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Court : Rajasthan

Decided On : Nov-23-1989

Reported in : 1989(2)WLN353

Judge : G.K. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 171 of 1982

Appellant : Kalu

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

G.K. Sharma, J.

1. This appeal is directed against the judgment dated 14th April, 1982 passed by the Sessions Judge, Kota, by which, the appellant has been found guilty of offence under Section 148, IPC and sentenced to 6 months' rigorous imprisonment and a fine of Rs. 100/-, and in default of payment of fine, to further under go 1 month's rigorous imprisonment; under Section 332, IPC to 6 month's rigorous imprisonment and a fine of Rs. 100/-, and in default of payment fine to further undergo 1 month's rigorous imprisonment; under Sections 323/149 and 323/149, IPC, to 6 months's rigorous imprisonment and a fine of Rs. 100/-, and in default

thereof, to further undergo 1 month's rigorous imprisonment on both the counts. And, all the substantive sentences were ordered to run concurrently,

2. On 22nd Dec , 1980, at about 5 PM, one Raj Vallabh submitted a written report at PS Chechet, alleging that be and Nandlal Forest-Guard were on patrolling duty in the jungle of village Khani, in the night at about 12 O'clock. There they found 5 bullock-carts loaded with green wood; and they suspected that they were bringing those wood after committing theft in the jungle. The carts were stopped by them. 15 persons were with those carts. When the informant and Nandlal object to it, those persons started beating them. They were armed with lathis, Gandasis and axes. Raj Vallabh and Nandlal both received injuries on their persons. Amongst those 15 persons, Raj Vallabh could indentify only one person, who was Kalu, the present appellant. On this report, a case under Sections 332, 353 & 379, IPC was registered. The injured persons were sent to doctor for medical-examination, whose injury-reports are Exs P 17 and 18. After usual investigation, the police submitted a challan against 5 persons.

3. The learned Sessions Judge framed charges against the accused persons under Sections 332, 333/149, 148, 147 and 332/149, IPC. All the accused persons pleaded not guilty and claimed trial.

4. The trial court recorded evidence of the prosecution witnesses. One witness was produced in the defence. After hearing both the learned Counsel the trial court found that the prosecution has failed to prove its case against 4 accused persons, namely, Brajraj, Uda, Bhawana and Surtiram and so, they all the four were acquitted of all the charges levelled against them. The present appellant Kalu was, how ever, found guilty of offences under Sections 148, 332, 332/149, and 333/149, IPC and sentenced as mentioned above.

5. The learned Counsel for the appellant argued that according to the prosecution, the incident had taken place on the intervening night of 21st & 22nd Dec, 1988 at about 12 O'clock. The police station Chechet was about 12 kms. away from the Place of occurrence. But a report of the incident was not immediately lodged, and, it was lodged at 5 PM on 22nd Dec, 1988. So there was a delay in lodging the report and this delay has not been explained by the prosecution at all. If we read

the statement of Nand Lal PW 2, the injured, he is found to have stated in his examination-in-chief that in the night of occurrence, they had remained in Village-Khans; and on the next morning, by bus, they had come to Chechet Hospital. It means that on the morning of 22nd Dec, 1980, Nandlal & Raj Vallabh had come to Chechet and went to hospital When they had come to Chechet that morning where the police station was situated, they should have lodged a report immediately; but, they waited for the whole day, and in the evening at 5 I'M, a written-report was submitted by Raj Vallabh. It means, after due consultation and consideration, a report was prepared by Raj Vallabh, and it was submitted. The injured persons were forest-guards, means they were Public servants employed in the Forest Department. If something had happened to those forest-guards, they must have informed their boss immediately about that. But there is nothing on the record to show that any report was sent by these two persons to their department. The concerned officer of the department, has not been examined by the prosecution. So, when Raj Vallabh and Nandlal had come to Village-Chechet and they bad been to hospital, why did they not report the matter immediately to the police station This delay which has not been explained at all by the prosecution, is fatal to the truthfulness of the story.

6. The police submitted the challan against 5 persons. The trial court, after concluding the trial, found that no case was made out against four accused persons, and so, it acquitted them. There thus remained only one accused i e , the present appellant; and he was convicted of offences Under Sections 148, 332 & 333/149, IPC.

7. I fail to understand as to how an unlawful-assembly was formed by one person. 4 accused persons were acquitted; and if it is established by the prosecution that there were 4 more persons, along with Kalu, leaving aside the four acquitted persons, then certainly a case Under Sections 147 & 148, IPC can be made out For forming an unlawful-assembly, there must be 5 persons, and those 5 persons roust have a common object, and in furtherance of that common object, they should commit a criminal act. But the present one is not such a case. The statement of Raj Vallabh PW 1 was persued. He has stated that there were 5 persons only, who were accused in the case. He has not stated that apart from

these 5 persons, there were more persons more who had accompanied there 5 persons. Similarly, Nandlal PW 2 has stated that only these 5 persons were the persons who had given beating. He has not stated that there were more than 5 persons and that these 5 persons were with those other persons. The statement of the Investigating Officer PW 9 shows that during investigation, it was found that the incident had taken place by only 5 persons; and in the report, it has been mentioned by exaggerating the fact that there were more than 5 persons The report (Ex.P. 1) shows that about 15 persons were there with the 5 carts. During the investigation, the Investigating Officer found that the number 15 has been exaggerated by the informant, while actually, there were only 5 persons and not more than that. Under such circumstances, the evidence is very clear that this is a false case that there were 15 persons in fact, there were 5 persons only; and the court came to the conclusion that the four persons could not be identified by the witnesses, and so, they were acquitted, which means that no case of forming an unlawful-assembly is made out. The trial court, in para 13 of its judgment, has discussed this aspect: & there is nothing to say except that the trial court has committed error in interpreting the evidence of the prosecution witnesses; it has wrongly arrived at the conclusion that in this incident, leaving aside these 5 persons, there were other persons also. From which evidence, did not trial court draw this inference? Absolutely, there is no evidence, and the inference drawn by the trial court be absolutely incorrect. So, no case of unlawful assembly is made out, and it is wrong to convict a single persons for forming an unlawful-assembly with the aid of Section 149, IPC. Therefore, a case Under Sections 148, 332/149, 333/149, IPC, is absolutely not made out: & the trial court has committed error in finding the accused guilty under these three sections. The finding of the trial court in this respect, is not acceptable, which is based on wrong interpretation of evidence, not correctly understanding the evidence; hence, it cannot be sustained.

8. According to the prosecutions, Mangilal, Kishanlal and Bhana were the persons who were eye-witnesses to the incident. But, neither of these three persons supported their case, and so, they were declared hostile. It means, there is no corroborative evidence of those three persons. Nandlal in his court statement, has stated that Kishanlal, Ramchandra and Bhana had come to the sport and saw the incident. Then, in his cross examination, he has said that Ramchandra was

wrongly named and that in his Place, it should have been Mangiya. This type of conduct of a witness who can say his own statement wrong, how he can be believed? Thus, the situation is that the alleged independent witness has not corroborated the case of the prosecution. There now remains the statements of Raj Vallabh PW 1 and Nandlal PW 2 The case of the prosecution is that Kalu appellant had given injuries to Raj Vallabh. There is no allegation against him that he had inflicted injuries to Nandlal. Therefore, so far as the injuries of Nandlal is concerned, appellant: Kalu cannot be held responsible for that. Nandlal might have been beaten up by some other person, which fact either has not been brought to the notice of the court, or a case has not been established against the other accused persons. So, for the injuries to Nandlal, Kalu is not held responsible. Now, remains the injuries of Raj Vallabh. In the report (Ex.P. 1), it has not been specifically mentioned that Kalu had inflicted those injuries to Raj Vallabh; and the only allegation was that all the persons started beating Raj Vallabh and Nandlal; and in that beating, Raj Vallabh received some injuries. So, there is a general allegation about the infliction of the injuries by Kalu. Then Raj Vallabh PW 1 has stated that Kalu had inflicted an axe-blow on his ribs. Allegedly Kalu was armed with an axe, and he had inflicted the injury on the ribs of Raj Vallabh. If we look into the injury-report (Ex.P. 17), no injury on the ribs of Raj Vallabh is found by same sharp weapon. Two injuries were there by sharp weapon, both were simple in nature, and they were injuries Nos. 6 & 7 on the left fourth finger and middle little finger. Raj Vallabh did not state that Kalu had inflicted any injury on his fingers. Th; only injury inflicted by Kalu was on his ribs and that too was by an axe. But, there was no injury on the ribs of Raj Vallabh by some sharp weapon.

9. It was argued that Kalu had used his axe from its blunt side and had inflicted the blow was found to be by some blunt weapon. It should have been specifically proved and stated by the witnesses that Kalu had used his axe not from its sharp side but from the blunt side. A presumption cannot be drawn that Kalu who had an axe in his hand, would inflict the blows to Raj Vallabh from its blunt side. It is to be stated by the witnesses that the axe was used by him from its blunt side and not sharp side. How ever, the allegation is that appellant Kalu had used an axe, means, he had used if from its sharp side. In this content, the case of Ganga Sahai v. State of Rajasthan 1981 RCC 135 was cited. In that, case, the injured

had stated in the court that the injuries were inflicted to him by the assailant with a Farsa; the doctor had found all the injuries on the person on the injured to be by some blunt object. The trial court convicted the accused observing that it was just possible that the sharp side of the blow might not have hit his finger and the injured had received the injuries from its reverse side. Under such circumstances, it was held as under:

The reasoning given by the trial court was guilty as it has drawn conclusion on the basis of presumption It was the duty of the injured to prove that the injuries were inflicted by the accused from the reverse side of the Farsa, and it was not proper for the trial court to have drawn any presumption in this regard.

10. In the present case also, no presumption can be drawn that appellant Kalu had used the axe from its reverse side and that he had inflicted the injuries to Raj Vallabh from the blunt side of the axe.

11. Another aspect is that while convicting a person Under Section 332, IPC the prosecution has to prove that the injured was a public servant and that at the time of the incident, he was in discharge of his duty. Section 332. IPC says that who ever voluntarily causes hurt to any person being a public servant, in the discharge of his duty as such public servant, shall be punished with imprisonment Now, under this section, the main ingredients are that the injured person should be a public-servant; and the second important ingredient is that he must be at the time of the incident discharge his duty as a public-servant. In the present case, as is in the evidence, the injured persons were forest-guards. So, they were public-servant, believing that the statement of the witnesses are correct, though, there is no proof on the record about their appointments as forest-guards. How ever, for the sake of argument, even if it is believed that they were forest guards, still, the question remains whether they were discharging their duties as forest guards? Mere bring a public-servant is not enough for being covered Under Section 332, IPC, It must be proved that the public servant while on the discharge of his duty as a public-servant, was given beating or inflicted blows. Therefore, it was the duty of the prosecution to have proved that Nandlal and Raj Vallabh were not only public-servants, but they were on duty at the relevant time, discharging their duties as

public-servants, but there is no proof on the record in this regard. The prosecution should have examined the head of the department of the injured persons, who would have certified that the injured persons were in the service of the forest dept. and that at the relevant time they were in the discharge of their duties as public-servants. But there is no proof to this effect.

12. Therefore, the trial court has committed error in finding that an offence Under Section 332 IPC has been made out. It has not at all been proved that the injured persons were firstly public-servants and secondly that they were discharging this duties as public-servants at the relevant time. So the conviction of the appellant Under Section 332, IPC is bad.

13. Now the question is whether an offence under Section 333, IPC is made out against the appellant or not. After going through the entire evidence and the circumstances of the case, a case under Section 333, IPC is also not made out beyond reasonable doubt against the appellant. According to the FIR there were 15 persons who had inflicted injuries to the injured persons. Kalu has not been named in the FIR. But, subsequently, the injured persons alleged that Kalu had inflicted those injuries to them. So, that was a later development/improvement. They reported the case late when they bad already been at Chechet, where the police station was situated. The delay has not been explained. AH this shows that a case Under Section 333, IPC, is also not made out beyond reasonable doubt. I, therefore, do not find the appellant guilty of this offence too.

14. In the result, the appeal is accepted. The convictions and the sentences of the appellant are set aside and he is here by acquitted of all the charges levelled against him. He is on bail. His bail-bonds are cancelled. He need not surrender.

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