

Leela and ors. Vs. State of Rajasthan

Leela and ors. Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/772637

Court : Rajasthan

Decided On : Jan-11-1988

Reported in : 1988(1)WLN378

Judge : M.B. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 18 of 1988

Appellant : Leela and ors.

Respondent : State of Rajasthan

Judgement :

M.B. Sharma, J.

1. Heard learned counsel for the accused appellant and the learned Public Prosecutor and have gone through the judgment of the learned trial court. The learned trial court in its judgment dated December 15, 1987 has convicted accused-appellant Sri Chand under Section 324 IPC and accused-appellants Leela Ram and Jaidayal under Sections 325 and 323 IPC. The learned Court while hearing the arguments on the quantum of sentence has declined to deal with the case of the accused appellants under the provisions of the Probation of Offenders Act, 1958 (for short 'the Act') on the only ground that injured Munshi Singh received injuries which were grievous.

2. The submission of learned counsel for the accused-appellants is that the only ground that the injuries are grievous, the Court could not have declined to give the benefits of provisions of Section 4 of the Act to the appellants more so when the case was such which could have been dealt with under the provisions of the Act and there is mandate in the legislature contained Section 361 Cr. PC that the case of such accused persons should have been dealt with under Section 4 of the Act unless for special reasons to be recorded, the Court considered not in the interest of justice to deal with the case of the accused appellants as stated above. The learned counsel has not challenged the conviction on merits and rightly in view of the evidence on record duly supported by medical evidence.

3. Time and again, the courts have said that the provisions of Section 361 Cr.PC are mandatory and if the case of the accused is such which could have been dealt with under the provisions of Section 360 Cr.PC which is not applicable in this part by virtue of Section 19 of the Act or under the provisions of the Act and is not so dealt with, the Court shall record 'special reasons' for not dealing with the case of the accused under Section 4 of the Act. It has also been held that so far as 'special reasons' within the meaning of Section 361 Cr. PC are concerned, they not only relate to the circumstances in which the offence was committed but also relate to the character, antecedents and age of the accused. Recently, the courts have gone to this extent that in case the age of the accused is not mentioned in the warrant sending him to jail then the warrant may have to be set aside. Be that as it may, the recent trend is reformatory and rehabilitative and unless the Court can come to the conclusion that the case of an accused is such which though could have been dealt with under the provisions of the Act, but looking to the antecedents character and circumstances of the case it shall not be so dealt with it must 'record special reason' for not doing so. It is well known that during the trial of the case generally the character and antecedents of the offender are not known and there is no material for the Court to say anything in that respect. Therefore, in such of the case which could be dealt under the provisions of the Act, the Court should call for the report of the police officer which report is bound to contain not only the material in respect of the offender and his character and the circumstances in which the offence was committed but also his family circumstances, his economic condition etc. and unless the report of the police

officer is adverse and unless the circumstances of the case in which the offence was committed are such which shock the conscience of the Court, the court in view of the mandate of legislature contained in Section 361, Cr.PC will have and can have no option but to deal with the case of the accused persons under the provisions of Section 4 of the Act or any other similar provision.

4. It is enjoined on all courts to consider the provisions of Section 361 Cr. PC in such of the cases in which that Section is applicable and all the lower courts are directed to specifically deal with Section 361 Cr. PC in such of the cases when the same is attracted.

5. Consequently, I partly allow this appeal, while maintaining the conviction of each of the accused appellant under the various Sections stated earlier under which the accused-appellants have been convicted, taking into consideration Section 361 and there is being no material adverse to the appellants in respect of their character, age etc. as aforesaid, it is hereby directed that each of the accused-appellants Leela, Jai Dayal and Sri Chand shall be released on entering into a bond in the sum of Rs. 5,000/- and surety in the like amount to the satisfaction of the trial Court to appear and receive sentence as and when called upon to do so during a period of one year and in the meantime to keep peace and be of good behaviour.

6. I also direct that under Section 5 of the Act, each of the accused-appellants Leela, Jai Dayal and Sri Chand shall pay a sum of Rs. 200/- as compensation to injured Munshi Singh for the injuries caused to him. The bonds as aforesaid and the amount shall be deposited by the accused appellants in the trial Court within a period of one month failing which the trial court shall take steps to see that the accused persons are called upon to undergo the sentence awarded by it. On depositing the amount of compensation as aforesaid, notice shall be given to Munshi Singh injured to receive the amount.

7. Dy. Registrar (Judicial), Jodhpur/Jaipur are directed to send a copy of this judgment to each of the subordinate courts for drawing their attention.

