

Bhanwar Lala Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-08-2001

Reported in : 2002CriLJ1472

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 323, 324, 326 and 341

Appeal No. : S.B. CrI. Appeal No. 476 of 2001

Appellant : Bhanwar Lala

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, P.P.

Advocate for Pet/Ap. : Ranjeet Joshi, Adv.

Judgement :

ORDER

Sunil Kumar Garg, J.

1. This appeal has been preferred by the accused-appellant-Bhanwar Lal against the judgment and order dated 30-6-2001 passed by the learned Additional Sessions Judge (Fast Track), Nagpur in Sessions Case No. 47/2001 (47/97) whereby the learned Additional Sessions Judge while acquitting the accused-

appellant for offence under Sections 307 and 341, I.P.C. convicted him for offence under Sections 326, 324 and 323, I.P.C. and sentenced him as under :

Name of Convicted SentenceAccused under AwardedSectionBhanwar Lal 326 IPC 2 years' R.I. and a fine of Rs. 1000 in default to further undergo 3 months' imprisonment.Bhanwar Lal 324 IPC 1 years' R.I. and a fine of Rs. 200 in default to further undergo 1 month's imprisonmentBhanwar Lal 323 IPC 6 months' S.I. and a fine of Rs. 100/-in default to further undergo 15 days' imprisonment

All the sentences were ordered to run concurrently.

2. It arises in the following circumstances :

i) P.W. 1 Bajrang Singh gave Parcha Bayan Ex.-P/I on 15-7-1997 in the hospital to the police RoI, Dist. Nagaur stating that the accused-appellant and one Lal Singh were giving beating to P.W. 2 Rajendra Singh and at that time, the accused-appellant was armed with an axe and when he and P.W. 3 Bhanwar Singh tried to intervene in the matter, they were also beaten by the accused-appellant and Lal Singh.

3. On this statement, police registered a case and started investigation.

4. P.W. 1 Bajranj Singh, P.W. 2 Rajendra Singh and P.W. 3 Bhanwar Singh were got medically examined. Injury report of P.W. 1 Bajrang Singh is Ex. P/15, injury report of P.W. 2 Rajendra Singh is Ex. P/17 and injury report of P.W. 3 Bhanwar Singh is Ex. P/16. P.W. 2 Rajendra Singh received frac-' ture on his head by sharp edged weapon. P.W.I Bajrang Singh received simple injuries by sharp edged weapon and P.W. 3 Bhanwar Singh received injuries on arm and also received grievous injury on his radius part of his body.

5. After usual investigation, the police submitted a challan against the accused-appellant only.

6. On 24-11-1997 the learned trial Judge framed charge for offence under Sections 307, 326, 324, 323 and 341, I.P.C. who pleaded not guilty and claimed trial.

7. At the conclusion of the trial, the learned Additional Sessions Judge convicted and sentenced the accused-appellant as stated above inter alia holding :

That accused-appellant caused grievous injuries to P.W. 2 Rajendra Singh and caused simple injuries to P.W. 1 Bajrang Singh by axe and so far as injuries of P.W. 3 Bhanwar Singh are concerned, the learned Additional Sessions Judge came to the conclusion that they were caused by Lal Singh and not by the present appellant and Lal Singh was not before the learned Additional Sessions Judge.

8. Aggrieved from the said judgment and order, this appeal has been filed by the accused-appellant.

9. In this appeal, the learned counsel for the accused-appellant has not assailed the findings of conviction recorded by the learned Additional Sessions Judge, by his judgment dated 30-6-2001 for offence under Sections 326, 324 and 323, I.P.C. but it has been argued on behalf of the accused-appellant that the accused may be sentenced to the period already undergone by him.

10. I have heard both and perused the record and impugned judgment.

11. Since in this case, findings of conviction recorded by the learned Additional Sessions Judge (Fast Track), Nagaur for offence under Sections 326, 324 and 323, I.P.C. have not been challenged, therefore, they are liable to be confirmed and the appeal of accused-appellant against his conviction is liable to be dismissed.

12. From perusing the warrants attached with the file, it appears that the accused-appellant has remained in PC/JC for the following period :

13-8-1997 to 14-8-1997 (PC)

14-8-1997 to 19-3-1998 (JC)

13-8-2001 till today

13. From perusing the order sheet of the trial Court, it appears that on 30-6-2001 when the accused-appellant was convicted and sentenced for the said offences,

an application for suspension of sentence was filed by the accused-appellant before the trial Court and the learned trial Court accepted that application and gave one month's time for bringing suspension order from the High Court and suspended the sentences on furnishing bonds etc. But striking feature is that at the time when the accused-appellant was convicted in the present case, though he was on bail in this case, but he was in jail in some other case as he was produced in the Court through production warrant.

14. In my opinion, when the accused-appellant was already in jail, the learned trial Judge should not have suspended the sentence passed against the accused-appellant. From perusing the order sheet dated 30-7-2001, it further appears that when order of suspension of sentence was not brought by the learned counsel for the accused-petitioner from the High Court, the learned trial Judge ordered that warrant be prepared so that the accused-appellant may undergo the sentence awarded to him by order dated 30-6-2001. Since the accused-appellant was not brought before the Court from jail, therefore, the order of undergoing the sentence was not issued and the same was issued on 13-8-2001 and since then the accused is in jail and is undergoing sentences awarded to him vide order dated 30-6-2001. Thus, in this case the accused-appellant is in jail from 13-8-2001 till date.

15. Looking to the fact that the accused-appellant caused grievous injury on head to P.W. 2 Rajendra Singh and simple injuries to P.W. 1 Bajrang Singh with axe and he was also in jail in some other case, therefore, looking to the conduct of the accused-appellant, it is not a fit case where accused-appellant should be released for the period already undergone by him. However, it would be just that sentence awarded to the accused-appellant be reduced from 2 years' R.I. to 1 year's R.I. for offence under Section 326, I.P.C. and the order of sentence is liable to be altered accordingly.

16. In the result this appeal filed by the accused-appellant-Bhanwar Lal is partly allowed in the following manner :

The appeal of the accused-appellant-Bhanwar Lal against his conviction for offence under Sections 326, 324 and 323, I.P.C. is dismissed after confirming the

judgment dated 30-6-2001 passed by the learned Additional Sessions Judge (Fast Track), Nagaur.

However, the order of sentence dated 30-6-2001 passed by the learned Additional Sessions Judge (Fast Track), Nagaur is modified to the extent that the accused-appellant is sentenced to 1 year's R.I. in place of 2 years' R.I. for offence under Section 326, I.P.C. The rest order of sentence dated 30-6-2001 passed by the learned Additional Sessions Judge (Fast Track), Nagaur is however maintained.

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