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Court : Rajasthan

Decided On : Aug-03-1990

Reported in : 1990(2)WLN157

Judge : B.R. Arora, J.

Appeal No. : S.B. Cr. Appeal No. 578 of 1979

Appellant : Tarachand

Respondent : State of Rajasthan

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 7th of December, 1979, and 14th of December, 1979, passed by the Sessions Judge, Jodhpur by which the learned Sessions Judge, convicted the appellant Tarachand Under Section 304 Part II IPC and awarded him a sentence of rigorous imprisonment of five years.

2. The incident, which led to the prosecution of the present appellants along with Sohanlal and Munnalal, to place on 8th of August, 1979, According to the prosecution on the day of 'Raksha Bandhan' on 8th of August, 1979, 3 Hukamchand, accused Tarachand, and Munnalal, the brother Mohanlal P.W. 6 were plying kites on the roof their house. P.W. 2 Suraj Kanwar was also there on

the roof. Hukam-chand cut the string of Manohar-Lai's kite, upon which. Manobarlal gave a fist blow to Hukam-chand and Hukam-chand, thereupon cried and on hearing the cried of Hukam-chand, his father Kishanlal, went upstairs reprimanded Manoharlal and sent Manobarlal his brother Tarachand and Munnalal down stairs, Kishanlal took Hukam-chand with him and made him to sit in the roof. After coming downstairs, Manoharlal P.W. 6 narrated the incident to accused Mohanlal. Thereupon accused Sohanlal asked Kishanlal to down-stairs in the chowk.when Kishanlal came into the chowk, aucused Sohanlal took Kishanlal to task and these three accused made an assault on Kishanlal and struck him against the wall. Accused Sohanlal also asked. Tarachand to bring a dagger. Accused Tarachaod brought a dagger from the room and inflicted injury with that dagger to Kishanlal. On account of this injury, there was a profuse bleeding Kishanlal was brought to the Mahatma Gandhi Hospital, Jodhpur, where be was admitted for treatment, but the injury proved fatal and Kishanlal died on account of this injury. After the death, post mortem of Kishanlal was conducted by Dr. R.K. ghelot and he found following injury on the body of Kishanlal:

Incised wound 5.0 cm. x 2.0 cm. on the anterior aspect of left shoulder region about 5.0 cm. below and medial to acromian process. Subcutaneous tissue, muscles underneath were cut, running obliquely backwards, medially across the anterior axillary fold reaching to third intercostal space in the mid-axillary line of its course tissues are clean cut, entering into the thoracic cavity through third intercostal space in the mid-axillary line, the intercostal muscles are clean cut and under neath pleura was clean cut and there was incised wound 2.0 x 0.7 c m. which was 2.5 cm. deep on the lateral aspect of left lung on its upper lobe, obliquely downwards, backwards and medially. There was about 1.5 litre of blood present in the left pleural cavity the left lung was collapsed into cavity.

The prosecution, in support of its case produced four eyewitnesses to the occurrence, namely, P.W. 1 Smt. Kamla, P.W. 2 Smt Surajkanwar.PW 3 Hukam-chand and P.W. 6 Manoharlal. The persecution in all produced 12 witnesses. Accused did not produce any evidence in defense. The learned Sessions Judge tried the present appellant Under Section 302 IPC and the other two accused, Munnalal and Sohanlal, for the offence Under Section 302/34 IPC. The learned

Sessions Judge after trial acquitted Sohanlal and Munnalal for the offence Under Section 302/34 IPC. He also acquitted the present appellant Under Section 302 IPC, but convicted him Under Section 304 Part II IPC and awarded a sentence of 5 years' rigorous imprisonment. Dissatisfied with the conviction and sentence passed by the learned Sessions Judge, the appellant preferred this appeal.

3. The only contention raised by the learned Counsel for the appellant is that the learned lower convicted the appellant Under Section 304 Part II IPC but did not give the benefit of Probation to the appellant though at the time of incident as at the time of conviction he was less than 21 years of age. It is not in dispute that the accused at the time of incident was of 19 years of age. The learned Sessions Judge refused or release appellant on probation on the ground that the offence is a serious in nature, the life of innocent person has been lost for no fault of his and the age is not the only consideration for releasing an accused on probation of good conduct, the learned Sessions Judge while refusing to release the appellant on probation of good conduct Under Section 360 Cr. PC or under the provisions of Probation of Offenders Act, though gave reasons but in may view the reasons given by learned Sessions Judge in rejecting this prayer are not convincing. Section 361 Cr. PC creates a duty upon the court to apply the provision of Section 360 Cr. PC wherever it is possible to do so and to state 'special reason' if it does not do so. In the context of Section 360 Cr. PC the special, reasons contemplated by Section 361 Cr. PC must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed Thus while considering the question whether the probation should be given to a particular person or not, personality of the offender as revealed by age, character and antecedent and other circumstances and the tactility of the offender to reform must necessarily play a must prominent role. the learned Sessions Judge while refusing to grant the Probation to the appellant did not consider this aspect of the law and in my view he was not right in refusing to grant probation. Section 6 of the Probation of Offenders Act lays down an injunction not to impose a sentence of imprisonment upon an offender of the class covered by this Section unless for the reasons recorded by it the Court finds it undesirable to vige benefit and for that be should

call for the report from the Probation Officer.

4. The accused at the time of incident was only 19 years of age and he inflicted injury to his real uncle and had no intention to take the life of deceased, but on account of the suddenness of the incident the unfortunate death of Kishanlal took place. Thus looking to the age of the accused, close relationship of the parties, the intention of the accused and the fact that the accused was not a previous convict and the offence is not, punishable with life imprisonment, I think it proper to extend the benefit of probation to the appellant.

5. Accordingly, the appeal is partly allowed, the conviction of the appellant Under Section 304 Part II IPC is maintained but instead of sentencing the accused Under Section 304 Part II IPC, I direct that the appellant shall be released, provided he furnishes a personal bond in the sum of Rs. 10,000/- and a surety in the like amount to the satisfaction of the learned Sessions Judge, Jodhpur, undertaking to appear and receive the sentence when called upon to do so within a period of 3 years and in the mean time to keep the peace and be of good behavior. The appellant is allowed one months' time to file the a foresaid bonds.

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