

Sugan Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-05-1986

Reported in : 1986WLN(UC)640

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Cr. Appeal No. 974 of 1976

Appellant : Sugan Chand

Respondent : State of Rajasthan

Judgement :

Guman Mal Lodha, J.

1. The only point argued by Mr. Maloo, is in respect of the sentence passed against the accused.
2. Mr. Maloo submits that the offence under which the appellant has been convicted, is of 323 IPC only and no weapon was used in the incident. It was pointed out that the appellant is a Railway Servant and in similar circumstances, this court has granted benefit of probation under the provisions of the Probation of Offenders Act:
3. Reliance is placed on the judgment in Kistoora v. State 1974 WLN (UC) 385 in which Kistoora was prosecuted for offence under Section 302 IPC but was

convicted under Section 325 IPC. This court observed in paras 7 and 8, as under:

This incident had taken place in the year 1968. Throughout the trial Kistoora remained behind the bar and even after his conviction was ordered by the trial court he had to suffer an imprisonment for 20 days before his bail application was accepted by this Court. Kistoora, in his statement recorded under Section 342 IPC has given out his age as 22. It is contended by learned Counsel for the appellant that Kastoora was a young lad and, therefore, he might have lost the balance of his mind, when, his servant refused to work for him and demanded to furnish surety for the delivery of grain that was settled between them and it was out of that temporary enragement that a 'Parani' blow was given by Kastoora on the head of Dhanna. Looking to the period that has elapsed since the incident had taken place and the age of accused appellant it is prayed that Kastoora may be given the benefit of the provisions of Section 4 of the Probation of Offenders Act. The circumstances of this case, in my opinion, do justify the extension of the benefit of the provisions of Section 4 of the Probation of Offenders Act to Kistoora appellant.

(8) While maintaining the conviction of the appellant under Section 325, IPC it is here by ordered that Kastoora shall not be sent to jail to serve out the substantive sentence awarded to him provided he executes a personal bond for Rs. 2,000/- and furnishes surety in the like amount to keep peace and be of good behaviour for a period of two years. The sentence of fine is however, maintained. The appellant shall furnish the surety and execute the bond within one month from today. In case he fails to do so, he shall be sent to Jail to serve out the remaining sentence awarded to him. The personal and the surety bond shall be submitted in the Court of Sessions.

4. In the present case, Mr. Maloo submits that there was dispute about vacation of the house and house has been vacated by Sukan Chand accused. Sukan Chand remained in for about 4 months.

5. Mr. Purohit has opposed the appeal and submitted that the conviction is based on proper appreciation of evidence. He has submitted that if the sentence is reduced to the sentence of term of imprisonment already undergone then the fine should be increased.

6. Having heard the learned Counsel for the parties, I have perused the relevant record. It is true that no weapon has been used and the accused has been convicted only for offence under Section 323 IPC, the State has not filed any appeal against the acquittal of the accused for offence under Section 302 IPC.

7. Following the principles laid down in *Imamudeen v. State* 1976 Cr.LR Raj. 55 and *Kistoora v. State* 1974 WLN (UC) 385. I am inclined to maintain the conviction but grant the benefit of probation to the accused, as he is a Railway Servant and he is not having a previous conviction. It is here by ordered that accused Sugan Chand shall not be sent to jail if he executes a personal bond for Rs. 2,000/- and furnishes a surety in the like amount for keeping peace and be of good behaviour for a period of 2 years. He should furnish the surety and execute personal bond within a period of 3 months from the date of receipt of the record by the trial court, failing which he would be sent to jail to serve out the remaining sentence awarded to him by the trial court.

8. In case, the appellant submits the surety and executes the personal bond and keeps peace and be of good behaviour for two years, the conviction should not deprive him of his service.

9. The appeal is partly accepted, as indicated above.