

Sarkar Vs. Jalamsingh

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Court : Rajasthan

Decided On : Dec-15-1949

Reported in : AIR1950Raj28

Judge : Nawal Kishore and; Bapna, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439(6), 562(1) and 562(3); Indian Penal Code (IPC) - Sections 307

Appeal No. : Criminal Ref. No. 23 of 1949

Appellant : Sarkar

Respondent : Jalamsingh

Advocate for Def. : Prakash Chandra, Adv. and; Party in person

Advocate for Pet/Ap. : Mansaram, Govt. Adv.

Disposition : Reference accepted

Judgement :

ORDER

1. This is a reference by the learned District Magistrate observing that the learned Magistrate who convicted the accused under Sections 307 and 326 was not justified in giving him the benefit of Sections 562 (1) Criminal P. C., and recommending that the accused should be given a sentence of rigorous

imprisonment instead.

2. The accused is represented and the learned counsel on his behalf has argued that he is entitled also to show cause against the conviction of the accused under Section 307, Penal Code, The learned counsel obviously assumes that this is a case of enhancement of sentence and that accordingly under Section 439, Sub-section (6) it is open to him to show while opposing the motion for enhancement that the accused had been wrongly convicted by the Court below. It may be pointed out that in a case under Section 562 (1), Criminal P. C., the Magistrate does not pass a sentence and merely directs the release of the accused on his executing a bond with or without sureties to keep the peace and be of good behaviour. In the circumstances, since there is no sentence, there can be no enhancement of the sentence. Accordingly the learned counsel cannot be allowed to show cause against the conviction of the accused.

3. So far as the order is concerned, it is clear from a bare perusal of Section 562, Criminal P. C., that it is not applicable where the accused is convicted of an offence which is punishable with death or imprisonment for life. In this case, the accused has been convicted under Section 307 and since hurt has been caused, he was liable to be sentenced to rigorous imprisonment for life, therefore, the case calls for a sentence of imprisonment being awarded to the accused. According to Sub-section (3) of Section 562, it is open to the High Court when exercising its powers of revision to set aside the order passed by the Magistrate under Section 562 and in lieu thereof pass a sentence according to law; but there is a proviso and that is to the effect that the High Court shall not under the Sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

4. The learned Government Advocate states that the learned Magistrate of the trial Court had powers under Section 30, Criminal P. C., and therefore, could inflict any sentence except that of death or imprisonment exceeding seven years. In this case the accused is a lad of 15 or 16 years of age and the act indulged in by him, to Bay the least, was the result of momentary impulse without any premeditation. In the circumstances, we consider a sentence of three years imprisonment under

Section 807 and two years imprisonment under Section 326 will meet the ends of justice. We accordingly hereby accept the reference, set aside the order passed by the learned Magistrate under Section 662 (1), Criminal P. C., and upholding the convictions under Sections 307 and 326, Penal Code, hereby sentence the accused to three years rigorous imprisonment under Section 307 and two years rigorous imprisonment under Section 326, Penal Code. Both the sentences will run concurrently. The accused is present in person and will be taken in custody forthwith.

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