

Jai Ram and Others

Vs

State of U. P. and Another

Criminal Appeal No. 141 of 1971

(Y.V. Chandrachud, V.R. Krishna Iyer, A.C. Gupta JJ)

25.02.1976

JUDGMENT

GUPTA, J. -

1. The Assistant Sessions Judge, Mirzapur, convicted appellant Kallu and Jai Ram under Section 323 and Section 323/34 respectively of the Indian Penal Code for causing simple hurt to one Jawahar and sentenced each of them to rigorous imprisonment for three months. Appellant Jagannath was acquitted of a similar charge under Section 323/34 for the same offence. The Assistant Sessions Judge also acquitted appellant Jagannath of the charge under Section 308 of the Indian Penal Code, and appellants Jai Ram and Kallu of the charge under Section 308/34 framed against them for the injury sustained by the complainant Nar Singh. All the three appellants were acquitted of the further charge under Section 324/34 for the injury suffered by one Rameshwar. Jai Ram and Kallu appealed to the Sessions Judge, Mirzapur, against their conviction and the complainant Nar Singh preferred an appeal to the Allahabad High Court challenging the acquittal of the three accused of the charges relating to the injuries caused to Rameshwar and Nar Singh and also against the acquittal of Jagannath of the charge under Section 323/34 for the injury to Jawahar. The appeal before the Sessions Judge, Mirzapur, preferred by Jai Ram and Kallu was transferred to the High Court and the two matters were heard and disposed of by a common judgment. The High Court upheld the conviction of Kallu and Jai Ram and dismissed their appeal. The High Court allowed the complainant's appeal in part convicting Jagannath under Section 308 and Kallu and Jai Ram under Section 308/34 and sentenced each of them to rigorous imprisonment for one year. Jagannath was further convicted under Section 6324/34 and sentenced to rigorous imprisonment for three months for causing hurt to Jawahar. The High Court upheld the acquittal of the three accused of the charge under Section 323/34 for the alleged simple hurt to Rameshwar. In this appeal by special leave the three appellants question the correctness of the High Court's decision.

2. When the appeal was taken up for hearing, Counsel for the State drew our attention to a statement in the special leave petition to the effect that the appellants' application for grant of a certificate under Article 134(1)(c) of the Constitution had been rejected by the High Court on merits, and pointed out that, in fact, the application was rejected because no surrender certificate as required by the rules of the court had been filed. It was submitted that the special leave granted by this Court should be revoked on the ground that the appellants had made a false statement in the special leave petition. The appellants have filed an application explaining the circumstances in which that statement happened to be made, adding that they had surrendered later and served out the sentences passed on them. On this application we are satisfied that the statement, though incorrect, was not deliberately made; we are therefore not inclined to accept the prayer for revoking the leave granted.

3. The occurrence out of which this appeal arises took place at about 8.30 in the night of August 20, 1964. The girls of the village had assembled at the 'chabutra' of one Balbhadar, alias Khanman, to sing Kajri. After the singing started accused Jai Ram came out of his house which was nearby and asked the girls not to sing there. PW 9 Raj Kumari Devi, a cousin of complainant Nar Singh, who was among the girls told Jai Ram that it was the practice to sing Kajri at that place every evening. At this Jai Ram started abusing the girls. The complainant Nar Singh hearing the abuses came out of his house which also was near, and protested against Jai Ram's behaviour. Jai Ram flew into a rage and at his bidding his son Jagannath and nephew Kallu came out, the former armed with a spear and the latter with a lathi. Jagannath struck the complainant with the spear on the left side of his abdomen. PW 6 Jawahar, a cousin of the complainant, who had hastened to the spot to save the complainant, was struck by Kallu with a lathi. One Rameshwar who is said to have arrived at the place to save the complainant also received injuries. It is admitted that even before this incident there was enmity between the complainant and accused Jai Ram over a plot of land and there were litigations between them. Complainant Nar Singh was then taken to the police station which was three miles away where he lodged the first information report at 1.30 a.m. on August 21, 1964 disclosing the prosecution case as summarised above. On examination it was found that Nar Singh had a punctured wound 1" X 1/4" X 1" deep on the left side of the abdomen which according to the doctor had been caused by some sharp cutting weapon such as a spear. Jawahar had one contused wound on the right side of the head which according to the doctor was simple and caused by some blunt weapon like a lathi. As no action was taken by the police on the report lodged by Nar Singh, he filed a complaint against the three accused who were ultimately committed for trial to the court of sessions.

In the trial Court Jagannath set up an alibi and pleaded that on the night of occurrence he was with the Head Master of Junior High School, Chunar, assisting him in arranging the books of the school library. Jagannath was an Assistant Science Teacher of the same school. Jagannath examined DW 1 Shiv Shankar, Head Master of the school, to prove his alibi. Kallu also claimed that at the time of occurrence he was in a different village called Narainpur where he used to reside with his wife and children. In support of his plea he examined DW 2 Jokhan Ram. Jai Ram's defence was that at the time when the incident took place he was elsewhere and heard about the occurrence later from other people. He examined DW 3 Mohan in support of his case. The Assistant Sessions Judge rejected the alibi of Kallu and also the defence set up by Jai Ram through his witness DW 3 Mohan. As already stated, he convicted Kallu and Jai Ram under Section 323 and Section 323/34 of the Indian Penal Code for the injury suffered by PW 6 Jawahar. In view of the concurrent finding of fact of both the courts as regards the incident resulting in the injury to PW 6 Jawahar, we find no reason to interfere with the conviction and sentence as aforesaid passed on Kallu and Jai Ram.

5. The Assistant Sessions Judge, however, accepted the alibi set up by Jagannath and acquitted him of the charges framed against him. As regards the injury to complainant Nar Singh, the prosecution case being that it was Jagannath who caused the same, Kallu and Jai Ram were also acquitted of the charge under Section 308/34. It was contended before us that the acquittal of Jagannath of all and Jai Ram and Kallu of some of the charges brought against them was wrong. One of the grounds on which the acquittal of Jagannath is based is what according to the Assistant Sessions Judge was a conflict between the statement of complainant Nar Singh at the trial and that made by him before the committing magistrate. Before the Assistant Sessions Judge Nar Singh stated that Jagannath attacked him with a spear and injured him in the abdomen. In the committing Court what he said was "on being exhorted by Jai Ram, Jagannath carrying a spear and Kallu carrying a lathi came and assaulted" him. The High Court found no conflict in the two statements, and for ourselves we also do not see how the two statements could be said to be conflicting. The Assistant Sessions Judge

accepted Jagannath's plea of alibi relying on the evidence of DW Shiv Shankar. The diary the logbook of the school produced by Shiv Shankar do not disclose how long Jagannath continued to work in the library. We have mentioned already that the incident took place at about 8.30 p. m. DW 1 of course stated during trial that Jagannath assisted him in arranging the library even after 10 in the night, but before the committing magistrate he had said that he was not certain as to how long after 8 p. m. Jagannath was in the library with him. The departure from the statement made in the committing Court was overlooked by the trial Court. Further, the logbook discloses that one "Shri Sethji" had done some library work "from 4 o'clock till night". The High Court was of opinion that it was unlikely that in the official register Jagannath would be referred to as Sethji. According to Jagannath he was known in school also as Sethji. The High Court pointed out that in the diary produced by Shiv Shankar Jagannath was referred to by his own name and not as Sethji. The High Court also pointed out that there was no explanation "why though Jagannath was mentioned in the diary by his formal name, he was described by his alias in the logbook". On a consideration of these aspects the High Court declined to rely on the testimony of DW 1 Shiv Shankar. It would thus appear that the High Court set aside the acquittal not really on a reappraisal of the same evidence, but on a consideration of several important aspects of the case which were overlooked by the trial Court. In our opinion the view taken by the High Court was legitimate and reasonable and there is no valid ground for interference.

6. The appeal is accordingly dismissed.

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