

Neutral Citation No. - 2023:AHC-LKO:45270

Reserved on 23.5.2023

Delivered on 12.7.2023

Case :- CRIMINAL REVISION No. - 409 of 2009

Revisionist :- Ram Akbal Misra and others

Opposite Party :- State of U.P.

Counsel for Revisionist :- Anirudh Singh, Shobh Nath Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Manjive Shukla, J.

1. Heard learned counsel for the revisionists and learned Additional Government Advocate appearing for the State.

2. Revisionists have filed the present revision challenging therein the judgment and order dated 21.7.2009 passed by Judicial Magistrate-III, Faizabad in **Criminal Case No.891 of 2007** whereby they have been convicted for the offences punishable under **Sections 323, 324, 504, 336 IPC** and each have been sentenced to undergo one year simple imprisonment and the judgment and order dated 18.8.2009 passed by the Sessions Judge, Faizabad in **Criminal Appeal No.93 of 2009**, Ram Akbal Mishra and others vs. State of U.P. whereby the appeal has been dismissed and the order of conviction passed by the learned trial court has been upheld.

3. Facts of the case, in brief, are that on 11.11.1990 when the complainant came back to his house from Pura Bazar, then he saw that a branch of tree was cut and kept. The complainant asked his children about the aforesaid and then came to know that in spite of the fact that Ram Akbal Misra was requested not to put the branch of tree, he put the same and also abused. The complainant was sitting at his door at about 6.30 p.m., then accused Ram Akbal

Mishra armed with axe came from south at his door and then he asked from Ram Akbal Mishra in respect of the aforesaid branch of tree. Ram Akbal Mishra again began to abuse him and when he said to him to refrain from abusing, he had beaten him with axe and caused injuries in the left leg. Other accused also started throwing stones.

4. The FIR in respect of the aforesaid incident was lodged in Police Station Maharajganj, District Faizabad as Case Crime No.379/90 **under Sections 323 324, 504 and 336 IPC** and after investigation the police submitted charge sheet against the accused/revisionists in the competent court of law. Thereafter, the accused revisionists were charged under Sections 323/34, 324/34, 504 and 506 IPC. Thereafter, trial was concluded and the trial court vide judgment and order dated 21.7.2009 convicted the accused revisionists under Sections 323, 324 and 336 IPC and sentenced them to undergo simple imprisonment for one year with fine of Rs.1,000/- each. The accused revisionists challenged the aforesaid judgment and order dated 21.7.2009 passed by the trial court in **Criminal Case No.891 of 2007** by filing **Criminal Appeal No.93 of 2009**, Ram Akbal Mishra and others vs. State of U.P.

5. Learned Sessions Judge after considering the entire evidence available on record dismissed the aforesaid criminal appeal and upheld the order of conviction and sentence passed by the trial court.

6. Learned counsel appearing for the revisionists has prayed that the revisionists do not want to challenge the order of conviction and sentence dated 21.7.2009 passed by the trial court in Criminal Case No.891 of 2007 but he prays that since the revisionists have not been convicted for any offence prior to the aforesaid conviction order and even till date, therefore keeping in view the nature of

sentence and the time gap between the date of incident and the date of hearing of the present revision, they may be granted protection as provided under Section 4 of The Probation of Offenders Act, 1958.

7. In view of the aforesaid prayer made by the learned counsel for the revisionists, the order of conviction and sentence dated 21.7.2009 and the appellate order dated 18.8.2009 passed in Criminal Appeal No.93 of 2009 are upheld.

8. Now, this Court proceeds to consider the case of the revisionists in respect of their entitlement for protection of Section 4 of The Probation of Offenders Act, 1958.

9. I find that the revisionists before the trial court pleaded that since they have not been convicted for any offence prior to the aforesaid conviction order passed by the trial court and since under Sections 323, 324 and 336 IPC minimum punishment is not prescribed, as such they are entitled for protection of Section 4 of The Probation of Offenders Act, 1958 but the trial court in a very cursory manner has rejected their request.

10. I find that the trial court has convicted the revisionists under Sections 323, 324 and 336 IPC and has sentenced them with simple imprisonment of one year and fine of Rs.1,000/-. I also find that prior to the aforesaid conviction order dated 21.7.2009, the accused/revisionists have not been convicted for any offence by any competent court of law. It is also noticeable that under Sections 323, 324 and 336 IPC minimum punishment is not prescribed. Besides the aforesaid fact, there is one vital fact which weighs in the mind of the Court that the incident in question took place on 11.11.1990 and since then about 33 years have elapsed and the revisionists have now become too old. Therefore, after considering the facts and circumstances of the case in totality, this

Court comes to the conclusion that the accused/revisionists are entitled for protection of Section 4 of The Probation of Offenders Act, 1958.

11. In view of the aforesaid, instead of sentencing the revisionists under Sections 323, 324 and 336 IPC for one year simple imprisonment along with fine of Rs.1,000/-, it is provided that they each shall file two bonds to the tune of Rs.10,000/- coupled with the personal bond to the effect that they shall not commit any offence, shall be of good behaviour and shall maintain peace during the period of one year. If there is breach of any of the aforesaid conditions, they will subject themselves to undergo sentence before the concerned Magistrate as per rules. The bonds aforesaid be filed by the accused/revisionists within two months from the date of judgment.

12. Accordingly, this revision is **partly allowed** regarding sentence of the revisionists.

13. Let lower court record be sent back to the trial court concerned along with a copy of this order for compliance.

Order Date :- 12.7.2023

Salim