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**Kalu Vs. State of Rajasthan**

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**SooperKanoon Citation** : sooperkanoon.com/765032

**Court** : Rajasthan

**Decided On :** Mar-04-1991

**Reported in** : 1991WLN(UC)546

**Judge** : Farooq Hassan, J.

**Appeal No.** : S.B. Cr. Appeal No. 185 of 1983

**Appellant** : Kalu

**Respondent** : State of Rajasthan

**Judgement** :

**Farooq Hassan, J.**

1. This appeal arises out of judgment dt. 1.4.83 passed by Addl. Sessions Judge, Gangapur City is Sess. case No. 22/82, where, by appellant Kalu has been convicted u/ss. 307, 452 and 323 IPC and sentenced him to undergo 1/1-2 years' RI with fine of Rs. 500/-; 6 months RI with fine Rs. 200/-; and only fine of Rs. 500/- under the aforesaid counts respectively.

2. In the FIR it had been alleged that the appellant was having sword at the time of incident and he caused injuries on the person of injured Bishanpal who was medically examined during which injuries were found to have been caused by blunt object. However, during trial the prosecution changed its earlier version and

the witnesses deposed that the injuries on the person of Bishanpal have been caused by lathi taking the aid of the afore narrated circumstances, learned Counsel for the appellant contended that since the prosecution changed its case after preparation of the injury report, at best the appellant could be convicted under Section 325, IPC. However it cannot be held that the appellant had any intention to commit murder of Bishanpal. Had he such intention then as per the facts stated in the FIR itself, he had sword in his hand and he could have used sword. But, a look at the injury report shows that if does not denote any abnormality due to the injuries on the injured person, rather condition of the injured at the time of the medical examination was normal. Only one injury on the head is attributed to the present appellant. Two injuries on the head were found on the person of the injured. Injury attributed to the appellant and allegedly caused by the lathi, on the head is found to have been sustained by blunt object. So, having regard to the circumstances of the case and the nature of the injuries caused by the appellant. I am unable to agree with the trial court that the case falls under Section 307 IPC. There is no evidence of any intention on the part of the appellant either to cause murder of the injured or cause such injuries of which he could have the knowledge, that it was likely to cause murder albeit it cannot be doubted that the appellant had an intention to cause grievous hurt to the injured by lathi. Thus the offence falls under Section 325 IPC and not Under Section 307 IPC. Since the offence for which the appellant is found guilty as above, has been committed in the house of the injured, in any view, he has rightly been convicted under Section 452, IPC and for other injuries found on the person of the injured, which were simple and attributed the appellant he was rightly convicted Under Section 323 IPC. His conviction Under Sections 323 and 452 IPC cannot be held to be perverse or based on no legal evidence.

3. Coming to the question of sentence for the offence altered to Section 325, IPC and other once conformed above, I may reiterate that the trial court itself has taken a lenient view by awarding lesser period's sentence i.e. under Section 452 IPC only 6 months RI with a fine of Rs. 200/- and Under Section 323 IPC only a fine of Rs. 500/-. The offence relates back to the year 1976 and more than 15 years have rolled by, so it would not be proper to send the appellant behind the bars to serve out remaining period of sentence of few months less than four or five months.

Thus it would be appropriate to give the benefit of probation to the appellant.

4. In the result, this appeal is partly allowed. The appellant is acquitted of the offence Under Section 307 IPC and instead he is held guilty and convicted Under Section 325 IPC while maintaining conviction under other counts Under Sections 452 and 323, IPC and instead sending him to jail the appellant is ordered to be released on his entering a personal bond for a sum of Rs. 2000/-(Rupees two thousand) with one surety in the like amount to the satisfaction of the trial court to appear and receive sentences whenever he is called upon to do so during the period of six months from the date of execution of the said bonds and in the meantime to keep the peace and be of good behaviour. Two months time is allowed to submit the requisite bonds. To the above extent two impugned judgment is modified. Record be sent back.

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