

Neutral Citation No. - 2023:AHC-LKO:70210

Reserved on 26.09.2023

Delivered on 27.10.2023

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1736 of 2002

Appellant :- Balram Ojha And 3 Others

Respondent :- State of U.P.

Counsel for Appellant :- O.N. Tripathi

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed, J.

1. List of cases has been revised and the case is being taken up in the revised call for hearing.
2. Heard learned counsel for the parties.
3. The present appeal under Section 374 (2) of the Criminal Procedure Code has been preferred by the appellants Balram Ojha, Om Prakash, Satya Prakash and Jagdamba Prasad against the judgment and order dated 04-12-2002 passed by Learned Additional Session Judge, F.T.C. 4th, Sultanpur, in S.T. No. 57 of 1997, State Vs Balram and Others, Police Station Sangrampur District Sultanpur whereby the appellants were convicted under Section 323 read with section 34 I.P.C. with fine of Rs. 1,000/- each with default stipulations.
4. That Brief facts of the case are that complainant's brother's brother-in-law Balram Ojha had some dispute regarding his scooter with Bahadur Singh and the same was settled between them, but Balram Ojha started having enmity with the complainant thinking that complainant had assisted Bahadur Singh in selling the scooter. And on the date of alleged incident at 10 PM when complainant was returning back to his house

then accused Balram Ojha, Om Prakash, Satya Prakash and Jagdamba who were already sitting there started beating the complainant with *lathi* and *danda* as a result of which blood started oozing out from the head and different parts of the body of complainant. After hearing the chaos when nearby villagers reached there then accused persons ran away after threatening the complainant for dire consequences.

5. On this allegation, PW-1 Triveni Prasad Tiwari, had made an written complaint at P.S. - Sangrampur District Sultanpur on the basis of which an F.I.R. was lodged on 22-09-1997 against appellants under sections 323/504/506 I.P.C.

6. Thereafter the complainant was medically examined at Community Heath Centre Amethi.

7. This case was entrusted to investigating officer who investigated this case and during investigation, he visited the place of occurrence, prepared the site plan, recorded the statement of injured persons, even recorded the statements of witnesses and after completing the investigation, investigating officer had submitted the charge sheet against the appellants under section 323/504/506/308 I.P.C.

8. That further after submission of charge-sheet before the Court below the said case was committed from the 3rd Additional Chief Judicial Magistrate, Sultanpur to the Court of Session on 17-02-1997 wherein it was registered as S.T. No. 57 of 1997. After committal, the trial court framed charges against the accused-appellants u/s 323/504/506/308/307 read with section 34 I.P.C. The accused-appellants denied the charges levelled against them and claimed to be tried.

9. That in order to substantiate its case, prosecution examined following witnesses:-

I. PW-1 Triveni Prasad Tiwari (complainant) – who had proved the

Ex-K-1 (written report) lodged by him and even explained the prosecution story.

II. PW-2- Dr. Subodh Kant who proved the X-ray report of injured.

III. PW-3 Keshwar Singh- who proved the Ex-K-3 the site plan of the alleged place of occurrence.

IV. PW-4 Dr. P. K. Singh who proved the medical report of injured.

V. PW-5 Sub-Inspector Gajraj Singh who proved Ex-K-7 the charge sheet filled by him.

10. That after closing of the evidence, statement of accused/ appellants under Section 313 Cr.P.C. were recorded by the trial court explaining the entire evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and concocted. And even produced D.W.-1 Pirtu Ram in their defence.

11. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence oral as well as documentary, found the accused / appellants guilty and convicted them under Section 323 read with section 34 I.P.C. with fine of Rs. 1,000/- each with default stipulations.

12. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the accused-appellants have preferred the present appeal.

13. Learned counsel for the appellants have submitted that the accused appellants have been convicted and sentenced under sections 323 read with section 34 I.P.C. without there being any concrete evidence against them and the findings of conviction recorded by the Trial Court are based on surmises and conjectures.

14. Learned counsel for the appellants submitted that complainant PW-1 Triveni Prasad Tiwari has stated in his testimony recorded before the court below that that alleged incident took place towards the west side of Hanuman Mandir which was 25-30 steps away from the house of complainant whereas P.W.-3 Keshav Singh in his testimony recorded before the court below had specifically stated that the alleged incident took place towards the east side of Hanuman Mandir, as such there is vast contradiction in the statement of the complainant and his witness P.W.-3 which creates doubt on the entire prosecution story. And therefore the statements could not be relied upon which also weakens the version of prosecution.

15. Learned counsel for the appellants further placed reliance on the statement of D.W.-1 Pirtu Ram who was posted as an Assistant Clerk in Uttar Pradesh Transport Department. Learned Counsel stated that Pirtu Ram has stated in his testimony before the trial court that complainant was not present in his office from 12-09-1994 to 31-10-1994 which is evident from the attendance register produced by Pirtu Ram. As such the version of prosecution that on the date of alleged incident i.e., 21-09-1994 at 10:00 PM he was returning from Amethi (where complainant works) creates doubt on the version of prosecution. As such his statement could not be relied upon which also weakens the version of prosecution.

16. Learned counsel for the appellants further stated that prosecution could not prove its case beyond doubt that the appellants were present on the alleged place of occurrence at that time, which also creates doubt on the version of prosecution.

17. Learned counsel for the appellants further stated that prosecution could not prove its case beyond doubt that appellants had assaulted complainant with lathi and danda with intention to kill him as all the

injuries were simple in nature and there was no serious injury on the body of injured and the only injury as per the complainant was on his jaw but in the entire medical report there was no any injury on the jaw of the complainant. Which also falsify the prosecution story.

18. Learned counsel for the appellants further stated that complainant himself in his testimony has admitted this fact that there was no any serious injury on his body, and even P.W.-4 Dr. P.K. Singh has stated in his testimony before the trial court that at the time of medical examination of injured he was conscious. It was further contended by learned counsel for the appellants that appellant had not sustained any serious injuries which would amount to his death because he himself had got the written report lodged in the police station after the alleged incident.

19. Next argument of the learned Counsel for the appellants is that the trial court materially erred in not believing the testimonies of defence evidences which totally proved the prosecution story to be false and malafide.

20. It has also been argued by the learned counsel for the appellants that cogent reasons have not been given by the learned trial court for not believing the defence evidences.

21. Learned A.G.A. on the other hand opposed the appeal and has submitted that there is no material irregularity or illegality committed by court below and keeping in view the evidence on record, accused-appellants have been rightly convicted.

22. After considering the arguments advanced by the parties and after perusal of the material available on record, this court finds that the oral evidence discloses that there was indiscriminate attack by the accused on the complainant. As found by the court below, there is contradictions between the oral testimony of the witnesses and the medical evidence.

The evidence of the witnesses was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

23. Further Hon'ble Apex Court in case of *Amar Singh V State of Punjab 1987 1 SCC 679* had held as under:-

10.....Thus the evidence of PW 5 is totally inconsistent with the medical evidence. This Court in Ram Narain Singh v. State of Punjab [(1975) 4 SCC 497 : 1975 SCC (Cri) 571 : AIR 1975 SC 1727] has laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case. There is no explanation for the apparent total inconsistency between the evidence of PW 5 and the medical evidence.

24. Further Hon'ble Apex Court in case of *Viram V State of M.P. (2022) 1 SCC 341* had held as under:-

13. The oral evidence discloses that there was an indiscriminate attack by the accused on the deceased and the other injured eyewitnesses. As found by the courts below, there is a contradiction between the oral testimony of the witnesses and the medical evidence. In Amar Singh v. State of Punjab Amar Singh v. State of Punjab, (1987) 1 SCC 679 : 1987 SCC (Cri) 232] , this Court examined the point relating to inconsistencies between the oral evidence and the medical opinion. The medical report submitted therein established that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by a witness. Therefore, the evidence of the witness was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

25. It is also noteworthy that in instant case there is no direct evidence

came forward during the trial, the trial court could not have based the conviction of the appellants on conjecture and surmises. In the instant case the evidences brought on record which has not been fully established however the facts so established are to be consistent only with the hypothesis of the guilt of the accused and the circumstances should be of conclusive nature so as to rule out every possible hypothesis except the one to be proved i.e. complicity of the accused.

26. Further, it is observed that the instant case is a classic example of false implication of the appellants due to personal vendetta wherein the entire prosecution version is concocted, and the reliance has been placed upon interested witnesses, further prosecution has failed to produce any independent witness for corroboration of its own version.

27. Further, in opinion of this court the evidence produced by the witnesses casts a great doubt as to the commission of any offence by the appellants and consequently the benefits of that doubt must go to the appellants.

28. Considering the fact and circumstances of the case, I am of the view that the conviction needs to be set aside and the appeal deserves to be allowed.

29. In the light of the above discussion, the judgment and order dated 04-12-2002 passed by Learned Additional Session Judge, F.T.C. 4th, Sultanpur, in S.T. No. 57 of 1997, Police Station Sangrampur, District Sultanpur is **set aside** and **reversed**. The appellants Balram Ojha, Om Prakash, Satya Prakash and Jagdamba Prasad is acquitted of charges under section 323 read with section 34 I.P.C.

30. The personal bonds and surety bonds of the appellants are canceled and their sureties are discharged.

31. Office is directed to communicate this order to the court concerned for necessary compliance.

32. Lower court record, if any, shall also be sent back to the district court concerned.

Order dated : 27.10.2023

Arvind /-

(Shamim Ahmed, J.)