

Rajasthan High Court

Kacharia vs The State Of Rajasthan on 11 August, 1976

Equivalent citations: 1976 WLN UC 431

Author: D Gupta

Bench: D Gupta

JUDGMENT D.P. Gupta, J.

1. This case was fixed today for arguments on the bail application, but on the request of the learned Counsel for the appellant Kacharia and with the consent of the learned Public Prosecutor the entire appeal was taken up for hearing.

2. Learned Counsel for the appellant in this appeal confined his arguments to the submission that Kacharia appellant being below 21 years of age, he should be given benefit of the provisions of Section 4 read with Section 6 of the Probation of Offenders Act and the learned Counsel did not advance any argument in respect of the conviction of the appellant Kacharia for committing an offence under Section 304 Part II I.P.C..

3. It appears from the testimony of PW 3 Bhanwaria who is an eye witness of the occurrence, that the appellant wielded a lathi which struck on the head of Smt Garwari as a result of which she fell down and became unconscious and later on succumbed to her injuries. Kacharia appellant also made an extrajudicial confession. In this respect to PW 4 Guda Ram PW. 8 Dr. P.P. Gandhi also testified about the injuries suffered by Smt Ganwari. In these circumstances, the guilt of the appellant is fully proved by the prosecution and the learned Counsel for the appellant, in my opinion, rightly did not advance any argument on the merits of the case. Learned Sessions Judge held that in a fit of anger the appellant gave a lathi blow on the head of the deceased, Smt. Ganwari, as a result of which she died on account of extra-dural haemorrhage, and came to the conclusion that the appellant had committed an offence punishable under Sections 304 Part II, 323, 447 I.P.C. and sentenced him to four years' rigorous imprisonment under Section 304 Part II I.P.C. and to one month's rigorous imprisonment under Section 323 I.P.C. and one month's rigorous imprisonment under Section 447 I.P.C.

4. It is not in dispute that the appellant is about 16 years of age and that he has not been convicted on an earlier occasion. It has been argued by his learned Counsel that in the circumstances of the case the appellant should be given benefit of the provisions of the Probation of Offenders Act. Section 360 of the Code of Criminal Procedure provides that when a person under 21 years of age is convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against him then the Court may, having regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed, direct that the offender should be released on probation of good conduct-Section 6 of the Probation of Offenders Act also provides that when any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment, but not imprisonment for life, the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4 of the

aforesaid Act and if the Court passes any sentence of imprisonment on the offender it shall record its reasons for doing so. It has also been provided in the aforesaid Section that the Court shall call for a report from the Probation Officer for the purposes of satisfying it Self as to whether it would be desirable to deal with such an offender under Section 3 or 4 of the aforesaid Act and consider the report of the Probation Officer and any other informatics available to it relating to the character and physical and mental condition of the offender.

5. The report of the Probation Officer was called for in the present case and the Probation Officer, Jodhpur in his report dated August 7, 1976 has reported that Achaia appellant is about 16 years of age and his behavior during the four months' period of his confinement in prison was quite sociable and submissive. According to the aforesaid report of the Probation Officer, Kacharia is a boy of simple habits and he had no previous history of quarrelling of fitting in his village. Considering the report of the Probation Officer regarding the character of the convict, I think it proper that the appellant should not be kept in prison and exposed to the society of hardened criminals, who happen to be the inmates of jail. A Division Bench of this Court in Shri Ram v. The State 1973 RLW 495 bought it proper to give the benefit of the provisions of Section 6 of the Probation of Offenders Act to a boy under 21 years of age, who was convicted for an offence punishable under Section 304 Part II I.P.C..

6. In the result, I allow the appeal in part and while maintaining the conviction of the appellant Kacharia under Section 304 Part II I.P.C., I direct that he may be released on probation under Section 4 lead with Section 6 of the Probation of Offenders Act en executing a personal bond in the sum of Rs. 5000/- of his father and natural guardian Roopji with two sureties in the sum of Rs. 2500/- each to the satisfaction of the Sessions Judge, Jodhpur for maintaining peace and be of good behavior during a period of three years and to appear before the learned Sessions Judge, Jodhpur and receive the sentence wherever he is called upon to do so during the aforesaid period.