

Neutral Citation No. - 2023:AHC-LKO:67533

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1046 of 2003

Appellant :- Jai Prakash Tewari And 2 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- J.P.Pandey, Geeta Rani, Shiva Nand Pandey

Counsel for Respondent :- Govt. Advocate, Bijendra Kumar Mishra, Dharendra Kumar Mishra

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 Jai Prakash Tewari, Virendra Kumari Tewari and Smt. Durga Devi against the judgment and order dated 10-05-2003 passed by Learned Additional District and Session Judge, F.T.C. 5th, Court No. 14th Sultanpur in S.T. No. 136 of 1999, State Vs Jai Prakash Tewari and others; Police Station Kurebhar, District Sultanpur whereby the appellants were convicted and sentenced for an probation period of one year under Section 323 read with section 34 I.P.C.
4. That Brief facts of the case are that on 12-03-1994 at 06:30 – 07:00 AM when father of complainant had gone to ease then some altercation took place between the father of complainant and accused Jai Prakash Tewari, Virendra Kumari Tewari and Smt. Durga Devi and when after hearing the chaos complainant reached there then he saw that accused persons were armed with lathi and danda and after seeing the complainant

, accused persons started beating the complainant and his brother with lathi and danda. And when nearby villagers and his relatives reached there then accused persons went away.

5. On this allegation, complainant had moved an application through registered post to I.G. Sulatnpur but when no action was taken by them complainant moved an application under section 156(3) Cr.P.C. before court concerned after which an complainant case was registered against the accused persons and complainant and his injured brother was taken for medical examination.

6. That further the said case was committed from the court of Chief Judicial Magistrate, Sultanpur to the Court of Session wherein it was registered as S.T. No. 136 of 1999. After committal, the trial court framed charges against the accused-appellant under section 325, 323/149, 504, 506 I.P.C. The accused-appellants denied the charges levelled against him and claimed to be tried.

7. That in order to substantiate its case, prosecution examined three witnesses namely PW-1 Santosh Kumar, PW-2 Mahesh Kumar Tewari, and PW-3 Dr. Rajendra Kapoor Chief Medical Officer.

8. 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.

9. 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 and sentenced the appellants for an probation period of one year under

Section 323 read with section 34 I.P.C.

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

11. Learned A.G.A. submits that the present appeal is of the year, 2003. Moreover, there appears no illegality or infirmity in the judgment and order passed by the court below, therefore, appeal may be refused.

12. I have heard the learned counsel for the appellants and considered the ground stated by the both the parties and gone through the judgment passed by the court below.

13. Learned counsel for the appellants could not point out any illegality or infirmity in the judgment and order of passed in favour of appellants which has been challenged before this Court.

14. In the light of the aforesaid observations, the impugned judgment has to be considered from the point of view whether the view taken by the court below was a probable view based on the material on record or it is an absolutely erroneous judgment devoid of merits.

15. Keeping in view the aforesaid weakness of the appellants case, as noted by the court below, I am of the view that the view taken by the court below was a probable and logical view, which is based on valid reasons. The judgment of the court below cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

16. With the above modification, the instant criminal appeal is **disposed off.**

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

Order Date: 12.10.2023

Arvind.

(Shamim Ahmed, J.)