Bhandas Vs. State of M.P.

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SooperKanoon Citation : sooperkanoon.com/501644

Court : Madhya Pradesh

Decided On : Feb-13-2003

Reported in : 2003(2)MPHT517; 2003(4)MPLJ460

Judge : A.K. Shrivastava, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154; Indian Penal Code (IPC), 1860 - Sections 326

Appeal No. : Criminal Revision No. 9/96

Appellant : Bhandas

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Panel Lawyer

Advocate for Pet/Ap. : S.S. Tiwari, Adv.

Judgement :
ORDER

A.K. Shrivastava, J.

1. This revision petition has been directed by the applicant against the judgment of conviction and order of sentence passed by the learned Judicial Magistrate First Class, Pawai, District Panna on 27-4-1995 in Criminal Case No. 192/90, convicting

the applicant under Sections 452 and 326 of the Indian Penal Code (hereinafter referred to as 'the IPC) and sentencing him under Section 452 of the IPC to suffer for one year rigorous imprisonment and fine of Rs. 100 and under Section 326 of the IPC for two and half years rigorous imprisonment and fine of Rs. 300/-, in default of fine in each offence, to suffer ten days and one month rigorous imprisonment. The judgment of conviction has been maintained and the sentence has been modified to the extent that the applicant has been ordered to suffer one year rigorous imprisonment under Section 326 and six months rigorous imprisonment under Section 452 of the IPC in Criminal Appeal No. 34/95, decided 21-12-1995 by the learned Sessions Judge, Panna.

2. In brief the case of prosecution is that on 3-5-1990, the complainant Sukhlal was taking rest after having his meals, at that juncture, accused/applicant armed with an axe came and dealt certain blows to the complainant. The first blow was given on his hand and the second blow was dealt on the right elbow, as a result of which the complainant screamed and thereafter, Bora, Sukha and Desaiya came to the spot. The accused, on seeing these persons fled from the spot.

3. The complainant Sukhlal lodged the report in the concerning police station and in this manner the criminal law set into motion.

4. The investigating agency after investigating the matter filed the charge-sheet under Sections 452 and 326 of the IPC.

5. The learned Trial Judge framed charges against the applicant punishable under Sections 452 and 326 of the IPC. The applicant abjured the guilt and pleaded his innocence and maladroit implication.

6. In order to bring home the charges, the prosecution examined as many as seven witnesses and placed Exs. P-1 to P-5 the documents on record.

7. The learned Trial Judge after marshalling the evidence came to the conclusion that the applicant did commit offence of which he was charged and thereby convicted him and passed sentence mentioned hcreinabove.

8. Feeling aggrieved by the judgment of conviction and order of sentence, the applicant preferred an appeal before the Sessions Judge, Panna who by the impugned judgment allowed the appeal in part by confirming the judgment of conviction, but, modified the sentence, as mentioned hereinabove.

9. In this appeal, Shri S.S. Tiwari, learned Counsel for the applicant has contended that in the present case the FIR and the seizure of the impugned weapon has not been proved and therefore the conviction is bad in law. It has been further contended by him that the investigating officer has also not been examined and therefore the applicant has been convicted contrary to the law. On the other hand, Shri S.K. Rai, learned Panel Lawyer for the State, has submitted that the learned Courts below on the basis of the appreciation of evidence found that the applicant did commit the offence of which he was charged and he has been rightly sentenced to suffer the sentence imposed by the Sessions Judge.

10. So far as the proving of FIR is concerned, the law is now well settled that the FIR is not a substantive piece of evidence, it can be used only for the corroboration and contradiction. In this view of the matter, I see no force in the submission of learned Counsel for the applicant. The second contention of Shri Tiwari is that the seizure of the weapon has not been proved and lastly he submits that as the Investigating Officer has not been examined, the learned Courts below erred in law in convicting the applicant. These contentions have been properly appreciated by the Courts below on the basis of the evidence placed on record and I find nothing so as to dis-believe the reasons assigned by them. The finding are based on appreciation of evidence under the revisional jurisdiction, this Court is not permitted to re-appreciate the evidence.

11. At the end, it has been submitted by Shri Tiwari, learned Counsel for the applicant that the applicant had already suffered a jail sentence of two and half months, according to him, the fine has already been deposited. He has also diverted the attention of this Court that the application of compromise was filed in appeal but the same was rejected by the Court as the offence was under Section 326 of the IPC. To bolster his submission, he has placed heavy reliance on the decision rendered by the Apex Court in the case of Ram Pujan and Ors. v. State of

Uttar Pradesh, AIR 1973 SC 2418, wherein while appreciating the facts of that particular case in which the accused was sentenced four years rigorous imprisonment for the offence under Section 326 of the IPC, the High Court on an application for compromise on behalf of the injured and the accused refused to record the compromise on the ground of the offence being non-compoundable. However, the High Court in that case, reduced the sentence. The Apex Court while further reducing the sentence with the period already undergone held that the fact of compromise could be taken into account in determining the quantum of sentence, even if, the accused were sentenced of non- compoundable offences.

12. Thus, applying the ratio of the case of Ram Pujan (supra) and looking to the peculiar facts and circumstances of the present case and particularly the age of the case, this Court is of the opinion that it will be justifiable to undergo the applicant for the period he had already undergone.

13. In the result, the revision petition is allowed in part, the sentence is modified. The applicant shall be released on the period he had already undergone.