

(2005) 02 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 537 of 1995

Raju Lal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 320
Penal Code, 1860 (IPC) — Section 323, 324, 325, 326, 34

Citation : (2005) 02 RAJ CK 0009

Hon'ble Judges : S.C. Singhal, J

Bench : Single Bench

Advocate : Sanjay Singhal, Mr. V.K. Gupta, for the Appellant; B.N. Sandoo, Public Prosecutor, for the State, for the Respondent

Judgement

S.C. Singhal, J.—Accused petitioners have filed this criminal revision petition against the judgment & order dated 12.12.1995 of the learned Addl. Sessions Judge, Gangapur City, confirming the conviction and sentence recorded by the learned trial Court (Addl. Chief Judicial Magistrate, Gangapur City) dated 11.10.94 for the offences under sections 326 and 326/34. The learned trial court convicted and sentenced the accused petitioners as under:

RajuLal

326 IPC

2 years and 6 months? RI and to pay a fine of Rs.300/- in default to further undergo 3 months SI.

324 IPC

6 months? SI and to pay a fine of Rs.100/- in default to further undergo 1 month? s SI.

323 IPC

3 months? SI and to pay a fine of Rs.50/- in default to further undergo 15 days? SI.

Ram Charan

326/34 IPC

2 years and 6 months? RI and to pay a fine of Rs.300/- in default to further undergo 3 months? SI.

324 IPC

6 months? SI and to pay a fine of Rs.50/- in default to further undergo 15 days? SI.

323 IPC

3 months? SI and to pay a fine of Rs.50/- in default to further undergo 15 days? SI.

Nangu

326/34 IPC

2 years and 6 months? RI and to pay a fine of Rs.300/- in default to further undergo 3 months? SI.

324 IPC

6 months? SI and to pay a fine of Rs.100/- in default to further undergo 1 months? SI.

323 IPC

3 months? SI and to pay a fine of Rs.50/- in default to further undergo 15 days? SI.

2. On an appeal by the accused petitioners the learned Addl. Sessions Judge acquitted all the accused petitioners from the offence under sections 323 and 324 IPC as the compromise was filed by the parties and maintained the conviction and sentence awarded by the learned trial court for the offences under sections 326 and 326/34 IPC.

3. Brief facts of the case are that a criminal case was registered at P.S.Garhmora District Swaimadhopur on 12.5.82 on the basis of Parcha Bayan of complainant injured Omvir with regard to the incident which took place on 10.5.82 at 6.00 PM. It was averred in the Parcha Bayan that there is common open place (Guwari) belonging to him and his grand-father Hansa. When he was coming alongwith his brother Man Singh, the accused petitioners came armed with Gandasi and Lathis and abused him. Accused petitioner Raju Lal inflicted two Gandasi below on his hand. Accused petitioner Nangu inflicted Gandasi blow on the head of his brother Man Singh. When his father Prabhu came at the site to

rescue them, accused petitioners gave beating to him also. On this Parcha Bayan, FIR No.35/82 was chalked out and a criminal case was registered for the offences under sections 323 and 324 IPC at the police station Garhmora. The police after necessary investigation, filed the chargesheet in the trial court for the offences under sections 323, 324, 325 and 326/34 IPC. The learned trial court after framing charges, recording evidence and after examining the accused petitioners u/s 313 Cr.P.C. convicted and sentenced the accused petitioners as aforesaid and on appeal learned Addl. Sessions Judge passed the impugned order.

4. I have heard learned counsel for the accused petitioners and have gone through the record of the case and the impugned judgment.

5. Learned counsel for the accused petitioners has submitted that the occurrence took place on 10.5.82 and more than a decade has elapsed and in the meantime the parties have sorted out their difference, entered into compromise and therefore, a lenient view may be taken while awarding the sentence to the accused petitioners. In support he has placed reliance in Bankat & Anr. Vs State of Maharashtra, 2005(1) CCC 931 (S.C.): 2005 RCC (SC) 48. It was next submitted that the incident took place all of a sudden and without pre-concert of minds, therefore, both the courts below have erred in convicting the accused petitioners Nangu and Ram Charan with the aid of section 34 IPC.

6. In my view, the submission of the learned counsel for the accused petitioners requires to be accepted. For compounding of the offences punishable under the IPC, a complete scheme is provided u/s 320 Cr.P.C. Sub-section (1) of Sec.320 Cr.P.C. provides, that the offences mentioned in the Table provided thereunder can be compounded by the persons mentioned in the column 3 of the said Table. Further, sub-section (2) of Sec.320 provides that the offences mentioned in the Table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above, can be compounded and the rest of the offences punishable under the IPC could not be compounded.

7. It is admitted that both the parties have received injuries in the occurrence which took place between the accused petitioners and complainant. It is also not disputed that the common place (Guwari) is joint and there exists only one entry. The incident took place all of a sudden and there was free fight between both the parties. Accused petitioners Raju Lal and Nangu, both have received 11 injuries and three injuries, respectively, out of which petitioner Raju Lal has sustained three injuries with sharp object. Since free fight took place all of a sudden, it cannot be inferred that the accused petitioners were taking part with the common intention to cause "marpeet" to the complainant party or each of the accused petitioners shared common intention. When there was free fight, petitioners could not be convicted and sentenced with the aid of Section 34, IPC. Hence both the courts below have erred in convicting and sentencing the accused

petitioners Nangu and Ram Charan with the aid of section 34 IPC. Therefore, both the accused petitioners Nangu and Ram Charan are entitled to be acquitted from the offence of section 326 read with section 34 IPC.

8. The Apex court while discussing the previous case law cited on the subject has taken lenient view in the case of Bankat's case (supra). Since in the present case, petitioner Raju Lal has also remained in jail for 13 days and the matter has been compromised between the victim and the accused petitioners for other offences which were compoundable and since the matter could not be compounded for this offence u/s 326 IPC because it could not be compounded due to legislative mandate.

9. Therefore, considering the fact that the parties have settled their dispute outside the court, the fact that 13 years have elapsed from the date of incident and the further fact that accused petitioner Raju Lal has Already undergone 13 days imprisonment, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs.5,000/- on the accused petitioner u/s 326 IPC. In default of payment of fine, the accused petitioner concerned shall undergo imprisonment for a further period of six months. Out of the fine amount, if realised, a sum of R.4,000/-shall be paid to injured Onkar as compensation.

In the result, this revision petition is accepted in part and disposed of as indicated above.