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SooperKanoon Citation : sooperkanoon.com/757380

Court : Rajasthan

Decided On : Jul-11-1978

Reported in : 1978WLN(UC)275

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 21 of 1977

Appellant : Hari Ram

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. R.S. Sharma

Judgement :

K.D. Sharma, J.

1. This is an appeal filed by Hari Ram against the judgment of the learned Sessions Judge, Merta, dated 14th December, 1976, by which he was convicted under Section 398, I.P.C. and sentenced to undergo rigorous imprisonment for seven years,

2. The case for the prosecution, which has been accepted by the learned Sessions Judge, is that on 1st February, 1976, Babu Ram was grazing his she-camel and its young-one in the field of Kana Ram Bhambhi at village Bhakrod at about 12 in the noon At that time Hari Ram appellant, having armed himself with a gun, came into

the field of Kana Ram Bhambhi and asked Babu Ram to hand over the possession of the she camel and its young-one to him. Babu Ram refused to give the appellant his she-camel and its young-one. Upon Babu Ram's refusal, the appellant became angry and in a fit of anger he slapped Babu Ram twice or thrice and snatched away the she-camel and its young-one. The appellant, while earning away the she-camel and its young one, openly declared that if he was pursued by Babu Ram, the latter would be killed. Out of for Babu Ram did not pursue the appellant and went to his house to inform his father about the robbery. At his house he met his father Baksa Ram and related the whole of the incident to him. Baksa Ram went to Ram Chandra Panch and Ram Chandra Chaudhary for help. Ram Chandra Panch, Ram Chandra Chaudhary and Baksa Ram followed the foot prints of the she-camel, but could not trace its where about. So they returned to their village in the evening Ram Chandra Panch and Ram Chandra Chaudhary told Baksa Ram that the appellant might have taken the she camel and its young-one to the fair going on in Nagaur in those days and so it was worthwhile to go there and search for the appellant before making a report of the occurrence to the police. Baksa Ram acted on their advice and went to Nagaur but could not find the appellant or the she-camel in the fair. Hence, he lodged a report about the incident with the police at police station, Amarda on 4th February, 1975, which is Ex. P. 1 on the record. The police registered a criminal case under Section 398, I.P.C. against Hari Ram appellant and made the usual investigation into the matter. After collecting necessary evidence in the case, the police, eventually, submitted a charge-sheet against Hari Ram appellant for the offence under Section 398, I.P.C. in the court of the Judicial Magistrate, Nagaur, who, upon finding a prima-facie case exclusively triable by the court of Sessions, committed the appellant to the court of the Sessions Judge, Merta, for trial for the offences under Section 394 and 398, I. P.C.

3. The learned Sessions Judge tried the appellant after framing a charge against him for the offence under Section 398, I.P.C. only. The learned Sessions Judge relied upon evidence of the two eye-witnesses namely, Babu Ram, P.W. 1 and, Ram Niwas, P.W. 2 and held on its basis that the prosecution story had been fully proved by the evidence of these two witnesses. Accordingly, he convicted and sentenced the appellant for the aforesaid offence. Aggrieved by his conviction and

sentence, the appellant has preferred this appeal, as stated above.

4. I have carefully examined the evidence on the record and heard Mr. P.N. Mohanani and Mr. R.S. Sharma, learned Counsel for the appellant and Mr. K.c. Bhandari, Public Prosecutor for the State. It has been contended by the learned Counsel for the appellant in the first place that the case for the persecution was false and the evidence produced in support there of is highly unworthy of credence. It was further argued that the appellant owned and possessed agricultural land in the neighbourhood of the field of Babu Ram' and his father and, therefore, the story that he robbed Babu Ram of his she-camel and its young-one in broad day light does not carry conviction to a judicial mind. According to the learned Counsel the appellant was falsely implicated in this case as his relations with Babu Ram's father were highly strained on account of a quarrel that ensued between the two when Babu Ram s father had let loose his cattle into the appellant's field Mr K.C. Bhandari, Public, Prosecutor, on the other hand, urged that the motive suggested by the appellant for the prosecution witnesses to falsely implicate him is not established on the record and, therefore, there is no ground for discarding the testimony of the two eye witnesses, namely, Babu Ram and Ram Niwas, which has been found trust-worthy on merits upon scrutiny by the Sessions Judge.

5. I have given my best consideration to the rival contentions. After critically going through the statements of Babu Ram, P.W. 1 and Ram Niwas, P W. 2 I may say that their testimony did not suffer from any infirmity. Both these witnesses were cross-examined at the trial by the learned Counsel for the appellant but nothing could be elicited from their cross-examination which may adversely affect their credibility or minimise the value of their evidence. Both these witnesses clearly stated in their depositions at the trial that the appellant apprehended Babu Ram in the field of Kana Ram Bhambhi having armed himself with a gun and asked the latter to hand over the possession of the she. camel and its young-one to him and then, upon Babu Ram's refusal to give him the she-camel and its young-one, the appellant forcibly took away the she-camel and its young-one after giving two three slaps to Babu Ram. These witnesses further deposed that the appellant while riding the she camel openly declared that if Babu Ram or any person

followed him, he would be killed. Out of fear Babu Ram did not go in pursuit of the appellant or his she-camel and its young one. The appellant voluntarily slapped Babu Ram twice or thrice for the end or purpose of committing theft of the she-Camel and its young-one and, thereafter, snatched the string of the she-camel from the hand of Babu Ram and after riding on the animal went away with the looted property. The she-camel and its young-one was no doubt left, later on, by the brother of the appellant near the house Babu Ram, but the return of looted property to its owner does not exonerate of the appellant from the criminal liability. Consequently, I am satisfied that the appellant was rightly held guilty of the offence of robbery and no ground has been made out for discarding the evidence led against him by the prosecution at the trial

6. The next contention raised before me by the learned Counsel for the appellant is that the conviction of the appellant under Section 398, I.P.C. was wrong in law and that he could be convicted only under Section 392, I.P.C. The above contention is based on the ground that Section 398, I.P.C. is applicable to cases of attempt to commit robbery or dacoity and cannot be made applicable to a case like the present one in which robbery or dacoity has been actually committed or completed. In my opinion, the above contention is not devoid of force. Section 398, I.P.C. opens with the words 'If at the time of attempting to commit robbery or dacoity....' These words clearly indicate that Section 398, I.P.C. merely relates to cases where the offender, having armed himself with a deadly weapon, attempts to commit robbery or dacoity and does not apply to cases where robbery or dacoity is committed and the offender is merely armed with a deadly weapon at the time of committing the offence. As there is no evidence on the record that the appellant used his gun at the time of committing robbery, he could not be held guilty under Section 397, I.P.C. also. The only section under which he could be convicted and punished was Section 392, I.P.C. which does not provide for a minimum sentence as Sections 397, and 398, I.P.C. do. The trial court, therefore, did not consider this aspect of the case and committed an error in convicting and punishing the appellant under Section 398, I.P.C. As the offences under Sections 398 and 392, I.P.C. are cognate offences, the conviction of the appellant under Section 398, I.P.C. can be altered to one under Section 392, I.P.C.

7. The learned Counsel for the appellant further contended that as Section 392, I.P.C. does not prescribe any minimum sentence, the sentence awarded to the appellant may be reduced in view of his youth and having regard to the fact that no loss of property has been caused to Babu Ram, as the she camel and its young one were returned to him a couple of days after the incident. The above contention also has some force. The appellant is a young-man of 32 years of age. He has no previous conviction for a similar offence to his discredit. It appears from the prosecution evidence itself that he was having his land adjacent to the field of Babu Ram's father. The she-camel and its young one were returned by his brother to Babu Ram and his father shortly after the commission of the crime. In these circumstances, I feel persuaded to reduce the sentence of seven years' rigorous imprisonment awarded to the appellant, especially when he is found guilty of the offence under Section 392 I.P.C. only which does not prescribe any minimum sentence. Reference in this connection may be made to *Shekh Ghassu v. Emperor* A.I.R. 1925 Nag. 136 and *Chandra Nath v. Emperor* A.I.R. 1932 Oudh. 103 wherein a similar view has been taken regarding the applicability of Section 398, I.P.C. The ends of justice would be met if the sentence of seven years' rigorous imprisonment awarded to the appellant by the trial court is reduced to a term of three years rigorous imprisonment.

8. The result is that I partly accept the appeal and alter the conviction of the appellant from under Section 398, I.P.C. into one under Section 392, I.P.C. and instead of seven years' rigorous imprisonment under Section 398, I.P.C. sentence him to undergo rigorous imprisonment for three years under Section 392, I.P.C. However, the period of detention, if any, undergone by the appellant during investigation, inquiry or trial of this case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him and his liability to undergo imprisonment, on such conviction, shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.