

(2002) 01 RAJ CK 0041
In the Rajasthan High Court
Case No : Criminal Appeal No. 40 of 1987

Shanti Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 323, 342

Citation : (2002) CriLJ 1719 : (2003) WLC 570

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : N.K. Chandak, for the Appellant; M.A. Bhurat, Public Prosecutor, for the Respondent

Judgement

Sunil Kumar Garg, J.—This appeal has been preferred by the accused appellants against the judgment and order dated 30-1-1987 passed by the learned Sessions Judge, Udaipur in Sessions Case No. 152/85 whereby the learned Sessions Judge convicted the accused appellants for offence u/s 342, I.P.C. and Section 323, I.P.C. in place of Section 302, I.P.C. sentence each of them as under :

Name	of	Convicted	Sentence	Accused	u/s	Awarded
						Shanti Lal } 323
						IPC 6 months" R.I. Rajnikant } Sardar Khan } Shantilal } 342 IPC 6 months" R.I.
						Rajnikant } Sardar Khan } Both the substantive sentences were ordered to run
						concurrently.

2. It arises in the following circum-stances:

_____ (i) On 12-3-1985 a report was lodged by PW 1 Rooplal with the police Station Fateh Nagar, Dist. Udaipur stating that his brother Mangi Lal (hereinafter referred to as the deceased) was beaten by the accused appellants.

3. On this report, police chalked out regular FIR Ex. P/2 and started investigation.

4. The deceased died on then next date and the post mortem of the deceased was got conducted by PW 8 Dr. Pramod on 13-3-1985 and the post mortem report is Ex.P/11 and he found five abrasions on the body of the deceased and the cause of death as assigned by PW 8 Dr. Pramod is asphyxia as a result of injury on scalp and other injuries also.
5. The accused appellants Shanti Lal, Rajni Kant and Sardar Khan were arrested through Fard Ex.P/15. P/16 and P/17 respectively on 18-3-1985.
6. After usual investigation, police filed challan against the accused appellants for offence under Sections 302 and 342, I.P.C. in the Court of Magistrate, from where the case was committed to the Court of Sessions Judge, Udaipr.
7. On 3-12-1985, charges, were framed by the learned Sessions Judge for offence under Sections 302 and 342, I.P.C. against the accused appellants who pleaded not guilty and claimed trial.
8. During trial, the prosecution examined as many as 13 witnesses in support of its case. The accused in their statement udner Section 313, Cr.P.C. denied to have committed any offence and no evidence was led in defence.
9. At the conclusion of the trial, the learned trial Judge through his judgment dated 30-1-1987 came to the conclusion that the offence of culpable homicide amounting to murder punishable u/s 302, I.P.C. was not proved by the prosecution and in place of offence u/s 302, I.P.C. only offence u/s 323, I.P.C. was proved against the appellants and thus, he convicted the accused appellants for offence u/s 342, I.P.C. and 323 I.P.C. in place of Section 302, I.P.C. sentence them as stated above.
10. Aggrieved from the said judgment, this appeal has been filed by the accused appellants.
11. In this appeal, the learned counsel for the accused appellants has not assailed the findings of conviction recorded by the learned Sessions Judge, Udaipur by his judgment dated 30-1-1987 for offence under Sections 342 and Section 323 I.P.C. but it has been argued on behalf of the accused appellants that they may be sentenced to the period already undergone by them.
12. I have heard both and perused the record and impugned judgment
13. Since in this case, findings of conviction for offence u/s 342 and 323,1.P.C. recorded by the learned Sessions Judge, Udaipur vide his judgment dated 30-1-1987 have not been challenged, therefore, they are liable to be confirmed one and the appeal of the accused appellants against their conviction is liable to be dismissed.
14. Looking to the fact that the accused appellants have remained in PC/JC from 18-S"1985 to 18-4-1985 i.e. forone month and the incident took place on 12-3-1985 and more than 16 years have passed and this period is sufficient to exhaust anybody mentally phisically or economically and it will not be in the

interest of justice to send the appellants to Jail for conviction for offence u/s 323, I.P.C. after 16 years, the sentence of period for which the accused appellants Shanti Lal, Rajni Kant and Sardar Khan have remained in jail would be sufficient to meet the ends of justice and it is a fit case in which the accused appellants should be sentenced to the period already undergone by them.

15. In the result this appeal filed by the accused appellants Shanti Lal, Rajni Kant and Sardar Khan is partly allowed in the following manner.

The appeal of the accused appellants Shanti Lal, Rajni Kant and Sardar Khan against their conviction for offence under Sections 342 and 323, I.P.C. is dismissed after confirming the judgment dated 30-1-1987 passed by the learned Sessions Judge, Udaipur in Sessions Case No. 152/85.

However, the order of sentence dated 30-1-1987 passed by the learned Sessions Judge is modified to the extent that the accused appellants Shanti Lal, Rajni Kant and Sardar Khan are sentence for the offence under Sections 342 and 323, I.P.C. to the period already undergone by them.

Since the accused appellants are on bail they need not surrender. Their bail bonds are hereby cancelled.