

Ganga Bishun And (4) Others. vs The State Of U.P. on 28 July, 2010

Court No. - 5

Case :- CRIMINAL REVISION No. - 124 of 2000

Petitioner :- Ganga Bishun And (4) Others.

Respondent :- The State Of U.P.

Petitioner Counsel :- K.R.Singh

Respondent Counsel :- Govt Advocate

Hon'ble Vedpal,J.

Reserved Criminal Revision No. 124 of 2000 Ganga Bishun and (4) Others
.....Revisionists Vs. State of U.P. Opposite Party Hon'ble Vedpal,J.

This revision under Section 397/401 Cr.P.C. has been filed by the accused persons (revisionists herein) against the judgment and order dated 7.3.2000 passed by Sri P. N. Rai, H.J.S. the then Sessions Judge, Unnao in Criminal Appeal No.83 of 1999 : Ganga Bishnu and Others Vs. State of U.P whereby the appeal preferred by accused persons against their conviction and sentences under Sections 147, 148, 323/149, 325/149 and 506(2) I.P.C. was dismissed with the modification of acquittal of all accused persons for the offence under Section 148 I.P.C. except Pappu Singh and reduction of sentence of imprisonment of three years to one year for the offence punishable under Section 325/149 I.P.C. During the pendency of this revision Ram Narain Tiwari died, so proceeding against him was abated. Brief facts as is revealing from the record which are relevant for the decision of this revision, are that first informant Sri Nath Tiwari had gone to see his grove on 5.7.1995 at about 6:00 p.m. Accused persons Ganga Bishun, Ram Narain Tiwari, Surendra Singh, Man Singh and Pappu Singh also reached there. Accused Pappu Singh at that time was armed with a country-made pistol while other had lathi with them. All the accused persons on account of the old enmity, started assaulting Sri Nath Tiwari after abusing him. On the alarm being raised by Sri Nath Tiwari, Vijay Kumar, Gaya Prasad and certain other persons reached there who saw incident and intervened. The accused persons left the place of incident, threatened Sri Nath Tiwari to kill him. Sri Nath Tiwari in the incident received several injuries. One Rajendra Prasad Pandey scribe the written report at the dictation of Sri Nath Tiwari, which was submitted at Police Station Makhi District-Unnao. On the basis of the said written report, a case for the offence punishable under Sections 147/148/323/149/325/ 149/ 504/506(2) I.P.C. was registered against accused persons and the investigation of the case was taken up by the police. The injured Sri Nath Tiwari was sent by the police to district hospital, Unnao with a constable where he was medically examined by Dr. Alok Ranjan Mishra on the same day at 11:45 a.m. The following injuries were found on his person:-

1. A lacerated wound 1cm x 0.5cm aponeurosis deep on right parietal region of scalp, 13 cm away from right ear.

Blood is oozing from the wound on cleaning

2. An abraded contusion reddish in colour 9 cm x 5 cm on left side of face.
3. A lacerated wound 1cm x 0.5cm x muscle deep on outer aspect of right upper arm, 12cm away from right shoulder joint.
- Blood is oozing from the wound on cleaning.
4. A reddish contusion with diffuse swelling 15cm x 3cm on lower behalf of left upper arm at its back.
5. A reddish contusion with diffuse swelling 12cm x 9cm on the back of left elbow joint.
6. A reddish contusion with diffuse swelling 15cm x 8 cm on the back of upper 2/3 rd of left forearm.
7. A reddish contusion with diffuse swelling 10cm x 6 cm on the back of hand.
8. An abraded contusion reddish in colour with diffuse swelling 10cm x 8 cm on left shoulder joint and upper 1/3rd of left upper arm.
9. A lacerated wound 1cm x 0.5 cm x muscle deep in front of left leg, 15cm away from left ankle joint.
10. A lacerated wound with diffuse swelling 18cm x 6cm in front of right knee joint and upper 1/3rd of right leg.
11. A reddish contusion 20cm x 12cm on left scapular region of back.

In the opinion of the doctor, all the injuries were found fresh and caused by blunt object. Injuries nos.9, 10 and 11 were simple while others were kept under observation and x-ray was advised for them. Sri Nath Tiwari was X-rayed on the next day whereupon fracture of 4th meta carpal bone of his left arm was found. On the basis of X-ray report, an addition of Section 325 IPC was made. The police after having completed the formalities of the investigation submitted charge sheet against accused persons for the offence punishable under Sections 147/148/323/149/325/149/504/506(2) I.P.C. whereupon accused persons were summoned and put on trial. Learned trial court levelled a charge against accused persons for the offence punishable under Sections 147/148/323/149/325/149/ 504/506 (2) I.P.C. to which accused persons had pleaded not guilty and claimed to be tried.

In order to prove the charge levelled against accused persons, prosecution had examined six witnesses in all. PW-1 Gaya Prasad is alleged to be an independent eye witness of the incident. PW-2 Sri Nath Tiwari is injured himself. PW-3 Dr. Satya Prakash had X-rayed injured Sri Nath Tiwari on 6.7.1995 and had found fracture of 4th meta carpal bone of left arm of Sri Nath Tiwari. He has also proved X-ray examination report. PW-4 Sub-Inspector Ram Singh is the Investigating Officer of the present case who had recorded the statement of witness and had preferred the site plan of the place of incident after visiting the same and he had also submitted charge sheet after completing the

investigation. He has deposed in support of the factum of investigation. PW-5 Om Prakash Mela is a formal witness who had prepared chik report on the basis of written report of the incident and had registered the case in the G.D. He has deposed on the said factum. PW-6 Dr. Alok Ranjan Mishra had medically examined Sri Nath Tiwari on 5.7.1995 at 11:15 a.m. who had proved injured report, no other witness was examined by the prosecution.

The accused persons in their statement under Section 313 Cr.P.C. denied the prosecution allegations against them. They in their defence filed copy of charge sheet relating to Case Crime No. 784/98 Sri Nath Tiwari Vs. State of U.P. under Sections 323, 504, 506 IPC P.S. Makhi but no witness was examined by the accused persons in their defence. After going through the evidence on record and after hearing the parties, the learned trial court came to the conclusion that charge levelled against accused persons is made out beyond reasonable doubt and accordingly he convicted the accused persons for the offence punishable under Sections 147/148/323/149/325/149 and 506 IPC. Each of the accused was sentenced to undergo imprisonment for a period of six months for the offence punishable under Section 147 I.P.C., one year rigorous imprisonment for the offence punishable under section 148 I.P.C., six months rigorous imprisonment for the offence punishable under Section 323/149 I.P.C., three years rigorous imprisonment for the offence punishable under Section 325/149 I.P.C. and to pay a fine of Rs.500/- and one year rigorous imprisonment for the offence punishable under Section 506(2) I.P.C. It was further directed that the accused who commits default in the payment of the fine, he shall further undergo imprisonment for one month. Feeling aggrieved with the said judgment, the appeal was filed by accused persons, which was disposed of as stated above. Being dissatisfied with this judgment and order passed by appellate court this revision has been filed. I have heard the learned counsel for the revisionists as well as learned AGA for the State and perused the record of the case along with the judgment and order, carefully. Learned counsel for the revisionists has not challenged the legality and propriety of the conviction recorded by the appellate court against the revisionists. Learned counsel for the revisionists confined his arguments only to the legality and severity of the sentence passed against the revisionists by the court below. It was submitted that the accused persons were not previous convict and had no criminal history. They are simple villagers and have no criminal antecedents and therefore by keeping them in jail for short term of one year, no useful purpose will be served and by sending them to jail, there is possibility that they will come in contact with the hard criminal there and as such the accused persons ought to have been dealt with under the provisions of Probation of Offender Act but the learned court below did not do so and pass short term sentence as against the revisionists. Learned AGA submitted that a prayer for releasing them on Probation of Offender Act was made by the accused persons before the learned Magistrate but the same was refused and benefit of Probation of Offender Act was not sought for by accused persons before the appellate court and as such they should not be given the benefit of Probation of Offender Act and as such there is not infirmity or irregularity in the judgment and order passed by the court below and the revision is liable to be dismissed in toto. I carefully considered the respective submissions made by the parties.

It reveals from the perusal of the record that the revisionists and the injured of the present case are resident of the same village. The revisionists are not previous convict, they have no criminal history or criminal antecedents. The maximum sentence which was awarded to the revisionists is one year rigorous imprisonment. The incident has occurred on 5.7.1995 about more than 15 years back. They

had been under constant pressure of the litigation since then. There is every possibility that if they are sent to jail for the offence which was committed by them 15 years before, they will come in the contact of hard core criminals in jail. It reveals from the perusal of the record that though the accused persons had made prayer before the learned Trial Court that benefit of Probation of Offender Act be given to them but the learned court below refused to give benefit to them only on the ground that they have been held guilty for the offence punishable under Sections 147, 148, 323, 325 read with section 149 and 506 IPC and they do not deserve this benefit, but the reasons thereof for not giving benefit were not given. Section 361 Cr.P.C. is very relevant on this point. It provides as under

" Section 361-Special reasons to be recorded in certain cases- Where in any case the court could have dealt with--

(a).an accused person under Section 360 or under the provision of the Probation of Offender Act, 1958.

(b).a youthful offender under the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

But has not done so, it shall record in its judgment the special reasons for not having done so.

A perusal of the above provision would make it clear that where, in any case the court could have dealt with accused persons under the provisions of Probation of Offender Act, 1958 but the court has not done so, he shall record in his judgment the special reasons for not having done so. The offence for which the accused persons have been held guilty is not punishable life imprisonment or death sentence. All the offenses are triable by the court of the Magistrate and the maximum punishment awarded to them is one year imprisonment. No special reason for not having given benefit of the Probation of Offender Act has been assigned by the learned trial court in its judgment. I find no substantial ground to refuse this benefit to the accused persons. In view of the above having regard to the facts and circumstances of the case, antecedents of the revisionists and the provisions of the Code of Criminal Procedure and Probation of Offender Act, 1958, it appears expedient that benefit of Section 4 of the Probation of Offender Act be extended to the revisionists and as such the judgment and order of the court below is liable to be modified to this extent. The revision therefore, should be allowed in part. The revision is, therefore, allowed in part. The conviction recorded by the court below against revisionists are maintained but the sentence awarded to them is suspended and it is directed that the revisionists shall be released under the provisions of Section 4 of the Probation of Offender Act on probation of good conduct for a period of one year from today on their furnishing a personal bond in the amount of Rs 10,000 with one surety to the effect that they shall keep peace and be of good behaviour during the said period of one year and shall appear to receive sentence when called upon by the trial court. The bond shall be furnished by the revisionists before the trial court within a period of one month from today.

In case the revisionists failed to comply the above direction, the revision shall stand dismissed and sentence awarded to them shall be restored.

Order Date :- 28.7.2010 Mahesh