

(2017) 03 RAJ CK 0011
In the Rajasthan High Court
Case No : 315 of 2015

State of Rajasthan

APPELLANT

Vs

Babu Khan son of Khinwar Khan

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 324](#),
[Section 447](#), [Section 307](#) &c

Citation : (2017) 03 RAJ CK 0011

Hon'ble Judges : Vijay Bishnoi

Bench : SINGLE BENCH

Advocate : J.P. Bhardwaj, Dron Kaushik

Final Decision : Dismissed

Judgement

1. The matter comes up for consideration of application under Section 5 of the Limitation Act with a prayer to condone the delay of 512 days in filing this criminal leave to appeal.
2. After hearing learned counsel for the parties, the application under Section 5 of the Limitation Act is allowed and the delay of 512 days in filing this criminal leave to appeal is condoned.
3. With the consent of learned counsel for the parties, the matter is finally heard and decided.
4. This criminal leave to appeal has been preferred on behalf of the State seeking leave to file criminal appeal against the judgment dated 16.1.2014 passed by the Addl. Distt. & Sessions

Judge No.4, Jodhpur Metropolitan (for short "the trial court") in Sessions Case No.79/2012, whereby the trial court has acquitted the accused respondents for the offences punishable under Sections 307, 326 and 326 / 149 IPC while giving them benefit of doubt.

5. The trial court has convicted the accused respondents for the offences punishable under Sections 148, 323, 324 read with Section 149 and 447 IPC, however, granted benefit of probation instead of sentencing them. It is noticed that by this leave to appeal, the State has challenged only the acquittal of the accused respondents for the offences punishable under Sections 307, 326, 326 / 149 IPC and no grievance has been raised regarding granting benefit of probation to the accused respondents.

6. Brief facts of the case are that complainant - Dalle Khan has submitted a written report on 25.11.2016 to the SHO, P.S. Jhanwar, Distt. Jodhpur while alleging that on 24.11.2016, in the noon, when he along with his family members were sitting in their agricultural field, then, suddenly the accused respondents armed with weapons had forcibly entered into their house and fired a gun shot from a "desi katta" and sprinkled chilly powder and thereafter assaulted his father and the other family members. It is alleged that the accused respondents with the intention to kill had ran over a tractor on them and also torn clothes of the women.

7. The police has registered an FIR and started investigation. After investigation, the police has filed charge-sheet against the accused respondents for the offences punishable under Sections 148, 149, 323, 324, 326, 307 IPC. The trial court has framed charges against the accused respondents for the offences punishable under Sections 148, 323, 324, 326, 307, 447 read with Section 149 IPC.

8. The prosecution has produced as many as 15 witnesses and got exhibited 38 documents in support of its case. The statements of the accused respondents were recorded under Section 313 Cr.P.C. and the trial court after hearing learned Public Prosecutor, learned counsel for the accused respondents and after taking into consideration the evidence produced on behalf of the parties has acquitted the accused respondents for the offences punishable under Sections 307, 326, 326 / 149 IPC while giving them benefit of doubt, however, convicted them for the offences punishable under Sections 148, 323, 324 / 149 and 447 IPC but instead of sentencing the accused respondents for the aforesaid offences has granted them benefit of probation.

9. Learned Public Prosecutor has submitted that the prosecution has proved the guilt of the accused respondents by producing reliable and cogent evidence for the offences punishable under Sections 307, 326 and 326 / 149 IPC, however, the trial court while ignoring the said evidence has illegally acquitted the accused respondents for the aforesaid offences. Learned Public Prosecutor has argued that Dr.Kamlesh Choudhary (PW-8) in his statement has clearly said that the injury No.1 of injured Kammu Khan was dangerous to life and he has given the said report after examining the said injury. It is also contended that all the accused persons had brutally assaulted the injured persons and from that, it can be gathered that they had intention to kill the father of the complainant and his other family members. It is also argued that the injured prosecution witnesses have also specifically stated that the accused persons attacked with the intention to kill them and in such circumstances, it is clear that enough evidence is available against the accused respondents for convicting them for the offences punishable under Sections 307, 326 and 326 / 149 IPC.

Learned Public Prosecutor has therefore prayed that it is a fit case, in which, leave may be granted to file criminal appeal against the impugned judgment.

10. Per contra, learned counsel for the accused respondents has argued that the trial court after meticulously examining the evidence produced by the accused respondents has rightly acquitted them for the offences punishable under Sections 307, 326 and 326 / 149 IPC as there is no evidence available on record to prove the guilt of the accused respondents for the aforesaid offences. Learned counsel for the accused respondents has therefore prayed that this leave to appeal filed by the State may be dismissed.

11. Heard learned Public Prosecutor, learned counsel for the accused respondents, perused the impugned judgment and carefully scrutinized the record.

12. It is not in dispute that all the injured persons except Bhike Khan had received simple injuries. The injured Bhike Khan had received a grievous injury on the palm of his hand, however, he in his statement has failed to identify that which of the accused caused the said injury. From the statement of Dr.Kamlesh Choudhary (PW-8), it is clear that his opinion regarding the injury No.1 of Kammu Khan that the same is dangerous to life is also not based on any material as he has simply opined that if the injured is not getting treatment on time, the injury may be dangerous to life. From the statements of the other witnesses, it is clear that though they have stated that the accused respondents attacked them with the intention to kill but looking to the nature of injuries received by them, it cannot be said that the accused respondents had any intention to kill the complainant party, however, they had intention to cause injuries to them.

13. Having considered the prosecution evidence, this Court is of the opinion that the trial court has not committed any illegality in acquitting the accused respondents for the offences punishable under Sections 307, 326 and 326 / 149 . Hence, no case for grant of leave to appeal is made out.

14. Resultantly, this criminal leave to appeal being bereft of force is hereby dismissed.