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Court : Rajasthan

Decided On : Oct-15-1987

Reported in : 1987WLN(UC)552

Judge : Sobhag Mal Jain, J.

Appeal No. : S.B. Criminal Appeal No. 392 of 1978

Appellant : Rajak

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Doongar Singh

Judgement :

Sobhag Mal Jain, J.

1. The appellant stands convicted and sentenced by the judgment dated the 19th October, 1978, for the offence under Section 304, Part-II, IPC to five years' rigorous imprisonment and a fine of Rs. 1000/-, in default of payment of fine to six month's further rigorous imprisonment.

2. The case relates to the incident which took place on June 5, 1978 in the noon in the field of Asu Beba in village Sinod. The prosecution case is that the accused beat his wife Mst. Harku with a 'Kamdi' (a thin stick) and caused 14 injuries on various parts of the body, as a result of which she died the same day in the night.

The First Information Report of the occurrence was lodged by one Baldev Ram the next day at 10.30 a.m. at Police Station, Khinwsar, on which a case under Section 302 IPC was registered and investigation started. During investigation the accused was arrested. The postmortem examination of the dead body of Mst. Harku was conducted by Dr. Ram Ratan on June 7, 1978. He found 14 injuries on the body of the deceased. All the external injuries found on her body were simple in nature, except injury No. 9. None of the injuries were on the vital part of the body of the deceased. According to the doctor injury No. 9 was also superficial. The doctor further opined that none of the injuries individually was sufficient in the ordinary course of nature to cause death. The cause of death according to the doctor was shock due to cumulative effect of the multiple injuries. After investigation the police filed a charge-sheet against the accused in the court of Judicial Magistrate, 1st Class, Nagaur, who committed him to the court of Sessions Judge, Merta, to stand trial for the offence under Section 302 IPC. The accused was charged for the offence under Section 302 IPC. In his plea recorded by the learned Sessions Judge the accused pleaded not guilty and claimed to be tried.

3. After trial the Sessions Judge, Merta by the judgment dated the 19th October, 1978 convicted the appellant for the offence under Section 304 Part II, IPC and sentenced him to five year's rigorous imprisonment and a fine of Rs. 1, 000/-, in default of payment of fine to six months further rigorous imprisonment. Aggrieved by the aforesaid order of conviction and sentence the accused has filed the present appeal through jail.

4. I have heard Shri Doongar Singh, learned counsel for the appellant and the learned Public Prosecutor for the State. Shri Doongar Singh does not dispute the fact that the injuries of Mst. Harku were caused by the appellant but he submits that the offence against the accused would not be under Section 334, Part-II, IPC. Shri Doongar Singh submits that by looking to the circumstances of the case and the nature of the injuries, the offence against the accused would not exceed Section 323 IPC. True, the deceased received as many as 14 injuries, but none of them was on a vital part of the body, except injury No. 9. According to the doctor even injury No. 9 was a superficial injury. The doctor has categorically stated that none of the injuries found on body of the deceased were individually sufficient in

the ordinary course of nature to cause death. The injuries found by the doctor are either abrasions or contusions. They were caused by a 'Kamdi' (a thin stick). The prosecution has failed to establish the motive for causing the injuries. Looking to the facts and circumstances of the case accused wanted merely to chastise Mst. Harku and caused simple injuries by a stick. I agree with the contention of the learned counsel for the appellant that the offence does not exceed Section 323 IPC as none of the injuries was grievous or on vital part of the body.

5. Accordingly, the conviction of the appellant for the offence under Section 304, Part-II is altered to that under Section 323 IPC. The accused has already remained in custody for five months and 15 days. The occurrence took place as back as June 5, 1978. It is more than 9 years now and it would not be in the interest, of justice to send the accused to jail again. The sentence already undergone by the accused would meet the ends of justice.

6. The result is, the appeal is partly allowed. The conviction of the appellant is altered from Section 304, part-II IPC to Section 323 IPC and his sentence is reduced to one already undergone by him. The sentence of fine of Rs.1000/- is reduced to Rs.500/-, in default of payment of fine the accused will undergo two months' further rigorous imprisonment. The accused is granted three months time to deposit the fine.