

Naniya Vs. State of Rajasthan

Naniya Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/768733

Court : Rajasthan

Decided On : Jul-10-1986

Reported in : 1986WLN(UC)332

Judge : Sobhag Mal Jain, J.

Appeal No. : S.B. Criminal Appeal No. 340 of 1978

Appellant : Naniya

Respondent : State of Rajasthan

Judgement :

Sobhag Mal Jain, J.

1. This appeal by the accused is directed against the judgment dated the 2nd August, 1978, of the Sessions Judge, Pratabgarh, convicting and sentencing the accused-appellant for the offence under Section 326 IPC to 1-1/2 years' of rigorous imprisonment and a fine of Rs. 100/-, and in default of payment fine to one month's further rigorous imprisonment.

2. The accused was tried for the offence under Section 307, IPC for causing injuries to Nagji Ram, his uncle on August 31, 1977 on the way between village Timarwa and Pratabgarh. The prosecution story, in brief, was that a couple of days before the incident some cattle had entered into the field of Nagji Ram in

Manohargarh and caused damage to his crop of rice. He suspected that Naniya accused was responsible for this. On the date of the occurrence, Nagji Ram was returning from his brother Krishna's house and when he was on the Pratabgarh-Banswara Road, Naniya accused met him on the way. It was about sun-set. The accused asked Nagji Ram why he had falsely named the accused for grazing the cattle in his field. Nagji Ram told him that it was his cattle which had entered in the field and, therefore, he had rightly named him for this. On this, the accused abused Nagji Ram and inflicted axe blows on his body. Having received the injuries, Nagji Ram became unconscious and the accused ran away from the place. Nagji Ram regained consciousness after about an hour. He went to Krishan and told him all about the occurrence. Next day, i.e., September 1, 1977 at 7.30 a.m., he went to the police station Pratapgarh and lodged the First Information Report there. A case under Sections 324/323/341, IPC was registered against the accused and investigation started. The same day, the accused was arrested. An axe was recovered on the information and at the instance of the accused on September 2, 1977. After investigation, the police submitted a charge-sheet against the accused in the Court of Munsif and Judicial Magistrate, Partabgarh, who committed him for trial to the Court of Sessions for the offence under Section 307 and 323, IPC.

3. The Sessions Judge framed a charge against the accused for the offence under Section 307, IPC. The accused pleaded not guilty and claimed to be tried. As many as 7 witnesses were examined on behalf of the prosecution. In his statement under Section 313, Cr.PC the accused denied the prosecution allegation. He stated that he did not cause any injury to Nagji.

4. By the judgment dated the 2nd August, 1978, the Sessions Judge, Pratabgarh, convicted and sentenced the appellant as aforesaid for the offence under Section 326, IPC. The learned Sessions Judge has come to the conclusion that Nagji Ram received the injuries were caused by him. The injuries of Nagji Ram are proved by Dr. Ganendra Nath PW 7. The learned Sessions Judge has placed reliance on the testimony of these witnesses and after going through their statements, I do not find any infirmity in their depositions, which could discredit their testimony. I uphold the finding of the learned Sessions Judge that the injuries on the body of Nagji Ram

were caused by the accused.

5. As regards the nature of offence, I find force in the submission of the learned Counsel for the appellant that the offence made out against the accused would be that under Section 324, IPC. True, the doctor has described the injury as grievous, but in the absence of an X-ray examination and the opinion of a Radiologist, it would not be safe to sustain the conviction of the appellant for the offence under Section 326, IPC. After receiving the injuries, the witness walked a distance of two furlongs on foot. He went to the police station and made the report himself the next morning. He was at that time conscious. He was also conscious when he was examined by the doctor. In these circumstances, I consider that it would be safer to convict the accused for the offence under Section 324, IPC.

6. As regards the sentence, the learned Counsel for the appellant has prayed that the appellant be released on probation. The accused was 16 years of age when the offence was committed. He is the real nephew of the injured. No previous conviction has been proved against the accused. The offence took place as back as August 31, 1977 and it is over 8 years now. No useful purpose would be served in sentencing the accused to jail. Regard being had to the age, character and antecedents of the accused and the circumstances of the case, I consider it expedient that the accused should be released on probation of good conduct.

7. Accordingly, the appeal is partly allowed. The conviction of the appellant is altered from Section 326, IPC. Instead of sentencing the accused atonce to any imprisonment, I direct that he be released on his entering into a bond in the amount of Rs. 5000/- with one surety in the like amount to the satisfaction of the Sessions Judge, Pratabgarh to appear and receive sentence when called upon to do so during a period of one year by the Sessions Judge and in the meantime to keep peace and be of good behaviour. Two months' time is given to the appellant to execute the bond of probation as aforesaid.