

Narayan and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-26-1988

Reported in : 1988(1)WLN494

Judge : I.S. Israni, J.

Appeal No. : S.B. Cr. Appeal No. 55 of 1979

Appellant : Narayan and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. R.N. Sharma

Judgement :

I.S. Israni, J.

1. This appeal under Section 374 Cr.PC has been filed against the judgment dated January 8, 1979 passed by the Additional Sessions Judge No. 1, Alwar, where by the appellants were convicted and sentenced as under:

(1) Accused Narayan under Section 324, IPC to 1-1/2 year's rigorous imprisonment; under Section 323/34, IPC, 1 year's rigorous imprisonment. (2) Accused Kalu and under Section 323 IPC, 1 year's rigorous imprisonment; Dholiya under Section 324/34, IPC, 1-1/2 year's rigorous imprisonment.

All the sentences were to run concurrently.

2. According to the Prosecution version, on October 9, 1972 in the evening PW 10 Munshi returned to his house, where his wife told him that his she buffalo had gone for grazing and had not returned, thereupon, Munshi and his son Harphool started search for the she buffalo Ranjeet Bholu Kanchan and Ram Khilari who were present at that time also went along with them. PW 8 Khayali who is neighbour and cousin of Munshi also accompanied and so also PW 9 Meelya joined them. After some distance, PW 6 Harphool is said to have seen the accused appellants taking away she buffalo through the field of Baksha Chamar. Thereupon, Harphool cried and all the persons reached on the site. When they tried to snatch the she buffalo from the appellants who opened attack on them Narayan is said to have been armed with Farshi, while Kalu and Dholiya with Lathis. In the alleged incident 8 persons of the complainant party received injuries as per the medical reports Ex.P 6 to Ex.P 13. It is further stated by the prosecution that while beating was going on Meeliya brother of the appellants, cousin Mangiya and the ladies of the appellants also came on the spot and participated in the said incident. The complainant party was successful in snatching the she buffalo and apprehended the accused appellants. They took the she buffalo as well as the accused appellants to the Tibari of Munshi and a report of the said incident was lodged by Munshi at Police Station Kherli, which is Ex.P 5. After investigation, a challan was submitted against the appellants. The Additional Sessions Judge charged the accused appellants for offence under Sections 394, 397. 325. 324 & 323 IPC. After recording evidence, hearing arguments, the appellants were convicted and sentenced by the trial court as indicated above.

3. The contention of Mr. R.N. Sharma, learned counsel for the appellants is that the trial court after fully discussing the evidence of the prosecution has disbelieved the theory of theft of she-buffalo belonging to Munshi. The trial court has pointed out in its judgment under appeal that the theft of she-buffalo is said to have been committed on October 9, 1972 and was recovered by the complainant party on the same day. The FIR, Ex.P 5 was lodged on October 10, 1972 and the site map Ex.P 1 was prepared on October 12, 1972. However, no she buffalo was produced before the police at that time, but it. was only after 2 months, on December 23,

1977, that complainant Munshi produced she buffalo in the police as stated by the Investigating Officer, PW 13 in his statement recorded in the court. Apart from this PW 8 Khayali who is cousin of complainant Munshi and was said to be one of those who went in search of she buffalo along with him, has clearly stated that he did not see any she-buffalow on the spot. It is also contended by the learned counsel that the trial court has disbelieved the theory of the prosecution that the accused appellants gave beating to the complainant party as they tried to snatch the she buffalo of Munshi from them. This is evident since there was no theft, of she-buffalo the question of snatching the same from the appellant did not arise, therefore, the trial court has also disbelieved the theory that the accused appellants gave beating to the complainant party on account of snatching back the she-buffalo from the appellants.

4. The third contention of the learned counsel for the appellants is that the trial court has also disbelieved the site map Ex.P 1, where, according to the prosecution the quarrel between the parties took place, as according to the trial court no marks of blood or quarrel are mentioned in the site map prepared by the prosecution. The trial court has, therefore, according to the learned counsel rightly come to the conclusion that no dispute/quarrel/beating took place on the spot i.e. the field of Baksha Chamar as shown in the site plan. It is also pointed out by the learned counsel that the accused party also filed an FIR Ex.D/13 regarding the same incident, which is on record and has been admitted to be correct by the prosecution. Apart from this the medical reports of the accused party have also been filed, which shows that the injuries were received by both the parties. However, the appellants were still convicted as the trial court came to the conclusion that the appellants have failed to prove beyond doubt the parties received injuries it is contended by the learned counsel that when the appellants have successfully proved to the satisfaction of the trial court that no thefi of she-buffalo had taken place nor any beating was exchanged between the parties on account of snatching of she-buffalo from the complainat party by the accused, nor nay beating was exchanged in the field of Baksha Chamar as alleged by the persecution, the accused appellants deserve to be acquitted and the trial court has seriously erred in convicting them as mentioned above.

5. The contention of Mr. S.C. Sharma, learned P.P is that it is evident that beating was exchanged, in which the complainant party received injuries as are indicated in the medical reports. It is, therefore, contended that the trial court has rightly convicted and sentenced the appellants under Sections 325, 324 and 323/34, IPC.

6. I have learned counsel for both the parties, gone through the judgment of the trial court and the evidence and documents on record.

7. It is clear from the discussions made above that the trial court rightly came to the conclusion that the prosecution has failed to prove beyond shadow of doubt that the theft of she-buffalo have been no quarrel or exchange of beating between the parties. On account of the complainant party trying to snatch the she-buffalo from the appellants, which is said to have taken place in the field of Baksha Chamar. The trial court has rightly not relied upon the site map and has come to the conclusion that no fighting had taken place on the spot shown in the site map. The defence of the accused appellants is that there was no question of any theft of she buffalo and as late as December 3, 1972 the complainant party managed to bring some buffalo and showed it to the police nearly two months of the incident had taken place. It is further stated by the nearly two months of the incident had taken place. It is further stated by the appellants that on October 9, 1972 in the evening while the appellants and other members of their family were sitting at their house, the complainant party came armed and started beating their ladies, on account of which the injuries were received by some of them and, the fore, Mceliya in between ran away and lodged a report of the incident at the Police Station. Thereafter the complainant party dragged the appellants that even though the appellants have not produced the site map, which must, still since the appellants have not produced the site map, which must have been prepared by the police while Investigating First Information Report, Ex. D. 3 filed by the appellants' party. Therefore, the court could not accept the theory of the defence put forward by the accused appellants. It, therefore, convicted and sentenced the appellants as indicated above.

8 Learned counsel for the appellant has rightly contended that the appellants have succeeded in proving that the prosecution story was false and it was not

necessary for them to have proved beyond shadow of doubt the defence theory put forward by them. Reliance has been placed on the case of Tehsildar Singh v. State : AIR 1958 All 255. It was observed in this case that where on several points the prosecution case has been found false, the accused's explanation cannot be of any avail to the prosecution. A reference may also be made to the Full Bench decision in the case of Prabhu and Ors. v. Emperor AIR 1948 All 402. In which it was observed that even when evidence adduced by the accused was not sufficient to satisfy the court affirmatively as to its existence, but if considering the evidence as a whole a reasonable doubt is created in the mind of the court to its existence, the accused is entitled to acquittal.

9. The prosecution has to stand on its own legs. In this case the theory of the prosecution regarding theft of the buffalo, fighting having taken place on account of snatching of the buffalo from the possession of the appellants and fighting to have taken place on a particular place shown in the site map has been disbelieved by the trial court and the prosecution have thus failed to prove its case. Merely because the appellants did not file the site map, which might have been prepared on account of First Information Report lodged by them against the complainant party, cannot be used in favour of the prosecution as a matter on which the appellants may be convicted. The appellants have filed First Information Report as well as the injury reports in support of their contention that the fight had taken place between both the parties and both of them suffered injuries. Even if the theory put forth by the appellants in defence may not be acceptable to the court that fighting took place at the house of the appellants, there is no case proved against them as per the prosecution story, to sustain conviction of the appellants. The incident took place in October, 1972 and this appeal is heard in the year 1988 and the appellants are on bail.

10. In view of the above discussion, I am of the opinion that the prosecution has failed to bring home guilt to the accused appellant.

11. In the result, the appeal is accepted, the judgment and order of the trial court is set aside and the accused appellants are acquitted of the charges levelled against them. The appellants are on bail and they need surrender to their bail bonds.

