

Court No. - 28

Case :- CRIMINAL REVISION No. - 76 of 2009

Revisionist :- Hausila Prasad Tripathi

Opposite Party :- State of U.P.

Counsel for Revisionist :- Avinash Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Avinash Srivastava, learned counsel for the revisionist No.2 Prabhakar Tewari and learned AGA for the State.
2. This revision is being heard on behalf of revisionist no.2 Prabhakar Tewari and revision filed on behalf of revisionist no.1 has already been abated vide order dated 17.10.2022.
3. This criminal revisionist has been preferred with a prayer to set aside the judgment and order dated 05.02.2009, passed by the learned Additional Sessions Judge, Court no.9, Faizabad in Criminal Appeal no. 59 of 2006 (State of U.P. vs. Hausila Prasad and others) bearing Crime no. 21 of 1993 Police Station Bheethi, Ambedkar Nagar, whereby convicting the revisionists under Section 452, 323, 506 IPC., after modifying the sentence awarded by the IV ACJM., Faizabad in Criminal Case No.2821 of 2004, sentencing the revisionists under section 452 IPC to undergo simple imprisonment for one month and to pay fine of Rs.4000/- and in default to pay fine to further undergo four months additional imprisonment, further sentencing under Section 323 IPC to undergo imprisonment for one month and to pay

fine of Rs.1000/- and in default to pay fine to further undergo two months imprisonment and also sentencing the revisionists under section 506 IPC to undergo one month imprisonment and to pay fine of Rs.1000/- and in default to pay fine to further undergo two months imprisonment. All the sentences were directed to run concurrently.

4. Office has reported that in pursuance of the order passed by this Court dated 04.04.2023, a report has been furnished by the Chief Judicial Magistrate, Faizabad annexing the report of Jail Superintendent, Faizabad passed on 21.04.2023 wherein it has been stated that revisionist no.2 Prabhakar Tiwari had undergone total period of one month and two days in jail and also deposited 50% of fine.

5. The prosecution case, in brief, is that the informant had gone to District Court on 01.02.1993 to do pairvi of the criminal case of dacoity which was committed previously in his house. Both the revisionists were also accused in that case and some altercation took place between the informant and the revisionists. The accused chased the informant with an intention to assault him. However, he saved himself and reached to his house on 03.02.1993 at 6:30 a.m. When the informant was coming back to his house after easing himself, the accused who were hiding, on the way intercepted the complainant and abused him. He ran towards his house and accused chased him and entered into his house.

They abused and assaulted him with club and stick. Hearing the noise, the villagers Prayag dutt Tewari, Ram Kumar, Ram Raten, Indradeo reached the spot and rescued him. Thereafter, complainant lodged report at about 8:30 a.m. at Police Station bearing Crime No. 21 of 1993 under Sections 323, 504, 506, 452 IPC. The informant was medically examined.

6. The case was investigated by the Investigating Officer and thereafter charge sheet was filed. The charges were framed against the revisionist under sections 452, 323, 504, 506 IPC. The charge under section 325 IPC was framed on the basis of X-ray report of injured witness Dinesh Chandra Tewari and co-accused Hausila Prasad. Cognizance was taken and the case was committed for trial.

7. The accused were confronted under Section 313 Cr.P.C. and denied the charges and deposed before the court that he was falsely implicated due to enmity. The accused pleaded not guilty and claimed to be tried.

8. During prosecution evidence, P.W.1 Dinesh Chandra Tewari, (injured) P.W.2 as Indradeo Tewari (eye-witness), P.W.3 Dr. S.K. Yadav, P.W.4 S.I. Ram Gulam and P.W.5 Dr. D.R. Bhuwan were examined.

9. After adducing the evidence on record, the trial court convicted the accused-revisionist under section 452 IPC to undergo simple imprisonment for six months and to pay fine of Rs.200/- further sentencing under Section 323 IPC to undergo

imprisonment for three months and to pay fine of Rs.100/- and also sentencing the revisionists under section 506 IPC to undergo three months imprisonment and to pay fine of Rs.200/- and in default to pay fine to further undergo one month imprisonment. The accused were acquitted of the charge under section 504 IPC as it was not proved. No finding regarding charge under section 325 IPC was given by the learned trial Court.

10. Feeling aggrieved, against the judgment and order dated 29.05.2006 of the trial court, accused preferred an appeal before the court below and the appellant Court modified the order of trial court by sentencing the revisionists under section 452 IPC to undergo simple imprisonment for one month and to pay fine of Rs.4000/- and in default to pay fine to further undergo four months additional imprisonment, further sentencing under Section 323 IPC to undergo imprisonment for one month and to pay fine of Rs.1000/- and in default to pay fine to further undergo two months imprisonment and also sentencing the revisionists under section 506 IPC to undergo one month imprisonment and to pay fine of Rs.1000/- and in default to pay fine to further undergo two months imprisonment. It was also directed that out of the amount of fine realised Rs.10,000/- shall be paid to the injured/complainant as compensation. Hence, the present revision has been filed.

11. Learned counsel for revisionist submitted that the maximum sentence which is awarded by the

appellate court has been undergone by revisionist no.2 and he had spent one month and two days in jail and at present, the revisionist is on bail.

Shri Avinash Srivastava, learned counsel for the revisionist has further made submission that the revision may be dismissed on the basis that the revisionist has served the entire period of sentence.

12. Learned A.G.A. has opposed the revision and has submitted that there is no material irregularity or illegality committed by court below and keeping in view the evidence on record, accused-revisionist has rightly been convicted.

13. P.W.1 Dinesh Tiwari, has narrated the same facts as has been narrated by him in the First Information Report. He deposed before the court that accused persons threatened him with dire consequences and his father has lodged the FIR against the revisionists for committing the murder of his mother.

14. P.W. 2 Indradeo Tiwari, has deposed before the Court that the incident is of 5-6 years old and when he was at his home at about 6 o'clock in the morning, he saw the accused persons beating P.W.1 Dinesh Tewari abusing him and threatening him with dire consequences.

15. P.W. 3 Dr. S.K. Yadav, Medical Officer, who was In-charge at that time has given injury report of the complainant injured Dinesh Tewari, who sustained injury on Radius vision 5.5. cm x 1.5 cm

deep at right side of face 6 cm in front of ear.

16. In their cross examination, P.W.1 Dinesh Tewari, complainant, P.W.2 Indradeo Tewari, and Dr. S.K. Yadav, have deposed the same version as narrated in their earlier statement as well as in the FIR.

17. After going through the record, I find that the P.W.1 complainant, who is injured and P.W.2 Indradeo Tewari were able to prove their case before the trial court. Therefore, this Court does not find that this case requires consideration on the point that the revisionist no. 2 is entitled for acquittal because prosecution case is intact.

18. After looking to the statement of injured witness as well as the eye witness and also looking to the fact that revisionist no.2 is aged about 75 years and he has already undergone total period of sentence awarded by the court below and has suffered a lot of mental agony. The incident took place in the year 1993. Since he has served the entire period in jail as per conviction order therefore, the rest of 50% fine and compensation as awarded by the appellate court is liable to be waived off.

19. Therefore, on merits, so far as conviction part is concerned, I do not find any illegality, perversity or infirmity in the order passed by the court below.

20. Keeping in view the discussion made above and on the statement given by learned counsel for the revisionist, I do not find that the judgment of

the appellate Court is liable to be interfered with in any manner therefore, the conviction is upheld. However, order of sentence is modified to the extent that the revisionist has served the entire period of sentence and same is not interfered in any manner and 50% fine and compensation imposed by appellate court is waived off. The revision is partly allowed. The revisionist need not surrender unless wanted in any other case.

21. The bail bonds and sureties are discharged.

22. A certified copy of the order be also sent to the court concerned for compliance.

23. Let the lower court record be returned back to the court below.

Order Date :- 22.4.2024

Pks