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Court : Rajasthan

Decided On : Mar-29-1889

Reported in : 1989WLN(UC)108

Judge : A.K. Mathur, J.

Appeal No. : S.B. Criminal Jail Appeal No. 392 of 1988

Appellant : Roopa

Respondent : State of Rajasthan

Judgement :

A.K. Mathur, J.

1. This is a jail appeal directed against the conviction of the accused-appellant, under Section 326 and sentenced to 5 years rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to further undergo six month's rigorous imprisonment. He was also convicted under Section 324 and sentenced to one year's rigorous imprisonment and a fine of Rs. 300/ and in default of payment of fine he was directed to undergo further imprisonment for a period of 1-1/2 months. He was also convicted under Section 45? and sentenced to 2 year's rigorous imprisonment and a fine of Rs. 500/ and in default of payment of fine to further undergo three month's rigorous imprisonment.

2. Since it was a jail appeal and accused was not represented by a counsel, Mr. Bhim Raj Arora was appointed amicus-curiae, to represent the accused.
- 3 The brief facts giving rise to this appeal are that Roopa's daughter & Dhanji's niece Kanta. was engaged with injured Roopa's brother Laxman. But since the age of the girl was more than the boy, therefore, this engagement could not be solemnised Mst. Kanta was, thereafter, got married with some body else. It is alleged that Mst. Kanta eloped and she could not be traced therefore, the accused Roopa went to the house of the injured Roopa to protect and to find out the where about of the girl. But the girl was not available there. In the night intervening between 4th and 5th of October, 1987 at 12.00 mid-night accused Roopa armed with a sword, along with Dhanji, his brother, went to the house of the accused where he was sleeping. There they beat him with a sword and after that they went away from the place. The First Information Report in this respect was lodged at Police Station Dhambola on 5-10-198 7 and the injured was got examined in the Hospital. He received about six injuries on the face and other parts of the body. On the basis of the First Information Report a case under Sections 307, 452, 326, 324/34, IPC was registered against the accused Roopa as well as Dhanji, his brother.
4. The prosecution examined 7 witnesses and got a number of documents exhibited. Accused pleaded not guilty and claimed to be tried.
5. The learned Sessions Judge, Dungarpur however, found the accused Roopa only guilty and convicted as aforesaid. Aggrieved against this, accused Roopa has filed the present appeal from the jail.
6. Mr. Arora, amicus curiae, has taken me to necessary evidence and submitted that the incident has taken place in the night and recognition of the accused is doubtful. I have gone through the statement of the witnesses and the statement of the injured as well as his wife, who are relation and fully aware about the identity of the accused. In fact, the accused Roopa is the uncle of the wife of the injured. Therefore so far as the identity of the accused is concerned that cannot be doubted. From the statement of the injured Roopa, PW 2 as well as Smt. Jali, PW 3, the identity of the assailant accused Roopa is well established. Therefore, it

cannot be said that there is any room to doubt the identity of the accused Roopa.

7. Learned counsel has still urged that both, accused and the injured are closely related, as accused Roopa is the uncle-in-law of the injured Roopa. The whole incident has arisen on account of misunderstanding and the learned Counsel has also stressed that the nature of injuries are also not that serious so as to warrant a severe punishment of 5 years. Therefore, the learned Counsel submitted that some leniency should be shown to the accused.

8. Looking to the facts and terms of this case. I am inclined to reduce the sentence of the accused under Section 326 from 5 years to 2 years. However, I maintain the fine of Rs. 500/- and in default of payment of fine, to further undergo the sentence of three months rigorous imprisonment.

9. The conviction and sentence under Sections 452 and 324, IPC is also well established and affirm the conviction and fine of the accused under both these sections.

10. In the result, I allow this appeal in part, and maintain the conviction and sentence of the accused under Sections 452 and 324. However, I reduce the sentence of the accused under Sections 326, IPC to 2 years RI, and a fine of Rs. 500/- and in default of payment of fine to further undergo 3 months R.I.

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