
(2006) 04 RAJ CK 0056
In the Rajasthan High Court
Case No : Criminal Appeal No. 82 of 1985

Suraj Mal and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 326
Probation of Offenders Act, 1958 — Section 4

Citation : (2006) CriLJ 2663 : (2006) 2 RLW 1680 : (2006) 4 WLC 235

Hon'ble Judges : K.C. Sharma, J

Bench : Single Bench

Advocate : Sanjay Mehrishi, for the Appellant; Nirmla Sharma, Public Prosecutor, for the Respondent

Judgement

K.C. Sharma, J.—This appeal by appellants arises out of the judgment and order dated 31.1.1985 passed by the learned Sessions Judge, Bundi, whereby the learned Judge has convicted and sentenced the accused appellants in the following manner:

Appellant Suraj Mal:

For offence u/s 326 IPC:

Two years" rigorous imprisonment with a fine of Rs. 500/-, in default thereof to further undergo six months simple imprisonment.

Appellant Gyarsi Lal:

For offence u/s 324 IPC

Instead sentencing to the term of imprisonment, he has been extended the benefit of Section 4 of the Probation of Offenders Act.

2. Learned Counsel for the appellant has kept confined his argument only to the extent that in view of the evidence on record, the conviction of appellant

Surajmal u/s 326 IPC cannot be sustained and is liable to be quashed. At the most, the evidence discloses the offence u/s 324 IPC. Learned Counsel argued that according to injured himself, appellant Surajmal inflicted one "Gandasi" blow on his head, whereas the injury report discloses two injuries, one on forehead and another on occipital and parietal region, with fracture of parietal bone. Both the injuries have been stated to be grievous in nature. In this background, learned Counsel contended that there is no evidence to show as to which of those two injuries was given by appellant. In support of his argument, learned Counsel has relied upon a decision of the Apex Court in Ram Lal Vs. Delhi Administration, wherein their Lordships have observed as under:

...Since the evidence clearly discloses that two lathi blows had been given on the head and there is no evidence which of these two was given by the appellant, the benefit of doubt must go to him. He may have given the fatal blow or he may have given the blow which did not prove fatal....

3. I have given my thoughtful consideration to the above argument and gone through the evidence and material on record. PW 2 injured Chhotu Lal has categorically deposed in his examination in chief that appellant Surajmal inflicted a Gandasi blow on his head, while another appellant inflicted "Gandasi" blow on his left hand. PW 1 Bajranglal, an eye witness of the incident has also deposed that appellant Suraj Mal inflicted Gandasi blow from its front side on the head of Chhotu Lal. PW3 Nemi Chand, brother of injured, who reached the place of incident on hearing the cries of his brother has deposed that the appellants and other accused had encircled his brother who was lying on the earth and the accused were belabouring him. Appellant Surajmal had a Gandasi, while others had axe with them. All these accused were belabouring his brother. Similar is the statement of PW4 Radhey Shyam another brother of injured. It is thus evident that none of the eye witnesses including injured himself has been able to specifically state that as to on which part of the head of injured the appellant struck "Gandasi" blow. The injury report Ex.P5 discloses injury No. 1 i.e., incised wound of about 5" x 3/4" x 3/4" on frontal bone of forehead of skull and injury No. 2 i.e., incised wound of about 4" x 3/4" x 3/4" on occipital parietal bone of skull. Both the injuries have been described as grievous. The X-ray plates are Exs. 6 and 7, according to which there was fracture of parietal bone. PW6 Dr. Naveen Saxena who has described both the injuries as grievous has not been able to explain as to how the fracture of parietal bone would result in making the injury on frontal bone as grievous. Since, the evidence clearly discloses that there were two injuries on the head of Injured and there is no evidence as to which of those two injuries was caused by the appellant, Inasmuch as the appellant had struck a single blow on the head of Injured, appellant Suraj Mal cannot be held responsible for causing fracture of parietal bone and hence his conviction u/s 326 IPC cannot be sustained and is liable to be set aside. Instead, he is liable to be convicted for offence u/s V IPC.

4. On the question of sentence, learned Counsel for the appellants contended

that appellant deserves to be extended the benefit of Probation of Offenders Act, inasmuch as he is 65 years of age by now and has been facing prosecution for last more than 24 years and that co-accused has also been extended the benefit of Probation of Offenders Act by the learned Trial Court.

5. Considering the submissions made above, I feel that ends of justice would be met if the benefit of Section 4 of the Probation of Offenders Act is extended to the appellant, for which Mrs. Sharma, learned Public Prosecutor has no objection.

So far as conviction of another appellant Gyarsi Lal u/s 324 IPC is concerned, learned Counsel has frankly conceded that he does not want to challenge the same and in my opinion, rightly so. The learned Trial Court, having considered the evidence of eye witnesses who have deposed that appellant Gyarsi Lal inflicted injury on the left hand of injured, coupled with the medical evidence in true perspective, has rightly held appellant Gyarsi Lal guilty for offence u/s 324 IPC. Instead sentencing appellant Gyarsi Lal, the Trial Court on consideration of facts and circumstances of the case has extended the benefit of Section 4 of the Probation of Offenders Act.

6. Resultantly, this appeal is allowed in part. While maintaining the judgment and order of the Trial Court qua appellant Gyarsi Lal, the conviction of appellant Surajmal is altered to one u/s 324 IPC. However, instead sentencing him at once to any punishment, I direct that he be released on his entering into a bond of Rs. 1000/- to appear and receive sentence whenever called upon to do so during the period of one year and in the meantime to keep the peace and be of good behaviour. The appellant is directed to furnish the bonds with a period of one month from today to the satisfaction of the Trial Court.