

Court No. - 13

Case :- CRIMINAL APPEAL No. - 500 of 1998

Appellant :- Ram Ashrey And Others

Respondent :- State of U.P.

Counsel for Appellant :- H.B.Singh, Abdul Samad, Amitabh Tripathi

Counsel for Respondent :- Govt. Advocate

Hon'ble Karunesh Singh Pawar, J.

1. Heard learned counsel for the appellants as well as learned A.G.A. for the State.

2. The present appeal under Section 374(2) Cr.P.C. has been filed against the judgment and order dated 31.08.1998 passed by the IIIrd Additional District and Session Judge, Raebareli in ST No. 1/1992 whereby the appellants have been convicted under Section 201 IPC for three years of rigorous imprisonment.

3. As per the office report dated 21.11.2022, appellant no. 1 Ram Ashrey and appellant no. 3 Jhuri Pasi have died and thus, appeal with respect to appellant no. 1 and appellant no. 3 is abated.

4. So far as appellant no. 2 is concerned, learned counsel for appellant no. 2 submits that he is 72 years old. He has not indulged in any criminal activity after conviction vide order dated 31.08.1998 and during pendency of the appeal.

5. Learned counsel for appellant no. 2 further submits that he is not challenging the impugned judgment and order of conviction and he is confining his submission only with respect to the order of sentence.

6. It is submitted on behalf of appellant no. 2 that a maximum sentence of three years was awarded. He also submits that the incident took place in the year 1990 i.e. way back 33 years approximately and appellant no. 2 has no previous criminal history.

7. Learned counsel for appellant no. 2 submits that appellant no. 2 is not a previous convict. It is submitted that the appellant no. 2 is the first offender and he may be given the benefit of provisions of the Probation of Offenders Act, 1958 (in short, 1958 Act). In this context, he relied on judgment of Supreme Court in ***Mohd. Monir Alam versus State of Bihar (2010)***12

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He further submits that in view of the facts and circumstances including the fact that accused appellant no. 2 has not been convicted previously for any offence, the trial court ought to have invoked the provisions of the Probation of Offenders Act, 1958.

The Trial Court did neither invoke the provisions of the aforesaid Act nor the provisions of Section 360 Cr.P.C. while sentencing the accused-appellant no. 2. The Trial Court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving the benefit of provisions of Section 360 Cr.P.C. or the provisions of 1958 Act, as provided in Section 361 CrPC.

Learned counsel for the accused-appellant no. 2 submits that to that extent, the impugned judgment and order suffers from serious illegality being violative of provisions of section 361 Cr.P.C. and therefore, it cannot be sustained.

8. Section 361 of the Code is required to be applied with or without the beneficial provisions i.e. Section 360 of the Code or provisions of the Act, 1958. If the Court chooses not to apply either of these provisions, it is required to give special reasons for not applying the beneficial provision in case the accused offender otherwise, is eligible for provisions of Section 360 of the Code or Section 3 or 4 of the Act.

The accused-appellant no. 2 has statutory right for claiming the benefit of beneficial legislation i.e. the provisions of the Act and the learned Trial Court was under a duty to consider the applicability of Section 360 Cr.P.C. or Section 4 of the Act as mandated under Section 361 Cr.P.C. If the provisions of Section 360 Cr.P.C. or provisions of the Act were not applied, then the learned Trial Court should have recorded reasons for the same.

9. Learned AGA appearing for the State does not dispute the fact that accused-appellant no. 2 is the first time offender and was not previously convicted in any other case. He also submits that in view of the express provisions of Section 360 Cr.P.C., considering the facts and circumstances, nature of the offence, the character of accused-appellant no. 2 and particularly, the time period which has lapsed since the date of incident, the benefit of Section 4 of 1958 Act can be granted in this case.

10. In view of the above facts and circumstances mentioned above, including the fact that appellant no. 2 does not have any criminal antecedent and is the first offender, as also the scope of

section 4 of the Act, this appeal is **dismissed** by upholding the conviction against accused-appellant no. 2. Thus, the judgment of conviction passed by the learned trial Court is **upheld**. However, appellant no. 2 is granted the benefit of Section 4 of 1958 Act.

11. The accused-appellant no. 2 **Ram Bahadur** is released on probation by giving them the benefit of section 4 of the Probation of Offenders Act. The said accused-appellant no. 2 shall file personal a bond to the tune of Rs.20,000/- and two sureties each of the like amount, and he shall keep peace in the society and shall not commit any such offence in future. In case of breach of any such condition, accused-appellant no. 2 will subject himself to undergo the sentences before the Trial Court as per law. The accused-appellant no. 2 shall file the bond within a period of one month from today.

12. Accordingly, the order of sentence is **modified** to the above extent.

13. Let a copy of this judgment as well as the record, if received, be transmitted to the concerned Trial Court forthwith for necessary compliance.

Order Date :- 30.11.2023

R.C.