
(1982) 02 RAJ CK 0001
In the Rajasthan High Court
Case No : Criminal Appeal No. 60 of 1977

Khangiya and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 11-02-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 430, 436, 440

Citation : (1982) WLN 92

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—The appellants have been convicted for the offence u/s 147, 436 and 440, I.P.C., and have been sentenced to four months rigorous imprisonment, one year's rigorous imprisonment and a fine of Rs. 100/- and six months' rigorous imprisonment and a fine of Rs. 50/-, on each count respectively. Sentences have also been awarded in default of payment of fine for the offences u/s 436 and 440, I.P.C.

2. The prosecution case is that there is an agricultural land situated in village Devki measuring about 86 "bighas" and 5 "biswas" comprised of "khasra" No. 204 there is a well attached to it on the land for irrigation. The complainant Shankarlal had 1/10th share in the land. According to him, he used to cultivate 32 "bighas" and little more land for the last four years having purchased the land from the different cultivators. There were other co-sharers in "khasra" No. 204. The prosecution case is that the other co-sharers, namely, Khangiya, Gamia, Chelia, Roopa and Kana wanted to forcibly dispossess the complainant from the land and a report in respect thereof was lodged by him, but no action was taken. Then it is said that on 17-11-1975 when Ganesh, Bhanwara, Narain and Bagta were working on the well known as "katha", the appellant, 14 in number, armed with Dharias, Kulharis, spades and Gentis, entered into the complainant's field and Bhanwaria exhorted to demolish the house and to burn it

and to demolish the tank etc. Thereafter, it is said, that the accused persons demolished the reservoir and the small tank and set fire in the machine house, whereby the movable property consisting of the beds and cots, was destroyed. Narain went to Jalore and informed the complainant Shankarlal. Shankarlal on receipt of the information lodged the first information report Ex. P/1 on 18.11.1975 at the Police Station, Nosara. A case u/s 147, 430 and 436, I.P.C., was registered. Investigation was undertaken and after investigation a final report was submitted stating that no occurrence took place, as alleged. During investigation, site was also inspected and inspection memo was prepared. Shankarlal lodged a complaint and an inquiry was conducted and thereafter the accused persons were committed for trial. The accused persons were charged for the various offences, to which they pleaded not guilty and claimed trial. The prosecution in all examined three witnesses, namely, Bagta (P.W. 1), Narain (P.W. 2) and the complainant (P.W. 3). Statements of the accused persons were recorded in which they denied the prosecution case and the co sharers stated that the machine, the machine house, as well as reservoir and the tank were constructed jointly by all the co-sharers, and the land was not partitioned. In defence the accused persons examined Jaisingh Patwari (D.W. 1), Dhokalsingh (D.W. 2), Moolsingh (D.W. 3); Bhura (D.W. 4), and the investigating officer Mahboob Khan as D.W. 5. The learned Additional Sessions Judge, Jalore, after hearing the arguments convicted and sentenced the accused persons as aforesaid. Aggrieved against the convictions and sentences the present appeal is filed.

3. I have heard Shri B.K. Chauhan, learned Counsel for the accused-appellants and Dr. S.S. Bhandawat, learned Public Prosecutor, for the State and I have perused the record of the case.

4. The prosecution in this case relies on the ocular testimony of Bagta and Narain, who are the servants of the complainant Shankarlal. The other two witnesses, namely, Ganesha and Bhanwara, who are said to be present on the spot and working along with the other two servants, have not been examined by the prosecution. Shri Chauhan, learned Counsel for the appellants vehemently submitted that the learned Additional Sessions Judge seriously erred in placing implicit reliance on the testimony of these two witnesses. The testimony of these two witnesses will be rendered incredible if the evidence is considered in this perspective that the machine house and the machine and the reservoir and the tank were constructed jointly by all the co-sharers and did not belong exclusively to the complainant Shankarlal. He urged that the learned Additional Sessions Judge did not deal with the defence evidence and did not even properly examine the statement of the complainant Shankarlal. Shankarlal admitted that a writing was executed that the machine will be purchased jointly by all the co-sharers and that the constructions would also be made jointly by the co-sharers. If there is such a writing, then necessarily the machine as well as all the constructions must have been made by all the co-sharers. The complainant Shankarlal has given no explanation as to why he alone made the purchase of machine and raised the

constructions. Shri Chauhan pointed out that as against the testimony of Shankarlal, there are the statements of two co-sharers, namely, Dhokalsingh (D. W. 2) and Bhura (D.W. 4), who have stated that the machine house, Hoj, Kundi, etc. were jointly constructed and the machine was jointly purchased. If the machine was jointly purchased and the other constructions have been made jointly, then it was most unnatural and improper for the co-sharers to have indulged in the activities, which is alleged against the appellants. If the machine was purchased solely by the complainant and if the constructions would have been solely made by the complainant, the complainant ought to have examined the other witnesses and ought to have produced the relevant documents. In the absence of such a evidence, the statement of Shankarlal should not have been believed, more particularly, when there is reliable evidence of the two co-sharers. Shri Chauhan submitted that this aspect of the case have been completely ignored by the learned Additional Sessions Judge and the learned Additional Sessions Judge only proceeded to consider that even if it be taken that the land had not been partitioned, still the basic facts of the incident are not in any way adversely affected. It may be pointed out that the question of partition was not very material. What was material, was as to whether the machine was purchased jointly and the machine house and the other constructions were made jointly, and in respect of these matters m findings have been given by the learned Additional Sessions Judge. Shri Chauhan urged that in the background of the relations between the parties, this possibility cannot, be ruled out that a false case was concocted against the appellants and that is why the result of the investigation was not in favour of the complainant. The falsity of the occurrence is further apparent from what is contained in the site inspection memo. According to Mr. Chauhan the site inspection memo bears as eloquent testimony to the facts that the occurrence has not taken place in the manner alleged, else there would have been marks of burning in the machine house. What is found actually burnt is some part of the cot, that is, Munj, Iss. If 14 persons armed with weapons would have indulged under the alleged exhortation of Bhanwaria, then the whole machine house would have been destroyed resulting into burning of all movable properties, including the drums containing oil.

5. The above submissions of Mr. Chauhan do not appear to be without force. It is true that witnesses Bagta and Narain have supported the prosecution story, but the credibility of these two witnesses has to be considered in the light of the circumstances, which are more eloquent. It is unbelievable that a body of 14 persons would have only acted in the manner as is borne out from the site inspection memo Ex D/3, which bears the signatures of the complainant. The complainant's case is that it was he, who purchased the land and it was he, who raised the constructions of the machine house and of the reservoir and of the small tank. This case does not appear to be true. The complainant has admitted in his statement that the other co-sharers of the Jav also irrigated their fields with this machine. If the machine would have been exclusively of the complainant, it cannot be conceived that the complainant would have allowed the

other co-sharers to make use of that machine for irrigating their lands. Besides that, his statement is to be judged in the light of his other statements, where he admits that a writing was executed whereby the co-sharers agreed that the machine would be installed at the expense of all the co sharers and the other constructions would also be made at the expense of all the co-sharers. If the whole case is judged in this light that the machine was purchased jointly and the constructions were made jointly, then it does not stand to reason that the accused-party would go on the field and cause mischief by fire to the property, which is jointly owned by them. It is true that there is nothing on record to prove that the moveable property lying in the machine house and which has been destroyed, was a joint property, but the case with which the complainant came forward, does not appear to be true and possibility of concoction, in the circumstances of the case, cannot be ruled out. In that view of the matter, the appellant are entitled to the benefit of doubt.

6. In the result, the appeal is allowed, the convictions and the sentences of the appellants are set aside and the accused-appellants are acquitted of the offences with which they were convicted. They are already on bail so they need not surrender to their bail bonds and their bail bonds are discharged.