
(2016) 09 PAT CK 0003

In the Patna High Court

Case No : Criminal Revision No. 307 of 2016 (Arising Out of PS.Case No. -null
Year- null Thana -null District- Arraria)

Karu @ Sri Prasad Sah @ Karu Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 325

Citation : (2017) 1 ECRC 147

Hon'ble Judges : Mr. Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Gopal Kumar Jha, Advocate, for the Petitioner; Mr. Parmanand Kumar, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ashwani Kumar Singh, J. (Oral) - This revision application is directed against the judgment dated 16th December, 2015 passed by the learned 1st Additional Sessions Judge, Araria in Cr.Appeal No. 60 of 2007 affirming the judgment dated 28th April, 2007 passed by the learned Sub Divisional Judicial Magistrate, Araria in G.R. Case No. 313 of 1998 corresponding to Tr. No. 1536 of 2007 to the extent whereby the petitioner has been held guilty under Section 325 of the Indian Penal Code (for short "IPC") and sentenced to undergo R.I. for three years and to pay fine of rupees three thousand and in default of payment of fine to undergo further imprisonment for three months.

2. According to the prosecution case, the petitioner and six others are alleged to have assaulted the father of the informant, namely Sukhdev Sah and the petitioner is specifically alleged to have assaulted with dabia on his head as a result of which he fell down and became unconscious. Thereafter, on hulla, the villagers assembled there and rescued Sukhdev Sah from being further assaulted by the accused persons. The motive for the occurrence is said to be land dispute.

3. On completion of investigation, all the accused persons named in the FIR were sent up for trial for the offences punishable under Sections 447, 341, 323, 325 and 504/34 of the IPC.

4. After taking cognizance of the offence, the jurisdictional Magistrate framed charges against the petitioner and six others under Sections 323, 504/34, 447 and 341 of the IPC. The petitioner was additionally charged under Section 325 and 326 of the IPC separately.

5. In course of trial, altogether nine witnesses were examined on behalf of the prosecution. Out of them, P.W.1 is the informant of the case whereas P.W.2 and P.W.3 are hearsay witnesses, who came at the place of occurrence after the offence had already been committed. P.W.4 is injured Sukhdev Sah whereas P.W.8 and P.W.9 are the Doctor and the Investigating Officer respectively. Rest of the witnesses are eye-witnesses to the occurrence. The witnesses examined on behalf of the prosecution have supported the prosecution case as narrated in the FIR.

6. The doctor, however, found only one sharp cut injury measuring 3" x ?" x ?" on the right side of the head of the injured Sukhdev Sah. He has opined that the sole injury sustained by Sukhdev Sah was grievous in nature and was caused by hard and sharp instrument like dabia.

7. On the basis of the oral and documentary evidence led before the court, the learned Sub Divisional Judicial Magistrate, Araria convicted and sentenced all the accused persons including the petitioner for the offences punishable under Sections 323, 341, 447 and 504 of the IPC. Further, the petitioner Karu @ Sri Prasad Sah @ Karusah was also found guilty of the charge under Section 325 of the IPC and was sentenced in the manner described in the opening paragraph of the judgment.

8. As against the impugned judgment and order of the Sub Divisional Judicial Magistrate, Araria passed in G.R. Case No. 313 of 1998/Tr. No. 1536 of 2007, the accused persons preferred appeal in the court of Sessions Judge, Araria. On transfer, the appeal was heard by the learned 1st Additional Sessions Judge, Araria vide Cr.Appeal No. 60 of 2007/Trial No. 13 of 2007.

9. Considering the evidence on record, the appellate court came to a finding that the accused persons including the appellant were not guilty of the charges under Sections 447, 341, 323 and 504 of the IPC. The main reason for such finding was that almost all the eye-witnesses had corroborated the informant's version, as given in the written report wherein it was alleged that all the accused persons had collectively assaulted the father of the informant, but the doctor's evidence did not corroborate the ocular testimony, as only one injury on the person of the injured Sukhdev Sah, which was attributable to the petitioner, was found on medical examination. In that view of the matter, the appellate court doubted the prosecution case so far as allegation that all the accused persons assaulted the victim Sukhdev Sah and acquitted them of the charges under Sections 447, 341,

323 and 504 of the IPC, but the conviction and sentence awarded by the learned Sub Divisional Judicial Magistrate against the petitioner of the charge under Section 325 of the IPC was affirmed.

10. Having argued at some length, learned counsel for the petitioner submits that he would not press the application against conviction and is confining his prayer only on the point of sentence. He has submitted that there was no previous conviction of the petitioner. There was no adverse report on the record regarding the conduct of the petitioner and thus the trial Magistrate and the appellate court ought to have released the petitioner under the Probation of Offenders Act. He has submitted that the offence under Section 325 of the IPC does not relate to corruption, moral turpitude or narcotic drugs etc. The courts below ought to have taken into consideration the facts and circumstances of the case, nature of the offence, general effect on the society, the character and age of the petitioner before awarding punishment for three years for the offence under Section 325 of the IPC.

11. On the other hand, learned counsel for the State has submitted that the maximum punishment prescribed under Section 325 of the IPC is seven years and the courts below have taken a lenient view of the matter by sentencing him for a period of three years only. He has further submitted that the benefit of Probation of Offenders Act cannot be given to the accused as a matter of course. The petitioner is alleged to have used a dangerous weapon for causing assault on the father of the informant, which has caused grievous injury on his head. He has further contended that in view of the gravity of the offence, the courts below have rightly sentenced him to undergo R.I. for three years and a fine of Rs.3000/-.

12. I have heard learned counsel for the parties and perused the record.

13. Since the petitioner has confined his prayer on the point of sentence only, this Court does not intend to enter into minute appreciation of evidence.

14. It is true that for grant of benefit under the Probation of Offenders Act, 1958 (for short "the Act"), the mandatory requirements are as under :

(1) That the offence committed must not be one punishable with death or imprisonment for life;

(2) The Court must opine that it is expedient to release him on probation of good conduct instead of sentencing him; and

(3) The offender or his surety has a fixed place of abode or regular occupation in the place situated within the jurisdiction of the Court.

15. However, the convict has no indecisive right to be granted the benefit under the Act. The power is discretionary in nature. It vests in the Court to release a person found guilty of having committed an offence not punishable with death or imprisonment for life, having regard to the nature of the offence and the

character and age of the offender. However, the discretion has been given to the Court with a purpose and with an object to give the accused person a chance of reformation which he would lose in case he is incarcerated in prison and associated with hardened criminals.

16. Since the petitioner has not been given the benefit of the Act and has remained in custody for about eight months, this Court would not like to enter into the question whether the courts below were right or wrong in not extending the benefit under the Act.

17. Coming back to the question of sentence, it would be pertinent to note here that the Indian Penal Code prescribes offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed. Thus, the court has wide discretion in awarding sentence within the statutory limits. Under such circumstances, different courts exercise the discretion according to its own judgment.

18. While considering the question on the point of sentence the following observations given by three eminent Judges of the Supreme Court of India would be relevant :

"Every saint has a past, every sinner has a future."

- Krishna Iyer J.

"Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good but circumstances transform him into a criminal."

- K.T. Thomas J

"Reformative theory is certainly important but too much stress to my mind cannot be laid down on it that basic tenets of punishment altogether vanish".

- D.P. Wadhwa J

19. Keeping in mind the aforesaid observations, it would be evident that the courts have an onerous duty to perform while awarding sentence to an accused held guilty of a charge. It must consider the aggravating and mitigating circumstances before awarding sentence after holding a person guilty of charges having regard to the nature of the offence, the general effect on the society and the character and age of the offender etc.

20. From the record of the present case, it would transpire that at the relevant time the petitioner had just crossed the age of 18 years. There is no adverse report against the character of the petitioner on record. The contention of the petitioner is that the petitioner was not made accused in any other case is not controverted by the State. Learned counsel for the State has also failed to point out anything adverse regarding the character of the petitioner. The allegation

against him is that he had inflicted a dabia blow on the head of the father of the informant causing injury which the Doctor has opined to be grievous in nature. Since the other family members of the petitioner, who were convicted by the trial Magistrate, were acquitted by the appellate court, as no other injury was found on the person of the injured, it can safely be said that there was no repetition of blow by the petitioner. It would be evident that by now the petitioner has remained in custody for about eight months and all other co-accused of the case, who were tried together, are family members of the petitioner. The genesis of the occurrence is land dispute.

21. In *Shailesh Jasvantbhai & Anr v. State Of Gujarat and others*. [(2006)2 SCC 359], the Apex Court observed :

"?in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration."

22. In *Gopal Singh v. State of Uttarakhand* [AIR 2013 SC 3048], the Apex Court while reducing the sentence of three years of imprisonment to one year, for the offence under Section 324 of the IPC, observed that apart from other circumstances sometimes lapse of time in commission of crime is a ground for reduction of sentence.

23. In the present case, the alleged offence had taken place on 1st March, 1998, the trial before the Magistrate continued till April, 2007 and the appeal has been disposed of in December, 2015, which would mean that the petitioner has suffered mental agony for about 18 years. As noticed herein above, at the time of offence, he was aged about 19 years only. By now, he must have joined the main stream and in the absence of any bad antecedents, this Court is of the view that the sentence of eight months would be sufficient to meet the ends of justice for the charge under Section 325 of the IPC

24. Accordingly, while affirming the judgment of conviction, the sentence awarded to the petitioner under Section 325 of the IPC is reduced to the period already undergone.

25. The revision application is dismissed with modification in the sentence.