

Praveen Kumar Vs. State

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Court : Delhi

Decided On : Oct-24-2013

Judge : Veena Birbal

Appellant : Praveen Kumar

Respondent : State

Advocate for Def. : Ms. Jasbir Kaur, Mr. R.N. Gugulani

Advocate for Pet/Ap. : Mr. Rajiv Thukral

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

24. 10.2013 + CRL.REV.P. 694/2009 PRAVEEN KUMAR Petitioner Through: Mr. Rajiv Thukral, Adv. versus STATE Respondent Through: Ms. Jasbir Kaur, APP for State. Mr. R.N. Gugulani, Adv. for complainant. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. This is a revision petition under Section 397/401 read with Section 482 of Cr.P.C. wherein challenge has been made to impugned judgment dated 4.12.2009 passed by learned ASJ, Delhi whereby the learned Appellate Court has altered the order of conviction passed by learned MM under Section 326 IPC to one under Section 324 IPC and vide same judgment the sentence of imprisonment awarded to the petitioner has been reduced from one year RI to six months in Crl. Appeal

No.110/2009/2010.

2. The case of the prosecution is that on 16.1.1993 at about 3.25 p.m. injured Vinod Sherawat PW3 along with his classmate one Prem Parkash PW4 came to the police station in an injured position. From there, he was taken by the police to Safdarjung Hospital where he was medically examined vide MLC Ex.PW9/A. On being declared fit for making statement, injured Vinod Sherawat PW3 made a statement Ex.PW3/A to the police wherein he stated that he was a student of 12th class and while sitting in the classroom on the aforesaid date, at about 2 p.m. at the end of history period when he was cleaning the blackboard his classmate Praveen Kumar i.e. petitioner/accused abused him and asked him to get away from the blackboard. Thereafter, altercation ensued between them. On intervention of other boys in the class, petitioner/accused Praveen Kumar left him and went away. After some time he came in the classroom and sat behind him. At about 3.15 p.m., injured Vinod Sherawat PW3 felt a push on his back. He turned around and saw petitioner/accused Praveen Kumar holding a knife in his hand. The injured PW3 also felt a sharp pain in his back. The petitioner/accused again tried to stab him by the knife. However, injured PW3 saved himself by catching hold of the petitioner/accused. When other classmates tried to catch the petitioner, he ran away. On the basis of aforesaid statement, FIR Ex.PW8/A was registered. The investigation was conducted by the IO who had collected the MLC Ex.PW9/A of injured PW3, recorded the statements of PWs, seized the blood stained clothes. During the investigation the petitioner/accused also got recovered the weapon of offence. After completion of investigation, charge sheet was filed before learned MM. A charge was framed against the petitioner/accused for having committed offence punishable under Section 326 IPC. The petitioner/accused pleaded not guilty and had claimed trial.

3. Prosecution in all had examined 10 witnesses i.e. injured Vinod Sherawat PW3, alleged eye witness Prem Parkash PW4, three teachers of the school. The remaining witnesses relate to police and medical evidence. The statement of petitioner/accused was recorded under Section 313 Cr.P.C. wherein he denied the incriminating evidence and stated that he was an innocent person and was falsely implicated. However, no evidence was led in defence.

4. After hearing the learned counsel for the parties and perusing the evidence on record, learned MM convicted the petitioner/accused for having committed offence punishable under Section 326 IPC and awarded RI of one year and fine of `3,000/- and in default of payment of fine to further undergo SI of 20 days. The fine has already been paid by the petitioner.

5. The petitioner/accused challenged his conviction and sentence by filing an appeal before learned ASJ.

The injured i.e. complainant PW3 also challenged the aforesaid judgment by filing a separate appeal. Both the appeals were disposed of by learned ASJ by a common judgment wherein learned ASJ has discussed the evidence in detail and has held that the prosecution has been able to establish its case against the petitioner only under Section 324 IPC and not under Section 326 IPC and therefore his conviction was altered from Section 326 IPC to Section 324 IPC. As a sequel to this alteration, the sentence of imprisonment was reduced from RI of one year to RI of six months. The appeal filed by the complainant/victim PW3 for alteration of conviction of the petitioner from Section 326 IPC to Section 307 IPC was dismissed. The common judgment passed by learned ASJ has been challenged by petitioner/accused only. The complainant/victim PW3 did not challenge the judgment of learned ASJ, dismissing his appeal any further.

6. Learned counsel for the petitioner/accused has submitted that petitioner/accused is not challenging his conviction under Section 324 IPC as has been held by learned ASJ.

Learned counsel has made a prayer for grant of probation to the petitioner/accused. It is submitted that such a request was made before learned ASJ but the same was rejected without considering the necessary ingredients of Section 4 of Probation of Offenders Act. Learned counsel for petitioner/accused submits that such a request was also made before this court when the notice of revision petition was issued to the respondent vide order dated 9.2.2010. Pursuant thereto, the report dated 14.9.2000 of the Probation Officer has been called.

7. Learned counsel appearing for petitioner/accused has submitted that petitioner was a student of 12th class at the time of occurrence and was only 19 years of age at that time. It is stated that he has faced the agony of trial including appeal and present revision petition for 20 years and is now settled in life having wife and two minor children. He has also got a mentally unstable sister and a widow mother who are all dependent upon him. It is submitted that considering the nature of offence, age of petitioner/accused, his character, he be given benefit of probation under Section 4 of the Probation of Offenders Act. It is submitted that in report dated 14.9.2000 of the Probation Officer the recommendation has been made for release of petitioner/accused on probation.

8. Learned APP is also not averse to grant of benefit under Section 4 of the Probation of Offenders Act to the petitioner. Learned counsel for the victim PW3 is present who has opposed the request of the petitioner for releasing him on probation and submitted that the report of the Probation Officer is not correct. It is submitted that his family is not dependent upon him as is stated in the report. However, nothing has been placed on record to show that the report submitted is not correct as is contended. It is also not denied by the injured PW3 that the petitioner/accused has got a mentally unstable sister and a widow mother and is the only son.

9. Section 4 of the Probation of Offenders Act empowers the Court to release a convicted person on his entering into a bond with or without sureties on probation when he is found guilty of committing of any offence, not punishable with death or imprisonment for life. Relevant portion of Section 4 of the Probation of Offenders Act, 1958 reads thus:

Section 4 - Power of Court to release certain offenders on probation of good conduct - (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of

sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

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10. For exercising the power which is discretionary, the Court has to consider the circumstances of the case, nature of offence and character of the offender. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Court even at appellate or revisional stage. Reference is made to the judgment of Supreme Court in Sitaram Paswan and Anr. vs. State of Bihar; AIR 2005 SC3534 11. In the present case, learned MM could not have extended the benefit of probation as petitioner/accused was convicted by learned MM under Section 326 IPC. The learned ASJ altered the conviction from Section 326 IPC to Section 324 IPC. However, learned ASJ has not dealt with the grant of benefit of probation in an appropriate manner.

12. In the present case, petitioner/accused was of 19 years of age at the time of occurrence. The occurrence is of 1993. Petitioner/accused has faced the agony of trial for about 20 years. Presently, he runs a shop of electrical goods and also works as an electrician. The antecedents of petitioner/accused were also got verified through concerned SHO. He is not involved in any other case except the present one. Petitioner/accused has also remained in custody for 13 days in the present case. He has also the responsibility of mentally unstable sister and a widow mother. The petitioner/accused was of immature age when the act was committed. Considering the circumstances of the case including the nature of offence and the character of the offender, I feel it appropriate to extend the benefit of Section 4 of the Probation of Offenders Act to the petitioner/accused. Therefore,

while confirming the conviction of petitioner/accused under Section 324 of IPC, it is directed that he be released on probation on entering into a bond in the sum of `10,000/- with one surety of like amount within a period of two weeks from today before the concerned learned MM for keeping peace and good behaviour for a period of one year. In case petitioner/accused does not maintain good conduct during the period of probation then he shall be liable to undergo the substantive sentence as awarded by learned ASJ.

The revision petition stands disposed of accordingly. VEENA BIRBAL, J
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