

Court No. - 42

Case :- GOVERNMENT APPEAL No. - 386 of 2023

Appellant :- State of U.P.

Respondent :- Matadeen S/O Paarikshat Lodhi

Counsel for Appellant :- Ashutosh Kumar Sand

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard Shri K.P. Pathak for the appellant in this government appeal.
2. This government appeal has been filed praying to set aside the order of acquittal under Sections 307 and 504 I.P.C. dated 31.05.2023 in Sessions Trial No.162 of 2008 (State of U.P. vs. Matadeen) relating to Case Crime No.215/2005 under Sections 324, 323, 504, 325 and 307 I.P.C., P.S.- Majhgawan, District- Hamirpur; passed by the Additional Sessions Judge, FTC-I, Hamirpur.
3. Initially, the first informant lodged an F.I.R. on 21.09.2005 at 8:45 A.M. alleging that the accused-respondent alongwith one Prem Narayan has caused injuries by Lathi and Kulhadi at about 7 A.M. to the injured eye witness P.W.-2 (Naresh Kumar). The F.I.R. was lodged under Sections 324, 504, 323 and 325 I.P.C. Chargesheet was filed by the police on 07.10.2005 under Sections i.e., 324, 323, 504 and 325 I.P.C. Subsequently, the informant P.W.-1 (maternal uncle of the injured P.W.-2) filed a Complaint Case No.63 of 2006 (Kalka Prasad vs. Matadeen and Others) to summon the accused persons under Section 307 I.P.C. The said case was transferred to the Court. Consequently, the Sessions Court framed charges against the accused persons on 31.10.2013 under Sections 323, 324, 504, 325 and 307 I.P.C. read with Section 34 I.P.C. Prosecution examined six witnesses, namely, P.W.-1 Kalka Prasad (informant), P.W.-2

Naresh Kumar (injured), P.W.-3 Brij Kishore, P.W.-4 Dr. K.D. Gupta (who examined injuries of P.W.-2), P.W.-5 Dr. Akhilesh Kumar (Radiologist) and P.W.-6 Constable Hari Narayan (who noted the F.I.R.).

4. In his cross examination, the informant P.W.-1 has admitted that the complaint was not filed by the injured but he filed the complaint on advice of a lawyer. In his cross examination, he stated that he does not know what was written in the complaint. He stated that he does not remember that what papers were filed alongwith the complaint.

5. The P.W.-3 Brij Kishore, in his cross examination; firstly stated that the informant P.W.-1 was present at the place and time of occurrence but subsequently, denied it. He stated that the P.W.-1 alongwith Balmukund, Dev Karan and two others went to lodge F.I.R. at the police station but he remained outside the police station.

6. The P.W.-6 Head Constable Hari Narayan has stated in his examination-in-chief that the informant has come to the police station with a written application alongwith the injured Naresh Kumar on 21.09.2005 at 7 A.M. and the F.I.R. being Case Crime No. 215 of 2005 under Sections 324, 504, 323 and 325 I.P.C. was registered and a copy of F.I.R. was given to the informant P.W.-1 after obtaining acknowledgement, which fact is mentioned in G.D. dated 21.09.2005 at 8:45 A.M. He proved the F.I.R. and the G.D. In his cross examination, he admitted that Section 323 I.P.C. was inserted subsequently and there is some over writing.

7. The learned Trial Court considered the evidence of the prosecution witnesses and found that the P.W.-4 Dr. K.D. Gupta and P.W.-5 Dr. Akhilesh Kumar have not stated nature of injuries to be such which may cause death. The P.W.-3 Brij Kishore has stated that the accused-respondent had spoken that he shall insult the injured P.W.-2 if money is not returned. No evidence of insulting the injured could be filed nor it could be proved that the accused-respondent has insulted the injured.

After meticulous discussion and analysis of evidence in paragraph nos.31 and 35 of the impugned judgement, the learned Trial Court recorded a finding of fact that no offence under Sections 307 and 504 I.P.C. could be established against the accused beyond reasonable doubt. Learned AGA could not point out any discrepancy in the findings so recorded by the learned Trial Court for acquitting the accused-respondent under Sections 307 and 504 I.P.C.

8. The accused-respondent has filed a Criminal Appeal No.6504 of 2023 challenging his conviction under the impugned judgement under Sections 323, 324 and 325 I.P.C. The said appeal is cognizable by a learned Single Judge.

9. Considering the entire facts and circumstances of the case, we do not find any apparent error of law or fact in the impugned judgement relating to acquittal of the accused-respondent under Sections 307 and 504 I.P.C. Therefore, the application for leave to appeal is **rejected**. Consequently, the present government appeal against the acquittal of the accused-respondent under Sections 307 and 504 I.P.C. is also **dismissed**.

10. It is made clear that any observation made in the body of this order shall not have any effect on hearing and decision in the pending Criminal Appeal No.6504 of 2023.

Order Date :- 18.10.2023
Ankit.