

Pritam Singh Vs. State

Pritam Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/683542

Court : Delhi

Decided On : Apr-25-1995

Reported in : 1996CriLJ7

Judge : M.S.A. Siddiqui, J.

Acts : Indian Penal Code, 1860 - Sections 307, 320 and 326

Appeal No. : Crl. A. 37 of 1977

Appellant : Pritam Singh

Respondent : State

Advocate for Def. : H.J. Singh, Adv.

Advocate for Pet/Ap. : Rajiv Awasthy, Adv

Judgement :

1. The appellant aggrieved by the order dated 18-12-1976 passed by the Additional Sessions Judge, Delhi, in Sessions Case No. 46/76, convicting and sentencing him to undergo rigorous imprisonment for two years under Section 326, I.P.C. has come up in appeal before this Court.

2. The prosecution case, in brief, is that on 9-11-1975 at about 4 p.m. some row took place between the complainant and Rakesh (P.W. 2) and the appellant regarding purchase of liquor during the course of which the appellant caused an

injury on the abdomen of Rakesh (P.W. 2) by a blade of scissor. The occurrence was witnessed by Tejpal (P.W. 3). Rakesh (P.W. 2) was removed to the hospital where he was medically examined by Dr. O. P. Sharma (P.W. 6). On the same day, a case under Section 307, I.P.C. was registered against the appellant. The appellant was arrested. During investigation, the appellant made a statement (Ex. P.W. 3/B) leading to the discovery of the scissor as a result whereof the Scissor (Ex. P. 1) was recovered vide seizure memo (Ex. P.W. 3/C). On completion of the investigation, the appellant was charge sheeted under Section 307, I.P.C.

3. In the trial court a charge under Section 307, I.P.C. was framed against the appellant to which he pleaded not guilty and claimed to be tried. In order to prove the charge, the prosecution has examined 10 witnesses. The learned Additional Sessions Judge, on a consideration of the evidence adduced by the prosecution found that the prosecution has failed to prove the charge under Section 307, I.P.C. against the appellant and the evidence on record clearly proved that the appellants' act in inflicting the injury in question on the person of Rakesh (P.W. 2) is punishable under Section 326, I.P.C. He, therefore, acquitted the appellant of the offence charged under Section 307, I.P.C. but convicted him under Section 326, I.P.C.

4. Learned counsel for the appellant has fairly conceded that in the present state of evidence, it is not possible to contend that the appellant had not caused hurt to Rakesh (P.W. 2). But he has assailed the finding recorded by the learned Additional Sessions Judge that the appellant's act in causing hurt to Rakesh (P.W. 2) is punishable under Section 326, I.P.C. Although, the learned Additional Sessions Judge was right in relying upon the testimony of Rakesh (P.W. 2) the victim of assault, showing that it was the appellant and none else who inflicted the injury to him by means of a Scissor's blade, the fact remains that the injury caused to him was of simple nature. The learned Additional Sessions Judge has placed strong reliance on the testimony of Mr. O. P. Sharma (P.W. 6) in holding that the appellant had committed an offence punishable under Section 326, I.P.C. Learned Additional Sessions Judge has observed that :

'Dr. O. P. Sharma P.W. 6 has also deposed that Rakesh P.W. 2 remained as an indoor patient in the hospital from 9-11-1975 to 29-11-1975 that means the injured suffered from severe bodily pain for more than 20 days and/or was unable to follow his ordinary pursuit for this period. Consequently, the injury on the person of Rakesh P.W. 2 was grievous according to Clause 8 of Section 320, I.P.C.'

I find it difficult to sustain the said finding of the learned Additional Sessions Judge. Dr. O. P. Sharma (P.W. 6) who stated in the evidence that Rakesh (P.W. 2) remained in the hospital as indoor patient from 9-11-1975 to 29-11-1975. He has nowhere stated that during that time, Rakesh (P.W. 2) was unable to follow his ordinary pursuit. Clause 8 of Section 320, I.P.C. speaks of two things (1) any hurt which endangers life and (2) any hurt which causes the sufferer to be during the space of twenty days (a) in severe bodily pain, or (b) unable to follow his ordinary pursuits. Thus, the mere fact that Rakesh (P.W. 2) Remained in the hospital for twenty days is not sufficient to attract the provision of Clause 8 of Section 320, I.P.C. The evidence of Dr. O. P. Sharma (P.W. 6) does not show that during that period, Rakesh (P.W. 2) was in severe bodily pain or unable to Follow his ordinary pursuits. The learned Additional Sessions Judge has completely misdirected himself in construing the evidence of Dr. O. P. Sharma (P.W. 6) and convicting the appellant under Sec. 326, I.P.C. I accordingly alter the conviction of the appellant from Sec. 326, I.P.C. to one under S.ec 324, I.P.C.

5. Coming to the question of sentence, I may point out that the occurrence took place in the year 1975 and the appellant has undergone the proceedings for a period of two decades. Having regard to the age of the appellant on the date of offence and looking into the circumstances in which the offence was committed and the nature of the injury caused to the victim, I am satisfied that it is a fit case in which if the sentence of the appellant is reduce to the sentence already undergone it would meet the ends of justice.

6. Subject to this modification, the appeal is dismissed.

7. Order accordingly.

