
(2002) 01 RAJ CK 0116
In the Rajasthan High Court
Case No : Criminal Appeal No. 276 of 2000

Raju Alias Kurshu	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 324, 326

Citation : (2002) CriLJ 1720

Hon'ble Judges : O.P. Bishnoi, J

Bench : Single Bench

Advocate : B.L. Khatri, Amicus Curiae, for the Appellant; Ramesh Purohit, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

O.P. Bishnoi, J.—This appeal has been received by Post through Jail against the judgment dated 15-5-2000 passed by the learned Additional Sessions Judge, Raisinghnagar District Sri Ganganagar. The appellant Raju alias Kurshu has been found guilty under Sections 307, 326, 324, I.P.C. For the offence u/s 307, IPC, the appellant has been awarded seven years R.I. and a fine of Rs. 1,000/- and in default of payment of fine to further undergo six months" R.I. u/s 326, IPC, he has been awarded three years" R.I. and a fine of Rs. 500/- and for non payment of fine, he has been ordered to further undergo R.I. for three months. For the offence u/s 324, IPC one year"s R.I. and a fine of Rs. 200/- and one month"s R.I. has been ordered, if the amount of fine is not paid.

2. The prosecution story, in brief, is that the accused was employed as a labourer to work in the field of injured Harbans Singh. On 16-2-1999 at about 7.30 p.m. both were in the field, the water from the canal was to be brought for irrigating the crop standing in the field of the complainant and the duty of the accused was to strengthen the watercourse. The injured Harbans Singh, while supervising the water-course reprimanded the accused for being negligent in strengthening the

water - course and the accused allegedly attacked Harbans with "kassi" and caused injury to him. Harbans Singh became unconscious on the spot and the accused dis-appeared from the scene. After sometime, PW 2 Sukhchain Singh and PW 3 Karma were able to see Harbans Singh lying unconscious and they informed PW 1 Lakhbir Singh (brother of Harbans Singh) about the fact, who went to police station, Sri Vijaynagar and lodged the F.I.R. Ex.P/1. A case u/s 307, IPC was registered and investigation started. On 23-9-1999 the accused was arrested and ultimately a challan u/s 324, 326 and 307, IPC was filed in the Court of Judicial Magistrate, Sri Vijaynagar from where the case was committed to the said trial Court. The accused pleaded not guilty to the charges. The prosecution side examined as many as 15 witnesses in support of its story. The statement of the accused-appellant were then recorded under Section 313, Cr.P.C. and he denied everything. No defence evidence was led by the accused. The learned trial Court then, heard the arguments and delivered the judgment as indicated above.

3. I have heard the learned Amicus Curiae on behalf of the accused -appellant and the learned Public Prosecutor for the State and have perused the record of the trial Court.

4. Learned Amicus Curiae has submitted that there is no reason to infer that the accused had the intention to murder the injured and hence, the finding of guilt u/s 307, IPC is unsustainable. He has further stated that the sentence awarded are on the higher side. A case decided by this Court (Gulam Dastgir v. State of Rajasthan (1994) 2 WLC 607 (Raj) has been cited wherein the accused-appellant was awarded a sentence of two years' R.I. and a fine of Rs. 500/- for the offence u/s 307, IPC. The learned Amicus Curiae has further argued that apart from the testimony of the injured Harbans Singh, there is no other eye witness to provide necessary corroboration about the alleged incident.

5. So far as the last argument is concerned. I find the same unacceptable. As per the prosecution story, there was nobody other than the accused and the injured Harbans Singh on the spot where the incident took place. The injured Harbans Singh became unconscious and the accused- assailant made his escape good. Subsequently, Karma and Sukhchain Singh discovered Harbans Singh lying unconscious and they informed brother of the injured PW 1 Lakhbir Singh, who went to police station and lodged the F.I.R. There being no other witness present, was not possible to produce a person who could corroborate the prosecution story as an eye witness. I find no reason to disbelieve the testimony of PW 8 Harbans Singh. There is no enmity between the accused and the injured Harbans Singh. The accused was employed by the injured as a labourer and the incident took place in the manner narrated above. Nothing has come on record on the basis of which it can be inferred that Harbans Singh was interested in implicating the accused falsely. PW 1 Lakhbir Singh, PW 2 Sukhchain Singh, PW 3 Karma, PW 4 Davendra Singh, PW 5 Santveer Singh, PW 6 Harbindra Singh and PW 7 Bhan Singh are the persons who were not eye witnesses but were those who

reached on the spot subsequently and took the injured to the hospital and their testimony is to that effect. PW 9 Dr. Devilal has stated that the injured Harbans Singh was examined by him on 17-2-1999 and there were four injuries by sharp-edged weapon. According to the Doctor, three of the injuries were simple and one injury resulted into a fracture. Dr. Devilal has stated that X-ray was conducted in his presence and he prepared the injury report accordingly. In the examination-in-chief, the doctor has not stated that the injuries found on the person of Harbans Singh were sufficient to cause death. In the cross-examination, he admitted that the grievous injury was not sufficient to cause death. Subsequently, he added that the death could occur due to low blood pressure. After going through the evidence, I find that the testimony of the injured alone is sufficient to prove the allegation that he received the injuries at the hands of the accused.

6. However, I find myself unable to agree with the conclusions of the learned trial Court to the effect that the accused had an intention to cause murder of the injured. It is true that one of the injuries has been found to be grievous but at the same time, we cannot lose sight of the fact that had the appellant harboured the intention to murder Harbans Singh, there was no hinderance in achieving that motive, The injured Harbans Singh fell down after receiving injuries and was unconscious. The accused, thus, had the occasion and full liberty to cause further injuries in order to murder the injured. There was no reason for him to leave him alive. The fact that the accused did not do so is the circumstance which supports the defence version. Moreover, the motive for the incident was too trivial to provoke the accused to murder his employer. It was a petty argument as a result of which the incident took place.

7. Consequently, the finding of guilt u/s 307, IPC cannot be sustained. So far as the findings of guilt u/s 324 and 326, IPC are concerned, in view of the above discussion, there is no reason to disagree with the conclusion drawn by the learned trial Court.

8. In the result, the appeal is allowed in part. The finding of guilt u/s 307, IPC is set aside and the accused-appellant is acquitted of the said offence. Rest of the appeal is dismissed.