

Gopal Vs. the State

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Court : Rajasthan

Decided On : Mar-29-1978

Reported in : 1978WLN(UC)78

Judge : R.L. Gupta, J.

Appeal No. : S.B. Criminal Appeal No. 43 of 1977

Appellant : Gopal

Respondent : The State

Judgement :

R.L. Gupta, J.

1. The appellant Gopal was tried for the offences under Sections 307, 328 and 392 IPC by the learned Sessions Judge, Merta for having administered 'Dhatoora' in sweets in to Poosa Ram PW. 1, Nimbaram PW. 3 on 30.5.1975 and Kumbharam, PW. 3 on 30.5.1975 and having robbed the golden earstud (loong) from the person of PW. 2 Nimbaram. The learned Sessions Judge, after trial, acquitted the appellant of the offences 392 IPC but he convicted him for the offences under Section 307 and 328 IPC. For the offence under Section 307 IPC the appellant was sentenced to undergo rigorous imprisonment for six year and a fine of Rs. 100/- in default of the payment of fine to undergo further rigorous imprisonment for three months for the offence under Section 328 IPC he was sentenced to undergo

three years rigorous imprisonment & to pay fine of Rs. 100/- in default to pay the fine to undergo further rigorous imprisonment for one month. The substantive sentences on both the counts were made to run concurrently vide his judgment dated, 31.1.1977.

2. aggrieved by his convictions and sentences as aforesaid, the appellant has preferred this appeal before this Court. I have heard the learned Counsel for the appellant and the learned public prosecutor and gone through the record of the case.

3. The learned Counsel for the appellant has Submitted before me two points in this appeal. First that the offence which arise out of the single act of the accused appellant falls only under one count and not under two counts and he could have been convicted-only on one count and not on two counts as has been done by the learned Sessions Judge. The learned Sessions Judge has erred in convicting the appellant for the offence under Section 307 IPC as well as under Section 328 IPC for the same single act. The offence alleged to have been committed by the appellant does not fall within the purview of Section 307 IPC but under Section 328 IPC and the appellant could have been convicted only that count. There was no intention on the part of the accused-appellant to commit murder. The prosecution alleged the motive of robbery though it has also not been proved. Nevertheless under the circumstances of the case the offence committed by the appellant does not fall within the ambit of Section 307 IPC but under the ambit of Section 328 IPC. The appellant at the time of his arrest was of about 16 years and is a very young person. In the present case it can safely be said that the prosecution has not come with a case that the intention of the appellant was to commit murder of the persons whom the poison was administered nor such an inference can be drawn from circumstances as the appellant was stranger to them all. The prosecution came with a case that the intention of the appellant was to commit robbery. Though the alleged act of robbery has not been accepted by the trial court but for the take of arguments this intention of the appellant is taken at par even then the offence committed falls under Section 328 IPC. Where the object of administering 'Dhathoora' was to commit robbery, and one of the persons to whom it was administered died and another was taken seriously ill, it was held

that in respect of the former the offence committed was that of grievous hurt and in respect of the latter the offence fell under Section 328 IPC. (Law of Crimes by Ratan Lal & Dhiraj Lal 22nd Edn. page 829 notes under Section 307). The learned Public Prosecutor also agrees that the offence made out against the appellant falls within the purview of Section 328 IPG and not under Section 307 IPC. He also agrees that the appellant could have been convicted for his act only under one court i.e. under Section 328 IPC.

4. The next submission of the learned Counsel for the appellant is that the appellant is a young boy of below 21 years of age and he is entitled to the benefit of the provisions of Probation of Officers Act. In the alternative he has submitted that the petitioner has undergone imprisonment for about 14 months and he had remained for more than five months in detention during investigation, enquiry and trial. Thus he has already suffered sufficient punishment.

5. Looking to the facts and circumstances of the case and that the appellant is a young lad of about 19 years of age I think the imprisonment already undergone by him would be sufficient to meet the ends of justice.

6. In the result the appeal is partly allowed. The conviction and sentence of the appellant under Section 307 IPG are set aside. He is acquitted for the same. His conviction for the offence under Section 328 IPC is maintained, but the sentence is reduced from rigorous imprisonment for three years to that already undergone. The sentence of fine of Rs. 100/- and in default to undergo further rigorous imprisonment for one month is maintained. If the fine is deposited he shall be released forthwith if not required in any other case.