

Court No. - 80

Case :- CRIMINAL APPEAL No. - 5909 of 2019

Appellant :- Rajeev

Respondent :- State of U.P. and Another

Counsel for Appellant :- Om Prakash Rai, Ashish Rai

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Heard learned counsel for the appellant, learned A.G.A. for State and perused the record.

This criminal appeal has been filed by the appellant with prayer to set aside the order dated 5.1.2019 passed by learned Additional Sessions Judge/Special Judge (S.C./S.T. Act) Saharanpur in Special Session Trial No.24 of 2017, under Sections 302, 504, 506 IPC and Section 3(2)(5) S.C./S.T. Act, Police Station Sadar Bazar, District Saharanpur.

It is submitted by learned counsel for the appellant that he was also named in the F.I.R for causing injury to the deceased who died later on. It is further submitted that during the course of investigation no any material regarding complicity of the appellant was found by the Investigating Officer and he was exonerated. After commencement of trial and recording evidence before the learned trial court an application under section 319 Cr.P.C was moved on the part of the informant which was rejected one time and after recording further evidence the other application under section 319 Cr.P.C was moved upon which the learned court concerned passed the order on 5.1.2019 and summoned the appellant for trial. The other co-accused persons were charged under sections 302, 504, 506 I.P.C and section 3(2)(5) SC/ST Act. It is also submitted that P.W-1 Vimla Devi wife of the deceased, P.W-2 Gopal were not eye witnesses of the incident but before the trial court they deviated from their previous statements and said that they saw the incident and assigned the role of beating to all though the specific role was assigned to co-accused Sanjiv. It is further submitted that during postmortem of the deceased injuries were found on the head and there was smell of alcohol which shows that he was under the influence of liquor and fell on the ground somewhere and sustained injuries, as a result his death was caused but on account of rivalry the appellant and other co-accused persons were named in the F.I.R by concocting false story. During course of investigation the Investigating Officer found the presence of the appellant not on the spot where the incident is said to have taken place, therefore, he exonerated

him but this fact was also not taken into consideration by the court concerned. It is also submitted that an affidavit was given by the witness before the Investigating Officer that he did not saw the incident but later on before the learned trial court he deposed against his previous statement on affidavit that he saw the incident. In this way his statement cannot be said to be reliable. This fact has also not been taken into consideration by the learned trial court while passing the order, therefore, request to set aside the order passed by learned trial court on 5.1.2019 and allow this appeal.

On the other hand, learned AGA opposed the prayer and contended that P.W-1 Vimala Devi and P.W-2 Gopal were eye witnesses of the incident and the deceased was beaten by the co-accused Sanjiv and the present appellant with other co-accused Rajiv and Ram Kishan as a result he sustained injuries and his several ribs were fractured and other parts of the body of the deceased were also got injuries. In the postmortem all the injuries were found to be present on the body of deceased which suggest that the deceased was beaten by the co-accused Sanjiv and the present appellant as a result he died. During course of trial P.W-3 Rahul Saroj was also examined who deposed before the learned trial court that the incident was narrated to him by the injured when he was alive and he also stated about the involvement of the present appellant in the incident. It is also contended that the injuries found on the body of the deceased does not suggest that those injuries were sustained on account of falling on the ground under the influence of liquor.

The learned court concerned considered the facts and circumstances of the case and the material on record and the statements made by P.Ws-1,2 and 3 those are said to be the eye witnesses of the case and then passed the order while exercising the power under section 319 Cr.P.C which cannot be said to be illegal but this appeal being devoid of merit, is liable to be dismissed.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A and perusal of record, the order passed by learned court concerned on 5.1.2019, it appears that the appellant was named in the F.I.R for causing injuries to the deceased with co-accused Sanjiv, Ram Kishan and Rajiv and also using the word relating to his caste but during the course of investigation he was exonerated. Some affidavit were taken by the Investigating Officer and on their basis his complicity was negated. During the course of trial, P.W-1 Vimla Devi, P.W-2 Gopal Das and P.W-3 Rahul Saroj were examined before the

learned trial court. P.W-1 Vimala Devi and P.W-2 Gopal Das both deposed that they saw the incident themselves. They stated about the involvement of the present appellant also in causing the injuries and using the words relating to the caste of the deceased. About the affidavit P.W-2 Gopal Das refused that he filed an affidavit before the Investigating Officer though accepted photograph affixed on it but it was without his signature.

The pen drive on the part of the opposite party was also produced before the learned court concerned which was viewed by the learned court and video clip was also shown to the witness who refused to accept his picture and also denied the voice. The injuries found on the body of the deceased were also taken into consideration by the trial court and then the order in question was passed.

Thus, in the order passed by learned trial court dated 5.1.2019, there appears no any error of fact or law but it is lawful and appropriate, it warrants no interference by this Court as a result this appeal being devoid of merit, is liable to be dismissed.

Accordingly, the present appeal is dismissed.

Order Date :- 1.12.2023
G.S