

Faquir Mohammad and anr. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-14-1984

Reported in : 1984WLN(UC)226

Judge : N.M. Kasliwal, J.

Appeal No. : S.B. Criminal Revision Petition No. 12/82 and 274/81

Appellant : Faquir Mohammad and anr.

Respondent : The State of Rajasthan and ors.

Disposition : Appeal allowed

Judgement :

N.M. Kasliwal, J.

1. Both the above revision as well as appeal arise out of the same order passed by learned Sessions Judge, Tonk, date June 9, 1981 as such the same are disposed of by one single order.

2. On a report lodged On January 29, 1981 (Ex. P6) by Mohammad Islam (deceased) the police registered a case under Section 107/116 Cr.P.C. Thereafter on the same night PW. Faquir Mohammad lodged the report Ex. P. 1 on which a case was registered under Section 302/34 IPC as Mohammad Islam who had lodged Ex. P. 6, had died. After investigation the police filed a charge sheet

against Mohammad Rafiq, Mohammad Sandiq, Mohammad Rasheed under Section 302/34 IPC in the Court of Chief Judicial Magistrate, Tonk. The learned Chief Judicial Magistrate committed the case for trial to the Court of Sessions Judge Tonk. The learned Sessions Judge framed charge against all the accused persons under Section 102 read with Section 34 IPC. The accused persons denied the charge and claimed to be tried. The learned Sessions Judge after recording the prosecution evidence examined the accused persons under Section 394 Cr.P.C. The learned Sessions Judge after hearing the arguments convicted the accused Mohammad Rafiq only for offence under Section 323 IPC and sentenced him to undergo rigorous imprisonment for six months. Mohammad Rafiq was acquitted of the charge under Section 302 IPC. The other accused were acquitted. Aggrieved against the conviction and sentence awarded by the learned Sessions Judge, Mohammad Rafiq filed an appeal which had been registered as S B. Criminal Appeal' No. 274/81. The complainant Faquir Mohammad who is the father of deceased Mohammad Islam has filed the revision against all the four accused person and has prayed for convicting them under sec.302 IPC.

3. I have perused the judgment given by the learned Sessions Judge, dated June 9, 1981. Learned Counsel for the complainant-petitioner was unable to show any infirmity in the said judgment so as to take the case beyond Section 323 IPC under which the accused Mohammad Rafiq has been convicted. In these circumstance so far as the revision filed by the complainant petitioner is concerned, is devoid of all force and is dismissed.

4. The learned Counsel for the accused appellant Mohammad Rafiq vehemently contended that his conviction under Section 323 IPC is totally wrong and is not justified on the basis of the evidence produced by the prosecution. A great emphasis was laid on Ex. P. 6, itself which was lodged by Mohammad Islam himself after the alleged occurrence. It was pointed out that Mohammad Islam has lodged Ex. P. 6 at police station, Kotwali Tonk, at 7.35p.m after the alleged incident but in the said report he had not mentioned a single word that the accused persons inflicted any injury on him. On the contrary it was only mentioned that the accused persons had threatened to inflict injury on him and he had a danger of his life from the accused person? Subsequently Mohammad Islam died and thereafter

a report was lodged by Shri Faquir Mohammad, father of Mohammad Islam, in which it was mentioned that injuries were inflicted by the accused persons on Mohammad Islam.

5. It would not be necessary for this Court to go into the merits of the appeal No. 274/81 filed by Mohammad Rafiq and to consider the arguments advanced by learned Counsel for Mohammad Rafiq in view of the fact that the parties have come to amicable settlement and according to which Faquir Mohammad complainant who is father of deceased Mohammad Islam has no grievance and does not want to press for the conviction or sentence of Mohammad Rafiq under Section 323 IPC. It may be further mentioned that Mohammad Miyan, one of the accused persons, had filed a civil suit against Faquir Mohammad complainant in the Court of Civil Judge, Tonk for damages on account of malicious prosecution. Mohammad Miyan has also submitted an application in this Court that he did not want to prosecute that case and wanted to withdraw the suit for which he would submit an application for withdrawal of the suit in the Court of Civil Judge, Tonk. The parties have thus settled their differences and in the facts and circumstances of this case, I permit the parties to compound the case under Section 328 IPC.

6. In the result, the appeal No. 274/81 filed by Mohammed Rafiq is allowed, his conviction under Section 323 IPC and sentence for six months, rigorous imprisonment is set aside.