
(2010) 10 AHC CK 0147
In the Allahabad High Court
Case No : Criminal Revision No. 3320 of 2009

Bullu Sharma @ Prabhu Nath Sharma APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 326

Citation : (2010) 10 AHC CK 0147

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Judgement

S.C. Agarwal, J.—The revisionist Bullu Sharma @ Prabhu Nath Sharma was convicted u/s 326 IPC vide judgment and order dated 24.1.2008 passed by the C.J.M., Ballia in Criminal Case No. 1883 of 2007 arising out of the case crime No. 75 of 2005, P.S. Sahatwar, District- Ballia and was sentenced to undergo R.I. for 7 years alongwith fine of Rs. 50,000/- and in default to further undergo additional imprisonment for one year. The amount of fine was ordered to be paid to the victim Km. Madhuri. Criminal appeal No. 9 of 2008 preferred by the revisionist was dismissed by judgment and order dated 21.5.2009 passed by the Addl. Sessions Judge, Court No. 1, Ballia. Hence this revision.

2. Heard Sri G.S. Chaturvedi, Senior Advocate assisted by Sri Raunak Chaturvedi, learned Counsel for the revisionist, learned AGA for the State and perused the judgment and trial court's record.

3. The prosecution case, in nutshell, is that Km. Madhu (P.W.-2), aged about 21 years, is the daughter of the complainant Triloki Prasad Gupta (P.W.-1). On 18th July, 2005 at about 4 a.m. when P.W.-2 was going towards east of her house for easing herself, the revisionist threw acid on her, causing grievous injuries. On her alarm, the complainant and Bhushan reached there but the revisionist managed to escape. He was identified in the light of torches. The complainant took her daughter to District Hospital, Ballia and thereafter lodged FIR at 20 : 25 hours.

4. After investigation of the case, the charge-sheet was submitted against the revisionist. Charge u/s 326 IPC was framed against the revisionist by learned Magistrate. The revisionist denied the charge and claimed to be tried.

5. The prosecution examined six witnesses namely, the complainant Triloki Prasad Gupta (P.W.-1), Km. Madhuri (P.W.-2), S.I. Hemwant Kumar Singh (P.W.-3), Dr. Ashwani Kumar Singh (P.W.-4), Dr. H.N. Singh (P.W.-5), Eye Surgeon, Constable Kanhaiya Tiwari (P.W.-6) as witnesses. P.W.-1 and P.W.-2 are the witnesses of fact and remaining witnesses are formal witnesses.

6. The revisionist-accused was examined u/s 313 Code of Criminal Procedure by the Magistrate. He denied the prosecution allegations and claimed that he was falsely implicated due to enmity. Three witnesses Vinod Kumar Pandey (D.W.-1), Gopal Ji (D.W.-2) and Sanjay Kumar Sharma (D.W.-3) were examined as defence witnesses.

7. Relying on the prosecution version, the witnesses examined on behalf of the State and disbelieving the defence evidence, learned Magistrate found that the offence u/s 326 IPC was proved against the revisionist beyond reasonable doubt and consequently, the revisionist was convicted as aforesaid.

8. An appeal was filed by the revisionist before Sessions Judge as well as a revision was filed by the complainant for enhancement of sentence. Learned Sessions Judge rejected the appeal filed by the revisionist and the revision filed by the complainant was also dismissed on the ground that the Magistrate was not empowered to pass an order of sentence exceeding seven years.

9. Sri Chaturvedi, learned Counsel for the revisionist has not challenged the finding of fact recorded by C.J.M. and confirmed by learned Addl. Sessions Judge. Even on merits the statements of Triloki Prasad (P.W.-1) and the victim Km. Madhu (P.W.-2) are sufficient to prove that it was the revisionist, who threw acid on P.W.-2 causing grievous injuries. The victim received burn injuries due to acid on face, head, neck, right hand, right side thigh, right chest and left hand. The vision of both the eyes had almost gone. The contention of learned Counsel for the revisionist is that he is in jail for more than five years and three months and the sentence be reduced to the period already undergone by him.

10. The incident took place on 18.7.2005. The revisionist was arrested by the police on 25th July. 2005 and is in jail since then. The revisionist has already undergone imprisonment for a period of five years and three months as he was not granted bail either during trial or during pendency of appeal or this revision. At the time of incident, the revisionist was also 19-20 years of age and is a young man. Though grievous injuries was caused by him to the victim by throwing acid on her, considering the age of the accused, the sentence of seven years R.I. may be reduced to the period already undergone by him in jail.

11. Learned AGA has no objection in this regard.

12. The revision is party allowed. Conviction of revisionist u/s 326 IPC is

maintained but the sentence of seven years R.I. is reduced to a period already undergone by him in jail (about five years and three months). However, the sentence of fine of Rs. 50,000/ - and in default to further undergo imprisonment for one year is maintained.

13. The trial court's record be returned to the court concerned alongwith a copy of this judgment for compliance.