

A.F.R

Reserved.

Neutral Citation No. - 2023:AHC:211834

Court No. - 75

Case :- CRIMINAL REVISION No. - 325 of 1997

Revisionist :- Chhabi Nath

Opposite Party :- State of U.P.

Counsel for Revisionist :- K.N. Pandey, Santosh Kumar Yadav

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri K.N. Pandey, and Santosh Kumar Yadav, learned counsel for the revisionist, learned A.G.A for the State and perused the record.

2. This criminal revision has been preferred by the convicted accused-revisionist against the judgment and order of conviction and sentencing dated 28.08.1992 passed by Judicial Magistrate-I, Bareilly in Criminal Case No. 884 of 1992 – State Vs. Chhabi Nath & Ors., by which the accused-revisionist was convicted under Section 326 I.P.C and was sentenced to three years rigorous imprisonment without awarding any amount of fine and also against the judgment and order passed by Additional District & Sessions Judge-IX, Bareilly in Criminal Appeal No. 86 of 1992–Chhabi Nath Vs. State of U.P., by which the learned A.S.J. has affirmed the conviction of the convicted revisionist but reduced the sentence from 3 years to 1 ½ years rigorous imprisonment and Rs. 1,000/- fine with default stipulation to undergo three months additional incarceration in case of non deposition of fine.

3. In revision the convict-revisionist has taken ground that the lower court and the lower appellate court have not considered the statements of the complainant and the witnesses which were contradictory against the first information report. The learned trial court has acquitted the co-accused on the basis of doubtful statements of complainant and the witnesses, but the same benefit has not been given to the revisionist. The conviction of the revisionist is against the weight of evidence on record, which is bad in law. The sentence is too severe, hence the revision be allowed and the order of conviction, sentencing and fine as well be set aside.

4. In brief, facts of the case are that on 31.07.1988 at the time of incident, the victim Tilak Ram was caught hold by both the convicted accused Chhabi Nath and Dharam Pal. The accused Chhabi Nath gnawed the nose of Tilak Ram with his teeth. Another accused Dharam Pal was exonerated and was acquitted from the charge. No cross appeal had been preferred by the State against his acquittal.

5. During the course of trial following witnesses were examined.

- (I). P.W 1 – Tilak Ram, victim (informant) has proved the F.I.R version (Ex.Ka-1) beyond any reasonable doubt.
- (ii) P.W 2 – Ram Murti Lal and P.W. 3 Har Prasad, independent witnesses have deposed in favour of prosecution and have also proved the prosecution version.

(iii) P.W 4 – Dr. S.V. Ahmed, who had examined the injured had proved his injury report (Ex.Ka-2), and has opined that the injuries of the informant was grievous in nature and the nose of the informant has permanently been disfigured.

(iv) P.W 5 – Aichal Singh, has proved the *Chik* F.I.R (Ex.Ka-3), Case Kaymi G.D (Ex.Ka-4), Site Plan (Ex.Ka- 5) and charge-sheet (Ex.Ka-6).

6. After closure of the evidence, statements of the accused persons were recorded under Section 313 Cr.P.C, in which they denied the prosecution versions, charge and evidences adduced by the prosecution, but they refused to produce any evidence in defence. The appellate court as well as the trial court had given concurrent finding regarding the facts of the case and have concluded that the convict-revisionist – Chhabi Nath bit the nose of the informant – Tilak Ram by his teeth and caused grievous injury to him, which disfigured his nose and face, which is covered under Section 326 I.P.C. Though, no defence evidence was produced by the convict-revisionist, but it was argued from the defence side that the alleged injury would have been caused by falling on broken piece of glasses and scattered bamboo, which was not accepted by both the courts below.

7. During the course of argument only one point has been argued by the learned counsel for the revisionist that in several cases the Hon'ble Apex Court and High Courts have held that since the teeth of a human being is not a deadly weapon as defined under Section 326 I.P.C,

hence, if any injury by teeth biting occurs, the same would not attract Section 326 I.P.C.

8. In this regard, the learned counsel for the revisionist relied upon the judgment in ***Shakeel Ahmed Vs. State (Nct of Delhi) 2001 0 (Supreme) SC 911***, in which the assailant had bitten the index finger and had caused the injury. It was observed by the Hon'ble Apex Court that the teeth of a human being cannot be considered as deadly weapons as per the description of deadly weapons enumerated under Section 326 I.P.C, and the offence cannot escalate to Section 326 I.P.C, hence the case best remains only under Section 325 I.P.C. Therefore, the conviction was converted into Section 325 read with Section 34 of the I.P.C and only rigorous imprisonment for a period of six months besides fine of Rs.1,000/- was awarded and the sentence was accordingly modified.

9. Contrary to that the learned A.G.A for the State relied on the judgement in ***Jamil Hassan Vs. State of U.P. 1974 Crl.J. 867*** in which it has been held by this Court that the tooth is an instrument for cutting.

10. In ***Chaurasi Manjhi Vs. State of Bihar, A.I.R 1970 Patna 322*** Mr. Justice Untwalia held that the tooth is instrument for cutting and serves as weapons of offence and defence. Injury by tooth bite is offence under Sections 324 or 326 I.P.C depending upon whether injury is simple or grievous.

11. In ***Gopal Bhai Chhagan Lal Soni Vs. State of Gujrat, (1972) 13 Guj L.R 848*** contrary view has been expressed.

12. In ***Jagat Singh and another Vs. State of Delhi 1984 SCC Online Delhi 93***, the Division Bench held that “We are of the view that tooth is an instrument for cutting within the meaning of Section 324 of the I.P.C. P.W-10, Dr. Bajaj has described the injury on the ear to be a grievous injury. The Doctor opined the injury to be grievous because it has caused dis-figuration of the face of Lal Chand. We are of the view that the offence committed by Suresh would fall under Section 326 of the I.P.C. Suresh is a young man aged about 22. We feel that it would serve no useful purpose to send Suresh Appellant to jail. We, therefore, direct that in lieu of unexpired period of the sentence of imprisonment imposed on him he shall pay a fine of Rs.2,000/- This fine shall be in addition to the fine of Rs.250/- imposed on him by the trial judge..... The fine of Rs. 2,000/- , if realized, shall be paid to Lal Chand.

13. All the aforesaid pronouncements referred by the prosecution are pronounced by the different High Courts. The judgment *Sakeel Ahmed (supra)* is pronounced by the Apex Court, in which the Apex Court has clearly concluded that the teeth of human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 I.P.C. In such a situation, the alleged injury caused by the revisionist Chhabi Nath to the informant Tilak Ram would fall under Section 325 I.P.C which is meant for the punishment for voluntarily causing grievous hurt under which if a person is found guilty, may be punished for seven years imprisonment and fine also.

14. This is the case of the year 1988. Since then more than 35 years have been elapsed. As per records earlier, during the course of the trial and appeal, the convict revisionist has been in jail for two months and thereafter since 04.01.2023, he is continuously in jail till date. According to this Court, considering the long time pendency of the case and no any other criminal antecedent to the credit of the revisionist, a lenient view with regard to the sentencing under Section 325 I.P.C would be better and would also meet the ends of justice. According to this Court one year's simple imprisonment and Rs.1,000/- fine would be sufficient. Thus, the revision is liable to be decided accordingly.

ORDER

15. The revision is partly allowed. The conviction under Section 326 I.P.C is converted into Section 325 IPC. The convicted-revisionist Chhabi Nath is awarded one year's simple imprisonment and Rs.1,000/- fine which has to be deposited within a month. If the fine is not deposited, he shall serve one month's additional incarceration in lieu of non-deposition of fine.

16. A copy of this order be sent immediately to the Judicial Magistrate Ist Bareilly, for compliance.

Order Date :- 03.11.2023.
Vinod.

[Umesh Chandra Sharma]