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(2009) 04 RAJ CK 0110

In the Rajasthan High Court

Kanhalya Lal and Others — APPELLANT

Vs

State of Rajasthan — RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360, 394
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 324

Citation : (2009) 4 RLW 3426

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment dated 29th July, 1987 rendered by Sessions Judge, Ajmer, whereby the appellants Kanhaiya Lal, Ram Prasad, Jagdish, Nathu and Manohar Das were convicted in the offences under Sections 326 read with Section 149 and 147 of IPC and sentenced as under:

under Section 326/149 of IPC:

Each accused sentenced to two years'' rigorous imprisonment and a fine of Rs. 200; in default of payment of fine to further suffer rigorous imprisonment for two months.

under Section 147 of IPC:

Each accused sentenced to six months rigorous imprisonment and a fine of Rs. 100/- in default of payment of fine to further suffer rigorous imprisonment for one month.

All the substantive sentences were ordered to run concurrently.

2. The nub of the appellants'' story is that:

On 21st August, 1984 at about 9:30 a.m. the complainant was taking his bullocks to his field. He was followed by his brother Ladu. When the two brothers

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reached the bank of Motisagar juxtaposed to the field of Deo Karan, they were accosted by 3-4 persons who came out of Babool trees. Four persons appeared from the field of Maize and four came from the front. All these 13 persons were armed with naked sword, axe and clubs. It is alleged that all the 13 accused persons assaulted upon Ladu with swords amputing fingers and thumb of left hand and four fingers of his right hand. Three toes of the right foot of Ladu were also injured with the sword. Rest of the accused are alleged to have caused injuries with lathe blows. It is further alleged that these 13 accused persons thereafter, chased the complainant Shiv Dayal but he protecting himself jumped into a water tank and-escaped from there. This incident was witnessed by Chhotu Lal Kalal of Kerot, Kalu Gujar of Sampla and the complainant''s brother Kailash who was grazing his buffaloes nearby. When all the accused persons fled from there, the injured Ladu came back to his house from where he was taken by his brother in a bullock cart to Kekri. Ladu was medically examined in a Government Dispensary, Kekri. The complainant Shiv Dayal gave an oral report at the police station Kekri, whereupon, an unnumbered FIR Ex. P/1 was recorded. This unnumbered FIR was sent to police station Bhinai where FIR Ex. P/2 was lodged on 22.8.1984 and investigation commenced.

3. The Investigating Officer recorded the statements of the witnesses acquainted with the facts and circumstances of the case, prepared the site plan Ex. P/3, arrested the accused persons, recovered the weapons such as sword, axe and clubs at the instance of the accused persons vide separate recovery memos, got the injured Ladu medically examined and after usual investigation the police submitted the charge-sheet against 13 accused persons in the offences under Sections 148, 307/149, 326/149, 325/149 and 324/149 of IPC and put them to trial.

4. The accused persons were indicated for the offences under Sections 147, 307, 326 and 324 read with Section 149 of IPC who pleaded not guilty and claimed trial. In order to further its version, the prosecution examined as many as 16 witnesses. In their explanation u/s 313 of Cr.P.C. all the accused appellants claimed their innocence. The accused appellants adduced 7 witnesses in defence and after completion of trial, 12 accused persons were convicted and sentenced in the offences under Sections 326, 148, 326/149, and 147 of IPC. The five accused appellants were convicted and sentenced as indicated hereinabove.

5. Heard learned Counsel for the appellants as also the learned Public Prosecutor appearing for the State and scanned the relevant material on record.

6. The learned Counsel for the accused-appellants has submitted the during the pendency of the appeal in the High Court two appellants Kanhaiya Lal and Jagdish Prasad had expired. With regard to rest of the three accused appellants, learned Counsel has not assailed their conviction and sentences awarded to them. He has simply focused his arguments on the quantum of sentence. Learned Counsel has further submitted that occurrence of this case took place as far back as on 21.8.1984 and the appellants have been suffering a trauma of

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criminal proceedings for about 25 years. This occurrence took place on account of animosity between two parties but after this occurrence, the appellants neither have been convicted in any criminal case nor have been found to be involved in any other criminal activity. Their antecedents have remained unblemished. In view of all these factors, a lenient view may be taken, with regard to the quantum of sentence and ends of justice would be meted out if the appellants are sentenced to a period already undergone in confinement as two accused appellants have remained in custody for about two months and one appellant Ram Prasad for about 25 days.

7. The learned Public Prosecutor appearing for the State has conceded to this fact that undisputedly the case has been pending for the last 25 years. He has further conceded to the submissions advanced by the learned Counsel for the appellants that in case, the conviction of the appellants that in case, the conviction of the appellants is maintained they may be sentence to a period already undergone in their confinement as the case is very old.

8. Having perused the certificates issued by Sarpanch, Gram Panchayat Kerot, Panchayat Samiti Bhinai, District Ajmer, it is noticed that the appellant Kanhaiya lal S/o. Kalyan Mai expired on 13.11.1990 and Jagdish S/o. Kunna expired on 16.6.2005. In support thereof, he has submitted the certificates issued by Sarpanch, Gram Panchayat Kerot, Panchayat Samiti Bhinai, District Ajmer., which are taken on record. Thus, they are found to have died during the pendency of this appeal in this Court and the appeal of these two appellants abates u/s 394 of Cr.P.C.

9. From the perusal of the relevant documents on record, it is noticed that the appellant Ram Prasad remained in custody w.e.f. 25.8.1984 to 21.9.1984 and rest of the appellants Nathu and Manohar Das remained in custody w.e.f. 24.9.1984 to 21.11.1984. The occurrence is alleged to have taken place way back on 21.8.1984 at 9:30 a.m. at village Kerot. It is found that all the 13 persons constituted an unlawful assembly, the common object of which, was to commit murder of Ladu. In furtherance of the common object of the unlawful assembly, they assaulted upon injured Ladu with sword, axe and clubs causing numerous simple and grievous injuries on his person, especially amputing his fingers and thumbs of both right and left hands. The eye witnesses namely PW-9 Shiv Dayal, PW. 11 Chhotulal and PW. 12 Kailash have supported the evidence of PW. 10 Ladu. The statements of PW. 10 Ladu stand substantiated by the medical evidence of PW. 13 Dr. Laxmi Narain Singhar and PW. 16 Dr. D.K. Gupta. The evidence of the prosecution witnesses have been critically examined by the learned trial Court at length and the Court drew the following conclusions:

(i) That the 12 accused persons (except accused Jagdish Parihar), formed an unlawful assembly and that the common object of such assembly, was to voluntarily cause grievous bodily hurt with deadly weapons to Ladu.

(ii) That the offence committed by the members of the unlawful assembly, was

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that of voluntarily causing grievous bodily hurt with deadly weapons to Ladu. The accused Ram Karan and Lalaram are shown to have amputated the hands of Ladu with their Swords. This act of each of the two accused renders them liable to conviction for the offence u/s 326 of IPC. The other ten accused are constructively liable for the offence u/s 326 read with Section 149 of IPC.

10. The appellants have been rendered constructively liable and held guilty for the offence u/s 326 read with Section 149 of IPC. They have been convicted for the offence of rioting also. The impugned judgment is found to be just and well merited and 1 am in full unison with the finding of conviction arrived at by the learned trial Court which calls for no intervention.

11. Now adverting the issue of quantum of sentence, it is noticed that the occurrence of this case took place as far back as on 21.8.1984 and the appellants have been suffering the trauma of criminal proceedings for the last approximately 25 years. The appellants are not the main accused of this case. It was the accused Ram Karan who assaulted upon Ladu with the naked sword and amputed his findings and thumb of the right and left hands. The appellants have been held guilty for vicarious liability and accordingly convicted in the offences under Sections 326/149 and 147 of IPC. By now the appellants must have turned grey. They have not been found involved in any other criminal activity thereafter, their antecedents have remained unblemished.

12. In the case of Ved Prakash Vs. State of Haryana, the Hon''ble Apex Court has held that

sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. Even if Section 360 of Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant.

13. Hence, keeping in view all the factors and the principles of awarding sentence as propounded by the Hon''ble Supreme Court, I feel inclined to take a lenient view with regard to quantum of sentence and the ends of justice would be meted out if the appellants are sentenced to a period already undergone in confinement.

14. For these reasons, the criminal appeal of Kanhaiya lal and Jagdish abates u/s 394 of Cr.P.C. The criminal appeal filed by the accused appellants Ram Prasad, Nathu and Manohar Das is partly allowed. Their conviction in the offences u/s 326/149 and 147 of IPC is maintained but sentence of rigorous imprisonment as awarded to them by the learned trial Court is reduced to a period already undergone in confinement. The sentence of fine awarded to them vide impugned-judgment dated 29th July, 1987 is maintained.

15. The appellants are on bail. They need not surrender. Their bail bonds stand discharged. The appellants are directed to deposit the amount of fine within a period of one month from today in the Court of Sessions Judge, Ajmer.

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16. The impugned judgment stands modified as indicated hereinabove.

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