Sajid Khan and Others Vs State of Rajasthan

Criminal Appeal No. 85 of 1983

Court: Rajasthan High Court

Date of Decision: July 30, 1991

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 155, 158, 313#Penal Code, 1860 (IPC) â€" Section 147, 149, 307, 323, 324

Citation: (1991) 1 RLW 564 : (1991) WLN 311

Hon'ble Judges: Farooq Hasan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Farooq Hasan, J.
By this appeal, appellants, namely, Sajid Khan, Majid Khan, Ashraf, Bhoundu, Boti, Sultan Surajmal, Himmat, Hasmal,

Budh Singh & Jhuha Mev have challenged their impugned conviction & sentences which are thus-

All appellants u/s 307/149, IPC 4 years RI with a fine of Rs. 500/- (in

default, further 6 months RI.

Sajid u/s 325/149, IPC 2 years" RI with a fine of Rs. 250/- in

default, 3 months RI further.

Sajid and all others u/s 324, IPC 1 year"s RI with a fine of Rs. 150/- (in

u/s 324/149, IPC default, 2 months RI further)

All appellants u/s 147, IPC 6 months RI with a fine of Rs. 100/-in

default, 1 month"s RI further.

All appellants u/s 323, IPC 3 month"s RI.

except Sajid, Majid

& Budh Singh.

2. Learned Counsel for the appellants contended that from the evidence adduced by the prosecution during trial, it is evident that the genesis of the

incident was that a squabble took place at a well where, Mst. Chhotki W/o Jahur Khan had went for drawing water and a buffalo of Sajid Khan

came at the spot and broken the pitcher thereby there were some hot exchanges in between Sajid Khand & Mst. Chhotki and the complaint of

which was made by the complainant party to Bhondu (appellant). Shri Balwada further uged that quarrel took place in between the parties and

cross reports came to be lodged in with regard to an incident which took place on 13.4.1981 in between 6 & 6 p.m. FIR No. 41/81 against the

appellants was registered at police station Kherli upon a written report of Jahur Khan, whereas cross case against the complainant party was

registered on the basis of the report lodged by appellant, Majid Khan, under FIR No. 42/81. According to the appellants, they have come with

clean hands and have stated specifically in their statements recorded u/s 313, Cr.P.C. many of the people from the complainant party came to

Bhondu''s hut when he was smoking tobacco pipe while his son, Majid & Sajid Khans were cutting fodder, and that, Jumma, Jahur Khan,

Dalkhan, Sumer, Mamman & Fajru - persons from the complainant party who were armed with lathis exept Jumma. Who was having a Farsi, and

all of them suddenly opened an assault on Majid Khan & Sajid Khan to which Bhondu interrupted but they being in aggressive mood, Jumma out

of them inflicted a farsi blow from reverse side on the head of Bhondu, while Dalkhan inflicted a lathi blow on the left shoulder of Bhondu rather

other persons amongh them inflicted blows with their respective weapons in their hand on the family members of Bhondu. It had also been stated

that despite efforts to cool down them, the complainant party continued to inflict blows without any head to their persuasives. The appellants in

their evidence adduced u/s 313, Cr.P.C. admitted that they caused injuries on the persons of the complainant party but in their right of private

defence only when they reached to the conclusion that the complainant party was a dement to inflict severe blows without any rhyme.

3. Taking the aid of the aforesaid evidence and circumstances, on record. Shri Balwada argued that the trial Court erred in rejecting the appellant''s

plea of right of private defence. On the contrary, learned Public Prosecutor argued that no such right did accrue to the accused party keeping in

view the facts & circumstances of the case.

4. However, learned Counsel for the appellants raised manifold contentions which were also rebutted by the learned Public Prosecutor. At this

stage, firstly I would like to examine as to whether right of private defence had accrued to the appellants. If the answer culminates in positive then

definitely, other contentions raised by both the parties are not necessarily to be dealt with.

5. A look at the record shows that the persons from the accused side did also receive injuries by sharp & blunt objects. Obviously, the

complainant party had not come with bean hands before the investigating agency and the trial Court, in as much as they have not explained injuries

sustained on the persons of the accused side. Thus viewed, the principles laid down by their Lordships of the Apex Court in Lakshmi Singh and

Others Vs. State of Bihar, are fully applicable. In the case (supra), it has been held that commissions on the part of the prosecution to explain

injuries sustained on the persons of the accused aside are of great significance particularly when the defence ride gives out a version which

competes in probability with that of prosecution one. According to the principles laid down in the case (ut supra), non-explanation of the injuries

sustained by accused in the course of altercation or the occurrence is a significance circumstances so as to draw the following inferences:

(i) that, the prosecution has suppressed the genesis and origin of the occurrence and has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore,

their evidene is unreliable;

(iii)that in case there is a defence version which explains the injuries on the person of accused it is rendered probable so as to throw doubt on the

prosecution case.

6. Thus viewed, the principles enunciated by their Lordships of the Apex Court in Laxmi Singh v. State of Bihar (supra), are applicable to the

present case where the altercation has taken place between the parties and as per the defence version altercation took place at the instance of the

complainant party which were in aggressive mood and they started squabble on a very petty issue that a pitcher of Smt. Chhotki was broken by a

buffalo of one of the appellants. Such an issue was not of such a nature which could have provoked the complainant party and could have

insticated the complainant party to go at the hut of Bhondu (appellant) duly armed with weapons so as to wreck vengeance for the cause of

breaking of a pitcher. It is evident from the record that the incident of having broken the pitcher had taken place in the noon. The appellants had

not taken any otherwise action but the action on the part of the complainant party shows that they were aggressors and had rushed to the hut of the

appellant (Bhondu) with lathies & Farsis after forming an assembly with common object and they went to the hut of Bhondu and without assigning

any cause or reason started causing injuries on the persons of the accused party. Having benefited by the enhlightments derived from the evidence

on record, it is clear that right of private defence of person did accrue to the accused party and in exercise of their that right, the appellants did not

exceed their right.

7. The prosecution has come with belied version. According to it, the accused party had come with deadly weapons at the fields of Rewada

forming an unlawful assembly, whereas, according to the material on record itself, the appellants had formed no unlawful assembly at that time.

Moreover, the presence of the complainant party at the field of Rewada also creates doubt. The prosecution has filed to clarify that the appellants

had come with a common object. Had they come with common object then the appellants could have opened assault at the fields or the residence

of the complainant party, while, the incident is alleged to have taken place at the field of Rewada. Therefore, the prosecution version full of

incongruities stands unfounded as it causes reasonable doubt where the defence version is seemingly truthful and it probabilises its version

plausible.

8. Another incongruity crept in the prosecution case is that the written report of Jahur was not registered immediately after the incident and was

registered on the next day at 8 p.m. It makes precise that the prosecution''s report also came to be registered after a delay of more than 24 hours,

without any explanation of delay by the prosecution. In FIR No. 41/81, 16 accused persons were named including some family members but

during the course of investigation, it was found that women folks from the accused side have wrongly been implicated so, no charge-sheet was

produced against woman folks. Such a circumstances also makes it clear that the prosecution exaggerated the materials and over-implicated the

persons and thus it casts a speck on the prosecution case, raising serious doubt with an inference that the prosecution has suppressed the origin

and genesis of the occurrence.

9. During investigation, on the information of Himmat & Hasmal, some weapons are alleged to have been recovered. Vide Ext. P.19 & 20. But

these weapons when produced before the Court were not marked as Articles Moreover, it has not been claimed that these weapons were stained

with blood nor any chemical examination report was secured. In the absence of such a report. That being so, weapon of offence so recovered

were and are not connected with the crime. No inference can be drawn on the basis of such a tainted recovery so as to hold guilty against the

appellants, Hasmat & Himmat.

10. From the bare perusal of the site plan, it can be said that the complainant party went to the field of the accused party and caused injuries to

them and subsequently when the appellants were well within their right to examine private defence, and chased the complainant party towards the

field of Rewada situated nearby their field. It seems that the investigating agency has committed a mistake by not inspecting the complete site and

not preparing it fairly and legally. The investigating agency has tried to built up a case as if two different incidents had taken place but the case

registered on the instance of the accused party is the starling point of the incident in question which ended at the fields of Rewada. The investigating

agency has failed to perform its legal duty which is expected at least when cross cases Come to be registered, to bring true facts in light. But it

failed. Moreover, the prosecution has also come with embellished version in its evidence on record. That apart, the trial court also failed to

considered this significant aspect while considering the defence version of this case which is very much precise in itself that the incident had taken

place for which the complainant party proved to be aggressor and the appellants in the exercise of their right of private defence caused, injuries on

the body of the complainant party.

11. From the perusal of the entire evidence on record, it appears that the complainant party sustained injuries at the instance of the accused party

at the field of Bhondu, itself, and the complainant party tried to mislead the investigating agency by way of stating that the complainant party were

present at the field of Rewada. True version appears to be otherwise. The learned trial Court has not considered the defence evidence adduced by

the appellants. As is evident from the perusal of the judgment of the trial Court, the statements of the defence witnesses have not been discussed at

all which was necessary in the light of the statements recorded of the appellants u/s 313, Cr.P.C. It can, therefore, be said that the trial Court was

not fair and it has convicted the appellants without any foundation and acted by misceading the evidence, without considering the entire facts of the

case. The impugned conviction is based merely on assumptions.

12. Statedly above, the persons from the accused party were busy in their work and at I hat time, the complainant party reached at the field of

Bhondu. In the presence of the evidence given in defence, it cannot be assumed that the accused party formed an unlawful assembly with common

object. The record shows that the presence of the appellants at the place of Bhondu''s hut was natural. The trial Court has failed to consider that

no active participation is proved by the prosecution for all the appellants in this incident as there has been no specific allegation specifying the

overt-act against each of the appellants. Thus, they deserve to be acquitted.

13. It has come on record that on the day of the incident, appellant, Himmat, was at Alwar in order to attend his case pending in the court of

S.D.O. Alwar. In this regard, DW 5 has been examined but the trial Court did not discuss his evidence and no-where found ! hat the evidence of

DW 5 is not believable. A perusal of the judgment further shows that the trial Court has not considered the evidence of Dw 2 & Dw 2 also who

have fully explained (he incident stating therein that the appellants exercised their right of private defence which accrued to them. It is settled law

that mere presence does not establish the active participation in the commission of the culpable offence of unlawful assembly.

14. A perusal of the record shows that one more incongruities is apparent which has crept in the prosecution case and which is fatal to the

prosecution raising adverse presumption that too of innocence. FIR No. 41/81 was not sent to the concerned Magistrate immediately after the

registrations is required u/s 155, Cr.P.C. read with Section 158(2), Cr.P.C. and it is mandatorily required that the report shall be transmitted to the

magistrate without any delay. In the case at hand, the incident has taken place at about 5/6 p.m. the FIR of which was lodged on 14.4.81 at 8 p.m.

and it was produced in court on 16.4.81 at 12 noon. So, non-transmission of the FIR before the concerned Magistrate casts aspersion on the

prosecution case and it can be presumed that this time has been used by the prosecution for due deliberation and embellishments in the evidence in

whole hog to support their case.

15. In this view of the matter, after perusal of the evidence on record, it cannot be said that an unlawful assembly was formed because, the

prosecution case itself, was that appellant, Sajid abetted Hasmat to kill Jumma. Thus, viewed, at the most, adverse inference can be raised only

against Sajid & Hasmat but such inference cannot be at all be raised against the remaining accused. The conviction u/s 149, IPC, without-actually

proved participation of other appellants is neither alleged nor proved by the prosecution. The trial Court failed to consider properly the evidence of

PWs 5, 6 & 7 who can be held to be chance witnesses of the incident and, their evidence ought to have been read and considered with great care

& cautious. Other prosecution witnesses are interested and, therefore, no reliance can be placed on the testimony of such witnesses. The

prosecution has utterly failed to prove motive of the accused appellants to inflict blows on the persons of the complainant party.

16. For the reasons stated (ut supra), this appeal is allowed. I set aside the impugned judgment dated 16.2.1983. The appellants are acquitted of

the offence charged. Their conviction & sentences impugned in this appeal are se aside. They are on bail and need not surrender. Their Bail bonds

stand cancelled.

The record be sent back.