accused appellant for offence under Sections 307 I.P.C. convicted the accused

appellant for offence under Sections 333 and 332 I.P.C. and sentenced him as under :

Offence

Sentence awarded

U/Sec.333 I.P.C.

3 years' R.I. and a fine of Rs. 100/- in default to further undergo 1 month's S.I.

U/Sec.332 I.P.C.

1 & 1/2 years' R.I.

Both the sentences were ordered to run concurrently.

2. This appeal arises in the following circumstances :

(i) On 9.2.81, P.W.1 Jagdish gave Parcha Bayan, Ex.P/1 to the Police stating that he was under employment of Forest Department and his duty was in the area of 16BLD (B). On 8.2.81, when he was on duty at about 6 p.m., one Badri was grazing his cattle in the jungle and upon this he told Badri not to graze cattle in the jungle, then from the back side, he caused injuries to him by axe. PW.1 Jagdish cried and after hearing his cries. Shankar Lal PW.6 and Purna Ram Chamar also reached there and he was brought to the hospital on the next day, where he was got medically examined.

3. On this parcha Bayan Ex.P/1, police chalked out regular FIR Ex.P/8 and started investigation.

4. During investigation, P.W.1 Jagdish was got medically examined by P.W. 5 Dr. Momanram Jangu and his injury report is Ex.P/4 which shows that he received one incised wound and four other injuries and out of these injuries, injury No. 2 was grievous one by blunt object and for that x-ray was advised and the x-ray report is Ex.P/3. The injury report Ex.P/4 has been admitted by the learned counsel for the accused appellant appearing in the trial Court.

5. After usual investigation challan was filed for offence under Sections 307, 333 and 332 I.P.C. against the accused appellant in the court of Magistrate from where it was committed to the court of additional Sessions Judge, Raisinghnagar.

6. On 13.8.84, The learned Additional Sessions Judge framed charges offence under Sections 307, 333 and 332 I.P.C. against the accused appellant who pleaded not guilty and claimed trial.

7. During trial, 8 witnesses were examined by the prosecution and thereafter statement of accused appellant under Section 313 Cr.P.C. was recorded and two witnesses were examined in defence.

8. At the conclusion of the trial, the learned Additional Sessions Judge vide his judgment and order dated 10.10.85 acquitted the accused appellant for offence under Section 307 I.P.C. but convicted the accused appellant for offence under Sections 332 and 333 I.P.C. and sentenced him as stated above inter alia holding.

(i) That it was accused appellant who caused injuries and not one Badri whose name was found in the Parcha Bayan Ex.P/1. However, no case for offence under Section 307 I.P.C. is made out against the accused appellant, but the prosecution has proved its case for offence under Sections 333 and 33 I.P.C. against the accused beyond reasonable doubt.

(ii) That the so called recovery of weapon from the accused appellant was not found to be proved by the learned trial Judge and thus, he convicted the accused appellant as stated above.

9. Aggrieved from the said judgment, this appeal has been filed by the accused appellant.

10. In this appeal, following two submissions have been made by the learned counsel for the appellant:

(i) That initial story of PW.1 Jagdish is that one Badri was the person who caused injuries, but at the trial PW.1 Jagdish changed his statement and identified the accused appellant as the person who gave injury. This shows that it was one Badri

who caused injuries and not the appellant and thus, the whole prosecution case against the accused appellant is vitiated and he should be acquitted as the identity of the accused appellant is not established.

(ii) It has also not been proved that PW.1 Jagdish was on duty at the time of incident. Therefore, no offence under Sections 333 and 332 I.P.C. are made out against the accused appellant and hence the findings of conviction recorded by the learned trial Judge should be set aside and the accused appellant should be acquitted.

11. On the other hand, the learned PP has opposed the submission made by the learned counsel for his appellant and submits that the judgment of the trial Court is based on correct appreciation of evidence and the same does not require interference by this Court.

12. I have heard both and perused the record of the case.

13. There is no dispute on the point that P.W.1 Jagdish received injuries as mentioned in the injury report Ex.P/4. In the Parcha Bayan Ex.P/1, the name of the assailant is mentioned as Badri, while the present accused appellant is Karnel Ram.

14. PW.1 Jagdish Has further admitted following facts in his cross-examination:

(i) that during the course of investigation when the police recorded his statement, he mentioned the name of Badri as the assailant.

(ii) That the person named as Badri, at that time did not live in the village, but he used to live in other village.

(iii) He further states that the accused appellant is the same person to whom he was referred as Badri and he is also known as Karnel Ram, but this fact is not found in his police Statement.

15. PW.3 Bhanwar Ram has been declared hostile. PW.6 Shankar Lal whose name is also found in the Parcha Bayan Ex.P/1 has also been declared hostile.

16. It may be stated here the incident took place on 8.2.81 and the present accused appellant was got arrested on 27.2.81 meaning thereby after so many days of the registration of the FIR and that is why the learned trial Judge too came to the conclusion that the so called recovery was not found to be proved.

17. The pertinent question that arises for consideration is whether the person named as Badri in the Parcha Bayan Ex.P/1 is the author of injuries of PW.1 or the person whose name was introduced later on by P.W.1 Jagdish as Karnel Ram, the accused appellant

18. P.W.1 Jagdish has categorically stated that Badri and Karnel Ram are the same persons and that is why he mentioned the name of Badri in the Parcha Bayan Ex.P/1, but P.W.8 Banne Singh who is a Forest Guard has categorically admitted that Badri is brother of the accused appellant Karnel Ram, meaning thereby that there are two persons and they are known as Badri and Karnel Ram. Therefore, the theory which has been developed by PW. 1 Jagdish that they are the same persons stands abrogated by the statement of P.W. 8 Banne Singh who clearly admitted that Badri is brother of the accused appellant Karnel Ram. When this being the position, it cannot be said with certainty whether injuries on the person of P.W. 1 Jagdish were caused by the accused appellant or Badri. In these circumstances benefit of doubt should be given to the present accused appellant for the simple reason that when the identity of sole accused appellant becomes doubtful, the whole case of the prosecution results in acquittal. Since in the present case, there is only one accused appellant and his identity is doubtful, therefore, the whole case of the prosecution should go away and the accused appellant should be acquitted.

19. Hence, findings of learned Additional Sessions Judge by which he convicted the accused appellant for offence under Section 333 and 332 I.P.C. are liable to be set aside and his appeal is liable to be allowed and the accused appellant is entitled to acquittal for offence under Sections 333 and 332 I.P.C.

For the reasons mentioned above, the present appeal filed by the accused appellant Karnel Ram is allowed and judgment and order dated 10.10.85 passed by the learned Additional Sessions Judge, Raisinghnagar by which he convicted

and sentenced the accused appellant for offence under Section 333 and 332 I.P.C. are set aside and the accused appellant is acquitted for offence under Sections 333 and 332 I.P.C.

Since accused appellant is on bail, he need not surrender. His bail bonds are hereby cancelled.

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