
(2001) 08 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Appeal No. 236 of 1987

Saleem	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 323

Citation : (2002) 4 WLN 380

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Judgement

Sunil Kumar Garg, J.—This appeal has been preferred by the accused appellant Saleem against the judgment and order dated 14.7.1987 passed by the learned Sessions Judge. Merta in Sessions Case No. 43/1984 whereby the learned Sessions Judge while acquitting the accused appellant for offence u/s ,304 I.P.C., convicted the accused appellant for offence u/s 323 I.P.C. and sentenced him as under:

Name of Accused Convicted Sentence awarded under Section

Saleem 323 I.P.C. 1 Year's R.I. and a fine of Rs. 1000 in default to further undergo 1 month's R.I. 2. It arises in the following circumstances:

(i) On 6.7.1984 P.W.8 Megha Ram lodged a report Ex.P/3 before Police Station, Makrana stating that his brother Dungra Ram (hereinafter referred to as the deceased) was working labour job and he worked under the accused appellant and after some time he left the work of accused appellant Salim and started doing labour work in another mine. At about 10 a.m. his brother Dungra Ram went to the mine of Salim and demanded wages of three days labour and upon this the accused appellant gave 2 to 3 fists on his stomach, as a result of which the deceased died. It was further stated in report Ex.P/3 that when accused appellant Salim gave fist blow, Chutra Ram P.W.9 was also there.

3. On this report, a case u/s 302 I.P.C. was registered and investigation commenced.
4. The post mortem of the body of the deceased was got conducted and post mortem report is Ex.P/2 which shows that the deceased died as a result of shock due to excessive haemorrhage as a result of rupture of spleen.
5. The accused appellant was arrested through Fard Ex.P/5 on 6.7.1984.
6. After usual investigation a challan for offence u/s 304 I.P.C. was filed by the police in the Court of Magistrate from where the case was committed to the Court of Sessions Judge, Merta.
7. On 13.2.1985, the learned Sessions Judge, Merta framed charge for offence u/s 304 I.P.C. against the accused appellant who pleaded not guilty and claimed trial.
8. During trial, the prosecution examined as many as 10 witnesses in support of its case. The accused in his statement u/s 313 Cr.P.C. denied to have committed any offence and examined one witness in defence.
9. At the conclusion of the trial, the learned trial Judge through his judgment dated 14.7.1987 came to the conclusion that prosecution has proved the case for offence u/s 323 I.P.C. in place of Section 304 I.P.C. and convicted and sentenced the accused appellant as stated above.
10. Aggrieved from the said judgment, this appeal has been filed by the accused appellant.
11. In this appeal, the learned Counsel for the accused appellant has not assailed the findings of conviction recorded by the learned Sessions Judge, Merta by his judgment dated 14.7.1987, for offence u/s 323 I.P.C, but it has been urged on behalf of the accused appellant that the accused may be sentenced to the period already undergone by him.
12. I have heard both and perused the record and impugned judgment.
13. Since in this case, findings of conviction recorded by the learned Sessions Judge, Merta for offence u/s 323 I.P.C. have not been challenged, therefore, they are liable to be confirmed and the appeal of the accused appellant against his conviction is liable to be dismissed.
14. Looking to the fact that the accused appellant has remained in jail from 6.7.1984 to 13.8.1984 and the incident took place on 6.7.1984 and more than 17 years have passed and this period is sufficient to exhaust anybody mentally, physically or economically and it will not be in the interest of justice to send the appellant to Jail for offence u/s 323 I.P.C. after 17 years and looking to the fact that there is no appeal on behalf of the State, the sentence of period for which the accused appellant Saleem has remained in jail would be sufficient to meet the ends of justice and it is a fit case in which the accused appellant should be

sentenced to the period already undergone by him.

15. In the result this appeal filed by the accused appellant Saleem is partly allowed in the following manner:

16. The appeal of the accused appellant Saleem against his conviction for offence u/s 323 I.P.C. is dismissed after confirming the judgment dated 14.7.1987 passed by the learned Sessions Judge, Merta.

17. However, the order of sentence dated 14.7.1987 passed by the learned Sessions Judge, Merta is modified to the extent that the accused appellant is sentenced for the offence u/s 323 I.P.C, to the period already undergone by him.