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Court : Rajasthan

Decided On : Apr-26-1994

Reported in : 1995(2)WLC595; 1994(2)WLN584

Judge : R.R. Yadav, J.

Appeal No. : S.B. Cirminal Revision Petition No. 270 of 1985

Appellant : Bhanwar Singh

Respondent : The State of Rajasthan

Disposition : Petition allowed

Judgement :

R.R. Yadav, J.

1. The instant revision is filed by revisionist- convict Bhanwar Singh Under Section 397 read with Section 401, Cr.P.C. against the judgment dated 14.8.85 passed by the learned Sessions Judge, Bhilwara in Sessions Case No. 8 of 1984 convicting and sentencing him for the offence Under Section 352, IPC and to pay a fine of Rs. 100/- in default of payment of fine to undergo 15 days' simple imprisonment and also convicting and sentencing him for the offence Under Section 341, IPC and to pay a fine of Rs. 100/-, in default of payment of fine to undergo 15 days' simple imprisonment.

2. It is held by the learned Sessions Judge that both the substantive sentences are to run consecutively.

3. According to the prosecution story, while complainant. Basant Kumar Agrawal, Assistant Electrical Engineer of Gulabpura spinning Mills was returning on his cycle on 17.11.1983 after finishing his duties at about 6 p.m. when he was passing through Sadar Bazar, Gulabpura and reached near Shyam Medical Store, in front of B.M.S. office, the accused revisionist Bhanwar Singh, who was also an employee of Gulabpura Spinning Mills suddenly started abusing and gave farsa blow on his person but latter saved himself by moving his body. He fell down from his cycle and again revisionist Bhanwar Singh gave a farsa blow which he saved himself by moving his neck. The motive of the incident disclosed in the first information report (Ex. p/6) is that services of the real brother of accused Bhanwar Singh were terminated due to disciplinary action against his brother which annoyed him and motivated him to commit the said crime. It is also alleged in the first information report (Ex. P/6) that the incident was witnessed by one Govind Sindhi. A written F.I.R. was lodged of the incident on the very same day at about 6.30 p.m. with the police station, Gulabpura, whereupon a case Under Section 307/341, IPC was registered and investigation commenced.

4. After investigation, a charge-sheet Under Section 307/341, IPC was submitted by the police and eventually the case was committed to the court of Sessions Judge, Bhilwara for trial.

5. The learned Sessions Judge framed the charges Under Section 307 IPC and in alternative, charges Under Section 352 and 341 IPC were also framed against the revisionist Bhanwar Singh. The revisionist pleaded not guilty to the aforesaid charges framed against him and claimed trial.

6. During trial, the prosecution examined six witnesses namely: PW 1 Anand Mathur, PW 2 Govind Sindhi, PW 3 Puranmal, PW 4 Ram Prasad, PW 5 Basant Kumar Agrawal (complainant), & PW 6 Shanker Singh. In support of the prosecution story, six documents were produced from Ex. P/1 to Ex. P/6. Ex. P/1 is inspection memo. Ex. P/2 is site plan. Ex. P/3 is recovery memo of cycle. Ex. P/4 is the statement of Govind Sindhi recorded by the Investigating Officer. Ex. P/5

is written report by complainant Basant Kumar Agrawal (PW 5) on the basis of which, F.I.R. was registered at the police station, which is marked as Ex. P/6.

7. In the statement Under Section 313, Cr.P.C., the revisionist has stated that he was active member of B.M.S. Union while the first informant Basant Kumar Agrawal in collusion of management was helping another rival union I.N.T.U.C. According to the petitioner, he is falsely implicated in the case due to rivalry between two unions.

8. After hearing, learned public prosecutor and learned Counsel for the revisionist, the learned Sessions Judge came to the conclusion that the prosecution failed to establish the offence Under Section 307, IPC against the revisionist beyond doubt, hence acquitted him Under Section 307, IPC but on the same appreciation of evidence convicted him Under Section 352 and 341, IPC.

9. I have heard learned Counsel for the petitioner and learned public Prosecutor for the State and gone through the oral and documentary evidence on record including the judgment given by the learned Sessions Judge convicting and sentencing the revisionist under Section 352 and 341, IPC.

10. The main thrust of argument of the learned Counsel for the revisionist is that it is unsafe to base conviction of the revisionist on the sole un-corroborated testimony of complainant Basant Kumar Agrawal, who is an interested witness being the complainant himself and also inimical to the revisionist. In the instant case, the learned Sessions Judge categorically held that out six witnesses, four witnesses namely: PW 1 Anand Kumar, PW 3 Puranmal, PW 4 Ram Prasad and PW 6 Shanker Singh are formal witnesses and only one independent witness to the occurrence PW 2 Govind Sindhi had not supported the prosecution and was declared hostile. According to the learned Sessions Judge, the statement of complaintant PW 5 Basant Kumar Agrawal about giving two farsa blows with intention to kill him, did not inspire his confidence, therefore, he recorded a finding that the prosecution failed to establish guilt against the revisionist Under Section 307 IPC beyond reasonable doubt.

11. Surprisingly, the learned Sessions Judge on the sole uncorroborated testimony of the complainant convicted the revisionist Under Section 352 and 341, IPC. It is true that the revisionist can be convicted even on the sole uncorroborated testimony of an independent eye-witness but not on the uncorroborated testimony of the complaintant. who is interested in success of prosecution and has his own personal interest to see the accused convicted to wreak his vengeance. The Sub-ordinate courts must bear in mind human Psychology behavioral probity while assessing potency of such witness. It is further true that in peculiar set of circumstances, the sole testimony of even complaintant can be basis of conviction where offences are committed in lonely places taking care that no one can be able to witness the crime. More so, even in such cases: such as rape cases, injury on the person of the victim (prosecutrix) especially on her private parts have always corroborative value before the Court. But in the instant case, there is no corroboration whatsoever for recording conviction against the revisionist Under Section 352 and 341, IPC. According to me, PW 5 Basant Kumar Agrawal (Complaintant) can not be said to be a witness of sterling worth for the reasons given below:

(a) The prosecution version given by PW 5 Basant Kumar Agrawal is highly improbable. The incident is alleged to have been taken place in a thickly populated area and that too, of a Bazar, still not a single witness has come forward to testify and lent support to his version. The only independent witness named in the F.I.R. i.e. Govind Sindhi has not supported his version and has been declared hostile by the prosecution.

(b) The version given by PW 5 Basant Kumar Agrawal (complainant) about weilding of farsa blows, is also inherently improbable especially because not a single scratch was received by him. A man can speak lie but circumstance never speak lie. In the present case, even the prosecution version given by PW 5 Basant Kumar Agrawal is accepted as disclosed in the F.I.R. and his statement before the court regarding sudden attack by the revisionist, and his fall from the cycle, he must have received some abrasions or contusion. It is highly improbable to contemplate that a person is suddenly attacked with an intention to kill by farsa while he was going on cycle but even by fall from the cycle, he did not receive any

abrasion or contusion.

12. Since in the present case, the sole testimony of PW 5 Basant Kumar Agrawal is suspicious, therefore the learned Sessions Judge should not have convicted the revisionist on his sole uncorroborated testimony without any corroboration whatsoever.

13. In my considered opinion, suspicion about truthfulness of a witness should never be substituted as evidence for recording conviction in those cases where before the Sub-ordinate Courts, there is uncorroborated testimony of a complainant which lacks corroboration even from circumstantial evidence on record-Although it has not set a form or procedure. It depends upon the facts of each case after examining human Psychology and behavioral probity.

14. Ordinarily, this court use to address and examine in exercise of revisional powers Under Section 397/401, Cr.P.C. only the question of law based on undisputed facts and avoid to enter into the question of law based on disputed facts but in my view, in suitable cases in the interest of justice if judicious conscience of the court is pricking, it can set aside the finding of the court after re-apprisal of oral and documentary evidence on record. Once, the record of Sub-ordinate court is called for by this Court in exercise of its powers Under Section 397/401, Cr.P.C this Court can examine as to the correctness, legality and propriety of any finding and sentence or order passed by the Sub-ordinate Courts.

15. As a result of the aforesaid discussion, the revision petition is allowed. The conviction and sentence passed by the learned Sessions Judge, Bhilwara Under Section 352 and 341, IPC vide his judgment dated 14.8.85 are hereby set aside. The revisionist is acquitted of the offence Under Section 352 and 341, IPC. If the revisionist has deposited the fine in pursuance of the judgment dated 14.8.1985 passed by the learned Sessions Judge, Bhilwara, he is permitted to obtain refund within reasonable time.

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