
(2006) 07 RAJ CK 0024
In the Rajasthan High Court
Case No : Criminal Appeal No. 203 of 1988

Kala @ Kalia

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323

Citation : (2007) 1 WLN 424

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—This criminal appeal is directed against the judgment dated 19.04.1988 passed by Sessions Judge, Dungarpur in Sessions case No. 65/1987 whereby the appellant was acquitted from the charge of offence u/s 302 IPC and convicted for offence u/s 323 IPC and he was sentenced to one year simple imprisonment.

2. It is contended by the learned Counsel for the appellant that appellant is real elder brother of deceased. As per the contention of FIR, some quarrel took place in between Shankar and Kala - the present appellant. During the quarrel, the appellant gave a kick in the stomach of Shankar on account of which he died. After investigation, the police filed challan u/s 302 IPC against the appellant. As per the prosecution witness PW-7 Dr. Bhagwati Prasad, who conducted the post-mortem, Shankar died on account of head injury. However relying upon the testimony of PW-2 Ghoola to the extent that the accused gave kick in the stomach of Shankar and he died, the trial Court convicted the appellant for offence u/s 323 IPC. It is contended by the learned Counsel for the appellant that the testimony of PW-2 Ghoola cannot be accepted because as per statement of PW-7 Dr. Bhagwati Prasad, the deceased died due to head injury, thus, it cannot be said that PW-2, Ghoola was present at the time the occurrence took place. The statement of PW-2 Ghoola is not trust-worthy. Hence, the judgment impugned to the extent of convicting the appellant for offence u/s 323 IPC is also

not sustainable in the eye of law.

3. Learned Counsel for the appellant without prejudice to the above contentions contended that the appellant and deceased were real brothers and on the spur of moment due to sudden quarrel, injury upon the stomach was inflicted by the appellant and the said injury was not the cause of death, deceased fell down and received head injury which was cause of death, therefore, the appellant was not convicted for offence u/s 302 IPC as such it is prayed that the appellant may be given the benefits of probation u/s 360 Cr.P.C. The appellant is not a previous convict and he was 45 years of age at the time the occurrence took place. As per the record, the appellant has remained in custody from 22.08.1987 to 29.01.1988.

4. Learned Public Prosecutor opposed and contended that the judgment rendered by learned trial Court is perfectly based upon the cogent evidence, which is on record. Learned Public Prosecutor also opposed the prayer for granting the benefits of probation to the appellant.

5. I have perused the judgment and scrutinized the evidence on record. In my opinion, the trial Court has rightly recorded the finding of guilty against the appellant for offence u/s 323 IPC and convicted and sentenced him as aforesaid. The occurrence took place in the year 1987 and the appeal is pending before this Court since 1988. Thus, near-about 18 years have elapsed.

6. Looking to the facts and circumstances of the case and in the interest of justice, while maintaining the conviction awarded to the appellant and looking to the fact that appellant remained in custody from 22.8.1987 to 29.1.1988, the judgment rendered by learned trial Court dated 19.04.1988 is modified and it is directed that the sentence awarded to the appellant is reduced to already undergone. The bail bonds filed by the appellant are discharged.

7. With the aforesaid modifications and directions, the appeal stands partly allowed.