

Galba Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-27-2002

Reported in : 2002(2)WLN636

Judge : Jagat Singh, J.

Appeal No. : S.B. Criminal Appeal No. 401 of 1993

Appellant : Galba

Respondent : State of Rajasthan

Judgement :

Jagat Singh, J.

1. This is appeal against conviction filed under Sub-section (2) of Section 374 Cr.P.C. on behalf of Galba, assailing the judgment of conviction and order of sentence dated 27th September, 1993 delivered by learned Addl. Sessions Judge, No. 1, Udaipur, who in Cr. Case No. 47/89, while acquitting four co-accused persons, convicted accused appellant under Sections 326 and 324, I.P.C. and awarded him 5 years rigorous imprisonment along with fine of Rs. 500/- as also 3 years' rigorous imprisonment respectively. Hence, this appeal.

Though the appeal was filed through a counsel, however, subsequently the then learned Counsel was elevated to Bench and therefore, the accused appellant was

issued notice. In spite of repeated endeavor, he could not be served. The matter being of the year 1993, therefore, Mr. Talat Bari, learned Counsel of few years' standing, was appointed as amicus curiae under Legal Aid Programme.

I have heard at length learned amicus curiae as also learned P.P. and have perused the impugned judgment as also the record of the court below.

2. According to prosecution version, there were two injured PW-5 Pabuda and one Bhabuta, who have been caused injuries by five persons and F.I.R. was lodged immediately thereafter. Both the injured persons were medically examined. Accused persons were apprehended and one SBBL gun was recovered upon voluntary disclosure statement made by present accused appellant whereas arrows & bows were recovered from co accused persons. All the accused persons were charged by the court below and upon their pleading not guilty and claiming trial, prosecution examined number of witnesses and have also exhibited some documents. In their statements under Section 313 Cr.P.C., accused persons pleaded false implication and denied all the incriminating evidence. However, no evidence in defence was produced. Thereafter, learned trial court, upon a thread-bare discussion of the evidence, gave benefit of doubt to four co-accused persons while convicted and sentenced present accused appellant, as stated above.

3. Learned Amicus curiae submitted that except PW-5 Pabuda, no other eye-witness has supported the prosecution case. Pabuda being interested and inimical witness, should not have been placed implicit reliance and benefit of doubt should have been extended to the accused appellant also. It is also submitted that though SBBL gun was alleged to have been recovered on the basis of voluntary disclosure statement of Galba, however, same has neither been produced in the court nor exhibited. Similarly, PW-13 Dr. G.L. Dad. though have examined injuries on the person of Pabuda, however, pellets so removed from body of Pabuda by the surgeon have neither been produced in the court nor exhibited by the prosecution. Similarly, the Doctor who operated the injured has also not been examined before the court below. Lastly, it is urged by the learned Counsel that accused appellant may be sentenced with the period of imprisonment he has already undergone. On the contrary, learned P.P. supported the impugned

judgment.

4. I have carefully considered submissions made by learned Counsel as also evidence available on the record.

5. Learned trial court, after thread-bare discussion of evidence of PW-5 Pabuda, convicted the accused appellant. Even if other prosecution witnesses have been declared hostile and even if co-accused persons have been given benefit of doubt, that by itself is not sufficient to acquit present accused appellant. When in the F.I.R. itself and subsequently in the court testimony, PW-5 Pabuda has in unequivocal terms implicated accused appellant Galba that he was the person who caused fire-arm injuries and when PW-5 Pabuda has been cross-examined at length and could not be confronted or contradicted either with the F.I.R. lodged by him or by the police statements, implicit reliance has rightly been placed upon the testimony of this witness by the trial court, whose testimony has been corroborated by PW-13 Dr. G.L. Dad.

6. The SBBL gun though was recovered by the Investigating Officer, however, in the trial court when witnesses were under examination, same may not have been brought in the court and may not have been exhibited. Similarly, the pellets removed from body of injured Pabuda were though seized by the surgeon and deposited in the court Malkhana, however, at the time of prosecution evidence, may not have been brought for exhibiting. However, that by itself is not such a serious anomaly that the testimony of PW-5 Pabuda could be discarded altogether. For proving prosecution case, it is quality of evidence and not the quantity that matters. The credibility and testimonial value of PW-5 Pabuda has been correctly scrutinized, assessed and analyzed by the trial court as also by me and he has withstood the test of cross-examination and has rightly been held to be of sterling worth. I do not find any infirmity in it.

7. PW-5 Pabuda has been corroborated by the evidence of PW-13 Dr. G.L. Dad. Injury No. 5 caused by the firearm on right iliac-fossle abdomen 1 x 0.75 x cavity deep has been found to be grievous while injuries No. 6 and 7, also caused by fire-arm pellets were found to be simple in nature and therefore, the court below was right to convict the accused appellant under Sections 326 and 324 I.P.C.,

which I also uphold.

8. So far as quantum of punishment is concerned, accused appellant has remained in custody from 20.1.1988 to 15.6.1988 and subsequently, from 27.9.1993 to 24.11.1993. Thus, he has remained in custody for about 7 months. The occurrence is of the year 1987. In such a situation, sending him again in jail will be too harsh. In the facts and circumstances of this case, however, punishment of fine has to be increased in order to compensate the injured.

9. Consequently, the appeal is partly accepted. The conviction of the accused appellant under Sections 326 and 324 I.P.C. is maintained, however, sentence of 5 years and 3 years imprisonment is set aside and instead, he is awarded sentence for the period of 7 months' imprisonment he has already undergone but he has to pay fine of Rs. 5000/-, within period of 3 months, which is to be disbursed to injured Pabuda. The trial court will apprise the accused appellant Galba about this decision as also that in case he fails to deposit the above amount of Rs. 5000/-, he will have to undergo sentence awarded by the trial court. Upon information by the trial court, if the accused appellant fails to deposit the amount of fine, he shall be made to undergo the sentence awarded by the trial court.

10. A copy of this order be sent to Secretary, Legal Aid Programme for necessary action.

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