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Court : Rajasthan

Decided On : May-09-1991

Reported in : 1991WLN(UC)151

Judge : Farooq Hasan, J.

Appeal No. : S.B. Criminal Appel No. 498 of 1983

Appellant : Harphool

Respondent : State of Rajasthan

Judgement :

Farooq Hasan, J.

1. Heard learned Counsel for the parties. This appeal is directed against the judgment dated 31.10.1983 passed by the Sessions Judge, Sikar whereby he found the appellant guilty for the offence under Section 324 IPC and sentenced him to one and half year RI with fine of Rs. 1000/- (In default, to further undergo three months RI).

2. At the very out set, the learned Counsel for the appellant submits that he does not want to assail the findings of the learned trial Court on merits. He merely submits that in view of the proposition of law laid down in the case reported in AIR 1979 SC page 964 the judgment of the learned trial Court becomes erroneous

because while refusing the benefit of the probation of Offenders Act to the appellant the trial Court did not give any 'Special reasons' which are required under Section 361 Cr.P.C. and which have been defined by the Supreme Court in the case cited above. While granting or having the benefit of the probation of Offenders Act the Court is not required to decide this point on the gravity of the offence or the act of the offender. In the present case no such 'Special reasons' have been given by the learned trial Court. The learned trial Court refused the benefit of the probation merely on the ground that the appellant used the revolver in committing the offence. I am of the opinion that this is not a good ground for refusing the benefit of the probation of Offenders Act, because the reasons given out doubt come within the purview of Section 361 Cr.P.C.

3. A look at the record shows that Nathu Ram sustained injuries by a pistol shot fired by the appellant and there is a consistent evidence of the prosecution on this point. I find no reason to interfere in the findings recorded by the trial Court on the point of conviction, so the conviction of the appellant is maintained but instead of passing any sentence against him and in view of the proposition of law laid in the case cited above, I feel it justified that the accused-appellant be extended the benefit of the probation of the Offenders Act.

4. Consequently, this appeal is, therefore, partly allowed and the conviction of the appellant is maintained and I set aside the sentence passed by the learned trial Court vide its order dated 31.10.1983. The appellant is directed to furnish a personal bond in the sum of Rs. 2000/- (Rupees two thousand) with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Sikar with this condition that he maintain peace and be of good behaviour for a period of six months from the date of execution of the bonds. The appellant is allowed two months time to furnish the aforesaid bond in the Court failing which the trial Court will issue warrant of arrest of the appellant to serve out the sentence under challenge in this appeal. To the above extent, the impugned judgment is modified.