

(1988) 09 RAJ CK 0066
In the Rajasthan High Court
Case No : Criminal Appeal No. 271 of 1980

Raju alias Pappu	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 324, 326, 392, 397

Citation : (1988) 2 RLW 363 : (1988) WLN 403

Hon'ble Judges : Farooq Hasan, J

Bench : Single Bench

Judgement

Farooq Hasan, J.—This criminal appeal has arisen out of the judgment dated 19-7-1980 passed by the Addl. Sessions Judge, Dausa (Jaipur) whereby the appellant was convicted and sentenced as under:

1. u/s 307 and 392, IPC to undergo 4 years" R.I. with a fine on each count- of Rs. 100/- in default, further one month's R.I.
2. Both the sentences were ordered to run concurrently. How ever, the appellant was acquitted of the charge u/s 397, IPC, giving benefit of doubt by the trial Court.
3. A First Information Report was lodged at the Police Station Dausa on 14-9-1979 on a statement (Parcha Bayan) of Mst. Laxmi Devi recorded at Government Hospital, Dausa by Munshi Singh, SHO, where in she (Laxmi Bai) gave out that on 14th September, 1979 evening on return from a tea-stall of her son, Mahesh Chandra, situated at Bhakri Mod (turn) when she reached near Sayaloo, a boy of 18-19 years old wearing pant and bushirt met her and told her as to why are vacating the stall, to which she replied that her son would be appearing in the examination. It was also given out that as soon as she replied, that boy inflicted knife blow below the right ribs of breast and breaking golden chain snatching from her neck ran away Smt. Laxmi Bai also stated that that boy was sitting all around the day (14-9-1979) on her stall, and she gave out his

name as Raju and also shown ignorance about the presence of the persons at site. Cr. case No. 200/79 was registered at the Police Station, Dausa for the offences u/s 307/392, IPC. and after usual investigation, challan was filed against the appellant. The appellant was committed to the Court of Sessions and the Additional Sessions Judge framed charges under Sections 307 and 392 read with 397, IPC, against the appellant who pleaded not guilty and claimed to be tried. Therefore nine witnesses were examined by the prosecution. The statement of the appellant was recorded u/s 313, Cr.PC where in he denied all the allegations levelled against him and also stated due to enmity, he has been falsely implicated in the criminal case. No defence witness was produced.

4. After hearing the parties, the appellant was found guilty for the offences under Sections 307 and 392, IPC, and as stated above, was convicted and sentenced. Hence this appeal.

5. First wrangle on behalf of the appellant is that the injuries sustained on the person of injured, Mst. Laxmi Bai, are not grievous in nature in as much as it has not been proved by the prosecution that the injury was either dangerous to life or was sufficient to cause death in the ordinary course of nature. Against this, learned Public Prosecutor vociferously contended that the injuries were caused by a sharp weapon like knife on the chest of the injured which itself is sufficient to infer that the intention of the accused appellant was to commit murder.

6. Having considered, I may state that in the injury report (Ex.P. 1) out of three injuries third injury has been shown as fracture of 10th rib; but, about the nature of this injury being grievous or not, it has been mentioned in the report that it would be confirmed only after X-ray. In the statement, Dr. B.C. Gosh PW 1 who had prepared Ex. P. 1, has admitted saying, "I cannot say without seeing the X-ray report that the injury No. 3 is grievous." I also observe that no X-ray report is available on record, in as much as the prosecution has not claimed that the injuries sustained on the person of Mst. Laxmi Devi was X-rayed or that after X-ray, any fracture was detected. In these circumstances, no inference can be drawn to the effect that the third injury sustained on the person of Mst. Laxmi Devi was grievous in nature. In the injury report, no abnormality is shown by the doctor when the examined Mst. Laxmi Devi. Further, Smt. Laxmi Devi PW 6 nowhere stated that on sustaining injuries, she became unconscious or any abnormality has been happening. In view of these circumstances, it cannot be held that Smt. Laxmi sustained any grievous injury and that the accused-appellant inflicted that injury with such an intention or knowledge that it would cause death. I do not find any case for the offence Uder Section 307 or Section 326, IPC. And as such, the appellant deserves to be acquitted of the offence u/s 307, IPC. How ever, the accused appellant can be held responsible for the offence u/s 324, IPC, because, there is no reason to disbelieve the testimony of Smt. Laxmi Devi with regard to the injuries on her person at the hands of the accused appellant, as has come in the evidence of Smt. Laxmi Devi who, in her statement, has deposed that the accused-appellant inflicted knife blows on her

person and she sustained injuries, this evidence is corroborated by Dr. DC. Gosh PW 1.

7. As regards the other charge against the accused-appellant of Section 392, IPC, the learned Counsel for the accused-appellant submitted that no recovery has been made at the instance of the accused-appellant, where as the case of the prosecution is that a golden chain was snatched/broken by the accused-appellant from her neck and, as admitted by Smt. Laxmi in her statement, at that time she did not sustain any injury on her neck. Learned Counsel added that the aforesaid circumstance is sufficient to discredit the testimony of Smt. Laxmi Devi who has stated that one chain was snatched by the accused-appellant.

8. With regard to snatching of the golden chain, the evidence of Smt. Laxmi Devi has not been corroborated by any of the circumstances. Having considered, I am of the opinion that the circumstances are such which show that the allegation of snatching golden chain has been falsely made against the accused-appellant and I do not find any substantial evidence against the accused-appellant for the commission of the offence u/s 392, IPC so as to connect him with that crime. The accused-appellant is, therefore, liable to be acquitted of the offence u/s 392, IPC.

9. Last plank of attack which is significant and important, made on behalf of the accused-appellant is that at the time of commission of offence, the appellant was a child of 12 years of age and, so, his conviction and sentence cannot be maintained by virtue of the provisions of the Raj." Children Act. In support of his arguments, learned Counsel placed reliance on the decision of the Apex Court in Umesh Chandra Vs. State of Rajasthan, , The trial against the accused-appellant has vitiated, learned Counsel added.

10. On the other hand, learned Public Prosecutor submitted that as per the statement of Dr. Shri Gopal Maheshwari PW 2, the age of the accused-appellant on the alleged date of commission of the offence was 17 years.

11. I have, therefore, gone through the statement of Dr. Shri Gopal Maheshwari PW 2 who had prepared Ex.P. 2. In Ex P. 2, the age of the accused appellant was shown in between 17 and 25 years but for confirmation, Skiagram of elbow and pelvis was required for which the accused was referred to the Medical Jurist, SMS Hospital, Jaipur. Dr. Shri Gopal Maheshwari PW 2 in his cross-examination admitted that Raju (appellant) could be of 17 years of age; that, looking to the X-ray, findings, the pelvis did not show any fusion of epiphysis of iliac crest which appears at the age of 17 years and fuses between 19 and 20 years. According to Dr. Shri Gopal Maheshwari PW 2, after the appearance of the epiphysis the process of fusion starts. Then. Dr. Shri Gopal Maheshwari PW 2 stated that according to him, Raju (appellant) is about 18 years. Having considered the evidence of Dr. Shri Gopal Maheshwari PW 2. in my opinion, it cannot be held that the age of the appellant on the date of occurrence was in between 17-25 years. On 4-7-1980, when the appellant was examined, u/s 313, Cr. PC; he has given out his age as 13 years and the Court assumed his age 15 years. By the

estimation of the Court the age of the accused appellant on the day of occurrence was 14 years and 3 months. More over Dr. Shri Gopal Maheshwari has not come with definite evidence as he has used the word "can be" which shows that he has only estimated while it was not expected from him because he could have been the best expert witness in the matter of confirmation of age. Even for his evidence that the epiphysis of iliac crest appears the age of 17 years, and fuses between 19 and 20 years, Dr. Shri Gopal Maheshwari PW 2 has not given any explanation as to on what basis he has stated so, nor he has cited any medical jurisprudence. In my view, it appears that Dr. Shri Gopal Maheshwari PW 2 has given out the evidence on mere presumption and assumption. In these circumstances, I have been left with no option but to rely upon the estimation of the Court in the matter of age, as mentioned in the statement of the accused-appellant, and on that basis, it can be said that on the day of occurrence, the accused-appellant's age was not more than 14 years of age.

12. Now, the question remains for consideration is whether the sentence can be passed against the accused appellant being a child by virtue of the provision of the Rajasthan Children Act?

13. In view of the decision of the Apex Court in *Umesh Chandra v. State of Rajasthan* (supra), it is well settled that where proceedings in respect of a child were pending in any court in any area on the date on which the Children Act came into force. Section 26 in terms lays down that the Court should proceed with the case but after having found that the child has committed the offence, it is debarred from passing any sentence but would forward the child to the Children's Court for passing order in accordance with the Act.

14. In the present case, undisputedly, at the relevant time, the Rajasthan Children Act was in force in Jaipur district I may state that the accused appellant has already remained in jail during trial for a period of one month and 13 days. Ordinarily, the case should be sent back u/s 26 of Rajasthan Children Act to the Children's Court for awarding sentence to the accused-appellant for the offence u/s 324, IPC, for which I have found the accused-appellant guilty, as stated above. But, taking note of the fact that, the accused appellant had been in jail for one month and 13 days and the matter is pending since long time, I consider it proper not to send the case back to the Children's Court for passing the sentence according to the provisions of Section 26 of the Rajasthan Children Act, as it would multiply the proceedings. And no separate order is necessary for the purpose of sentence as the accused-appellant has remained in jail during the course of investigation inquiry or trial for a period of about one month and 13 days and that may be treated as sentence for the purpose.

15. In the net result, the appeal is partly allowed and the impugned judgment is quashed and set aside. Further, the accused-appellant is acquitted of the Offence under Sections 307 and 392, IPC, but is held guilty of the offence and convicted u/s 324, IPC. However, as held above, since the accused-appellant was a child at

the time of commission of offence on the day of occurrence, instead of sending the case to the Children's Court for passing an order of sentence according to the provisions of Section 26 of the Children Act for the offence u/s 324, IPC in order to avoid multiplicity of proceedings and since the accused-appellant had been in jail during the course of investigation, inquiry or trial for one month and 13 days, I order that the sentence undergone by the accused-appellant be treated as sentence for the purpose. Further, I deem it proper that since the accused appellant was a child and now he has joined the main stream of the life and it will not be proper that he should be thrown out of the employment, if any, on account of conviction, the benefit of Section 25 of the Rajasthan Children Act would be extended to the accused-appellant and he will not suffer any disqualification for, his conviction for the offence u/s 324, IPC, in the matter of employment or any other purpose.

16. The accused-appellant is on bail and need not surrender. His bail bonds stand cancelled.