

Neutral Citation No. - 2023:AHC-LKO:67438

Court No. - 15

Case :- CRIMINAL APPEAL No. - 721 of 2003

Appellant :- Roop Narain And 3 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Sampurnanand, Shanker Lal Pandey

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. As per order dated 09-08-2018 passed by co-ordinate bench of this court, this appeal has already been abated in respect of appellant no. 1 Roop Narain. Thus this appeal is finally heard in respect of sole remaining appellants only.
4. The present appeal under Section 374 (2) of the Criminal Procedure Code has been preferred by the appellants Sakarjeet, Vijay Dhar and Vishnu Dhar against the judgment and order dated 15-03-2003 passed by Learned Additional Session Judge, F.T.C. 3rd, Pratapgarh in S.T. No. 485 of 2000, State Vs Roop Narain and others; arising out of Case Crime No. 511 of 1995, Police Station Lalganj, District Pratapgarh whereby the appellants were convicted and sentenced for an probation period of one year under Section 323 read with section 34 and section 506 (2) I.P.C.
5. That Brief facts of the case are on 29-11-1995 at 07:00 AM when complainant had gone to his fields then he saw 17. that accused Roop Narain, Sakarjeet, Vijay Dhar and Vishnu Dhar were cutting the boundary line of complainants fields. And when complainant objected them, then

accused Sakarjeet who was armed with country made pistol and accused Sakarjeet, Vijay Dhar and Vishnu Dhar who were armed with lathi started beating the complainant with intention to kill him. After hearing the chaos when nearby villagers gathered there then accused persons went away after threatening the complainant to kill him.

6. On this allegation, first information report of the complainant was registered at P.S. - Lalganj, District Pratapgarh and the case was registered against appellants and one another accused persons under relevant section 307/323/506 I.P.C bearing Case Crime No. 511 of 1995.

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 complainant under section 161 Cr. P. C, conducted the medical examination of complainant and even recorded the statements of other witnesses and after completing the investigation, investigating officer had submitted the charge sheet against the appellant and one other accused person under section 323/307/504/506 I.P.C.

8. That further after submission of charge-sheet before the Court below the said case was committed to the Court of Session wherein it was registered as S.T. No. 485 of 2000. After committal, the trial court framed charges against the accused-appellant under section 307/34, 323/34, 504 and 506(2) I.P.C. The accused-appellants denied the charges levelled against him and claimed to be tried.

9. That in order to substantiate its case, prosecution examined five witnesses namely PW-1 Ishwar Chandra Dubey, PW-2 Surya Prakash Dubey, PW-3 Kailash Chandra Dubey, PW-4 Dr. R.S. Tripathi, PW-5 Constable Sheetla Prasad Pandey.

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.

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 and sentenced the appellants for an probation period of one year under Section 323 read with section 34 and section 506 (2) I.P.C.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

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

Order Date: 12.10.2023

Arvind.

(Shamim Ahmed, J.)