
(2008) 04 RAJ CK 0071
In the Rajasthan High Court

Nand Lal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Forest Act, 1927 — Section 42
Penal Code, 1860 (IPC) — Section 147, 148, 149, 189, 302

Citation : (2008) 4 RLW 3133

Hon'ble Judges : Mahesh Chandra Bhagwati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Chandra Bhagwati, J.—This Criminal appeal is directed against the conviction and order of sentence dated 13th of July 1988 passed by the Sessions Judge, Dungarpur whereby the learned Sessions Judge has convicted the accused appellants, namely Nandlal, Motilal and Bakshi in the offences u/s 148 189 307 307/149 353/149 of Indian Penal Code and Section 42(1) of Forest Act and sentenced them as under:

Sentence Nand Lal 353/149 IPC 2 years" Rigorous imprisonment and a fine of Rs. 100/-, in default 2 1/2 months" Simple imprisonment.

148 IPC 2 years" R.I. and a fine of Rs. 500/-, in default 2 1/2 months" S.I.

189 IPC 2 years" R.I. and a fine of Rs. 500/-, in default of payment of fine 2 1/2 months" S.I.

307 307/147 IPC 10 years" R.I. and a fine of Rs. 2,000/-, in default 10 months" S.I. 42(1) Forest Act Three months" S.I. and a fine of Rs. 100/- , in default 15 days" S.I. 1 2 Moti Lal -do- -do- 3 Bakshi -do- -do-

2. The factual matrix of the prosecution case as narrated in the FIR Ex.P/8 is that on 11th of February, 1983 at about 10.30 PM PW/7 Surya Singh , Forester, came

to the complainant PW/3 Kartikeshwar on motor cycle and told that two trucks loaded with Sagwan timber were to reach at the barrier, who were not having any pass or transit permit to carry the same. PW/7 Surya Singh, when apprising the complainant Kartikeshwar, just thereafter, 8-9 persons armed with deadly weapons like that of clubs and arms, entered the check post and asked him to let both the trucks go. They also told him that whatever money they wanted to take they could take, but they should lift the barrier. The complainant replied that the trucks could not be allowed to move, if they do not have any pass or transit permit with them. Enraged with the reply of the complainant, one unknown person armed with revolver, aimed his head and threatened that if he did not lift the barrier, he would kill him. Meantime, rest of the other persons surrounded him and threatened his life. The accused appellant Nand Lal fired a gun shot, with an intention to kill him, but the bullet did not hit him and passed through. When these persons were going to unlock the barrier, Dilip Singh stopped them. Thereupon the accused appellant Moti Lal assaulted him with a knife but he missed the object and the thrust of knife rested on the pillar of barrier. It is also alleged that rest of the accused persons broke out the lock and then succeeded in lifting the barrier and taking away both the trucks, without any pass or transmit permit. The complainant PW/3 Kartikeshwar submitted a written report in the police Station, Mithauwa, upon which first information report Ex.P/8 was registered by the police and investigation commenced.

3. During the course of investigation, the investigating officer recorded the statements of witnesses acquainted with the facts and circumstances of this case u/s 161 of Cr.P.C., prepared the site plan Ex.P/2, seized the lock from the place of occurrence vide memo Ex.P/3 and after usual investigation, the Officer Incharge of Police Station Mithauwa, filed the police report in the court of Judicial Magistrate, Dungarpur, who in turn committed the same for trial to the court of Sessions.

4. The accused persons were charged with the offences u/s 148, 307, 307/149, 353/149 and 189/149 IPC and Section 42(1) of Forest Act. The charges were read to the accused, who denied the guilt and claimed trial.

5. The prosecution has examined only 9 witnesses, namely, PW/1 Lakhma, PW/2 Durga Shankar, PW/3 Kartikeshwar, PW/4 Dilip Singh, PW/5 Phool Chand, PW/6 Jeetmal Jain, PW/7 Surya Singh, PW/8 Pratap Singh and PW/9 Gordhan Lal to prove the offences against the accused persons. The accused persons have not adduced any evidence in defence.

6. Heard the arguments of Mr.Manish Shishodia, learned Counsel appearing for the accused appellants, Mr.JPS Choudhary, learned Public Prosecutor appearing for the State, perused the relevant material and prosecution evidence available on record.

7. The learned Counsel for the appellants has argued that the occurrence took place at 10.30 PM of 11th February, 1983 whereas the FIR has been lodged by

the Forester Kartikeshwar with the delay of approximately 12 hours, on 12th of February, 1988 at 10.00 AM. The prosecution has not given any reasonable and satisfactory explanation of this delay, which under the facts and circumstances of the case, can be said to be fatal to the prosecution.

8. The main thrust of argument of the learned Counsel for the accused appellants is that no recovery of any weapon or gun, has been made by the police in this case. Nor any injury has been found on the person of Dilip Singh and Kartikeshwar. The police has seized only one broken lock from the site of occurrence in this case. There is no evidence available on record which can link the accused appellants with the commission of the offence. PW/1 Lakhma who is an employee of Forest Department, has not supported the prosecution case and has turned hostile. PW/2 Durga Shankar is said to have handed over the lock to police which has been seized vide Ex.P/3 in his presence. Mr.Shishodia has further argued that though PW/7 Surya Singh has not been declared hostile, but he has not supported the prosecution case also. The statements of PW/2 Durga Shankar PW/4 Dilip Singh and PW/7 Surya Singh are not such, which can emit any ray with regard to the commission of offence u/s 307 IPC. The entire prosecution case suggests, either no offence has been committed by the accused appellants and they have been falsely implicated therein, or there has been simple altercation between these two, of which a mountain has been made. Mr.Shishodia submits that no offence is proved against the accused appellants, as such they deserve to be acquitted of the charges.

9. Per contra, Mr.JPS Choudhary, learned Public Prosecutor appearing for the State has argued that for the purpose of Section 307 IPC, what is material is the intention or the knowledge and not the consequence of the act termed for the purpose of carrying out the intention. While placing reliance on the judgment of Hon"ble Supreme Court, cited in the case of Prakash Chandra Yadav Vs. State of Bihar and Others, he has argued that for the proof of the commission of an offence u/s 307 IPC the receipt of any injury on the part of the victim is not a pre-requisite condition. Even if the accused has fired a shot, pointing the victim and somehow the victim narrowly escapes, it could be gathered from these circumstances that the accused had an intention to kill him, or he had the knowledge that if the bullet hits the victim, he will be killed. Mr.Choudhary has further submitted that the lower court has properly appreciated the evidence of the prosecution and arrived at a right finding, convicting the accused appellants in the aforesaid offences.

10. Having considered the submissions made at the bar and scanned the entire prosecution evidence, it is found that no weapon like that of gun, revolver or knife, a mention of which is being made in the report Ex.P/7, has been recovered by the police from any of the accused appellants. It is also an admitted fact that none of the prosecution witnesses, including the complainant, has sustained any injury during the occurrence. It is for this reason alone that none of the witnesses has been medically examined by the police. PW/1 Lakha, who is a

public servant, has not supported the prosecution case and has turned hostile, whereas PW/2 Durga Shankar is the Investigating Officer of this case who has stated on oath in cross-examination that he tried to search the bullet or the empty cartridges but it was not found to be traceable. The statement to this effect that the empty cartridge or bullet was not found to be traceable, does not find any place in the charge sheet or in any memo. From the statement of the investigating officer it appears that he has just observed the formality of conducting an investigation of this case, that too in a casual manner. No effort is found to have been made by the investigating officer to collect such evidence which would link the accused appellants with the commission of offence. Even the employees of the Forest Department, who were deployed on check post, could not record the registration number of the said trucks. Out of 8 or 9 accused persons, who had trespassed in the room of check post, only two or three persons have been named by the complainant, who were already known to them. But with regard to the rest of the accused persons, no identification parade has been conducted by the investigating officer, nor any effort is found to have been made in this direction.

11. In order to prove the offence u/s 307 IPC, it is necessary for the prosecution to establish that if the victim would have met his death, the offence would have been one u/s 302 IPC. In the case of *Parasuram Pandey and Ors. v. State of Bihar* (2004) 13 SCC 189, the Hon"ble Supreme Court inter alia has held that to constitute an offence u/s 307 , two ingredients of the offence must be present:

- (a) an intention of or knowledge relating to commission of murder; and
- (b) the doing of an act towards it.

12. For the purpose of Section 307 IPC, what is material is the intention or the knowledge and not the consequence of the actual act done, for the purpose of carrying out the intention. The consequence clearly contemplates the act which is done with the intention of causing death, but which fails to bring about the intended consequence on account of intervening circumstances. The intention or knowledge of the accused must be such, as is necessary to constitute murder. In the absence of intention or knowledge, which is the necessary ingredients of Section 307, there can be no offence of attempt to murder. Intent, which is a state of mind, cannot be proved by precise direct evidence as a fact, which can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. The mere show of caution or touching the revolver on the head, is not enough to prove an intention in using it, unless it was shown to exist. The use of chopper has been talked about, but there has been no recovery of the same. The burden is on the prosecution to prove both , namely the *actus reus* and *mens rea*. The prosecution has utterly failed to prove both of them. The prosecution has merely endeavoured to produce the superficial evidence which talks of the revolver , gun and chopper but does not prove the use thereof. The

use of weapon is totally wanting in this case but the evidence has been given in such a way so as to lead the court to infer, as if the accused appellants had an intention to kill the complainant and his party, deployed at the chek post. The judgment of the Hon''ble Supreme Court, cited by the learned Public Prosecutor, does not render any assistance to the prosecution in the sense that in this case a bomb was blast which had a very vide range or coverage, whereas in the case at hand, at one point the revolver has been touched on the head of the complainant and at another point, Nand Lal fired a shot, which did not hit him. The chopper also is said to have been used but it also did not hit Dilip Singh.

13. The entire story is found to be a concocted and manipulated one. The learned Judge is not found to have properly appreciated the evidence of the prosecution witnesses. The finding arrived at by the lower court is totally misconceived, erroneous and against the settled principles of criminal jurisprudence with which I do not agree. The prosecution has utterly failed to prove the aforesaid offences against the accused appellants and to my firm opinion, the accused appellants deserve to be acquitted of all the charges.

14. Apart, there has been a considerable delay of about 11 hours in lodging the FIR Ex.P/8 of this case, a mention of which finds place in Col. No. 4 thereof. It has been mentioned in the FIR Ex.P/8 itself that the delay in lodging FIR has been on the part of the complainant PW/ 3 Kartikeshwar. The prosecution has utterly failed in giving a reasonable and satisfactory explanation of this delay. In a case where the complaint is a public servant, who is well conversant with the proceedings of an investigation, delay in lodging the FIR may undoubtedly prove to be fatal, as there may be every possibility of an embellishment, ornamentation and exaggeration in the factual matrix of prosecution case. This view is based on the observations of Hon''ble Supreme Court made in the case of Thulia Kali Vs. The State of Tamil Nadu,

15. In view of the above discussion, the criminal appeal filed by the accused appellants Nand Lal, Moti Lal and Bakshi succeeds. The impugned order of conviction of the accused appellants in the offence under Sections 148 189 307 307/149 353/149 IPC and Section 42(1) of Forest Act and the order of sentence as aforesaid detailed, are set aside.