
(1998) 04 RAJ CK 0055
In the Rajasthan High Court
Case No : Criminal Appeal No. 382 of 1982

Kalyan and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 302, 325

Citation : (1998) 2 RLW 981 : (1998) 3 WLC 559 : (1998) 1 WLN 344

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The appellants-accused have challenged in this appeal the judgment and order of conviction and sentence dated 21.9.1982 passed by the learned Sessions Judge, Bhilwara in Sessions Case No. 58/1982 whereby the accused have been convicted for the offences punishable under Sections 325, 149 and 147, IPC and sentenced to suffer 3 years rigorous imprisonment and to pay fine of Rs. 100/- in default to further undergo 1 month's simple imprisonment.

2. Learned Counsel Shri N.P. Gupta for the appellants-accused submitted that the learned Sessions Judge committed an error in relying upon the prosecution story and the evidence of the prosecution-witnesses. In all, six witnesses were examined. The defence of the accused was in two folds viz., (i) that deceased Rupī was a witch and she was beaten by the villagers wherein she received 6 injuries, (ii) Ram Lal, son of deceased Rupī misbehaved with the wife of appellant-accused No. 2 Sita Ram for which complaint was also filed, therefore, the names of the accused have been falsely given in this case.

3. The incident in question took place on 2.4.1982 at about 10-11 p.m. in the night. FIR was lodged immediately on the next day. It is true that Ram Lal's version that first the accused started to beat him When his mother asked him to

run away, he left the place. But. no injuries were found on the person of Ramlal. However, that itself would not be sufficient to discard the entire prosecution story. There were other witnesses. PW. 2 Kundan Mal's evidence is clear. He stated that all the accused came with arms and started to beat Rupri wherein she received 5 injuries-one of them was radius fracture on her hand. She was thereafter removed to the hospital and she succumbed to the injuries after some days. Therefore, a case was registered against the accused u/s 302. read with Sections 149 and 147 IPC. However, the learned Trial Judge considering the evidence of the witnesses and the medical evidence was of the opinion that no case was made out to convict the accused u/s 302 IPC, therefore, they were acquitted for the major offence. However, he convicted the accused for offence punishable u/s 325 read with Sections 149 and 147 IPC. Considering the reasons assigned by the learned Trial Court and the evidence of the witnesses mainly Kundan Mal, it cannot be said that the trial Court has committed any error in convicting the accused for offences punishable u/s 325 read with Sections 149 and 147 IPC.

4. Mr. Gupta then contended that the incident in question took place because of the misbehaviour of Ramlal son of deceased Rupri who misbehaved with the wife of appellant-accused No. 2 Sita Ram for which complaint was lodged against him. He submitted that all the six accused-persons cannot be asked to undergo the remaining part of the sentence of 3 years after so many years of the commission of the offence. He submitted that the offence in question took place on 2.4.1982 i.e., almost 16 years from today. They have remained in jail for some time. Their appeal was admitted in 1982 and since then they are on bail. For these injuries, all the accused cannot be sentenced to 3 years. He submitted that the substantive sentence be reduced to the sentence already undergone.

5. As against, the learned Public Prosecutor submitted that even if it is believed that it was Ramlal who was responsible for the incident who is said to have misbehaved with the wife of appellant-accused No. 2, that would not mean that the accused-appellants should take the law in their hand and commit such offence. He submitted that deceased Rupri was not at fault at all. She was an old lady of 65 years of age and she was mercilessly beaten by the accused who came with arms like sticks etc. and she received as many as 5 injuries out of which 3 were serious. She died after she was admitted in the hospital. Under the circumstances, he submitted that this is not a fit case for reducing the sentence at all and the trial Court has rightly imposed the sentence of 3 years rigorous imprisonment against each of the accused.

6. I fully agree with the submission made by the learned Public Prosecutor Shri C.R. Jakhar that even if it is believed that it was Ramlal who was responsible for this incident but that would not entitle the accused to take the law in their hands, and particularly beat an innocent old lady aged about 65 years who was the mother of Ramlal. It is also true that almost 16 years have passed after the commission of the offence. But, that circumstance itself would not be sufficient to

reduce the sentence to the sentence already undergone. It is unfortunate that the appeals of 1982 are being heard only in 1998 i.e., after 16 years. To award the sentence is the discretion of the Court and the same has to be exercised in a fit case. There are cases and cases wherein the Court may take a liberal view of the matter and may pass an order of sentence as already undergone and may not ask the accused to suffer imprisonment for the remaining period of the sentence. This Court itself has reduced the sentence to sentence already undergone in a fit cases. But, looking to the peculiar facts of the case and the fact that an innocent old lady aged about 65 years was mercilessly beaten who ultimately died after some time in the hospital would be sufficient for this Court not to reduce the sentence. It is true that all the accused have been sentenced to suffer 3 years" rigorous imprisonment but when they are convicted u/s 325 read with Sections 149 and 147 IPC then all of them have to be sentenced accordingly.

7. In view of the above discussion, I do not find any substance in this appeal and it is dismissed. The appellants are on bail. Their bail-bonds stand cancelled. They shall surrender within four weeks from today, failing which non-bailable warrants of arrest would be issued against them.