
(1949) 08 AHC CK 0004
In the Allahabad High Court
Case No : Criminal Revision No. 89 of 1949

Sheetal Baksh Singh and Others

APPELLANT

Vs

Rex

RESPONDENT

Date of Decision : 24-08-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 109

Citation : AIR 1950 All 184

Hon'ble Judges : Chandiramani, J

Bench : Single Bench

Advocate : R.F. Bahadurji and Onkar Singh, for the Appellant; Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Chandiramani, J.—The three applicants Sheetla Baksh Singh, Nanhey Singh and Nanku were bound over u/s 109 (a), Criminal P. C., by the Sub-Divisional Magistrate, Sidhauli, district Sitapur, on 28th February 1949. Five other persons, Debi, Hulasi, Mulhey, Nafadin and Jagannath, were also bound over. All these eight persons went up in appeal, but their appeal was dismissed. Only the three applicants have come up in revision and stated that on the facts proved the order u/s 109 (a), Criminal P. C., is not justified. I have heard the learned counsel and am satisfied that the order passed is illegal.

2. The prosecution case briefly was that the police of Sidhauli were informed by Ratnu chaukidar on 26th September 1948, that some 10 or 12 strangers had collected at the taina of Nasrullah Shah in village Bari and it was feared that some incident might take place. It was mentioned that these people were drunk. Sub-Inspector Amrit Singh accompanied by some constables and some other villagers came to village Bari and raided the place at about 11 p. M. It is stated that the three applicants and the five other persons, who have also been bound over, tried to run away, but they were caught; that four or five other persons actually managed to escape. It was also said that the persons arrested were all

armed with lathis and one of them, Debi, had hidden in the fold of his dhoti a sabar, a house-breaking implement. It was admitted by the station officer that these three applicants in particular certainly were drunk. It was also established that all the persons arrested gave their correct names and addresses.

3. The learned appellate Court has come to the conclusion that the fact that all the persons arrested were of different castes and belonged to different villages, that they were found inside the house of a person with whom they had nothing in common and that Debi had a sabar, would show that they were taking precautions to conceal their presence with a view to commit an offence. I do not think that the view taken by the learned lower Court is at all correct. It was for the prosecution to show that the applicants had taken some active steps to conceal their presence in the house or done something to show that they did not wish it to be known that they were present in that house and that such steps were taken with a view to commit some offence. The only evidence in the present case is that these eight persons were found inside the house of Nasrullah Shah. There is not a word to show that they had actually concealed themselves or taken any steps to prevent their presence being known to other people. Nasrullah Shah, the man at whose place they were found, has stated that they were present there with his own consent and permission. It is proved that these persons were drunk and it appears that the persons were there at the takia to sleep off or to get over the effects of their drink. It is impossible to hold that on the evidence on the record it could be said with any justification that the applicants, or the other persons who were arrested along with them, had taken any precautions to conceal their presence. Even if the applicants and their companions tried to run away that would not amount to taking precautions to conceal their presence. They may have tried to run away just purely out of fear of the police. One of the necessary ingredients, therefore, of Section 109 (a), Criminal P. C., is missing. The mere fact that the applicants and their companions were armed with lathis or that Debi, one of their companions, had concealed in the fold of his dhoti a house-breaking implement will not establish that the intention of all the persons together was to commit some offence. It is clear that on the accepted evidence, as found by the learned Sessions Judge himself, it is not proved that the applicants and their companions were taking precautions to conceal their presence. The order u/s 109 (a), Criminal P. C., is therefore unjustified.

4. Accordingly, I allow this application and set aside the order of the Court below as against three applicants. In exercise of my revisional powers I also set aside the order u/s 109 (a), Criminal P. C., against the remaining five persons, Debi, Hulasi, Mulhe, Nafadin and Jagannath. The security, if furnished by these eight persons, is discharged and if in default of furnishing the security they are in jail they shall be released forthwith unless required in any other case.