

Neutral Citation No. - 2023:AHC-LKO:54581

A.F.R

Reserved on 15.05.2023.
Delivered on 11.08.2023.

In Chamber.

Case :- CRIMINAL REVISION No. - 374 of 2010

Revisionist :- Gaya Prasad Shukl

Opposite Party :- State of U.P.

Counsel for Revisionist :- Anil Kumar Tripathi

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Anil Kumar Tripathi, learned counsel for the revisionist, Sri Dinesh Kumar Gupta, learned A.G.A for the State and perused the record.

2. The instant criminal revision under Sections 397/401 Cr.P.C has been preferred by the revisionist against the judgment and order dated 24.09.2010 passed by the Additional Sessions Judge / Special Judge (SC ST Act), Court No. 8, District Sultanpur, in Criminal Appeal No. 15 of 2009 (*Gaya Prasad Shukl*) *Versus State of U.P*), convicting the revisionist under Section 353 I.P.C for one year rigorous imprisonment and Rs. 1,000- as fine, and in case of default additional two month's rigorous imprisonment, under Section 504 I.P.C for six month's rigorous imprisonment and for Section 506 I.P.C one years' rigorous imprisonment and also against the judgment and order dated 25th March, 2009 passed by Chief Judicial Magistrate, Sultanpur in Criminal Case No. 2076 of 2002, Crime No. 457 of 1994, (*State Vs. Gaya Prasad Shukl*), Police Station Kotwali Nagar, District Sultanpur, under the aforesaid Sections by which, the accused was convicted and sentenced under Section 353 I.P.C for two years rigorous imprisonment and Rs.1,000/- fine under Section 504 I.P.C one month's imprisonment and Rs.500/- fine under Section 506 I.P.C two year's simple imprisonment with default

of stipulation. It was also directed by both the courts below that all the sentences shall run concurrently.

3. In brief, facts of the case are that on 15.05.1994 at about 3:00 p.m. Anil Kumar Mishra, Collection Peon and Tulsi Prasad Mishra, Collection Ameen, moved a written complaint for lodging an F.I.R stating therein that on 15.05.1994 when they both went to village Palhipur to recover Rs.13,399/- as arrears of Bank and informed about the arrest warrant and tried to take him to the *Tehsildar* Sadar, Sultanpur, he got angry and pushed them and started abusing after that he said he was coming with country made pistol and shoot on both of them and will tear their stomach. He also threatened that he will cut themselves into pieces within a week, you go and do whatever you want to do, I will see who will be the witness from your side.

4. It was also written that the accused is a very influential and bad person, none is ready to state against him as he is a person of dominating personality.

5. On the basis of the aforesaid written complaint, a complaint was registered on 16.05.1994 at Crime No. 457 of 1994 under Sections 353, 224, 504 and 506 I.P.C. S.I. Jaipal Singh Bishnoi investigated the case and after collecting the evidence submitted the charge-sheet (*Ex.Ka-6*) under the aforesaid Sections.

6. The cognizance was taken and charge under Section 353, 504 and 506 I.P.C was framed. The prosecution examined the following witnesses:

1. P.W 1. Tulsi Prasad Mishra, Collection Ameen.
2. P.W. 2. Anil Kumar Mishra, Collection Peon.
3. P.W. 3. Constable Rajendra Prasad Mishra.

After closure off the statement of the accused under Section 313 Cr.P.C was recorded, in which he denied the

allegation and stated that on account of pressure of recovery, the witnesses had testified themselves against him. He also stated that no information regarding Proforma Nos. 69 and 70 was given to him, which does not bear his signature.

7. **In defense D.W 1 - Ram Milan** of the same village has been examined.

In this revision the revisionist-accused has taken grounds that the trial court and the learned appellate court failed to appreciate the evidence available on record and they erred in convicting and sentencing the revisionist, there is no material on record to carry conviction against the revisionist. There was no evidence regarding the service of the demand notice called as Proforma 69 upon the revisionist and there is mandatory provision regarding the service of the notice; and the same has been ignored by the courts below as without following the procedure of Proforma 69, Procedure of Section 70, recovery notice cannot be issued. No independent witness has been produced by the prosecution, because the illegal demand of the complainant was not fulfilled by the revisionist, the prosecution has been launched by the informant, there is no signature of the revisionist on the Proforma 69. The revisionist has no knowledge about the Proforma 70. The sentence is too severe. For the above reasons, the order passed by the courts below be set aside.

8. It is no where denied that Rs.13,399/- of the bank was not due against the revisionist.

9. From the evidence of P.W. 1 and P.W 2, it has been proved that before reaching to the revisionist with arrest warrant issued on Proforma 70, they had also met with the revisionist-accused and had requested to pay the amount due against him. They had proved that Proforma 69 was served upon the revisionist in proper manner about one week ago of the

incident and at that time it was signed by the accused before the witness, but when the amount due was not paid, an arrest warrant on Proforma 70 was issued and in compliance to that, P.W 1 and P.W 2 had gone to arrest the accused-revisionist.

10. It has been proved from the evidence that both the witnesses of fact were pushed by the accused and he got him free from their custody and also abused and threatened as described above. It has also been proved that when they could not arrest the accused and the accused did not pay the amount due, the matter was reported to the Tehsildar and on his direction, this case had been lodged.

11. So far as the non-examination of the independent witnesses is concerned, it has to be seen that this incident had occurred in the village of the accused, therefore no one came forward to testify himself in support of the prosecution. However, it has not been proved that P.W 1 & P.W 2 were inimical to the accused and had any interest in false implication of the accused in a criminal case. Both the witnesses of the fact may be treated to be an injured witness, therefore their testimony cannot be denied.

12. In ***State of Haryana Vs. Krishan, A.I.R 2017 SC 3125, Bhagwan Jagannath Markand Vs. State of Maharashtra, (2016) 10 SCC 537.*** It has been held that deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence. On the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered with the injuries during the said incident.

13. In ***Mukesh Vs. State of NCT of Delhi & Others, AIR 2017 SC 2161 (Three-Judge Bench),*** and in ***Sadhu Saran Singh Vs. State of U.P, (2016) 4SCC 357.*** It has been held

that if a witness examined in the Court is otherwise found reliable and trustworthy, the fact sought to be proved by that witness need not be further proved through other witnesses though there may be other witnesses available who could have been examined but were not examined. It is settled law that non-examination of eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of pen. Court can convict an accused on statement of sole witness even if he is relative of the deceased and non examination of independent witness would not be fatal to the case of prosecution.

14. In this case D.W - 1 is a neighbour of the accused and his status and evidence has been properly evaluated by the learned appellate court who has rightly concluded that he was deposing, only being neighbour and villager of the accused.

15. This defence witness has also accepted that probably he would have gone to his relation on 15.05.1994, which is the date of occurrence, therefore the evidence of D.W 1 becomes non trustworthy. There is no ground to reject the testimony of P.W 1 and P.W. 2 with regard to the facts of the case. So far as as the evidence of P.W. 3 is concerned, this witness has proved the documentary evidence as secondary evidence, because the I.O. was not available and in this regard, no argument has been advanced by the learned counsel for the revisionist.

16. The trial court and the learned first appellate court has properly discussed the facts and circumstances of the case and also the evidence available on record and has rightly concluded that the alleged offence had been caused by the accused revisionist and the prosecution has successfully proved the case against him beyond the reasonable doubt. Therefore, this Court is of the considered view that as far as the conviction is concerned, there is no merit in revision at all

and the order of conviction recorded by both the courts below is not liable to be interfered with.

17. So far as the sentencing is concerned, since it is a case of the year 1994 and about 29 years have been lapsed and the concerned Sections are triable by the Court of Magistrate, no injury had been caused by the accused. The revisionist has become a senior citizen and there is no pre or post criminal history of the accused, therefore it would be proper to enlarge the accused on probation rather to send him in jail for serving the sentence. Hence, this revision is liable to be decided accordingly.

18. In ***State of Karnataka Vs. Muddappa, (1999) 5 SCC 732*** it has been held as follows:-

"2. The learned Counsel for the appellant is not in a position to assail the acquittal of the accused under Section 302 I.P.C., but he vehemently contends that the Court did be not bear in mind germane considerations for releasing the accused on probation after convicting him under Section 304 Part II I.P.C. Whether the benefit of the Probation of Offenders Act could be extended in any particular case depends upon the circumstances of that case. Admittedly, there is no statutory bar for application of the Act to an offence under Section 304 Part II where the maximum punishment is neither death nor imprisonment for life. In that view of the matter and on examining the impugned judgment of the High Court, we find that the Court did consider the relevant material and then came to the conclusion that the accused should be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act. We see no infirmity with that order to be interfered with by this Court after this length of time, more so when nothing has been pointed out as to whether the accused has, in any way, violated the terms and conditions of allowing him on probation.

3. We, accordingly, dismiss this appeal. Bail bonds of the respondent stand discharged."

19. In the case of ***Mohd. Monir Alam Vs. State of Bihar, (2010) 12 SCC 26***, it was held as under:-

"8. We have considered Mr. Suri's submissions very carefully. We see from the documents that the appellant Md.Monir Alam has secured a Doctorate and is presently employed as a Senior Assistant Professor in the Department of Strategic and Regional Studies, University of Jammu and that he had secured this appointment in the year 1997. His professional attainments have also been provided to us which shows his expertise in his speciality and also portrays his association with prestigious organizations worldwide in the field of strategic studies. We are, therefore, of the opinion that his conduct and attainments after his involvement in this matter justifies his release on probation. We, accordingly, dismiss the appeal but direct that he shall be released on probation under Section 4 of the Probation of Offenders Act, 1958 on terms to be settled by the trial court."

And also in ***Krishna Deo and Others Vs. State, Criminal Appeal No. 735 of 1982***, it has been observed as under:-

"23. We are also not interfering with the conviction of appellants- Smt. Jalkall and Smt. Bhagwandel under Section 147 & 323/149 of the IPC. As discussed above, considering the facts and circumstances of the case, instead of sentencing the appellant no. 1 for the offence under Section 304 Part-II r/w Section 34, 147. 323/149 of the IPC., we think it proper in the interest of justice to release the appellant- Krishnadeo, after giving him the benefit of Section 4 of the Probation of Offenders Act. We are not inclined to interfere with the sentence passed against the appellant- Smt Jaikali. Smt. Bhagwander, who were only directed to pay fine. Appellant-Krishna Deo is directed to surrender in the court below. The learned court below is directed to release him as per the provisions of Section 4 of the Probation of Offenders Act. The learned court below shall take all coercive steps for realizing the fine from appellants-Jaikali and Bhagwandel, if the same has not been deposited by them."

ORDER

20. This revision is ***partly dismissed***, as far as the conviction under Sections 353, 504 and 506 I.P.C is concerned. This revision is partly allowed with regard to sentencing awarded by both the courts below and the accused revisionist is directed to remain on probation for a period of one year for his good conduct and behaviour rather to serve the sentence modified and awarded by the learned appellate court.

21. It is directed that within a period of thirty days from today, accused- Gaya Prasad Shukla shall execute two sureties bonds, personal bonds and an undertaking before the District Probation Officer, Sultanpur, to remain on probation on his good conduct and behaviour for one year, if he does so he shall not be send to jail otherwise he would be send to jail for serving the sentence as decided by the learned A.S.J / Special Judge (SC. ST Act), Court No. 08, Sultanpur.

22. The fine awarded by the learned appellate court would also be deposited within a period of thirty days from today otherwise he would serve the default of stipulation as directed by the appellate court.

23. A copy of this judgment along with lower courts record be sent back to the learned Chief Judicial Magistrate, Sultanpur to ensure compliance and for consignment.

Order Date :- 11.08.2023.

Vinod.

(Umesh Chandra Sharma, J).