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Court : Rajasthan

Decided On : Apr-01-1977

Reported in : 1977WLN(UC)162

Judge : R.L. Gupta, J.

Appeal No. : S.B. Criminal Appeal No. 1 of 1977

Appellant : Babu Singh

Respondent : The State of Rajasthan

Judgement :

R.L. Gupta, J.

1. Babu Singh appellant was convicted by the learned Additional Sessions Judge, Dausa for the offence under Section 324, IPC and sentenced to rigorous imprisonment for two years and a fine of Rs. 500/-, in default of payment of fine to further undergo rigorous imprisonment for three months, by his judgment dated December 15, 1976.

2. The prosecution case, in brief, is that Angad Singh PW/1 and the appellant, Babusingh belong to one family, and there is some dispute regarding 'pator' and some land which one party alleges to be its own, while the other alleges it to be its own; and on this ground there is some enmity between the accused Babusingh

and the injured Angadsingh. The appellant is alleged to have been serving in Ahmedabad and he was summoned by his mother telegraphically, and he reached his village Paparda, and he came there on May 24, 1976 along with one of his companion Abdul Khan. It is further alleged that on the morning of May 25, 1976, at about 10:30 p.m., the injured Angadsingh, was standing in the market near the shop of Gangasahay. The appellant attacked Angad Singh with a knife and caused injury on his chest. One Rameshwar snatched the knife from Babusingh appellant. Anyhow, he along with his companion Abdul Khan made good his escape. The brother of the injured Ghanshyam also reached at the spot. He took the injured first to the dispensary and then to the Police Station, Dausa and lodged the report Ex. P/2. The injured was thereafter brought to the SMS Hospital, Jaipur where he was medically examined and treated for his injury. Dr. M.R. Goyal, Medical Jurist, PW/15 medically examined the injured, Angad Singh on May 25, 1976 at about 5.30 p.m. He found one penetrating wound 1 1/4' X 1/2' x thoracic cavity obliquely placed with clean cut margins gaping exertion and blood air came out when the swab from the wound was removed suggesting lung and pleural injury on the chest. He prepared the injury report Ex. P/16. After investigation the appellant along with his associate Abdul Khan was challenged to the Court of Munsiff & Judicial Magistrate, Dausa, who committed them to the Court of Additional Sessions Judge, Dausa to stand their trial for the offence under Section 307, IPC.

3. The prosecution examined as many as 15 witnesses. Some of the witnesses were said to be present at the scene of occurrence. For example, Rameshwar PW/4, Ramlal PW/5, Rajmal PW/6 and Gopi PW/7, who have turned hostile. However the learned Additional Sessions Judge placed reliance on the statements of the injured, Angad Singh PW/1, Ghanshyam PW/3 and one Hanuman Prasad PW/12. He, however, held that the offence under Section 307, IPC is not made out against Babusingh and no offence is made out against Abdul Khan, as no injury was inflicted by the accused, Abdul Khan on the person of Angad Singh. He has, therefore acquitted Abdul Khan of the offence under Section 304/34, IPC as well as for the offence Section 324, IPC. The learned Additional Sessions Judge has held that looking to the facts and circumstances of the case it cannot be inferred that the appellant, Babusingh, had the intention to commit the murder of Angad

Singh. He, therefore, acquitted Babusingh of the offence under Section 307, IPC and convicted him for the offence under Section 324, IPC.

4. I have heard the arguments of the learned Counsel for the appellant and the learned Public Prosecutor for the State.

5. It has been contended on behalf of the appellant that the prosecution witnesses are unreliable and the court below was in error in placing reliance on the evidence of Angad Singh, Ghanshyam and Hanuman Prasad particularly, when they also tried to implicate Abdul Khan, and that they are interested witnesses. Another point that has been submitted by the learned Counsel on behalf of the appellant is that looking to the facts and circumstances of the case the sentence passed against the appellant is very excessive and the appellant could have been given the benefit of the provision of the Probation of Offenders Act in view of the provisions of Sections 360 and 361 of the Code of Criminal Procedure, 1973.

6. The learned Public Prosecutor has argued that the case against Babusingh appellant that he inflicted injury on Angad Singh PW/1 by a sense has been well proved. There is no sufficient reason to disbelieve the statements of Angad Singh, Ghanshyam and Hannuman Prasad, whose statements have tightly been believed by the trial Court. As regards the Sentence, his submission is that if looking to the facts and circumstances of the case it is considered to be excessive, it may be suitably reduced. However, the case is not one in which the benefit of the Probation of Offender Act or Section 360 of the of Criminal Procedure, 1973 should be given, and the learned trial Court while denying that benefit to the appellant has given just & valid reasons for not giving that concession to the appellant.

7. I have gone through the record of the case carefully, and I find that so far as the act of the appellant in causing injury to Angad Singh PW/1 is concerned the prosecution has proved its case beyond doubt. There is no reason to disbelieve the testimony of Angad Singh. The testimony of Ghanshyam Hanuman Prasad also cannot be disbelieved simply because one happens to be the brother of the injured and the other his sympathiser. I, therefore, find no reason to interfere with the finding of the learned trial Court. The conviction of the appellant under Section

324, IPC is, therefore upheld and maintained.

8. As regards the sentence, it may be said that the maximum sentence for the offence under Section 342, IPC is three years, and the contention of the learned Counsel for the appellant is that there was only one simple injury and there was no intention on the part of the appellant to cause any serious blow on the person of the injured. Looking to the circumstances of the case, a lenient view of the sentences may be taken, but looking to the reasons assigned by the learned trial Court and the circumstances pointed out for the denial of the benefit, I also feel that it is not a fit case in which the benefit of Probation of Offenders Act or Section 360 of the Code of Criminal Procedure, 1973 should be extended to the appellant. I think, in the facts and circumstances of the case, a sentence of six months rigorous imprisonment would meet the ends of justice.

9. In the result, the appeal of the appellant, Babusingh, is partly allowed. His conviction under Section 324, IPC is upheld, but his sentence is reduced from two years rigorous imprisonment and a fine of Rs. 500/-, to six months rigorous imprisonment and a fine of Rs. 250/- in default of payment of fine to undergo rigorous imprisonment for three months. The period spent in custody during investigation or trial would be set off against the term of imprisonment awarded to him.