
(1990) 01 RAJ CK 0019
In the Rajasthan High Court
Case No : Criminal Appeal No. 405 of 1982

Sri Chand

APPELLANT

Vs

Brij Bhushan and Others

RESPONDENT

Date of Decision : 30-01-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1990) WLN 16

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Judgement

N.C. Sharma, J.—This appeal has been filed by Srichand u/s 378 of the Code of Criminal Procedure against the judgment of the Addl. Sessions Judge, Deeg dated April 29, 1982, whereby seven respondents were acquitted by him of charges Under Sections 147, 148, 452, 323/149, 307 and 307/149, IPC.

2. The prosecution case was that on March 20, 1980, complainant lodged a First Information Report at Police Station, Sikari. In this report, it was mentioned by Srichand that when he came back to his house in village Kurkin from another village Sukheti, he found that his aunt Smt. Keshar (PW 3) was lying unconscious and his son Vinesh and Rajendra were lying injured. He inquired from them about the cause of injuries and thereupon Ramjilal and Prem told him that at about noon, the seven respondents came armed with country-gun, lathis and stones and entered into the house of Srichand. They inquired about Srichand and Smt. Keshar and the above mentioned two sons told them that the complainant had gone out of the village. Thereupon, Ramji Lal, Bhagwan, Battu and Gheesi exhorted to surround these persons to kill them. It was further mentioned that Jag Mohan respondent inflicted injury on the left leg of Vinesh Kumar by stone and Gopal respondent also caused injury by stone on the knee. Thereafter Brij Bhushan respondent fired the gun shot from the country gun and thereby caused injury on the left buttock of Smt Keshar. Nathi respondent inflicted injuries on the face of Rajendra by a stone. Thereafter the respondents went away saying that

Sri Chand may be told that he should leave the village otherwise all his family members would be killed. Ramji Lal and Prem were mentioned as eye-witnesses of the incident. Srichand complainant then took the injured to Bharatpur Hospital and got them medically examined. Then he came back from Bharatpur to Sikari and lodged FIR Ex. P1. On the basis of this report, a case was registered at the Police Station, Sikari.

3. It appears that after investigations, the Officer-in-charge of the Police Station, Sikari submitted a final report before the Magistrate. Thereupon, Srichand appellant filed a private criminal complaint of the incident. The Magistrate took cognizance on this private complaint and issued processes against the respondents. During the course of trial, the prosecution examined as many as 7 witnesses. The respondents in their examination u/s 313. Cr. PC denied having committed the offence. On consideration of various facts and circumstances of the case, the Addl. Sessions Judge, Deeg, to whom the case had been committed by the Addl. Munsif & Judicial Magistrate, Deeg, acquitted all the accused persons.

4. The main grounds on which the Addl. Sessions Judge acquitted the respondents were that although the incident took place at about 1.00 p.m. on March 19, 1980, the FIR Ex. P/I was lodged after a delay of 24 hours, in the noon on 20th March, 1980. It was mentioned that the Police Station, Sikari was at a distance of only two furlongs from the Sikari Hospital where the complainant had taken the injured and yet no First Information Report was lodged on 19th March, 1980 itself. The explanation given by the complainant for the delay was not accepted. It was also mentioned that the site-inspection note was not proved and the place of incident was changed. Regarding the injuries sustained by Smt Keshar, it was mentioned that there contradictions regarding the injuries sustained by her and with regard to the place where they were inflicted. If the injury had been inflicted on the buttock, it could not be said that there was any intention to kill Smt. Keshar. Country made pistol was not recovered and so also the pellets were not recovered from the place of incident. Certain contradictions were also pointed out in the evidence of the eyewitnesses. It was also stated that Nathi and Cbameli had not participated in the incident. On the basis of this finding, acquittal was recorded.

5. It was urged by the learned Counsel for the complainant that the Addl, Sessions Judge in para 6 of his judgment has himself criticised the conduct of the Investigating Officer in not investigating the case in respect of minor offences Under Sections 323 and 452, IPC simply because that on the basis of the First Information Report, the case was registered for a graver offence. It was also urged that although the FIR was lodged on 20th March, 1980 at 10 a.m., but it was clear that the complainant Srichand was not at his village Kurken and had gone out of village. Srichand had returned only after the incident and when he saw Keshar, Vinesh and Ram Chandra lying injured and also saw that Smt. Keshar was unconscious, he thought it his first duty to shift the injured to Sikari Hospital. At that hospital, he was advised to shift the injured to Bharatpur

Hospital. He had started from Sikari to Bharatpur at 5 p.m. and on the next day, the complainant came back to Sikari Police Station and lodged the First Information Report. It was, therefore, urged that the delay was properly explained.

6. Attention was also invited to injury reports Ex. P4, Ex. P5, and Ex. P6 of the three injured -- Smt. Keshar, Rajendra and Vinesh. In so far as Keshar is concerned, she sustained multiple gun-shot, punctured wounds over left buttock and sacrum including the perianal region. Each wound measured 1/8" to 1/4" in diameter. Openings were recovered with clotted blood. She was advised X-ray. Skiagram of buttock revealed that there was multiple radio opaque shadows resembling pellets seen in left pelvic region. This is clear from the injury report Ex. P/5. Lastly, it was urged that there was no material contradiction in the testimony of the eye-witnesses.

7. It is undoubtedly true that Smt. Keshar sustained gun-shot injury as she had multiple punctured wounds and pellets, were also found in the body. Dr R.D. Goyal was examined as PW/7. Dr. Goyal has stated in his cross-examination that Smt. Keshar could not sustain the injuries while sitting but she could sustain the same while running back in case shot was fired from the back-side. The mere fact that Doctor admitted the probability of Smt. Keshar being in a bent position and receiving injury on the buttock is not sufficient to hold that there were contradictions between the direct evidence and the statement of Dr. Goyal. So far as the delay in lodging the First Information Report is concerned, it is quite clear that Smt. Keshar herself was an aged lady. She also could not see well from her eyes. Rajendra and Vinesh Kumar were minors. Complainant Srichand was out of village. He had returned to the village soon after the incident was over and he found Smt. Keshar lying unconscious. Obviously, therefore, the first duty of Srichand was to take Smt. Keshar to the hospital, First of all, he went to Sikari Hospital, but then he was advised to shift the injured to Bharatpur Hospital. He, therefore, rushed to Bharatpur and got Smt. Keshar admitted there. Then he returned to Sikari Police Station and lodged First Information Report. In the background of these circumstances, it cannot be said that the delay in lodging the First Information Report was not reasonably explained.

8. It was mentioned in the First Information Report that the gun-shot had been inflicted on Smt. Keshar by Brij Bhushan, respondent No. 1 by a country-gun. So far as Vikesh Kumar and Rajendra Kumar are concerned, the latter had only abrasion 1-1/2" x 1/2" on the left side of face and Srichand had lacerated wound 1-1/4" x 1/2" over upper 1/3rd of right leg and abrasion 1/4" x 1/4" over dorsal surface left great toe. Had seven accused persons participated in the incident and more so when some of them were armed with lathis, it is difficult to believe that Rajendra and Vinesh Kumar would simply have received one or two minor injuries. They must have received, in that event, more injuries than what appears from the two injury reports and Smt. Keshar herself did not receive any other injury except the gun-shot injury on her body. In these circumstances, it

can reasonably be said that the case were of over implication and what the prosecution has been able to establish is that it was Brij Bhushan, respondent No.1 who had fired country made gun-shot at Keshar and she received injuries. The offence made out is only u/s 324, IPC and not u/s 307, IPC. As the distance of firing was not proved in the case, it cannot be said that the place where the incident took place has been precisely pin-pointed.

9. Consequently, Brij Bhushan alone was guilty of offence u/s 324, IPC. The guilt of the remaining accused has not been proved beyond reasonable doubt.

10. I; therefore, partly allow this appeal and hold Brij Bhushan guilty of offence u/s 324 IPC. The Incident place on March 19, 1980 and acquittal was recorded on April 29, 1982. It would be suffice to sentence Brij Bhushan, respondent No. 1, with a sentence of two month's rigorous imprisonment. He will further be liable to pay a fine of Rs. 1,000/-. In default of payment of fine he will further undergo rigorous imprisonment for a fortnight. Out of the amount of fine Rs. 700/- will be paid to the injured, Smt. Keshar. The appeal in relation to the rest of the respondents is here by dismissed.