

Neutral Citation No. - 2023:AHC-LKO:46044

Order Reserved on 23.05.2023

Order Delivered on 14.07.2023

Case :- CRIMINAL REVISION No. - 250 of 2010

Revisionist :- Ram Kripal

Opposite Party :- Roshan Lal And Ors.

Counsel for Revisionist :- M.E. Khan

Counsel for Opposite Party :- G.A.

Hon'ble Manjive Shukla,J.

1. Heard learned counsel for the revisionist, learned Additional Government Advocate for the State and perused the record.

2. Revisionist Ram Kripal through this revision has challenged judgment and order dated 26.04.2010 passed by learned Additional Sessions Judge, Court No. 9, Faizabad in Criminal Appeal No. 31 of 2010 (Roshan Lal & Others Vs. State of U.P.) whereby conviction of the accused under Section 452 I.P.C. has been set aside and they have been acquitted and further sentence given to accused under Sections 143 & 323 I.P.C. has been modified with a fine of Rs. 1,000/- each under Section 143 I.P.C. and fine of Rs. 1000/- each under Section 323 I.P.C.

3. F.I.R. was lodged on 21.02.1998 at 11:40 a.m. in Police Station, Haidarganj, District Faizabad which was registered as Case Crime No. 56 of 1998 under Sections 143, 323, 452, 504 and 506 I.P.C. wherein Ram Kripal stated that he and his family has purchased agricultural land and two houses from Sri Ramphal through registered sale-deed and since then he is in possession over the said two houses. It was further stated in the F.I.R. that on 18.02.1998 at 10:00 a.m., Roshal Lal, Pandey Lal, Kalika Prasad, Kapil Dev, Shailender Kumar,

Sunil Kumar, Uma Shankar and two ladies of the family of Roshan Lal entered his house and thrown away the articles lying in his house. The aforesaid persons also used abusive language and dragged his wife out of the house by catching her hair. The aforesaid persons also turned down the cot on which his old aunt having fractured leg was lying and further dragged her out of the house. The aforesaid persons also extended threat to wife of the complainant that if she and her family members will again come to this house, then they will kill them.

4. Police, on the basis of the aforesaid F.I.R. carried out investigation and submitted chargesheet before the competent court under Sections 143, 323, 452, 504 & 506 I.P.C. On the aforesaid chargesheet filed by the police, cognizance was taken by the court and trial started.

5. During the trial, testimonies of PW-1, Ram Kripal, PW-2, Ram Raj, PW-3, Smt. Shobha Devi, PW-4, Ram Saran Bharti, PW-5, Rajdhari Prasad (Police Inspector) were recorded, thereafter, statements of all the accused under Section 313 Cr.P.C were recorded. Accused did not produce any defense witness rather they said in their statements that house in question was purchased by father of Roshan Lal i.e. Saryu Prasad 30 years back from one Bachhi Devi through registered sale-deed and complainant Ram Kripal wants to grab that house. It was further stated that in respect of the aforesaid act of Ram Kripal, a criminal case under Section 420 I.P.C. has also been registered against him and further house in question is a "*khandahar*" and is in possession of the accused.

6. Learned Trial Court after appreciating the evidence, concluded the trial and convicted accused under Sections 143, 323 and 452 I.P.C. and further sentenced them under Section 143 I.P.C. with simple imprisonment of three months, under Section 323 I.P.C. with simple imprisonment of six months and fine of Rs. 500/- each and under

Section 452 I.P.C., three years' simple imprisonment and fine of Rs. 1,000/- each.

7. Accused challenged the judgment and order dated 04.03.2010 passed by the trial court i.e. Additional Chief Judicial Magistrate-IV, Faizabad by filing Criminal Appeal No. 31 of 2010 (Roshan Lal and Others Vs. State of U.P.) before the court of Additional Sessions Judge, Court No. 9, Faizabad.

8. Learned Appellate Court after considering the entire evidence on record has decided the Criminal Appeal vide judgement and order dated 26.04.2010 whereby all the accused have been acquitted in respect of the offence punishable under Section 452 I.P.C. and further their conviction under Sections 143 and 323 I.P.C. made by the trial court has been upheld. Learned Appellate Court while upholding conviction under Sections 143 & 323 I.P.C. has modified the order of sentence and has provided that for offence punishable under Section 143 of I.P.C. instead of three months' simple imprisonment, the accused are liable to pay fine of Rs. 1,000/- each and further for offence punishable under Section 323 I.P.C. instead of six months' simple imprisonment, accused are liable to pay fine of Rs. 1,000/- each.

9. Learned Appellate Court considered the testimony of investigating officer i.e. PW-5 who in cross examination has categorically stated that he has prepared site-plan of the place of occurrence and at the time of incident, place of occurrence was "*khandahar*" and was not in a position to be used as dwelling unit.

10. Investigating Officer, PW-5, in his cross-examination has further stated that in the said "*khandahar*", there was no room having any roof. On the aforesaid testimony of the Investigating Officer, learned Appellate Court came to the conclusion that offence punishable under Section 452 I.P.C. is not made out against the accused as for the said

purpose, the place of occurrence must be in a position to be used as a dwelling unit.

11. This Court has considered the aforesaid conclusion drawn by the Appellate Court and finds that the plea of place of occurrence being "*khandahar*" was considered by the trial court but has been ignored only on the ground that the testimony of the Investigating Officer has been recorded by the trial court after twelve years from the date of incident, as such during the said period, a house (dwelling unit) could have been converted into a "*khandahar*". The aforesaid reasoning given by the trial court is totally against the testimony of the PW-5 (Investigating Officer) recorded by the trial court as Investigating Officer in his cross-examination has categorically stated that during investigation, he has prepared site-plan of the place of occurrence and in the site-plan, he has mentioned place of occurrence as "*khandahar*", therefore, learned Trial Court while ignoring the said categorical testimony of the Investigating Officer has committed an error. Even otherwise, prosecution witnesses nowhere in their statements have said that the place of occurrence was a building which could have been used as a dwelling unit. In the aforesaid circumstances, learned Appellate Court has rightly considered the testimony given by PW-5 (Investigating Officer) and has acquitted the accused from offence punishable under Section 452 I.P.C.

12. Learned Appellate Court has considered the testimonies of prosecution witnesses and found that the complainant himself was not present on the place of occurrence at the time of incident and further none has suffered any serious injury and even no medical was done of any victim.

13. Learned Appellate Court on the basis of testimony of prosecution witnesses came to the conclusion that only this much is proved that the accused came on the place of occurrence and ousted wife of the complainant and his old-aunt, therefore, conviction of the accused

under Sections 143 & 323 I.P.C. has been upheld. Learned Appellate Court after considering totality of the evidence available on record, has modified the sentence given by the trial court under Sections 143 & 323 IPC and has provided that the accused under 143 I.P.C. are fined with Rs. 1,000/- each and under Section 323 I.P.C., they are also fined with Rs. 1,000/- each with a further rider that in case of non-deposition of fine, they will have to undergo three months' simple imprisonment.

14. I have considered the entire facts and circumstances of the case, particularly that about 25 years have already elapsed from the date of occurrence, I find that there is no illegality in the judgment and order dated 26.04.2010 passed by Additional Sessions Judge, Court No.5, Faizabad in Criminal Appeal No. 31 of 2010 (Roshan Lal Vs. State of U.P.).

15. Accordingly, present Criminal Revision lacks merit and is rejected.

Order Date:- 14.07.2023

A. Mandhani