
(2016) 06 RAJ CK 0053

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 761 of 2002

Motiya

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 327, 34, 341

Citation : (2016) 4 CriLR 1831

Hon'ble Judges : Mr. Sangeet Lodha, J.

Bench : Single Bench

Advocate : Mr. S.G. Ojha, Advocate, for the Petitioner; Mr. J.P. Bhardwaj, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Sangeet Lodha, J.—This revision petition is directed against judgment and order dated 24.8.2002 passed by the Additional Sessions Judge (F.T.), Jalore in Criminal Appeal No. 75/2002, affirming the judgment and order dated 10.11.1998 passed by the Additional Chief Judicial Magistrate (S.D.), Jalore, in Criminal Case No. 268/1998, convicting and sentencing the accused-petitioners as under:

1. Motiya

341 I.P.C.

One month's simple imprisonment to each

2. Gangiya

324/34 I.P.C.

Six months R.I. and fine of Rs. 500/- each and in default of payment of fine to further undergo 15 days S.I. to each

3. Billaram

327/34 I.P.C.

One year's R.I. and fine of Rs. 1,000/- each and in default of payment of fine to further undergo one month's S.I. to each.

All the sentences were ordered to run concurrently.

2. At the outset, learned Counsel appearing for the petitioners submitted that the accused-petitioners do not want to press the petition questioning the legality of the order passed by the Appellate Court, affirming the order passed by the Trial Court, convicting the accused-petitioners for offences under Sections 341 and 324/34 I.P.C., but the conviction of the accused-petitioners for offence under Section 327/34 I.P.C. is not sustainable in the eyes of law. Learned Counsel submitted that the F.I.R. lodged does not contain any allegation regarding the demand of money by the accused-petitioners for organising got (party) on the occasion of Deepawali. Learned Counsel submitted the bald allegation regarding the demand of Rs. 50/- for the purpose of got, is not substantiated by any cogent evidence on record. Learned Counsel would submit that there is no plausible explanation of record as to why the factum of demand of money being made by the accused-petitioners, was not mentioned in the written report submitted and thus, in absence of any evidence establishing the demand, the conviction of the accused under Section 327/34 deserves to be set aside. Learned Counsel submitted that more than 19? years have lapsed since the occurrence of the incident. It is submitted that at the time of occurrence the accused Motiya was 48 years of age and by now he has attained the age of 67 years. It is submitted that at the relevant time, Billaram and Gangiya were 21 and 25 years of age respectively and by now they have settled in their life. Learned Counsel submitted that on the facts and in the circumstances of the case, it would not be appropriate to send them behind the bars at this stage. Learned Counsel submitted that the sentence awarded to the accused-petitioners deserves to be reduced to the period already undergone. It is further submitted that the amount of fine imposed by the Trial Court may be increased as considered reasonable by this Court.

3. Learned Public Prosecutor has opposed the prayer made on behalf of the accused-petitioners and submitted that the Courts below have concurrently found the demand of money by the accused persons stand established and therefore, there is no reason why the finding arrived at by the Courts below should be interfered with by this Court in exercise of its revisional jurisdiction. Learned Counsel submitted that the sentence awarded by the Trial Court affirmed by the Appellate Court for the charges proved also does not warrant any interference by this Court.

4. I have considered the submissions of the learned Counsel for the accused-petitioners and learned Public Prosecutor and also perused the material on record.

5. Indisputably, in the written report (Ex.P-3) submitted by Ummaid Singh (PW-2) at Police Station, Bagra, does not contain any allegation regarding the

demand of money being made by the accused-petitioners from the victim Shaitan Singh, for the purpose of organising got (party) on the occasion of Deepawali. Shaitan Singh (PW-11) has stated that the accused persons obstructed his way and demanded Rs. 50/-. It is stated that the factum of demand of money was disclosed by him to Ummaid Singh (PW-2) on the next day. However, in his cross-examination, Ummaid Singh (PW-2) has stated that Shaitan Singh had disclosed the factum of demand of money to him when he reached at the place of occurrence i.e. on the date of occurrence of 13.11.1996. That apart, in his examination-in-chief, Ummaid Singh has stated that he had taken his brother Shaitan Singh, the victim, to the Bagra Police Station and thereafter, the report (Ex.P-3) was submitted. It is not understandable that if the factum of the demand of money by the accused persons was disclosed by Shaitan Singh and he was also present in Bagra Police Station at the time of submitting the written report, why the factum of demand of money by the accused-petitioners was not mentioned in the F.I.R. lodged. After due consideration of the evidence on record, this Court is of the considered opinion that the evidence of the witnesses in respect of the demand of money by the accused-petitioners for the purpose of organising the party on the occasion of Deepawali, suffers from contradictions and appears to be exaggerated. That apart, it is to be noticed that allegation is that on refusal to pay the money, Shaitan Singh was beaten by the accused-petitioners and not that he was induced to part with the money by putting him fear of injury. In this view of the matter, this Court is firmly of the opinion that the conviction of the accused-petitioners under Section 327/34 I.P.C. is not sustainable in the eyes of law.

6. Coming to the contention of the learned Counsel for the petitioners for reducing the punishment awarded by the Trial Court, affirmed by the Appellate Court for offences under Sections 341 and 324/34 I.P.C., it is to be noticed that the incident as alleged had occurred on 13.11.1996 and thus, since the occurrence of the incident, about 19½ years have lapsed. As per the information available on record, as on the date of occurrence the accused-petitioners were 48, 25 and 21 years of age respectively. The accused-petitioners Motiya and Gangia remained in police custody/judicial custody for two days and after decision of appeal, have undergone the sentence for the period from 24.8.2002 to 5.9.2002. Similarly, the accused Billaram remained in police custody/judicial custody for a period of four days and after the decision of the appeal, has undergone the sentence for the period from 24.8.2002 to 5.9.2002. Thus, the accused Motiya and Gangia have undergone the sentence for a period of 15 days and accused Billaram for a period of 17 days.

7. But then, as laid down by the Hon'ble Supreme Court in the matter of State of Madhya Pradesh v. Mehtab, 2015(5) SCC 197, that it is the duty of the Court to award just sentence to the convict against whom charges are proved. The Court observed that every mitigating or aggravating circumstances may be given due weight but mechanical reduction of the sentence to the period already undergone cannot be appreciated. The Court further observed that the sentence has to be

fair not only to the accused but also victim and society.

8. Thus, taking into consideration the gravity of the charge proved, the lapse of time since the occurrence of the incident and conviction of the accused, the age of the accused-petitioners and other relevant aspects noticed herein above, to meet the ends of justice, this Court considers it appropriate to reduce the substantive sentence passed by the Trial Court for offences under Sections 341 and 324/34 I.P.C., affirmed by the Appellate Court, to the sentence already undergone by the accused-petitioners, while increasing the fine imposed for conviction under Section 324/34 I.P.C. from Rs. 500/- to Rs. 5,000/-.

9. Learned Counsel appearing for the accused-petitioners submitted that the accused-petitioners may be granted three months time to deposit the amount of fine.

10. In the result, the revision petition is partly allowed. The conviction of the accused-petitioners under Section 327/34 I.P.C. is set aside, however, the conviction under Sections 341 and 324/34 I.P.C. is maintained. It is directed that substantive sentence passed by the Trial Court, affirmed by the Appellate Court for offences under Sections 341, 324/34 shall stand reduced to the period of sentence already undergone by the accused-petitioners, however, the fine imposed by the Trial Court for offence under Section 324/34 I.P.C., is increased from Rs. 500/- to Rs. 5,000/-. The amount of fine of Rs. 5,000/- shall be deposited by each of the accused-petitioners within a period of three months. In default of payment of fine of Rs. 5,000/-, the sentence awarded by the Trial Court for offence under Section 324/34 I.P.C., affirmed by the Appellate Court, shall stand restored and the accused shall be liable to undergo the remaining sentence. Needless to say that if the accused have already deposited the fine of Rs. 500/- imposed by the Trial Court, they are required to deposit remaining amount of fine Rs. 4,500/-. The order passed by the Trial Court directing payment of compensation to the accused a sum of Rs. 1,000/- is modified in terms that out of the amount of fine Rs. 15,000/- to be deposited by the accused-petitioners in terms of this order, Rs. 10,000/- shall be paid to the victim Shaitan Singh S/o Mohabbat Singh.