

Param Dev Vs. the State

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Court : Himachal Pradesh

Decided On : Jan-10-1975

Reported in : 1975CriLJ1346

Judge : D.B. Lal, J.

Appellant : Param Dev

Respondent : The State

Judgement :

ORDER

D.B. Lal, J.

1. This revision petition is directed against the decision of the learned Additional Sessions Judge, Mandi, in a case under Sections 323 and 325 of the I. P. C. whereby in appeal the conviction of Param Dev for causing voluntary hurt to Smt. Chhetri and her small child Sarla is maintained, although the sentence has been reduced. The prosecution case was, that on 16-5-1969 the accused Param Dev gave a beating to Smt. Chhetri and in this process snatched the child Sarla from her with the result that the child fell down and sustained a fracture in the head. There was also an exchange of abuses between them prior to the causing of voluntary hurt. Param Dev was accordingly prosecuted for the offence under Section 325 for causing grievous hurt to Sarla and for the offence under Section 323 for causing simple injuries to Smt. Chhetri. The learned Magistrate sentenced

him for nine months rigorous imprisonment and to a fine of Rs. 200/- for the offence under Section 325 and sentenced him to three months rigorous imprisonment under Section 323, I. P. C.

2. Param Dev came in appeal before the learned Additional Sessions Judge and his appeal was dismissed. However, the sentence of nine months rigorous imprisonment was reduced to four months while that of three months rigorous imprisonment to one month as a result to that appeal. He has, however, felt aggrieved of the decision and has come up in revision.

3. The learned Counsel contended with reference to Sections 206 and 207 of the Himachal Pradesh Panchayati Raj Act, 1968 that for the offence under Section 323, I. P. C. the jurisdiction vested with the Nyaya Panchayat and that Court alone could take cognizance of the case. However, the learned Counsel conceded that the offence under Section 325, I. P. C. was triable by the Court of a Magistrate. It is manifest, that the two offences were committed during the course of the same transaction. The two victims of assault were involved at one and the same time. The petitioner administered beating to Smt. Chhetri and while snatching the child from her lap dropped her and caused grievous hurt to the child. When the two offences were committed in one transaction, in my opinion the Court which could take cognizance of the higher offence was also eligible to take cognizance of the minor offence. If the trials are bifurcated and the Nyaya Panchayat becomes seized of the matter under Section 323 and the other offence under Section 325 is retained by the Magistrate, a conflict of decision is likely to arise. In order to avoid it the higher Court of the Magistrate could as well take cognizance of the other minor offence under Section 323 and in my opinion the provisions of the Himachal Pradesh Panchayati Raj Act, 1968, will not stand in the way. This would deal with the first contention raised by the learned Counsel.

4. It was then submitted by the learned Counsel that Sarla fell down while the accused wanted to snatch her from the lap of Smt, Chheri and that he could not be stated to have voluntarily caused hurt to Sarla. In that connection the learned Counsel referred to Section 322 of the Indian Penal Code. He attempted to point out that the petitioner neither intended to cause hurt to Sarla nor could he have

known that grievous hurt would be caused to her. Considering the circumstances under which the offence was committed I fail to understand if any benefit can be extended to the accused. His intention was to give a beating to Smt. Chhetri and in that connection he snatched the child obviously so negligently that it fell on the ground. He should have known that once the child fell on the ground she was likely to suffer a grievous hurt. In order to attract Section 322, I. P. C. the Court has to see that the accused intended to cause hurt, or that he knew that grievous hurt was likely to cause and that such grievous hurt is actually caused. In the present case the grievous hurt was actually caused and the accused should have known that his action was likely to cause grievous hurt to the child. Nothing more was needed to bring the offence under Section 322, I. P. C.

5. In the last the learned Counsel contended that the accused had been in jail for a month and six days after conviction before he could be released on bail and that the said period should be given a set off. That is not possible under Section 428 of the Code of Criminal Procedure, 1973. That section applies only to a stage before conviction. In my opinion the sentence awarded has already been considerably reduced by the appellate Judge and no further reduction of sentence is possible. The revision petition is therefore, dismissed.