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Court : Rajasthan

Decided On : Aug-17-2006

Reported in : 2007(1)WLN288

Judge : Gopal Krishan Vyas, J.

Appeal No. : S.B. Criminal Appeal No. 202 of 1988

Appellant : Mithalal

Respondent : State of Rajasthan

Judgement :

Gopal Krishan Vyas, J.

1. This appeal is directed against the judgment dt. 18.04.1988 passed by Addl. Sessions Judge, Rajsamand ('the trial Court' hereinafter) in Sessions Case No. 42/86 whereby the trial Court held the appellant guilty for commission of offence punishable under Section 324, IPC and sentenced him to suffer rigorous imprisonment for two years and pay fine of Rs. 500/- in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. As per facts of the case complainant Shantilal S/o Ghisulal r/o Gilund filed a complaint at police station Railmagra at 12 O' Clock on 18.07.1986 alleging that Ghisulal has Khatedari land over which he has possession for 2-3 years. It is

alleged by him that on that day he alongwith Ladulal and Ghisulal went to his field where they saw Mithalal (accused appellant), with a sword in his hand, cutting thorny shrubs thor upon which they interjected and told him why he was cutting thor and, infuriated, Mithalal accused hit a sword blow on the head of Ladulal which, in an attempt to ward off, Ladulal received on hand and as a result of it, Ladulal was injured on head and hand. it was alleged that the accused attempted to kill Ladulal and if Ladulal had not warded off the blow with his hand his head would have been ripped up. The complainant alleged that when he and Ghusulal tried to catch hold of him he ran away. It is stated that at that time Devji, Prithviraj Jat and Magani Ram Jat had approached there and they also witnessed the incident. On the complaint, the police registered case for offence under Section 307, IPC and started investigation. After completion of investigation, challan was filed against the accused appellant for commission of offence under Section 307, I.P.C.

3. At the trial, the prosecution examined 10 witnesses including complainant Shantilal, P.W.-9. In his statement recorded under Section 313, Cr.P.C. the appellant accused denied the charge and stated that false case out of vengeance has been set up against him by at the instance of Prithviraj, Magniram, Shantilal, Ghisa and Ladulal. He also stated that these persons had earlier beaten him on the very field which belonged to him about which criminal case is registered against them. The accused categorically stated in his statement recorded under Section 313, Cr.P.C. that neither he inflicted any sword injury nor he indulged in any beating. In defence, the accused examined himself as D.W.-1 and produced evidence of witness shankerlal, D.W.2.

4. With a view to arriving at correct finding on the charge levelled against the accused, the trial Court framed two questions. Firstly, whether the accused inflicted any injury to Ladulal and Secondly, whether the injuries, if so inflicted by him, are such that the accused may be held guilty for attempting to murder the injured.

5. On the first question, after discussing the entire evidence, the trial Court found that the prosecution has proved the case of inflicting injury with sword by the

accused upon the body of Ladulal; but, on the second question, the trial Court reached conclusion that no case under Section 307, IPC is proved against the accused. The trial Court, however, held the appellant guilty for committing offence under Section 324, IPC and sentenced him as noted above.

6. Learned Counsel for the appellant contended that according to the facts of the case, when cross-case was filed by the appellant and he had himself received as many as 10 injuries upon his person which have not been explained by the prosecution, therefore, in such circumstances, the entire prosecution case deserves to be thrown aside. It is contended that admittedly in this case certain documents were filed by the appellant showing that in the cross-case a compromise was arrived at in between the parties and, as per the compromise, the case against the complainant party (herein) was concluded. Learned Counsel for the appellant stated that the appellant also filed the injury report of that case and, therefore, when certified copy of the injury report was on record and those injuries were not explained by the prosecution nor any explanation was there in the FIR with regard to the injuries sustained upon the person of the appellant obviously it cannot be said in law that the prosecution proved before the Court its case beyond reasonable doubt.

7. Learned Counsel for the appellant argued that the appellant produced at the trial witnesses in defence and also exhibited the aforesaid compromise as Ex-P/4. It is contended that the appellant categorically stated that Prithviraj, Magniram, Shantilal, Gheesa and Ladulal had inflicted injuries upon his person and he filed a cross-case wherein challan was filed against the complainant party, therefore, the learned trial Court wrongly reached conclusion that the appellant committed offence under Section 324, IPC. It is vehemently argued that while arriving at the finding of guilt for offence under Section 324, IPC the trial Court ought to have taken into consideration the entire facts on record and the circumstances of the case. It is argued that when the injuries upon the person of the accused have not been explained before the Court it is absolutely illegal to hold that the prosecution has proved the case beyond reasonable doubt against the accused for commission of any offence. It is vehemently contended that the prosecution has deliberately concealed material facts from the Court in the instant case and only

the prosecution version was brought to the notice of the Court. It is argued that in the circumstances when the Court was apprised of the fact regarding cross-case and injury report of that case, it was obligatory duty of the Court to consider the case in its entirety and totality. According to the learned Counsel for the appellant, when the trial Court reached conclusion that no case is made out against the accused-appellant for commission of offence under Section 307, IPC, in the facts and circumstances of the case, even if the appellant was held guilty by the trial Court for commission of offence under Section 324, IPC he was entitled to the benefit of Section 4, Probation of Offenders Act. he contended that once the trial Court categorically observed that there is no evidence to show who was the aggressor nor it is established that it was a pre-conceived incident and the incident appears to have taken place casually in the circumstances of an altercation, then, the trial Court illegitimately concluded that the accused does not deserve to be given the benefit under Section 4 of the Probation of Offenders Act.

8. Per contra, the learned Public Prosecutor supported the judgment impugned and contended that the trial Court appreciated the evidence in right perspective and accordingly recorded the finding of guilt against the accused-appellant. He contended that there is sufficient evidence led by the prosecution to prove its case and it cannot be said that the prosecution failed at the trial to bring home the charge against the accused.

9. I have perused the entire record and re-appreciated the evidence on record.

10. In this case, challan was filed for commission offence under Section 307, IPC. However, the trial Court after consideration of the evidence coming on record found that no case is made out against the accused for offence under Section 307, IPC and the accused has been convicted for having committed offence under Section 324, IPC and sentenced to suffer rigorous imprisonment for two years with a fine of Rs. 500/-. Therefore, obviously the evidence on record need be appreciated only in respect of the gravity of the offence as may disentitle the accused from being granted the benefit under Section 4 of the Probation of Offenders Act. The material facts on record clearly show that cross-case was also filed against the complainant party in respect of which the accused exhibited

certified copy of the compromise arrived at in between the parties. In his defence, the accused pleaded that there is enmity and he has been falsely implicated in the criminal case. At the trial, the prosecution did not establish either the fact that the accused was the aggressor or that there was pre-conceived attempt to commit the offence. The sword allegedly used for commission of the crime by the accused appellant is recovered in the field at the instance of witness Shantilal, P.W.-9. The prosecution witnesses admitted before the Court that the accused had instigated one Dayaram Chamar to institute proceedings against them in respect of sale and purchase of a house and, thus, apparently there is evidence on record about the animosity in between the parties.

11. Before the trial Court, the prosecution witnesses do state about inflicting of injury with sword by accused Mithalal on the person of Ladulal but most of them deposed that the accused inflicted two injuries whereas witness Shantilal, P.W.-9 who testified upon the version of the FIR stated that only one injury was inflicted by the accused upon the head of the injured Ladulal which Ladulal received upon head and hand since he had raised his hand to ward off the blow. The allegation in the FIR is also for inflicting one injury.

12. Upon over-all appreciation of the evidence in this case, only it can be concluded that the altercation resulted in a free-fight in which both complainant Ladulal and accused Mithalal received injuries. The trial Court has observed in the impugned judgment that injury report produced by the accused is not proved by any doctor and, therefore, the accused ought to have produced the oral testimony of both of his witnesses Mohan and Shankerlal whereas only Shankerlal was produced in defence besides the accused himself. Neither it is proved on record as to who was the aggressor nor is it clear whether accused sustained injuries before or after inflicting injury upon the person of Ladulal with sword.

13. In the aforesaid facts and circumstances, the conviction of the appellant for commission of offence under Section 324, IPC held by the trial Court does not warrant interference. However, there is sufficient evidence on record that there was enmity in between the parties and the prosecution failed to prove as to who was the aggressor.

14. In the circumstances, on the question of sentence, the accused deserved to be given the benefit of probation under Section 4, Probation of Offenders Act, read with Section 360, Cr.P.C. Accordingly, this appeal is partly allowed. The conviction of the appellant under Section 324, IPC made by the trial Court is maintained. However, the sentence awarded by the trial Court is set aside and the appellant is given benefit of probation under Section 4, Probation of Offenders Act, read with Section 360, Cr.P.C. upon his furnishing a personal bond in the sum of Rs. 5,000/- undertaking to maintain peace for a period of two years. Upon his furnishing the personal bond as aforesaid, his bail bond shall stand discharged.