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**(2014) 05 AHC CK 0228**

**Allahabad High Court**

**Case No:** Criminal Revision No. 996 of 2014

Mahendra

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** May 23, 2014

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 320, 326, 504

**Citation:** (2015) 1 ACR 621 : (2014) 5 ADJ 578

**Hon'ble Judges:** Bharat Bhushan, J

**Bench:** Single Bench

**Advocate:** Sanjeev K. Tiwari, Advocate for the Appellant

**Final Decision:** Dismissed

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### **Judgement**

Bharat Bhushan, J.

Supplementary-affidavit filed by learned counsel for the revisionist today is taken on record. Heard Sri Sanjeev Kumar Tiwari, learned counsel for the revisionist-accused and Sri Jai Krishna Upadhayay, learned AGA for the State.

2. Revisionist Mahendra has preferred this criminal revision against the judgment and order dated 3.3.2014 passed by Additional Sessions Judge/Special Judge (S.C. & S.T.) Meerut in Cr. Appeal No. 222 of 2013 (Mahendra v. State) u/s 326, 504 IPC, Police Station Medical, District Meerut arising out of CrI. Case No. 4216 of 2008 (State v. Mahendra) Case crime No. 331 of 2003 whereby the appeal against the judgment and order dated 22.7.2013 convicting and sentencing revisionist to the rigorous imprisonment of five years and fine of Rs. 5,000/- with default stipulation, passed by Additional Chief Judicial Magistrate, Court No. 2, Meerut was dismissed.

3. Prosecution case is that on 4.12.2013 at about 7:30 p.m., informant was standing outside his house. Revisionist Mahendra arrived there and started abusing and

attacking the informant for not arranging employment for him. Indrajeet, his nephew intervened to rescue the informant enraging revisionist, who attacked and injured Indrajeet by a razor and thereafter fled from the spot. Indrajeet sustained serious wounds. Informant and other neighbours took Indrajeet to Medical College and admitted him there. A report was also lodged by the informant at the Police Station Medical bearing Case crime No. 331 of 2003 under Sections 326, 504 IPC. The matter was investigated and charge-sheet was filed under Sections 326, 504 IPC against the revisionist Manendra. He claimed to be tried.

4. Prosecution adduced evidence of PW-1 Jagpal, PW-2 Indrajeet, PW-3 S.I. Kalpana Tyagi and PW-4 Dr. B.K. Gupta. On conclusion of the trial, learned Additional Chief Judicial Magistrate convicted and sentenced revisionist/accused Mahendra u/s 326 IPC and sentenced him to rigorous imprisonment of five years and a fine of Rs. 5,000/- with default stipulation. However, the revisionist was acquitted u/s 504 IPC.

5. Revisionist preferred a criminal appeal against the judgment and order dated 22.7.2013 which was heard and dismissed by Additional Sessions Judge/Special Judge (S.C./S.T.) Meerut and the judgment and order passed by the trial Court dated 22.7.2013 was affirmed. This order is under now challenge before this Court under revisional jurisdiction.

6. Learned counsel for the revisionist has argued that lower appellate Court has not considered the various aspects of the evidence and that judgment has been passed without any cogent reason. He further argued that the prosecution case is not supported by evidence of any independent witness and judgment is not based on trustworthy evidence.

7. It is pertinent to mention here that the revisional jurisdiction is a limited jurisdiction wherein primarily the propriety, legality and jurisdictional errors are considered. If the impugned order is neither improper, illegal or perverse and does not suffer from any jurisdictional error, then the Court hearing the revision cannot interfere in exercise of discretion by the trial Court and lower appellate Court. It is also settled that the Court hearing revision will not substitute its own view as against the conclusions of the trial Court merely because it holds a different view in the interpretation of available evidence.

8. It is settled position of law that High Court will exercise its revisional power where there is a material error of defect in law or procedure, misconception or misreading of evidence, failure to exercise or wrong exercise of jurisdiction or where the facts admitted or proved do not disclose any offence.

9. As a broad proposition, the interference may be justified (a) where the decision is grossly erroneous; (b) where there is no compliance with the provisions of law; (c) where the finding of fact affecting the decision is not based on the evidence; (d) where the material evidence of the parties has not been considered; and (e) where the judicial discretion is exercised arbitrarily or perversely.

10. In exercise of the revisional jurisdiction, it will be beyond its power and jurisdiction to re-assess the evidence. Appraisal of the evidence is not permissible in revision petition. Hon"ble Supreme Court in [State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri](#), has held that the High Court while hearing revisions does not work as an Appellate Court and will not re-appreciate the evidence, unless some glaring feature is pointed out which may show that injustice has been done.

11. Hon"ble the Apex Court in [Jagannath Choudhary and Others Vs. Ramayan Singh and Another](#), has held that revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error or point of law and consequently there has been a flagrant miscarriage of justice. In [Munna Devi Vs. State of Rajasthan and anr,](#), it has been further held that while exercising powers the High Court has no authority to appreciate the evidence in the manner as the trial and appellate Courts are required to do.

12. Hon"ble the Apex Court in [State of Karnataka Vs. Appa Balu Ingale and others](#), has held that generally speaking, concurrent findings of fact arrived at by two Courts below are not to be interfered with by the High Court in absence of any special circumstances or if same are perverse in any manner."

13. I have carefully examined all the materials on record and find that FIR was lodged after medical examination of the injured Indrajeet. I am afraid the argument that this has vitiated trial is not sustainable for the simple reason that PW-2 Indrajeet was seriously injured in the said incident. Testimony of PW-4 Dr. V.K. Gupta is available on record which indicates that injury was serious and it could have resulted in the death of injured. He has submitted that injury was caused on vital and sensitive parts of body. Attack caused cut near trachea and on other veins of neck nearby.

14. Obviously at first instance PW-1 Jagpal and neighbours had to provide treatment to the injured and they immediately took the injured to the Medical College. The testimony of Dr. V.K. Gupta reveals that injured was admitted and examined at the Medical College at 8:15 pm in the evening meaning thereby that injured had been taken to the Medical College within 45 minutes of the incident. Thereafter PW-1 Jagpal lodged FIR at 10:10 p.m. Considering sequence of events, it is apparent that both the medical examination and lodging of FIR had been done without any delay.

15. Learned counsel for the revisionist has also argued that no independent witness was produced. This argument is also not sustainable for the simple reason that the criminal cases are tried and decided on the basis of available evidence on record and if available evidence is trustworthy and can be relied upon then, accused cannot be acquitted merely on the ground that some other witnesses had not been produced. Only test is reliability and sufficiency of available evidence on record. Learned counsel for the revisionist has further argued that no weapon of offence

was found. This argument is also not sustainable. Non-recovery of weapon of assault (razor) cannot make the prosecution case doubtful. Court cannot throw away the prosecution case merely because accused is clever enough to hide the weapon of assault or investigation is shoddy.

16. I have carefully examined all the materials on record. The presence of both witnesses have been proved without any doubt. The medical examination of the injured was conducted immediately. The FIR was lodged without any delay. Learned trial Court found both the witnesses of fact trustworthy and credible. Similarly lower appellate Court has also found prosecution evidence trustworthy. Learned counsel for the revisionist has argued that even if the evidence of prosecution is taken at its face value, still offence committed will not fall within the parameters of Section 326 IPC. Definition of grievous hurt is given in Section 320 IPC. Considering the parameters provided u/s 320 IPC, it cannot be said that no offence u/s 326 IPC is made out. Medical report in the instant case says that injured had sustained injuries on the vital parts of the body including chest, left eye, trachea and other veins around the same area. Not only allegation of permanent disfigurement can be accepted, but it is also evident that injuries endangered the life of Indrajeet injured. The act complained of, squarely falls within the domain of Section 326 IPC. Learned trial Court as well as lower appellate Court after thoroughly marshaling and microscopic scrutiny of evidence on record has held that prosecution has proved the charges against the revisionist. The finding recorded by both the Courts in the impugned order are based upon evidence and supported by the cogent reasons. In the opinion of this Court, revisionist has rightly been convicted u/s 326 IPC. The revision is not sustainable and is dismissed in limine. Let a copy of the judgment be sent to the lower Court within 15 days through Sessions Judge, Meerut.