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Court : Rajasthan

Decided On : Aug-08-1990

Reported in : 1990(2)WLN143

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Appeal No. 172 of 1980

Appellant : Fatta Ram

Respondent : State of Rajasthan

Judgement :

N.L. Tibrewal, J.

1. The accused-appellant Fatta Ram was convicted Under Section 326 and 324 IPC by the learned Addl. Sessions Judge, Sri Ganganagar in sessions case No. 26/79 and was sentenced to two years' R.I. and a fine of Rs. 500/- and six months' R.I. and a fine of Rs. 200/- respectively. Aggrieved against his conviction and sentences the appellant has preferred the present appeal.

2. The prosecution case is that on 17-1-1978, the injured Jasbir Singh accompanied with Pritam Singh Bhati and other person went to the village 4B in district Sri Ganganagar. They had gone to converse for the candidature of Pritam Singh Bhatti who was contesting the Panchayat election. It is alleged that Fatta

Ram was also approached by them for his vote but he refused to oblige saying that Jasbir Singh had come to ask for the vote and they was having enmity with him Other persons were also present at that time and it is further alleged that the accused-appellant also abuses but he was pacified by other persons. On the same day at 5.30 P.M. when injured Jasbir Singh was sitting in the village chowk along with other persons, then the appellant Fatta Ram is said to have come with a spade and inflicted a blow on the head of Jasbir Singh. The second blow was given on the hand. Jasbir Singh was brought to hospital at Kesrisinghpur and the Medical Officer sent an intimation to the SHO, Police Station, Kesrisinghpur at 7.15 P.M. on the same day. On the said information, the SHO Shri Balwant Rao came to the hospital and recorded the statement on Jasbir Singh injured. On the basis of the 'Parcha.Bayan' of Jasbir Singh a case was registered Under Section 307 IPC.

3. After usual investigation the police submitted a charge sheet against the appellant and thereafter he was prosecuted for the offence Under Section 30, IPC in the court of the learned Addl. Sessions Judge, Sri Ganganagar. The learned trial court, after completion of trial, convicted and sentenced the appellant as aforesaid.

4. I have heard the learned Counsel for the appellant as well as the learned Public Prosecution.

5. In this case the injured Jasbir Singh has been examined as P.W. 6 and also other four eyewitnesses, namely, P.W. 3 Gurutej Singh, P.W. 4 Harnek Singh, P.W. 7 Pritam Singh Bhati and P.W. 8 Hari Ram. PW 3 Gurutej Singh and P.W. 4 Harnek Singh did not support the prosecution case and they were declared hostile. The learned trial court after placing reliance on the testimony of the injured Jasbir Singh and the two eyewitnesses, namely, P.W. 7 Pritam Singh Bhati and P.W. 8 Hari Ram convicted and sentenced the appellant as aforesaid. The learned Counsel for the appellant, after making submissions on the merits of the case for some time, conceded that the conviction of the appellant Under Sections 326 and 324 as recorded by the learned trial court, is well founded. I myself have also gone through the statements of the injured Jasbir Singh and two eyewitnesses, namely,

P.W. 7 Pritam Singh Bhati and P.W. 8 Hari Ram and I am fully convinced that the appellant is the author of the two injuries sustained by Jasbir Singh and the conviction of the appellant has been rightly recorded.

6. The main thrust of the learned Counsel for the appellant is on the question of sentence. His contention is that the incident is dated 17th Jan. 1978 and more than 12-1/2 years have passed since then. It was further contended that the incident took place all of a sudden on a petty matter as the injured Jasbir Singh had gone to the appellant to seek his vote in the Panchayat election. It was further contended that the appellant had already remained in jail for about three weeks and it shall not be in the interest of justice to send the appellant in jail after such a long period. He further contended that in lieu of the reduction of the sentence of imprisonment the injured may be compensated, though it was further argued that the appellant is a poor Gardner. The learned Counsel for the appellant has referred Damodar Prasad v. State of Raj. 1989 RCC 105, Khatanmal v. State of Rajasthan 1989 RCC 219 and Ganesh Lal v. State of Rajasthan 1985 WLN (UC) 497.

7. The learned Public Prosecutor, on the contrary, supported the judgment of the learned trial court.

8. I have given my careful consideration on the question of sentence. It is not doubt true that the appellant had inflicted two injuries on the person of injured Jasbir Singh out of which one injury was found to be grievous. But there are some special circumstances, specially the fact that the incident had taken place on 17-1-1978 and about 12 1/2 years have parsed since then. Further the incident took place all of a sudden and that too on a petty matter when the injured had gone to the appellant to seek his vote for the Candidature of Pritam Singh Bhati. It appears that the appellant did not want that Jasbir Singh should have approached him for the vote as he had quarreled with his elder father previously. At the time of the incident the age of the appellant was 28 years and now he is more than 40 years. In his statement Under Section 313 Cr. PC he has given out that he was having three daughters and one son and all of them were below seven years of age at that time. Those daughters must have now grown up and they might be of

marriageable. Thus taking all the facts and circumstances of the case I am of the view that the sentence of imprisonment should be reduced to the period already undergone by the appellant.

9. In this connection it may be further submitted that in Damodar Prasad's case (supra) the accused was convicted Under Section 326 IPC but looking to the pendency of the criminal case for 10 years he was awarded the sentence of imprisonment already undergone by him and a fine of Rs. 1000/-. The accused had remained in jail for one month and 17 days in that case. Similarly in KhatarmaVs case (supra), also, sentence of imprisonment Under Section 326 IPC was reduced from three years' Rule I. to the period already undergone which was about two months. Reference can also be made in this connection to a judgment of the Supreme Court reported in Naib Singh v. State of Punjab (Cr. LR (SC) 1986 p. 469, in which their Lordship of the Supreme Court did not think it desirable to send the accused back to jail after 13 years though he was convicted Under Sections 326 and 324 IPC and he was awarded imprisonment till rising of the court and to pay a fine of Rs.5000/-.

10. In the aforesaid background of the various judgments of this Court as well as the Hon'ble Supreme Court I feel that in lieu of reduction of the sentence of imprisonment, the amount of fine should be enhanced from Rs. 500/-to Rs. 2500/- Under Section 326 IPC. The sentence of fine Under Section 324 IPC is maintained.

11. Consequently, I partly allow this appeal, while maintaining the conviction of the appellant Under Section 326 and 324, IPC. I reduce the sentence of imprisonment Under Section 326 and 224 IPC to the period already undergone by him and in lieu of reduction of sentence, amount of fine Under Section 326 IPC enhanced from 500/. to Rs. 2500/-, In default of payment of fine, the appellant shall undergo imprisonment for six months. The sentence of fine Under Section 324 and the sentence of imprisonment in case of default in payment of fine is maintained. Four months time is given to the appellant to deposit the amount in the trial court. In case the amount is deposed by the appellant, Rs. 2500/- shall be paid to the injured Jasbir Singh and the learned trial court shall take steps to hand over the

amount to him immediately.

12. The appellant is on bail, as such he need not surrender. His bail bonds are discharged.

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