

Court No. - 13

Case :- CRIMINAL APPEAL No. - 105 of 2002

Appellant :- Mohayadeen And Ors.4

Respondent :- The State Of U.P.

Counsel for Appellant :- Rajiva Dubey, Gopal Lnarain Misra,Paresh Miara,Rajiv Kumar Bajpai,Sanjay Kumar Rao

Counsel for Respondent :- Govt.Advocate,V.K. Singh

Hon'ble Karunesh Singh Pawar,J.

1. The present appeal under Section 374(2) Cr.P.C. has been preferred against the judgement and order dated 24.1.2002 passed by learned Additional Sessions Judge/Fast Track Court Gonda, in Sessions Trial No.319/88, under Sections 363 Indian Penal Code, Police Station Kotwali Dehat, District Balrampur, awarding sentence of three years' R.I. against each of the appellants and also awarding a fine of Rs.1000/-.

2. As per the report of the Chief Judicial Magistrate, Gonda appellant no.1 Mohayadeen and appellant no.2 Smt. Arvunisha have died.

3. Accordingly, the appeal with regard to appellant nos. 1 and 2 is dismissed as abated.

4. So far as appellant nos. 3,4 and 5 are concerned, learned counsel at the outset 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. The appellants are not a previous convicts.

5. Appellant's counsel submits that the the appeal is of the year 2002. The incident is of the year 1988. The appellant no.3 is 64 years of age and appellant no.4 is 74 years of age and appellant no.5 is 68 years of age. The appellants have been sentenced under Section 363 Indian Penal Code for a period of three years' R.I. and fine of Rs.1000/- each. It is submitted that the appellants are the first offender and they may be dealt with either under Section 360 CrPC. or under the provisions of the Probation of Offenders Act, 1958 (in short, 1958 Act).

6. He further submits that in view of the facts and circumstances including the fact that the accused appellants have not been convicted previously for any offence, the trial court ought to have invoked the provisions of the Probation of Offenders Act, 1958.

7. 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-appellants. 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.

8. Learned counsel for the accused-appellants 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.

9. 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.

10. The accused-appellants have 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.

11. Learned A.G.A appearing for the State does not dispute the fact that accused-appellants are the first time offender and were 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 the accused-appellants and particularly, the time period which has lapsed since the date of incident, the benefit of Section 4 of the Act can be granted in this case.

12. In view of the above facts and circumstances mentioned above, including the fact that the appellants having no criminal antecedent and are the first offender, the case law, referred to above as also the scope of section 4 of the Act, this appeal is, accordingly, **dismissed** by upholding the conviction and fine against the accused-appellants. However, they are granted the benefit of Section 4 of the Act.

13. The accused-appellants are released on probation. The accused-appellants shall file personal bonds to the tune of Rs.20,000/- and they shall keep peace in the society and shall not commit any such offence in future. These bonds shall be for one year. In case of breach of any such condition, the accused-appellants will subject himself to undergo the sentences before the Trial Court as per law. The accused-appellants shall file the bonds within a period of one month from today.

14. Let the copy of this judgment as well as the record be transmitted to the concerned Trial Court forthwith for necessary compliance.

Order Date :- 16.12.2023

Madhu