

(1999) 03 AHC CK 0013
In the Allahabad High Court
Case No : Criminal Revision No. 101 of 1984

Chhotan Giri and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-03-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 152, 323, 452

Citation : (1999) 1 ACR 688

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Bhagwat Prasad Gupta, Prashant Gupta, Rajiv Chaturvedi and A.B.L. Gaur, for the Appellant; A.G.A. and M.C. Singh, for the Respondent

Judgement

B.K. Sharma, J.—This revision has been preferred against the judgment and order dated 11th January, 1984, passed by Sri Manpokhi Lai Sharma, the then VIth Additional Sessions Judge, Bulandshahr in Chhotan Giri and 4 Ors. v. State, Criminal Appeal No. 126 of 1983, whereby he dismissed the criminal appeal of all the five accused revisionists and upheld their conviction for the offences Under Sections 147, 452 and 323/149, I.P.C. and their sentence of 3 months R.I. for the offence u/s 147, I.P.C. each ; 6 months" R.I. each for the offence u/s 452, I.P.C. and fine of Rs. 100 each and 6 months" R.I. each for the offence u/s 323/149, I.P.C. In default of payment of fine, each revisionist was ordered to further undergo two months" R.I. as awarded by Sri K.V. Singh, the then Munsif Magistrate VIIIth, Bulandshahr on 26.8.1983 in State v. Chhotan Giri and Ors., Criminal Case No. 1087/156 of 1980.

2. The incident related to 6th November, 1979. There were two victims in the occurrence, namely, Kripa Shanker and Smt. Vidyawati. Smt. Vidyawati is alive and Kripa Shanker is now dead.

3. In this revision, a compromise application was filed on 7th April, 1997 before this Court by all the accused-revisionists and also by Smt. Vidyawati, one of the victims, stipulating that other victim Kripa Shanker had died on 20.11.1988. The

said compromise was sent to the Chief Judicial Magistrate. Bulandshahr for verification and it had been verified before him and has been received back after due verification.

4. So far as the offence u/s 323/149, I.P.C, is concerned against all the accused-revisionists, it has been lawfully compounded and, therefore, all of them have become entitled to acquittal for the same. However, regarding the offences Under Sections 147 and 452, I.P.C, the legal position is that these offences cannot be compounded by the parties even with the permission of the Court. In regard to these offences, the learned Counsel for the accused-revisionists, has made a submission that in the light of the circumstances that the occurrence took place on 6.11.1979 ; that the accused-revisionists were on bail from this Court vide bail order dated 13.1.1984 and further they had remained in custody as convicts, at least for a period of six days after the dismissal of their appeal by the lower appellate court and further the fact that the parties have come to term to each other and jointly moved an application for compromise which had been duly verified, the sentences of all the accused-revisionists for both these offences may be reduced to the sentence of imprisonment already undergone. The learned Counsel for the accused-revisionists has stated that the fine imposed in this case had been deposited by each accused-revisionist in Court and that is how they were directed to be released on bail in pursuance of the bail order dated 13.1.1984 in which the realization of fine had not been stayed. Considering the circumstances enumerated above, it is only proper that the submission of the learned Counsel for the accused-revisionists be accepted. However, the learned Counsel for the accused- revisionists has prayed that the service career of all the accused-revisionists, who are serving on different non-gazettes posts, may be protected. This prayer is also acceptable in the circumstances.

5. For the reasons aforesaid, the revision is partly allowed. The conviction of all the accused-revisionists, namely, Chhotan Giri, Moti Giri, Murarl Giri, Babu Lai and Vinod for the offence u/s 323/149, I.P.C., is set aside and they are acquitted of the same, in view of the fact that the said offence has lawfully been compounded by the parties. In regard, to the offences Under Sections 147 and 452, I.P.C., the conviction of each of accused-revisionists, as upheld by the lower appellate court in its judgment dated 11.1.1984, is maintained. However, the sentence of imprisonment in the case of each accused-revisionists, is reduced to the period of imprisonment already undergone by each one of them after the dismissal of their appeal by the lower appellate court. The amount of fine has already been deposited. It is ordered that the conviction of all the accused-revisionists for the offences Under Sections 147 and 452, I.P.C. shall not adversely affect their service career in the respective Government departments in which they are employed.

6. The accused-revisionists are on bail. They need not surrender to it. Their bail bonds are cancelled and sureties are discharged.

7. Let a copy of this judgment be sent to the learned Sessions Judge,

Bulandshahr for information.