

Jaman Singh and anr. Vs. State

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Court : Rajasthan

Decided On : Mar-19-1956

Reported in : 1957CriLJ232

Judge : Bapna, J.

Appellant : Jaman Singh and anr.

Respondent : State

Judgement

:

ORDER

Bapna, J.

1. This is a revision against an order of conviction of the petitioners Jaman Singh and Manohar Singh under Section 324 of the Indian Penal Code made by the learned Extra Magistrate, Neem-ka-Thana, dated 15th June, 1954, The accused petitioners were sentenced to pay a fine of Rs. 100/- each. The appeal by the accused was dismissed by the Additional Sessions Judge, Sikar, by judgment dated 23rd March, 1955.

2. The case for the prosecution is disclosed by the evidence of P. W. 1, Roor Singh, who stated that on 29th November, 1946, the witness and Nathia went to Kothi Debaraweli and while they were returning, the accused Jaman Singh and Manohar Singh accompanied by several others, met them, in the way and shot at them with the result that Roor Singh was injured by a gun shot on the right hand and Nathia was injured by another gun-shot on his right hand.

The accused denied the charge and said that they were themselves the subject of an assault by guns by Roor Singh and his companions. The learned Extra Magistrate came to a finding that both parties seemed to be bent upon fighting with each other, & used gun shots, in which both parties were injured. He accordingly convicted and sentenced the accused as aforesaid. The same judgment was upheld on appeal.

3. Learned Counsel contended that of the 10 prosecution witnesses, 3 important ones, viz., Nathia P. W. 2, P. W. 3 Kheman and P. W. 3 Bhairum were not called for cross-examination after charge, and, therefore, their statements could not be read in evidence. It was urged that there should be evidence that these witnesses were not available before their previous statements could be considered as evidence for the purpose of founding the conviction.

It was urged that if the evidence of these three witnesses was not taken into

consideration the material on record would be insufficient to sustain the conviction.

4. There is no doubt that under Section 255 of the Code of Criminal Procedure the accused have a right to recall the prosecution witnesses for the purpose of cross-examination after charge. They expressed their desire to cross-examine all the witnesses except the doctor when they were asked about it on the 26th of September, 1953, on which date the charge was framed.

I also find from a perusal of the record that summonses were issued for Bhairun and Khuman to attend on the 19th October, 1953, but the report on the back of the summons is that Bhairun and Khuman had died. At no stage of the case it was said that the report was not correct. As regards Nathia the report on the summons was that his whereabouts were not known.

One Surjan Singh Constable, who had taken the summons for Nathia entered witness box to say that Nathia was not present in the village and had gone out to an unknown destination for earning a livelihood, and his father also was unable to give his address.

So far as Nathia is concerned, therefore, there was evidence for coming to the conclusion that he was not available in spite of a diligent search, Regarding Kheman and Bhairun it is apparent that they were dead. But as held in several cases, the result of not recalling witnesses for cross-examination under Section 25G, Cr. P. C., is not that their previous evidence can be expunged.

In the circumstances of this case, therefore, while no formal order has been drawn up to show that these witnesses were dead, I take the report of the serving officer that they were dead to be correct. The evidence, which they gave before the charge continues to be relevant with reference to Section 33 of the Evidence Act. Learned Counsel concedes that if that evidence is taken into consideration, not much can be said against the finding of the lower court.

5. In my opinion, there is no force in this revision, which is accordingly dismissed. The sentence on the accused was one of fine. The lower court will take steps for executing the sentence