

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

JUDGMENT

S.B. CRIMINAL APPEAL NO. 112/2003

IMRAN & ANR. Vs. THE STATE OF RAJASTHAN

S.B. CRIMINAL APPEAL UNDER SECTION
374 (2) CR.P.C. AGAINST THE
JUDGMENT AND ORDER DATED
06.01.2003 PASSED BY THE
ADDITIONAL SESSIONS JUDGE (FAST
TRACK) NO.1, KOTA IN SESSIONS CASE
80/2002.

Date: 29/08/2008.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. N.A. Naqvi for the accused-appellants.
Mr. B.S. Chhaba, Public Prosecutor for the State.

The present criminal appeal is directed against the impugned judgment dated 06.01.2003 passed by the Additional Sessions Judge (Fast Track) No.1, Kota, whereby the accused-appellant No.1 Imran has been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 1,000/-, in default of payment of fine to further undergo imprisonment for one year, whereas the accused-appellant No.2 Irfan has been convicted under Sections 307/34 and 324 IPC and sentenced to undergo rigorous imprisonment for 5 years with a fine of Rs. 500/-, in default of payment of fine to further undergo simple imprisonment for six months under Section 307/34 IPC and to undergo imprisonment for 3 years with a fine of Rs. 500/-, in default of payment of fine to

further undergo simple imprisonment for six months under Section 324 IPC. Both the sentences were ordered to run concurrently.

2. Brief facts of the case are that on 04.06.2002, the police recorded Parcha-Bayan Ex.P1 of injured Smt. Kherunisa, who was admitted in the Female Surgical Ward, BMBS Hospital, Kota, wherein it was alleged that in the morning at 10.30 a.m., when she was sitting on her shop and his son Anchu @ Sarfaraj had gone to the house of her sister-in-law Bilkis, accused Imran, Irfan and one other person entered in the house and accused Imran inflicted a sword blow on the stomach of Anchu @ Sarfaraj whereas accused Irfan caused injury to her. After giving beating, all of them fled away and they were taken to the hospital by Smt. Mamta and Noornisha.

3. On the basis of the aforesaid Parcha-Bayan Ex.P1, FIR No. 103/2002 (Ex.P14) was registered at Police Station Kishorepura, Kota for the offence under Section 307, 452, 34 IPC and investigation commenced. After completing the investigation, the police filed charge-sheet against the accused appellants for the offence under Sections 307, 452, 34 IPC.

4. The trial Court on the basis of the evidence and material collected during investigation

and placed before it and having considered the rival submissions of the respective parties, framed charges for the offence under Sections 307, 452 IPC against the accused-appellant Imran, whereas charges for the offence under Sections 307/34, 452, 324 IPC were framed against accused-appellant Irfan. Both the accused-appellants denied the charges and claimed to be tried. The prosecution, in order to prove its case, examined as many as 12 witnesses and also got exhibited some documents. The statements of the accused-appellants were recorded under Section 313 Cr.P.C., wherein they denied the story as setup by the prosecution.

5. The Additional Sessions Judge (Fast Track) No.1, Kota having heard rival submissions of the respective parties and after going through the evidence and material available on the record, vide its impugned judgment dated 06.01.2003 convicted and sentenced the accused-appellants in the manner stated herein above.

6. The main challenge to the impugned judgment dated 06.01.2003 is on the ground that keeping in view the facts and circumstances of the case and the manner in which the incident alleged to have taken place, the sentence awarded to the accused-appellants by the trial Court is excessive and there is no justification to award excessive sentence. It

is also submitted that there are several infirmities and contradictions in the statements of the witnesses and, therefore, no reliance can be placed upon the testimony of these witnesses.

7. Further the statements of the accused-appellants under Section 313 Cr.P.C. are not recorded in accordance with the provisions of law as all incriminating circumstances were not put to the appellants and proper opportunity of defence has not been provided to them.

8. It is also contended that as per Ex.P10, a knife has allegedly been recovered from accused-appellant Irfan, whereas in the Parcha-Bayan Ex.P1, the complainant has stated that Irfan was armed with a sword. Further the prosecution has shifted the place of occurrence because as per Parcha-Bayan Ex.P1, the occurrence alleged to have taken place inside the shop, whereas as per the statement of PW1 Kherunisha, occurrence took place outside the shop.

9. Learned counsel for the accused-appellant referred the statements of the prosecution witnesses as also the injury report of the injured and in support of his submissions, he placed reliance on the judgment rendered by the Division Bench of this Court in the case of **Jai Singh & Ors. Vs. The State of Rajasthan, reported in 2004(1) Cr.L.R.(Raj.) 442,**

wherein the Division Bench convicted the accused Jai Singh and Om Prakash under Section 324 and 324/34 IPC respectively instead of Section 307 and 307/34 IPC.

10. Learned counsel for the accused-appellants submits that in view of the ratio decided by the Division Bench of this Court, here in the instant case also, the case does not travel beyond Section 324 IPC and at the most the offence under Section 324 IPC is made out against the accused-appellants and the sentence awarded to them by the trial Court is excessive. It is also contended that the accused-appellant Imran is in jail for a period of more than 6 years and 2 months.

11. On the other hand, learned Public Prosecutor appearing for the State has strongly controverted the submissions made on behalf of the accused-appellants and submits that the accused-appellant Imran inflicted injury by sword and as the medical report of injured Anchu @ Sarfaraj, injury No.1 was opined as grievous in nature and sufficient to cause death in the ordinary course of nature. Therefore, the trial Court has rightly convicted the accused-appellant Imran under Section 307 IPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 1,000/-. Similarly the accused-appellant Irfan has rightly been convicted

under Sections 307/34 and 324 IPC and sentenced to undergo rigorous imprisonment for 5 years with a fine of Rs. 500/- under Section 307/34 IPC and to undergo rigorous imprisonment for 3 years with a fine of Rs. 500/- under Section 324 IPC.

12. Learned Public Prosecutor also referred Section 464 of the Code of Criminal Procedure, which reads as under:-

"464. Effect of omission to frame, or absence of, or error in, charge.- (1) No. finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash conviction."

13. In support of his submissions, the learned Public Prosecutor also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Ramesh Dass Vs. Raghu Nath & Ors.**, **reported in 2008 Cr.L.J. 1945.**

14. I have heard learned counsel for the accused-appellant, learned Public Prosecutor for the State and have also carefully gone through the impugned judgment dated 06.01.2003 passed by the Additional Sessions Judge (Fast Track) No.1, Kota

15. I have also carefully scanned the judgments referred by the respective parties and minutely gone through the evidence and the material available on the record, more particularly the injury reports and the statements of the prosecution witnesses.

16. I have considered the submissions made on behalf of the accused-appellants that at the most the offence under Section 324 IPC is made out against the accused-appellants and as per Section 324 IPC, the maximum punishment is imprisonment for 3 years.

17. The submissions of the learned counsel for the accused-appellants with regard to accused-appellant Irfan is that the benefit of probation be extended in favour of accused-appellant Irfan as

held by the Division Bench of this Court in the case of **Jai Singh & Ors. Vs. The State of Rajasthan (supra)**, wherein the Division Bench has observed that "Surgeon was not examined to prove operation note- There was no evidence to show that injuries sustained by Injured were either grievous or sufficient to cause death- Held, Conviction of appellants converted from offence u/ss. 307 & 307/34 IPC to Sec. 324 and 324/34 IPC."

18. I have carefully gone through the judgment rendered by the Division Bench of this Court in the case of **Jai Singh & Ors. Vs. The State of Rajasthan (supra)**, referred by the learned counsel for the accused-appellants, wherein the accused Jai Singh was convicted under Section 302 IPC and accused Om Prakash and Balbir Singh were convicted under Section 302/34 IPC and each were sentenced to life imprisonment with a fine of Rs. 2,500/-, in default of payment of fine to further undergo simple imprisonment for one year. Further the accused Jai Singh was convicted under Section 307 IPC also and accused Om Prakash and Balbir Singh under Section 307/34 IPC and each were sentenced to suffer imprisonment for seven years with a fine of Rs. 1,000/-, in default of payment of fine to further undergo simple imprisonment for six months.

19. Applying the ratio decided by the Division

Bench to the present case, I have carefully gone through the injury report Ex.P6 of injured Kherunisha as well as the injury report Ex.P8 of injured Anchu @ Sarfaraj and the statement of PW8 Dr. P.K. Tiwari.

20. As per the statement of PW8 Dr. P.K. Tiwari, who at the relevant time was posted as Medical Jurist, MBS Hospital, Kota, on 04.06.2002 he examined injured Kherunisha and found one stab wound of 3x1 cm. over epigastric region just right to mid line and this injury was opined as simple in nature.

21. PW8 Dr. P.K. Tiwari further stated that on the same day at about 01.20 p.m., he examined injured Sarfaraj @ Anchu and found one stab wound of 3x1 cm. over anterior aspect of abdomen left side and this injury was opined as grievous in nature and dangerous to life.

22. As per the prosecution case, accused-appellant Imran inflicted injury to injured Anchu @ Sarfaraj, which as per the statement of doctor, was observed as grievous in nature and dangerous to life, whereas the injury sustained by injured complainant Kherunishi has been attributed to accused-appellant Irfan and the same, as per the statement of doctor, was observed as simple in nature.

23. The ratio decided by the Division Bench of this Court in the case of **Jai Singh & Ors. Vs. The State of Rajasthan (supra)** is not applicable to the facts and circumstances of the present case and is of no help to the accused-appellants.

24. Upon careful perusal of the impugned judgment dated 06.01.2003, so far as accused-appellant No.1 Imran is concerned, this Court is of the view that he has rightly been convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 1,000/- as the injury sustained by injured Anchu @ Sarfaraj which has been attributed to accused-appellant Imran was found grievous in nature and dangerous to life.

25. Therefore, as observed herein above, so far as accused-appellant No.1 Imran is concerned, the impugned judgment dated 06.01.2003 passed by the Additional Sessions Judge (Fast Track) No.1, Kota requires no interference whatsoever by this Court and the conviction of the accused-appellant under Section 307 IPC and the sentence awarded to him thereunder are confirmed.

26. In the result, as regards accused-appellant No.1 Imran, his appeal fails being devoid of merit and the same is hereby dismissed.

27. So far as accused-appellant No.2 Irfan is concerned, who has been convicted under Sections 307/34 and 324 IPC, as per the statement of PW8 Dr. P.K. Tiwari, the injury sustained by the complainant-injured Kherunisha was observed as simple in nature and the aforesaid injury has been attributed to accused-appellant Irfan, therefore, looking to the facts and circumstances of the case, the conviction and sentence awarded to the accused-appellant Irfan under Section 307/34 IPC deserves to be set-aside, but looking to the injury received by the injured-complainant Kherunisha and considering the other facts and circumstances of the case, the conviction and sentence awarded to the accused-appellant Irfan under Section 324 IPC deserves to be confirmed.

28. In the result, the conviction and sentence of the accused-appellant No.2 Irfan under Section 307/34 IPC is set aside but his conviction under Section 324 IPC and the sentence awarded thereunder i.e. imprisonment for 3 years with a fine of Rs. 500/-, in default of payment of fine to further undergo simple imprisonment for six months, is hereby confirmed. The accused-appellant Irfan is on bail as the sentence awarded to him was suspended by the co-ordinate Bench of this Court vide order dated 23.01.2003. His bail bonds stand cancelled and he be taken in custody forthwith to serve out the

remaining part of his sentence as awarded under Section 324 IPC.

29. Accordingly, the appeal of accused-appellant Irfan stands partly allowed and the impugned judgment dated 06.01.2003 passed by the Additional Sessions Judge (Fast Track) No.1, Kota, so far as accused-appellant Irfan is concerned, is modified as observed herein above.

(K.S. RATHORE), J.

/KKC/
(Reserved/Hearing)

