

Sultan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-24-1981

Reported in : 1981WLN(UC)326

Judge : K.S. Sidhu, J.

Appeal No. : S.B. Criminal Appeal No. 256/1981

Appellant : Sultan

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Dhankar

Judgement :

K.S. Sidhu, J.

1. The appellant, Sultan, was tried by the learned Sessions Judge, Sikar on the charges punishable Under Section 148, 302/149, 307/149, 323 and 323/149 IPC. By his judgment dated May 28, 1981, the learned Judge acquitted the appellant of all the aforementioned charges and instead convicted him under Section 326 IPC read with Section 34 IPC. He awarded the accused appellant rigorous imprisonment for two years making it clear that the period of detention of the appellant from July 2, 1980 onwards until and during the course of the trial will be set off against the sentences awarded to him.

2. Mr. Dhankar, learned Counsel for the appellant has not questioned the order of conviction passed by the learned trial Judge, against the appellant Under Section 326 read with Section 34 IPC. He has, lower, argued that the sentence awarded to him is excessive and that it should be reduced to the sentence already undergone by the appellant.

3. It is not questioned by the learned Public Prosecutor that the appellant was armed with a lathi and that Chothe, a co-accused, who was armed with a lathi, was convicted and sentenced Under Section 323 IPC in a trial held earlier. It is significant to note that the learned trial Judge has held that the prosecution could not prove beyond reasonable doubt that the appellant had caused hurt to any of the three injured persons namely Mala Ram, Babu Lai and Gulabi. Of course, the appellant was held constructively liable for the grievous hurt caused by the co-accused Raghunath to Mala Ram deceased. It may be mentioned that in the earlier trial Raghunath was convicted and sentenced under Section 326 IPC.

4. In view of the facts and circumstances narrated above I am of the opinion that the sentence of the accused-appellant should be reduced to the sentence already undergone by him. He has already undergone a sentence of nearly 17 months. This is a term which in the facts and circumstances of this case will serve the ends of justice.

5. In conclusion the appeal is partly allowed. The order of conviction passed by the learned trial Court Under Section 326 read with Section 34 IPC is affirmed. However, the sentence of two years' rigorous imprisonment is reduced to a sentence already undergone by him. He should be released forthwith if not required in any other case.