

Faddya at Anil Vs. State of Rajasthan.

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Court : Rajasthan

Decided On : Jul-14-2011

Judge : Narendra Kumar Jain, J.

Acts : Indian Penal Code (IPC) - Sections 307, 452, 34, 323, 452; Code Of Criminal Procedure (CRPC) - Section 374(2), 313

Appeal No. : Case No. CRLA - 1475 of 2007

Appellant : Faddya at Anil

Respondent : State of Rajasthan.

Advocate for Def. : Ms. Rekha Madnani, Adv

Advocate for Pet/Ap. : Mr. Suresh Sahni, Adv

Judgement :

1. Heard learned counsel for the parties.
2. Accused-appellant has preferred this criminal appeal under Section 374(2) Cr.P.C. against judgment and order dated 30.05.2007 passed by Special Court, SC/ST(Prevention of Atrocities Cases) Kota, in Sessions Case No. 76/2006, whereby trial court convicted and sentenced the accused appellant under Section 307 I.P.C. to seven years' rigorous imprisonment and a fine of Rs. 2,000/- and in default of payment of fine, to further undergo one month's simple imprisonment

and under Section 452 I.P.C. to one year's imprisonment and a fine of Rs. 1,000/-, in default of payment of fine, to further undergo 15 days' simple imprisonment. Both the sentences were ordered to run concurrently.

3. Briefly stated the facts of the case are that on the basis of Parcha Bayan, Exhibit P-5 of informant/injured Gajanand, recorded in Emergency Ward, M.B.S. Hospital, Kota by Police on 31.10.2005, F.I.R. No. 531/2005 was registered at Police Station Gumanpura, Kota under Sections 452, 307, 323/34 I.P.C. and investigation commenced. After completion of investigation, Police submitted a charge sheet against three accused persons namely Faddya @ Anil(Appellant), Babu Lal and Om Prakash in the Court of Additional Chief Judicial Magistrate, No. 5, Kota, who committed the case for trial to the Court of Sessions Judge, Kota. Thereafter, the case was transferred for trial to Special Court, SC/ST(Prevention of Atrocities Cases), Kota. There was fourth accused in the present case, namely Kanhaiya, who was juvenile, therefore, a charge sheet was submitted against him before Juvenile Court, Kota.

4. Trial court framed charges against accused persons under Sections 307, 307/34, 323 and 452 I.P.C. Accused persons denied the charges and claimed trial. Prosecution in support of its case, examined P.W. 1 to P.W. 15 and produced documentary evidence. Thereafter, statements of accused were recorded under Section 313 Cr.P.C. No evidence was led in defence. Learned trial court after considering submissions of parties and record of the trial court, acquitted co-accused namely Om Prakash and Babu Lal from all charges but convicted and sentenced the accused-appellant, as mentioned above.

5. Learned counsel for the appellant argued the case at length and pointed out number of contradictions in the statement of injured witness and eye-witness as well as medical evidence and also submitted that P.W. 12, Dr. Renu Rawka, who operated the stomach of injured person, did not opine that the injuries sustained by injured were dangerous to life and statement given by P.W. 1, Dr. P.K. Tiwari in this regard was in the nature of secondary evidence, which was not permissible, therefore, prima-facie no evidence for commission of an offence under Section 307 I.P.C. is made out. But, during the course of arguments, learned counsel for

the appellant did not press the appeal on merits and submitted that the appellant remained in jail for about 23 days during trial and he further remained in jail for 4 years 1 month and 14 days from the date of judgment passed by trial court, therefore, he has already remained in custody for about 4 years, 2 months and 7 days and his sentence of rigorous imprisonment of 7 years under Section 307 I.P.C. may be reduced to a period of imprisonment already undergone by him.

6. Learned Public Prosecutor opposed the appeal of the appellant and submitted that there is no merit in appeal, so far as conviction of the appellant under Section 307 I.P.C. is concerned. However, for the purpose of reducing sentence of imprisonment of the appellant, she stated that it is within the discretion of this Court to consider the request of learned counsel for the appellant. However, it was contended that in case sentence of imprisonment of the appellant is reduced, then at least amount of fine may be enhanced reasonably and compensation may be awarded to injured person.

7. I have considered submissions of learned counsel for the parties and minutely scanned the impugned judgment and record of trial court.

8. Initially learned counsel for the appellant argued the case on merits, but in view of statement of P.W. 3, injured Gajanand, corroborated by statement of P.W. 1, Dr. P.K. Tiwari, statement of P.W. 12, Dr. Renu Rawka, Exhibit P-1, Medical Report of the injured, Exhibit P-2, Surgeon Note, learned counsel for the appellant did not press the appeal on merits. I also examined statement of prosecution witnesses including statements of doctors and record of the case and in my view, learned counsel for the appellant rightly did not press the appeal on merits. Since appeal has not been pressed on merits, therefore, it is not necessary to refer and discuss the facts and evidence of the case in detail. The finding of learned trial court regarding conviction of the accused-appellant under Sections 307 and 452 I.P.C. is absolutely legal and justified and no interference in the same is called for.

9. So far as period of sentence of imprisonment awarded by trial court to accused-appellant is concerned, it is relevant to mention that as far as sentence of imprisonment awarded for offence under Section 452 I.P.C. is concerned, the appellant has already undergone the said sentence. The question is only in

respect of offence under Section 307 I.P.C., wherein seven years rigorous imprisonment with fine of Rs. 2,000/- has been awarded by the trial court to the accused-appellant. There is no dispute that the appellant has remained in jail for about 4 years, 2 months and 7 days during trial and after his conviction by the trial court. After considering statements of injured, P.W. 3, Gajanand, P.W. 1, Dr. P.K. Tiwari and P.W. 12, Dr. Renu Rawka, I am not inclined to accept the request of learned counsel for the appellant to reduce the sentence of imprisonment of the appellant to a period of imprisonment already undergone by him, but in the facts and circumstances of the case, I am of the view that ends of justice will meet, in case sentence of rigorous imprisonment of seven years awarded to the appellant under Section 307 I.P.C. is reduced to a period of five years' rigorous imprisonment and amount of fine is enhanced from Rs. 2,000/- to Rs. 26,000/-.

10. Consequently, appeal is partly allowed. Conviction of the appellant under Sections 307 and 452 I.P.C. is upheld. Sentence of imprisonment and fine of the appellant under Section 452 I.P.C. is also upheld, but sentence of imprisonment of the appellant under Section 307 I.P.C. is reduced from seven years' rigorous imprisonment to five years' rigorous imprisonment, but amount of fine under Section 307 I.P.C. is enhanced from Rs. 2,000/- to Rs. 26,000/-(Rupees Twenty Six Thousands). However, it is directed that out of this amount, Rs. 25,000/- (Rupees Twenty Five Thousands) will be paid by the trial court to injured P.W. 3, Gajanand, as and when the same is deposited by the appellant in the trial court. Learned counsel for the appellant prays for time to deposit the amount of fine. Prayer is allowed. One month's time is allowed to the appellant to deposit amount of fine.

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