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Court : Rajasthan

Decided On : Jul-02-1986

Reported in : 1986WLN(UC)435

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Appeal No. 294 of 1978

Appellant : Phoola Ram

Respondent : State of Rajasthan

Advocate for Def. : Mr. O.P. Rana

Advocate for Pet/Ap. : Mr. Garg

Disposition : Appeal dismissed

Judgement :

Guman Mal Lodha, J.

1. Phoolaram has filed this appeal against the judgment dated July 21, 1978 of the learned Addl. Sessions Judge, Hanumangarh whereby he convicted the appellant under Section 304, Part II, IPC and sentenced him to six years rigorous imprisonment.

2. According to the prosecution on August 15, 1976 at 11.00 a.m. accused-appellant Phoolaram lodged a report at P.S. Rawatsar that his father had died 15 years back leaving him behind as his eldest son. The deceased Khayaliram developed illicit relations with his mother and sister Mst. Teja for the last 6/7 years. The accused-appellant had asked the deceased that he should stop coming to his house but the deceased insisted for it. It is alleged that on the intervening night of August 14/15, 1976, the accused-appellant and his father-in-law Roodram were sleeping in the court-yard. The accused got up at 6.00 a.m. and went inside the house. On opening the door, he found the deceased sleeping there. He was seriously provoked. He picked up an axe lying there and inflicted three injuries and came out and closed the doors. At that time his mother and sister returned after answering the call of nature. He told them that he was going to Rawatsar. At the bus stand Palu, he met Kishanaram who asked the accused as to why his shirt was stained with blood and it is said that the accused got nervous and made an extra-judicial confession before him. Kishanaram took the accused to the police station. A case under Section 302, IPC was registered. During the course of investigation accused was arrested; blood-stained clothes were seized, the weapon of offence, viz., the axe was recovered and after completion of investigation, the police filed challan in the court of Munsif and Judicial Magistrate, Nohar who committed him to the court of Sessions. The learned Addl. Sessions Judge No. 1, Hanumangarh tried the accused. The learned trial court framed charges under Section 302, IPC. Accused pleaded not guilty and claimed trial. Prosecution examined 8 witnesses in support of its case. Accused was examined under Section 313, Cr.PC and denied the accusation. One witness was produced in defence. Placing reliance upon the prosecution evidence, the learned trial court convicted and sentenced the accused as stated above. Aggrieved by the order of conviction and sentence, the accused has come up before this Court in appeal.

3. Mr. Gaur, learned Counsel for the accused has fairly submitted that in view of the fact that the FIR was lodged by the accused himself and later on, in his statement also, he has admitted the incident of causing injury to the deceased, though it was done on account of serious and grave provocation as the deceased was committing sexual intercourse with the sister of the accused in the night in the house of the accused; he would like to press the appeal only on the question of

sentence.

4. Even though I have gone through the record of the case and find that the conviction is well-proved on the evidence recorded by the trial court and there is no infirmity attached to it.

5. On the question of sentence, there is no doubt that in India the concept of morality is such that the brother normally gets seriously provoked and feels insulted if any one attempts sexual overtones against his sister or mother or closed relative.

6. Though there is difference between the version given in the FIR and in the statement, at least one common feature is that the deceased was trying to have sexual overtones with the mother and sister of the accused.

7. It is not necessary to discuss the evidence because the short point is whether the sentence should be reduced.

8. Mr. Gaur has pointed out that in *Pooran Singh v. State of U.P.* 1982 SCC(Cr.) 133(1), the Supreme Court reduced the sentence of the accused to already undergone which was 18-1/2 months, under Section 304, Part I, IPC. Justice Sarkaria, observed as under:

We have heard Mr. Garg, learned Counsel for the appellant and Mr. O.P. Rana, learned Counsel for the respondent State. Taking into consideration all the circumstances of the case, including the fact that at the time of occurrence the appellant was a raw youth of 19 years, we while maintaining the conviction of the appellant under Section 304, Part I, IPC reduce his sentence to imprisonment already undergone which is stated to be about 18-1/2 months. Subject to this reduction in the sentence, the appeal is dismissed. The bail bond of the appellant is discharged.

I am of opinion that though the accused is guilty of offence and has been rightly held to be so by the trial court, but the facts and circumstances of the case and the concept of morality which we Indians have got in respect of the chastity of mother and sister, certainly provided grave and sudden provocation to the accused, who

made a clean breast and in view of that, the reduction of sentence to that already undergone would be in consonance of the philosophy of substantial justice.

9. Consequently, this appeal is dismissed on merits. The sentence is modified and the sentence of imprisonment already undergone is held to be sufficient and, therefore, the sentence of imprisonment awarded by the trial court is reduced to that already undergone by the accused.

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