

Neutral Citation No. - 2023:AHC-LKO:45250

Reserved on 22.5.2023

Delivered on 12.7.2023

Case :- CRIMINAL REVISION No. - 559 of 2008

Revisionist :- Shiv Nath

Opposite Party :- State of U.P. and others

Counsel for Revisionist :- Dharendra Singh

Hon'ble Manjive Shukla,J.

1. Revisionist has filed this revision challenging therein judgment and order dated 11.7.2008 passed by Sessions Judge, Raebareli in **Criminal Appeal No.15 of 2007** (Ram Lal and others vs. State of U.P.) whereby the judgment and order dated 12.7.2007 passed by the Civil Judge (J.D.)/Judicial Magistrate, Raebareli in Case No.774/2007 convicting and sentencing the appellants under Section 323 and 325 IPC, has been set aside.

2. Present revision was filed by Shiv Nath, son of Thakurdeen, who as per the report dated 22.2.2023 submitted by the Chief Judicial Magistrate, Raebareli, has died.

3. After the death of the revisionist, his legal heirs have not filed any application for substituting themselves as revisionist in place of late Shiv Nath.

4. The aforesaid revision is pending before this Court since 2008 and since the sole revisionist has died, therefore there is no other option available to this Court except to proceed to decide the revision on merits.

5. Shiv Nath lodged a report In Police Station Salon, District Raebareli which was registered as Case Crime No.155/96 under Sections 323, 325 IPC, claiming therein that in the morning of

21.11.1996 when he was coming back from his tubewell and reached near his agricultural land, Ram Lal son of Thakurdeen, Ram Lakhan son of Ram Lal, Gayadeen and Shiv Mohan, sons of Jagannath, who are the residents of same village, met Shiv Nath and abused him and said that he had ploughed their agricultural land. When Shiv Nath asked the accused not to abuse, the accused started beating him by lathis. The sons of Shiv Nath, namely, Mahesh and Chandra Ram came to save their father but the accused also beaten them by lathi.

6. Shiv Nath and his sons were medically examined and injury reports were prepared. Most of the injuries suffered by Shiv Nath and his sons were simple in nature but since certain injuries were serious in nature, as such they were referred for x-ray and after the x-ray report was received, the police converted the aforesaid criminal case under Sections 323, 325 and 506 IPC. The charges were framed by the trial court against Ram Lal, Ram Lakhan, Gayadeen and Shiv Mohan under Sections 323, 325 and 506(2) IPC. Thereafter, all the accused pleaded not guilty and therefore, the trial started.

7. During trial, testimonies of Prosecution Witness No.1 Shiv Nath, Prosecution Witness No.2 Chandra Ram, Prosecution Witness No.3 Mahesh, Prosecution Witness No.4 Dr. Jagdish Prasad Mehrotra and Prosecution Witness No.5 Dr. S.L. Sharma were recorded.

8. Accused in their statements under Section 313 CrPC have stated that the prosecution version is incorrect. Ram Lal in his statement said that he was working in his potato field and Shiv Nath came and then he asked Shiv Nath as to why he had ploughed his field, then Shiv Nath started abusing him and also started beating him with lathi. The sons of Shiv Nath, namely,

Chandra Ram, Mahesh and Nakulle also came there and started beating him. Ram Lal in his statement has further stated that he in his self-defence also used lathi.

9. The trial court concluded the trial and vide judgment and order dated 12.7.2007 convicted Ram Lal, Ram Lakhan, Gayadeen and Shiv Mohan under Section 323 IPC and sentenced them for simple imprisonment of six months each and under Section 325 IPC, two years simple imprisonment and fine of Rs.1,000/- each with further rider that if the fine is not paid, the convicts will have to undergo one month's more imprisonment.

10. PW-1 Shiv Nath in his testimony recorded during trial has categorically said that Shiv Mohan and Gayadeen were not present on the place of occurrence at the time of incident. Ram Lal in his statement before the trial court stated that in fact Shiv Nath and his sons had beaten him and he in his self-defence had used lathi which resulted in certain injuries to Shiv Nath and his sons, though they being aggressor had given lathi blows to Ram Lal and thereby Ram Lal also suffered injuries. Ram Lal has further stated that he had reported the said incident to concerned police station and report in that regard was registered in Police Station Salon, District Raebareli on 22.11.1996 at 17.30 hours. Ram Lal was also referred for medical examination and his injury report was also prepared.

11. There is categorical statement made by Shiv Nath that Shiv Mohan and Gayadeen were not present on the scene of occurrence at the time of incident but since they were of the party of Ram Lal, therefore he has implicated them as accused, which makes the entire prosecution story suspicious and further injuries suffered by Ram Lal were not explained by the prosecution at all.

12. Accused Ram Lal, Ram Lakhan, Gayadeen and Shiv Mohan filed Criminal Appeal No. 15 of 2007 before learned Sessions Judge, Raebareli.

13. Learned Sessions Judge, Raebareli has considered the testimony of Shiv Nath that Shiv Mohan and Gayadeen were not present on the place of occurrence at the time of incident but he has implicated them as accused only because they were persons of the party of Ram Lal. Learned Appellate Court while dealing with the appeal has also considered the aspect that Ram Lal also suffered injuries and the prosecution during trial did not make any attempt to explain as to how Ram Lal suffered injuries.

14. Learned Appellate Court has decided Criminal Appeal No.15 of 2007 vide judgment and order dated 11.7.2008 and has set aside the conviction and sentence given by the trial court vide judgment and order dated 12.7.2007 passed in Criminal Case No.774 of 2007.

15. I have considered the material available in the paper book of the present revision and I find that once PW-1 Shiv Nath himself has admitted in his statement given before the trial court that he had falsely implicated two persons, namely, Shiv Mohan and Gayadeen only for the reason that they were of the party of Ram Lal, then the entire prosecution story comes under the cloud of suspicion. Once the prosecution could not prove the prosecution story beyond reasonable doubt and suspicion in respect of the story is apparent from the statement of Prosecution Witness No.1 Shiv Nath, then the accused are definitely entitled for benefit of doubt. Learned Appellate Court has considered the aforesaid aspect in detail and has recorded a finding that the entire prosecution story is under the cloud of suspicion and therefore, the accused are entitled for benefit of doubt.

16. I also find that the prosecution did not make any attempt to explain the injuries suffered by Ram Lal though it was incumbent on the prosecution to explain the said injuries because Ram Lal was claiming that actually he was beaten and thereby he had suffered injuries and when he used lathi in his self-defence, then Shiv Nath and his sons had suffered certain injuries. Once Ram Lal claimed that he was beaten and he used lathi in his self-defence, then it was obligatory on the prosecution to prove beyond reasonable doubt that the claim made by Ram Lal was false but from the record I do not find that any such attempt was made by the prosecution.

17. Learned Appellate Court in its judgment and order dated 11.7.2008 passed in Criminal Appeal No.15 of 2007 has relied upon various judgments of the Hon'ble Supreme Court wherein it has been categorically held that where the accused has suffered injuries, then it is obligatory on the prosecution to prove as to under what circumstances the accused has suffered the said injuries. Learned Appellate Court on the basis of the law laid down by the Hon'ble Apex Court has categorically held that the entire prosecution story is under the cloud of suspicion and therefore, in the said circumstances, accused Ram Lal, Ram Lakhan, Gayadeen and Shiv Mohan cannot be convicted and sentenced under Sections 323 and 325 IPC and accordingly, learned Appellate Court vide judgment and order dated 11.7.2008 passed in Criminal Appeal No.15 of 2007 has set aside the order of conviction and sentence passed by the trial court vide judgment and order dated 12.7.2007.

18. In view of the aforesaid reasons, I do not find any illegality in the judgment and order dated 11.7.2008 passed by the Appellate

Court in Criminal Appeal No.15 of 2007 (Ram Lal and others vs. State of U.P.) and accordingly, the present revision is **dismissed**.

Order Date :- 12.7.2023

Salim