

(1994) 05 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 276 of 1985

Chaina Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1994) 1 RLW 329 : (1995) 2 WLC 612 : (1994) 2 WLN 307

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—Put the facts briefly are as follows:

2. It is alleged that on 29.1.77 PW 8 Jodharam lodged a report (Ex.P/4) before the Superintendent of Police, Jodhpur stating therein that mother of petitioner Chainaram had died on 19.1.77 and "Mratyu Bhoj" is going to take place from 9.00 a.m. to 11 a.m. on the same day i.e. on 29.1.77 in village Jhanwar and food had been prepared for about 1000-1200 persons. The Superintendent of Police forwarded the said information to the Circle Inspector (East) for necessary action. The Circle Inspector Shri Ram Jeewan Meena thereupon proceeded on the spot alongwith Shri K.C. Sharma, Sub-Divisional Magistrate (PW,1), Shri S.N. Calla, Enforcement Officer (PW 2) and other police personnel reached at village Jhanwar on the basis of information given by PW 8 Jodharam as stated above. On seeing the police party, about 150-200 children and women alleged to have started running from the scene. In the "Nohra" the food-stuff i.e. "Lapsi" and "Kadi" was found in the utensils. The other articles for preparing the food were also found there. 252 Brass Plates (Thalles) were found used (unwashed) on the spot and 404 j Kg. Lapsi and 210 Kg. "Khata" (Kadi) were recovered on the spot and J was auctioned for Rs. 601/-. The petitioner Chainaram was arrested J on the spot and case was registered against him at Police Station J Jhanwar. After investigation, challan was presented in the court of Chief j Judicial Magistrate, Jodhpur for offence u/s 3/7 of the Essential Commodities Act, 1955 for

contravening the provisions of the Rajasthan Guest Control Order, 1978.

3. Learned Chief Judicial Magistrate, Jodhpur vide his judgment dated 4.12.81, after trial, held that the petitioner is guilty for the offence u/s 3/7 of the Essential Commodities Act; 1955 and sentenced him to undergo one year's S.I. and to pay a fine of Rs. 1000/-, in default of payment of fine, he was required to undergo 6 months S.I. He confiscated the articles recovered on the spot and forfeited Rs. 601/- of auction amount of "Lapsi" and "Kadi".

4. Aggrieved against the aforesaid conviction and sentence passed by the learned Chief Judicial Magistrate, Jodhpur on 4.12.81, the accused-petitioner preferred an appeal before the learned Sessions Judge, Jodhpur, who partly accepted the appeal by reducing the sentence to the term of 3 months' S.I. and a fine of Rs. 100/- in default of payment of fine to further undergo 15 days' S.I. by his judgment dated 17.10.85. The learned Sessions Judge released the articles confiscated by the Chief Judicial Magistrate but affirmed the order of forfeiture of Rs. 601/- as auction amount.

5. Aggrieved against both the judgments passed by the learned Chief, Judicial Magistrate, Jodhpur and learned Sessions Judge, Jodhpur the present petitioner filed the Instant revision on the ground, inter alia, that the prosecution has not been able to prove the case beyond all reasonable doubts and finding of guilt recorded by both the courts--below is based on conjectures and surmises leading to suspicion.

6. I have heard learned Counsel for the petitioner and learned Public Prosecutor for the State.

7. A close scrutiny of the finding of guilt recorded by the learned Chief Judicial Magistrate vide his judgment dated 4.12.81 and finding of guilt affirmed by the learned Sessions Judge, Jodhpur vide his judgment dated 17.10.85 throw a flood of light that the finding of guilt recorded by both the courts--below are not based on appreciation of evidence available on record. As a matter of fact, in utter ignorance of dispensation of justice in criminal side, the finding of guilt has been recorded on the basis of adhoc presumption and suspicion. It is held that whenever a person is about to be deprived of his life and liberty, which is sacrosanct in civilized society then criminal courts must address themselves that the finding of guilt should not be recorded on the basis of adhoc presumption and suspicion but must up bear in their mind the following principles of criminal Jurisprudence:

(a) The prosecution story may be true but it must be true and between may be true and must be true, there is a large gap, which is to be travelled by the prosecution agency by unimpeachable evidence.

(b) Suspicion cannot be substituted as a substantive evidence for recording the finding of guilt.

8. A perusal of the judgments given by the Sub-ordinate Courts in the present

revision petition lead towards an irresistible conclusion that the finding of guilt recorded against the petitioner by them, is based on mere suspicion and on adhoc presumption. In my humble opinion, in the present case, the prosecution has not been able to prove the charges against the petitioner by producing any definite, cogent, reliable and oral direct evidence to the effect that more than 100 persons were taking their meals on the spot at the "Nohra" of the petitioner. Learned Chief Judl. Magistrate and learned Sessions Judge have based their finding merely on conjectures and surmises for recording the finding of guilt. Both the courts-below have based its finding of guilt on 252 Brass plates (Thalies) unwashed and 404 Kg. "Lapsf and 210 Kg. "Kadi" found on the spot. The prosecution has miserably failed to establish that 252 Thalies, which were recovered on the spot, were used and that too, atleast by 252 persons at a time for taking meals. The finding of both the courts-below that about 404 Kg. "Lapsi" and 210 Kg. "Kadi" is sufficient for about 650 persons for meals is also not based on evidence but in fact based on adhoc presumption and suspicion which is not permissible under law.

9. In the instant case, the revisionist has also produced defence evidence, DW 1 Roopa Ram to prove that there were marriages of three girls on that day in the family of the petitioner, who were living separately.

10. While discussing the defence evidence adduced by the revisionist, both the courts-below recorded curiously again, a finding that even if there were marriages of three girls in the family of the revisionist even then, under the Rajasthan Guest Control Order, 1978 only 300 persons could have taken their meals. The finding of the learned Sessions Judge to the effect that the meals prepared by the revisionist was sufficient for 650 persons, is also based on no evidence, inasmuch as, none of the witness examined in support of the prosecution, had counted the number of women and children running from the "Nohra" of the revisionist after seeing the raiding police party. All the independent witnesses examined by the prosecution namely; PW 4 Naina Ram, PW 5 Jeetu Ram and PW 7 Dhan Karan have not supported the prosecution story and all these witnesses who gave number of persons present 100-125 have been declared hostile. Another independent witness examined by the prosecution namely; PW 13 Mohanlal had stated that only 100 or 50 persons were present on the spot and he has not been declared hostile for the reasons best known to the prosecution which further falsify the prosecution case. The statement of PW 13 aforesaid is against the prosecution story.

11. PW 1 K.C. Sharma and PW 2 Satya Narain believed by the learned courts-below have not counted the number of persons running from the "Nohra" of the revisionist but have disclosed different numbers of women and children which is based on their opinion. In fact, the evidence based on the opinion of the two witnesses is not admissible. PW 6 Ram Jeewan Meena had not disclosed the number of women and children running from the "Nohra" of the revisionist after seeing the raiding police party but in cross examination, he expressed his opinion

that near about 150-200 ladies and about 100 male started running from "Nohra". His statement about the number of persons is inconsistent to the number given by PW 1 K.C. Sharma and PW 2 Satya Narain mentioned above. In their statements, PW 1 K.C. Sharma and PW 2 Satya Narain had opined that 100 or 150 women and children started running from "Nohra" but they have not stated that 100 male also started running from "Nohra" after seeing the raiding party. The aforesaid material contradiction in the statements of PW 1 K.C. Sharma PW 2 Satya Narain and PW 6 Ram Jeewan Meena can not be reconciled by any stretch of imagination.

12. PW 3 Laxman is son of compLal nant PW, 8 Jodha Ram, who are admittedly enimical to the revisionist. Both father and son have stated different story altogether. According to the opinion of PW 3 Laxman when raiding party reached at "Nohra" of the revisionist about 250-300 persons were taking meals, which is in utter contradiction of the statement given by the other witnesses including his father PW 8 Jodha Ram according to whom 1000-1500 persons were present in the "Nohra" when raiding party reached at the "Nohra". The aforesaid opinion expressed by PW 8 Jodha Ram is not supported by any other witness examined by the prosecution. The statement of PW 9 Gomsingh, ASI DIG Office Jodhpur is also based on his opinion and number of persons, who started running from the "Nohra" does not with other witnesses. The witnesses examined by the prosecution, PW 8 Jodha Ram in collusion of his son PW 3 Laxman had launched the prosecution against the revisionist to wreck their vengeance which is to be deprecated.

13. It is well to remember that right of reputation in civilised societies is always treated to be a birth/fundamental right and it applies to the people of Rajasthan with greater force. Past history of Rajasthan bears testimony that people of the State easily used to sacrifice everything at the alter of their reputation and honour. In the present case, the honour and prestige of the revisionist who is an old man of more than 80 years and belong to old school of thoughts has been lowered down in estimation of his fellow villagers at the time of marriages of his two sons' daughters and one grand daughter, by lodging a false compLal nt by PW. 8 Jodha Ram. Statement of P.W.10 Allah Bux who made an attempt to prove photographs Ex.P/6 to Ex.P/11 are not relevant in as much as, in these photographs crowd alleged to have started running from the spot after seeing the raiding party, is not shown. In these photographs, only few of Thalies and some other articles recovered from the spot are photographed. Similarly, the statement of PW. 11 is also irrelevant in as much as, he has stated that he had recorded the statements of PW 2 Satya Narain and PW 12 Manohar Lal u/s 161, Cr.P.C. during investigation. Statement of PW 12 Manohar Lal is also contradictory with the statement of other witnesses.

14. In my humble opinion, the conviction based on the opinion given by the eye-witnesses produced by the prosecution is not sustainable. There are material contradictions in the statements of the witnesses which cannot be reconciled by

any stretch of imagination. Thus, it is unsafe to convict and sentence the revisionist on the basis of prosecution evidence adduced by the prosecution agency.

14. In view of the afore-mentioned discussion, in the present case, the persecution has failed to establish the guilt against the petitioner beyond reasonable doubt, therefore, the conviction and sentence passed against the petitioner by the courts-below are set aside and the revisionist is acquitted. The petitioner is on bail, therefore, he need not to surrender to his bail-bonds, which are hereby cancelled. If the petitioner had deposited Rs. 100/- as fine. he is entitled to obtain refund within reasonable time. The learned Chief Judicial Magistrate, Jodhpur is directed to refund Rs. 601/- amount of auction of "Lapsi" and "Kadi" to the petitioner forfeited by him in the present case.