

Nawal Kishor Tiwari Vs State of U.P.

Court: Allahabad High Court

Date of Decision: April 1, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 360, 361, 484

Penal Code, 1860 (IPC) â€” Section 294

United Provinces Borstal (Amendment) Act, 1976 â€” Section 10

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Final Decision: Partly Allowed

Judgement

Vinod Prasad, J.

Challenge in the instant revision by the revisionist Nawal Kishor Tiwari is to his conviction u/s 294 IPC and imposed

sentence of two months R.I. with Rs. 2000/- fine. In default of payment of fine, he has been directed to serve one month further imprisonment by

A.C.J.M. Mahoba vide impugned judgment and order dated 29.6.2009, recorded in Criminal Case No. 279 of 2006, State v. Nawal Kishor

Tiwari, relating to Crime No. 61 of 1996, P.S. Kotwali, district Mahoba.

2. Challenge to the aforesaid conviction and sentence by the revisionist in Criminal Appeal No. 25 of 2009, Nawal Kishor Tiwari v. State of U.P.

was unsuccessful as Additional Sessions Judge, F.T.C., Mahoba, who vide his impugned judgment and order dated 14.3.2011 confirmed trial

Court's judgment. After Appellate Court's judgment revisionist surrendered on 23rd March 2011 and is under incarceration since that date.

3. Background facts as are mentioned in both the impugned judgments indicates that revisionist is the Principal and Manager of Kishore Manch

Sanskritik Kala Institution, Gandhi Nagar, district Mahoba. Work of the aforesaid institution was to give admission to infant boys and girls.

Informant and victims had got their children admitted in the said institution by paying fees of Rs. 1300/- and 10 K.g.s. of grains. Students, who got

admitted in the said institution were Saurav Kishore, Sanjay Kishore, Raj Kishore, Bharat Kishore, Bhagwat Kishore, Kalyan, Watyan, Sunil, Om

Kishore.

4. It is alleged that the revisionist used to indulge in unnatural sexual activities as he used to get his feet and male organ massaged from those

infant children. Children complained to their parents regarding said unnatural lust and illegal activities of the revisionist. On lodging protest by the

parents, who also demanded back repayment of admission fees and also to score out the names of their wards, they were threatened by the

revisionist to falsely implicate them in false cases, as revisionist had got connections with higher authorities and further threat was that he will get the

parents annihilated with help of anti-social elements and goondas. Further allegation is that although children were studying in the said institution

since last twenty days but their admission in the scholar register was shown from a subsequent date i.e. 1.6.1996 and the unnatural lust was

practised since last eighteen days.

5. In respect of the said crime an F.I.R. was registered, which ultimately resulted in laying down a charge sheet against the revisionist. Learned

Magistrate found prima facie offence being disclosed against the revisionist, summoned him u/s 294 IPC and charged him with the said offence on

3.11.1997, which charge was denied by the revisionist, who claimed to be tried.

6. To prove the guilt of the revisionist and establish the charge, prosecution examined Babu Lal P.W. 1, Saurabh Kishore P.W. 2, Ramratan P.W.

3, Bharat Kishore P.W. 4 and Constable Ramjeet Dubey P.W. 5.

7. In his statement u/s 313 Code of Criminal Procedure, revisionist denied incriminating circumstances appearing against him and pleaded his false

implication.

8. A.C.J.M. Mahoba, who conducted the trial found the case of the prosecution proved to the hilt and therefore, convicted the revisionist u/s 294

IPC and imposed the sentence of two months R.I. with fine of Rs. 2000/-. She further ordered that in default of payment of fine revisionist shall

undergo one month further imprisonment.

9. Aggrieved by the aforesaid conviction and sentence, revisionist preferred Criminal Appeal No. 25 of 2009 before Additional Sessions

Judge/F.T.C. Mahoba but was unsuccessful as his appeal was dismissed by the lower appellate Court on 14.3.2011. Hence, this instant revision

challenging both the orders of conviction and sentence.

10. At the time of admission of this instant revision, Sri V.P. Srivastava, learned Senior Counsel who appeared to argue the case of the revisionist,

stated at the bar that the revisionist has surrendered after dismissal of his appeal on 23rd March 2011 and since that date, he is under

incarceration. In respect of the said submission, two certified copies of the record of the Magistrate's Court have been filed today in Court, which

are taken on record. Perusal of the order dated 23.3.2011 of ACJM indicates that the revisionist was taken in custody on the said date and was

dispatched to jail to serve out the sentence as was implanted on him by the trial Magistrate.

11. Learned Senior Counsel for the revisionist did not argue the revision on merits and conceded that so far as findings of facts recorded by both

the Courts below are concerned, they do not suffer from any error of law. No fault can be found in the marshalling of facts critical appreciation

thereof while concluding that prosecution has successfully established the charge against the revisionist to the hilt. Learned Senior Counsel,

therefore, did not address the Court on the merits of the revision and conceded that conviction of the revisionist is well merited. He, however,

addressed only on the question of sentence and submitted that in view of provisions of Section 484(e) Code of Criminal Procedure, the revisionist

should have been released on probation instead of being sentenced and A.C.J.M. has not given any reason not to follow that course. He,

therefore, submitted that the revisionist being an aged person of 50 years, be released on probation and his substantive sentence along with fine be

scored out.

12. Learned AGA, per contra, opposed the prayer and submitted that the activity of the revisionist is immoral and unethical and therefore, he does

not deserve any compassion and sympathy. Sentence of two months R.I. is neither excessive nor unjust and, therefore, should not be interfered

with.

13. I have considered the rival contentions. Perusal of the provisions of Section 484 Code of Criminal Procedure, which deals with repeals and

savings clause, reveal that by amending Act of 1976 (U.P. Act 16 of 1976), vide Section 10 thereof, Sub-Clause (e) was added in Section 484

Code of Criminal Procedure The said amendment came into force w.e.f. 1.5.1976. By the said amending Act, "the provisions of United Provinces

Borstal Act, 1938 (U.P. Act VIII of 1938) the United Provinces First Offenders" Probation Act, 1938 (U.P. Act VI of 1938), and Uttar Pradesh

Children Act, 1951 (U.P. Act 1 of 1951) were made applicable until altered or repealed or amended by the competent Legislature or other

competent authority, and accordingly the provisions of Section 360 of this Code shall not apply to State of U.P. and the provisions of Section 361

of the Code shall apply with the substitution of references to the Central Acts named therein by references to the corresponding Acts in force in the

State.

14. Section 361 of the Code ordains that where in any case the Court could have dealt with-

(a) an accused person u/s 360 or under the provisions of the Probation of Offenders Act, 1958 (Act 20 of 1958) or

(b) a youth offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or

rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

15. It is submitted that although Section 360 of the Code does not apply in the State of U.P. but reasons were required to be mentioned while

giving substantive sentence to the revisionist. Perusal of the record and the evidences led in the trial unerringly indicates that the revisionist was

indulging into immoral and unethical practices that too in respect of adolescents. Being an aged person of 50 years, he allowed depraved lust to

over power his saner thoughts to such a depravity that he indulged into lustuous practices as mentioned above.

16. Looking to the activity indulged into by the Petitioner, it cannot be said that he does not deserve incarceration. How ever sentence has to be

commensurate with the guilt of the accused. Judging from that angle it is detected that the illegal activity was carried out by the revisionist for a

period of eighteen days. The maximum sentence, which has been provided under the Statute for offence u/s 294 IPC can extend to three months

of imprisonment or with fine or with both.

17. Looking to the entire facts and circumstances, this Court is of the opinion that the substantive sentence of the Petitioner for two months R.I. is

excessive and should be reduced and instead he should be implanted with heavy fine of Rs. 30,000/- out of which compensation should be

awarded to the children for the agony suffered by them.

18. In view of above discussion, revision succeeds in part. The substantive sentence of the revisionist of two months R.I. is reduced to one month

R.I. but fine of Rs. 2000/- imposed upon him is enhanced to Rs. 30,000/- out of which Rs. 3000/- each is directed to be paid to the children

through their parents, namely, Babu Lal Lodhi, Lal Diwan Lodhi, Mukundi Lal Lodhi, Sewak Rajpoot, Devi Deen Pal, Moti Lal Pal, Waghraj

Lodhi, Kadhori Lal Goswami and Kali Charan Rajpoot, who all are fathers of above mentioned adolescents students. Revisionist is directed to

deposit entire amount of fine within a period of two weeks from today. In the event of default in depositing the fine, revisionist is directed to

undergo one month simple imprisonment.

19. A.C.J.M. Mahoba is directed to realize the fine and pay compensation to the children through their parents after noticing them within a period

of two weeks from the date of its realization.

20. Revision is allowed in part as above.