

Bhirug Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-11-2001

Reported in : 2002CriLJ271

Judge : J.C. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 504 and 506(2); Code of Criminal Procedure (CrPC) , 1974 - Sections 248(2)

Appeal No. : Cri. Revn. No. 1736 of 2001

Appellant : Bhirug

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Kameshwar Singh, Adv.

Judgement :
ORDER

J.C. Gupta, J.

1. Heard Sri Kameshwar Singh, counsel for the applicant and learned A.G.A. for the State.

2. By means of this revision the applicant has challenged the concurrent order of the Judicial Magistrate, Ballia and Illrd Addl. Sessions Judge, Ballia whereby the applicant has been convicted under Sections 323, 504 and 506(2) IPC. He has been sentenced to one month simple imprisonment under Section 323 IPC, one month simple imprisonment under Section 504 IPC and one year simple imprisonment under Section 506(2) IPC.

3. So far as the merits of the case are concerned, both the Courts below have concurrently found that from the prosecution evidence participation of the applicant has been firmly established. P.W. 1 complainant had himself received injuries and he narrated full facts leading to the incident in question. His statement has been found trust worthy and reliable by both the Courts below. Learned Counsel for the applicant in revision could not point out any infirmity or illegality in the orders of the courts below whereby applicant's conviction has been recorded.

4. It is next contented by the applicant's counsel that order of sentence is bad in law inasmuch as the applicant was not given any opportunity of hearing on the question of sentence as contemplated under Section 248(2) Cr. P.C. It is pointed out that from the judgment of the trial Court itself it is evident that after recording conviction, only the counsel for the applicant was heard orally on the question of sentence and no opportunity of hearing as required in law was afforded to the applicant and therefore he was deprived of the right conferred upon him by law makers. This submission of the learned Counsel for the applicant is not devoid of force. A bare perusal of the judgment of the trial Court indicates that on the question of sentence only the counsel of accused was asked to make oral submissions. The procedure adopted by the learned Magistrate was wholly against the spirit and object of the provisions contained in Section 248(2) Cr. P.C. It has been repeatedly held by the Apex Court that hearing as contemplated in the aforesaid provision is not confined merely to hearing of oral submissions. It is the duty of the Court to give opportunity to the accused to produce evidence or other material before the Court having a bearing on the question of sentence. It is not a mere formality and strict compliance thereof is mandatory. The object of giving such an opportunity is two fold. On one hand it fulfils the principle of natural justice by giving an opportunity to the accused to place on record his antecedents. Socio-

economic conditions as well as the mitigating and extenuating circumstances before the Court. The other is that it also helps the Court to choose an appropriate sentence particularly when no minimum sentence is prescribed and the Court has to select sentence out of a wide range of period of sentence. In the present case the Court finds that learned Magistrate as well as the Appellate Court treated this salutary provision a mere formality which has greatly prejudiced the applicant in revision.

5. Learned Counsel for the applicant in revision submitted before the Court that even as per the prosecution case assault by Lathi was made by co-accused Rama Nand who died during the pendency of trial. The allegation against the applicant was that he and accused Gopal assaulted the victim only with kicks and fists. In the medical examination only two blunt object injuries in the form of lacerated wound and contusion were found on the person of injured which most likely were caused by Lathi alleged to have been used by the deceased co-accused. The incident was of the year 1989. There is nothing on the record to indicate that the applicant in revision has any bad antecedents or criminal history. After a lapse of more than 12 years, socio economic conditions of the applicant must have gone radical changes. To send him to jail to serve out imprisonment of year after this long gap would be doing great injustice to the applicant. Order of Appellate Court was passed on 30-6-2001 and since then the applicant in revision is in jail. Learned Counsel for the applicant further submitted that the applicant in revision has no objection if the substantive sentence is converted to a sentence of fine and the applicant in revision shall not treat the same as enhancement of sentence.

6. Having regard to the facts and circumstances of the case and the above factors which the learned Counsel for the applicant has pointed out, this Court finds that ends of justice will sufficiently be met if the sentence of imprisonment is reduced to a period already undergone plus a fine of Rs. 1000/- under Section 323 IPC which on being deposited by the applicant shall be paid to the victim. The applicant in revision is allowed one month's time to deposit the fine.

7. For the reasons stated above this revision is allowed in part. The conviction of applicant in revision under Sections 323, 504, 506(2) IPC are maintained.

However, the sentence of imprisonment awarded under each count is reduced to a period already undergone. In addition applicant in revision is sentenced to a fine of Rs. 1000/- under Section 323 IPC which the applicant is allowed to deposit within one month. In case the fine is not deposited the same shall be recovered in accordance with the provisions of Code of Criminal Procedure. The applicant shall be released forthwith, unless required to be detained in custody for any other offence. Revision is accordingly disposed of.

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