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SooperKanoon Citation : sooperkanoon.com/763278

Court : Rajasthan

Decided On : Jan-21-1985

Reported in : 1985(1)WLN293

Judge : G.K. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 487 of 1975

Appellant : The State

Respondent : Bajranga

Disposition : Appeal dismissed

Judgement :

G.K. Sharma, J.

1. The State of Rajasthan has preferred this appeal against the judgment dated 29-8-74 passed by the Addl. Sessions Judge, Tonk, by which he acquitted the accused-respondent from the offence under Section 307, I.P.C., but found him guilty for the offence Under Section 323, I.P.C. only. He, therefore, ordered the accused to be released on probation.

2. According to the prosecution, there was a public way which was going from village Anwan to Sitapur, which was obstructed by the accused Bajranga. He cultivated that portion of the public way illegally. A village panchayat was called in

this respect, which was attended by Kalyan also. On 28-11-73 Mst. Nathi was coming back from her field in the evening to the village. A calf went into disputed field. Bajranga abused Mst. Nathi and inflicted Jeli blows on her head. Kalyan, who was coming on cycle got down and tried to rescue Mst. Nathi. Bajaranga then inflicted severe blows by Jeli on the head of Kalyan also. On this Chouthmal, Ramdev and Lallu intervened. Hiralal then lodged an oral report of this incident at the police station. The injured were shifted to the hospital and were medically examined. After completing the investigation, the police submitted a challan against Bajranga under Section 307, I.P.C. He was committed to the Court of Addl. Sessions for trial.

3. A charge Section 307, I.P.C. was framed against Bajranga, who pleaded not guilty and claimed trial. The prosecution examined 8 witnesses and after hearing both the sides the learned Addl. Sessions Judge found that no case Under Section 307, I.P.C. was established against the accused-respondent and he acquitted him. He was, however, found guilty for the offence under Section 323, I.P.C. Against the order of acquittal from the offence under Section 307 I.P.C. the present appeal has been preferred by the State.

4. The learned P.P. has argued that the learned Sessions Addl. Judge has misread the statement of the doctor and committed an error in holding that the accused-respondent had no intention to inflict such injury which was in the ordinary course sufficient to cause death. The case under Section 307, I.P.C. is clearly made out from the prosecution evidence.

5. I have gone through the entire record of the case & also perused the judgment of the court below. The learned Addl. Sessions Judge believed the prosecution witnesses and held that Bajranga accused inflicted blows to Mst. Nathi and Kalyan. So, this aspect that Bajranga inflicted blows to Mst. Nathi and Kalyan has been fully established, and the accused-respondent has not appealed against this finding. Now, it cannot be disputed that injuries were inflicted to Mst. Nathi and Kalyan by Bajranga accused-respondent.

6. The statement of Dr. S.C. Khincha (PW 3) has also been perused. He examined the injuries on the body of Mst. 'Nathi and Kalydn. According to him, both the

injured had simple injuries: The injury report of Kalyan is Ex. P. 5 and that of Mst. Nathi is Ex. P. 6. The doctor has stated that Kalyan had three injuries out of which injuries Nos. 2 and 3 were simple. For injury No. 1 he was doubtful and hence he advised for X-ray, but no X-ray report had been submitted. It is not on the record whether X-ray was done or not. So it cannot be said whether injury No. 1 was not a simple injury and was a grievous injury. In the absence of X-ray report, it will be presumed that injury No. 1 of Kalyan was also simple. Therefore, the injuries to both the injured persons were simple. The learned Addl. Session Judge has discussed in detail in his judgment and held that the accused-respondent had no intention to inflict such injury which would have caused death of Kalyan or Mst. Nathi.

7. Whoever does an act with such intention or knowledge and under such circumstance that if he by that act caused death of some body, he would be guilty of murder and in that circumstance only he would be punished for the offence under Section 307, I.P.C. So the important ingredient to prove such offence is that the accused had an intention or had the knowledge that the act which he is going to do or the injury which he is going to inflict, would cause death, and then he would be held guilty for the offence of attempt to murder. The conditions as mentioned under Section 300, I.P.C. are to be established. The prosecution should have established that the intention of the accused Bajranga for causing injury to Kalyan was of any one of the three kinds mentioned in Section 300, I.P.C. They should have established that injury was caused 'with the intention of causing death or with the intention of causing such bodily injury which Bajranga knew to be likely to cause the death of Kalyan or Mst. Nathi or he inflicted injuries to them with the intention of causing such bodily injury which was sufficient in the ordinary course of nature to cause death. Unless the prosecution establishes that there exists one of these essential ingredients of Section 300, I.P.C., the accused cannot be found guilty for the offence under Section 307, I.P.C.

8. In the present case the injuries were inflicted by the accused Bajranga by Jeli to Mst. Nathi and Kalyan. Their injuries were simple in nature. There is nothing on record to prove that the accused-respondent had any motive or intention to cause murder or to cause any injury which may result in the death of Kalyan or Mst.

Nathi. Hence, the learned Addl. Sessions Judge has correctly held that no case Under Section 307, I.P.C. was established against the accused Bajranga. The learned Addl. Sessions Judge in his judgment has referred to the case Sarju Pd. v. State of Bihar : 1965 CriLJ766 . That case was also under Section 307 I.P.C. & 324, I.P.C. The accused was acquitted of the offence under Section 307, I.P.C. but was convicted for the offence Under Section 324, I.P.C. The injury in that case was caused by the accused on the vital part with a knife. Their Lordships held that the fact that the injury was caused on vital part by a knife and the fact that no vital organ has been cut would not by itself be sufficient to take out the act of the accused out of the preview of Section 307, I.P.C. But in order to bring the offence home to the accused, the prosecution must establish that his intention was one of the three kinds mentioned in Section 300, I.P.C. The state of mind of the accused has to be deduced from the surrounding circumstances and it was held that there was not sufficient evidence to establish with certainty that there existed the intention or knowledge of the accused and the conviction Under Section 324, I.P.C. was maintained.

9. In view of the case cited supra, the prosecution has failed to establish that the accused had any intention or knowledge to cause murder or to cause such bodily injury which would result in the death of injured persons. The injuries to both the injured were very simple in nature, and hence the learned Addl. Sessions Judge has rightly held the accused guilty under Section 323 I.P.C.

10. I see no reason to interfere in the finding of the learned Addl. Sessions Judge. The conviction under Section 323, I.P.C. has not been challenged by him.

11. Hence the appeal of the State has no substance and is hereby dismissed.