

State Vs. Ramesh and ors.

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Court : Delhi

Decided On : Jan-11-2011

Judge : Mukta Gupta, J.

Acts : Criminal of Procedure Code (Cr.PC) - Sections 195 , 313; Indian Penal Code (IPC) - Sections 186, 353, 332, 451, 341

Appeal No. : CRL.A. 165/1996

Appellant : State

Respondent : Ramesh and ors.

Advocate for Def. : Mr. A.K. Singh; Mr. Tauseef Akhtar, Adv.

Advocate for Pet/Ap. : Mr. Pawan Bahl, Adv.

Judgement :

1. Whether the Reporters of local papers may

be allowed to see the judgment? Not necessary

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

1. The prosecution case in nutshell is that on 4 th March, 1985 at about 11.00 A.M., both the Respondents along with 18-20 associates went to the office of the

DCP, Traffic at Police Headquarter, IP Estate. When they reached the office, the orderly of the DCP, Traffic, Constable Kishore Lal stopped them and both the Respondents along with their associates forcefully entered the office. They shouted slogans 'Delhi Police Murdabad', manhandled and pushed the orderly Constable Kishore Lal. Inside the office, heated exchange of words took place and chairs were thrown here and there. The DCP, Traffic Sh. A.S. Khan was also gheraoed. Many police officials reached there and rescued the DCP, Traffic. PW9, Sh. Neeraj Kumar, the DCP traffic on 30th April, 1985 accorded the sanction for prosecution under Section 195 Cr.P.C. On the same day FIR was registered on the complaint of HC Kishore Lal, PW 6 and after investigation the police filed charge sheet against both the Respondents. The Respondents were charged for offences punishable under Sections 186/353/332/451/341 IPC. The prosecution in support of their case examined 10 witnesses of whom material witnesses are PW2, the then ACP Kewal Singh, PW3 the then DCP, Traffic AS Khan, PW5 the then Sub-Inspector Ahsan Ullah Siddiqui working as PA to PW3, PW6 HC Kishore Lal orderly of PW3 and the Complainant of the case and PW7 the then Traffic Inspector, Head Quarter. The Respondents denied the incriminating circumstances put to them under Section 313 Cr.P.C. and stated that they had gone to the office of the DCP, Traffic with prior appointment and by chance some other persons who were owners of Connaught Place Market wanted to have a talk with the DCP, Traffic in connection with some problem and it was then they had some heated arguments with the DCP. Within minutes the local police reached there and as a result of the misunderstanding and mistaken identity, the Respondents were apprehended by the police. The Respondents also examined defence witnesses who stated that only the Respondents had gone to meet the DCP Traffic at the PHQ on the said day and all others remained standing outside the office and suddenly 15-20 police officers came and they could not understand what had happened and why the police had come. The learned Trial Court acquitted the Respondents of the charges framed against them primarily on the ground that though the incident had taken place at the police headquarter and everybody claimed that 15-20 persons had gathered however, strangely only two persons could be apprehended and nobody else could be apprehended by the police. Moreover, the testimony of the two main witnesses PW2 DCP Kewal Singh

and PW3 DIG A.S. Khan does not make out any offence against the Respondents. PW2 has not supported the prosecution version and has stated that there was no gherao of the DCP. Challenging the impugned judgment dated 10th May, 1996 the present appeal has been filed.

2. Learned APP for the State contends that the learned Trial Court primarily acquitted the Respondents on the ground that the most baffling point in the prosecution case is that how the associates of the accused persons managed to escape from the 9th Floor of the police headquarter despite their involvement being at par with these two accused persons. As per the statement of the witnesses, 60-70 police officials were there on the 9th floor of the Police Headquarter and all the prosecution witnesses have given unsatisfactory and contradictory versions rendering the whole prosecution case into an arena of doubt. It is contended that merely because the other co-accused persons could not be apprehended and the Respondents were the one's who were identified and apprehended, the Respondents cannot be acquitted of the charges against them. It is stated that PW2 DCP Kewal Singh, PW3 Shri A.S.Khan and PW6 HC Kishore Lal, the Complainant are the eye witnesses who have deposed about the sequence of events and all have clearly implicated the Respondents. Hence the impugned judgment be set aside by this Court.

3. Learned counsel for the Respondents on the other hand contends that the allegations against the Respondents are that on 4th March 1985, at 11.15 A.M. they went to the 9th floor of Police Headquarter along with 18-20 persons manhandled the orderly to DCP, Traffic, entered his office forcefully and gheraoed the DCP, Traffic. However, the fact is that the Respondents had taken prior appointment from the DCP, Traffic and thus, there was no question of forcefully entering the office and gheraoing the DCP. PW3 who is the main witness, who was allegedly gheraoed and in whose office forceful entry was made, on being recalled for further examination after Respondent 2 was arrested improved on his earlier version on leading questions put to him by the learned APP. There is discrepancy in the testimony of witnesses as some of them have deposed that the incident took place on the 8th floor while the others deposed that the incident took place on the 9th floor. PW2 also did not support the prosecution case as he has

stated that when he heard the noise, he went inside and saw people were sitting and there were heated arguments. The chairs were not lying scattered. Thus there was neither any restrain nor any act to constitute the offence of criminal trespass on part of the Respondents.

4. PW5 Ahsaan Ullah Siddiqui, Inspector, Traffic in his testimony had stated that his office is a public office and moreover, 11.00-12.00 A.M. is the time for the public to meet the DCP and thus, the offence of trespassing cannot be said to be made out. PW6 Kishore Lal the Complainant of the case, the then orderly of PW3 deposed that at about 11.00-11.15 P.M., 15-20 persons came there, some of whom were wearing white Kurta Pyjama, and they tried to enter into the office of DCP. The witness has identified the Respondents as the one's whom he had stopped from entering into the DCP office and had asked them to show the permission to meet the DCP, and also enquired whether they had any appointment fixed with the DCP to which both the Respondents stated that this is a public office and no appointment was required. According to this witness, all the people started shouting slogans and both the Respondents manhandled him, pushed him and forcefully entered into the office of the DCP. This testimony of PW6 is totally contrary to PW3 and PW5 the then PA of PW3 who have stated that it is a public office and no prior appointment was required especially when 11 A.M. to 12 noon was public time and thus, PW6 as per his own version was unnecessarily stopping the Respondents from entering the office of the DCP. Moreover, this witness has not deposed in his examination-in-chief that his dress was torn in the process. PW3 A.S.Khan has stated that the dress of Constable Kishore Lal was torn by the mob and not by the Respondents. Strangely, though, 60-70 police officials were present there, however only the Respondents were apprehended by the local police and no action was taken by the police officers present in the Police Headquarter. The injuries on PW6 have not been proved as the MLC has not been exhibited. Thus there is no corroboration to the testimony of PW 6 and conviction cannot be based on his sole testimony which is contradicted by all other witnesses.

5. Relying on Kali Ram vs. State of Himachal Pradesh, AIR 1973 SC 2773 it is contended that if two views are possible on the evidence adduced in the case, one

pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. It is thus prayed that the appeal be dismissed being devoid of merit.

6. I have heard learned counsels for the parties and perused the records. PW3 the then DCP, Traffic A.S. Khan has deposed before the Court that 8-9 years back when he was working as DCP Traffic, he was sitting in his office at PHQ at about 11.00 A.M.-12.00 P.M., about 20-25 persons entered into his office and started shouting at him using filthy language. He tried to pacify them. All of them were opposing the lifting of vehicles by the traffic police which was obstructing the normal traffic in the area of Connaught Place. PW3 identified Respondent No.1 as one of the person present on the day of incident. He has deposed that they started throwing Chairs and sofa sets in his office and all these persons including the Respondent no.1 was gheraoed and thereafter, the office staff called the local police and about 2-3 people were apprehended by the police. This witness in his examination-in-chief recorded on the 19th December, 1994 does not say about forceful entry or his gherao. This witness was cross-examined on behalf of Respondent no. 1 and certain court questions were also put to him. In his cross examination, PW3 admitted that no register is maintained in his office for the visitors nor it is required to be maintained because it is a public office. He has further deposed that all these persons remained in his office and after seeing the local police they ran away. This witness has not stated anything in his testimony about what had happened to the orderly who was allegedly manhandled. According to him it was a public office and people were permitted to come. According to PW3, PW2 ACP Kewal Singh and PW7, the traffic Inspector were present when the local police arrived. However, as the Respondent no.2 was absconding so PW3 was recalled on 4th October, 1995 after the Respondent no. 2 was available. It is at this stage that the learned APP sought permission to further record the examination-in-chief of this witness before cross-examination on behalf of Respondent no. 2. In this examination-in-chief, PW3 improved his earlier version that he heard some shouting outside his office and some people were abusing his office orderly and a lot of noise was there. Some people forced entry into his office and gheraoed him, confined him and abused him. This materially improved testimony of PW3 cannot be considered in evidence against the

Respondent No.1 as he was not given any opportunity to cross examine this witness after this materially improved statement. Moreover, PW 2 the then ACP Kewal Singh has not supported the version of PW3 and deposed that he heard the noise and when he went to the office of the DCP, he found that the DCP was sitting on his chair and some other public persons were also sitting on the chairs and they were discussing something about the clearance of the traffic. PW2 pointed out towards Respondent No. 1 as one of the person present at the DCP office and named Respondent No. 2 as present on the day of incident. According to this witness, they were having heated arguments. Thus neither the allegations of confinement nor assault have been supported by this witness. This witness has been cross-examined by the learned APP however, even in his cross-examination he has denied the suggestions that the chairs were lying scattered or that the people including the Respondents were standing in the DCP office or that they had gheraoed the DCP. Though PW2 could not be cross-examined on behalf of Respondent No. 2, as he was declared proclaimed offender at that time and was not recalled for cross-examination, however, the testimony of this witness to the extent it supports the accused can be looked into.

7. The charges against the Respondents were of trespassing however, all the witnesses have stated that it was a public office and moreover, 11.00 a.m- 12.00 p.m. was the time for public meeting and hence, from the evidence on record a charge under Section 451 IPC is not made out. As regards the allegations of wrongful restraint under Section 341 IPC is concerned, the material improvements in the testimony of PW3 have been contradicted by PW2 that when he went to the office everyone was sitting in chairs including the DCP and there was a heated discussion going on but the DCP was not gheraoed. Moreover, PW3 has stated this fact in his subsequent testimony which cannot be considered as no opportunity to cross examine him was afforded to the Respondent No.1 after this examination-in-chief. Similarly, the allegations of the offence under Sections 332 and 353, that is, causing hurt and assault or criminal force to deter public servant from discharge of his duties has also not been proved as the MLC of the PW6 has not been exhibited and it has not surfaced that PW6 suffered injuries at the hands of the Respondents. Also there is no mention of the alleged beating in the examination-in-chief of PW6 and it is only during his cross examination that he

mentioned that he was beaten by the accused. In his cross examination, he also stated that it was not mentioned in his complaint that accuseds have torn his uniform, but during his examination-in-chief, he made specific allegations that due to manhandling and pushing by both the accused, his uniform got torn. In view of material contradictions and improvement in the testimony of PW6, it does not inspire confidence. Moreover, from the testimony of PW6 and that of the other witnesses it is apparent that even if the version of PW 6 is accepted he was unnecessarily not permitting the Respondents from entering the office when admittedly it was public meeting time and no prior appointment was required to meet the DCP, Traffic at that time.

8. I find no force in the contention of the learned APP for the State that the learned trial court acquitted the Respondents on the ground that the prosecution failed to give any satisfactory reply as to why the remaining associates of the two accused were not arrested by the police. Learned trial court after considering the testimony of all the prosecution witnesses and in view of the material improvements and contradictions and rejecting the defence as an after-thought held that the prosecution has not been able to prove the guilt of the accuseds beyond reasonable doubt.

9. The present is an appeal against acquittal. Interference in the impugned judgment of acquittal is permitted if the learned trial court has ignored material evidence or misread the material evidence or ignored statutory provision. If on marshalling the evidence, two views are possible then this court will not interfere with the same. I find no infirmity in the finding of the learned Trial Court arrived at after appreciating the testimony of the witnesses. Hence, I find no reason to interfere with the impugned judgment acquitting the Respondents.

10. The appeal is accordingly dismissed.

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