

RESERVED JUDGMENT

Reserved on- 23.11.2023

Delivered on- 16.12.2023.

Court No. - 15

Case :- CRIMINAL APPEAL No. - 471 of 2019

Appellant :- Rakesh And 2 Others

Respondent :- State of U.P.

Counsel for Appellant :- Lalji Prasad Shukla

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard learned counsel for the appellants and learned A.G.A. for the State.

2. This is an appeal under Section 374(2) CrPC against the judgment and order dated 15.02.2019 passed by the Special Judge, Gangster Act/Vth Additional Sessions Judge, Sitapur, in Criminal Case No.56 of 2013, State vs. Mahesh and Others, arising out of Case Crime Numbers 480 of 2009, 478 of 2009 & 479 of 2009, under Section 3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Sakran, District- Sitapur whereby the appellants, namely, Rakesh, Prakash and Gaya Prasad have been convicted and sentenced under Section 3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, for two years Rigorous Imprisonment with fine of Rs. 5,000/- each. In case of default of payment of fine, the appellants were directed to further undergo 1 month's rigorous imprisonment.

3. In short, the prosecution case is that Ishtiyak Ahmad, Station House Officer, Police Station- Sakran, District- Sitapur lodged a report on 25.09.2009 stating therein that from the record of Case Crime No.285 of 2009 under Sections 302 & 201 IPC, Police Station- Sakran, it comes out that there is a gang of accused Mahesh, Prakash, Gaya Prasad and Rakesh. Mahesh is the gang leader who along with his associates is involved in committing crimes punishable under Chapter XVI, XVII & XXII of the Indian Penal Code. It is said that the said gang is involved in anti-social activities and due to their criminal acts, there is fear and terror in the locality. In order to prevent these

persons from indulging in anti-social activities, which are prejudicial to the maintenance of law and order, a gang chart was submitted to the District Magistrate on 24.09.2009 for approval.

4. After necessary formalities, registration of the case, the Investigating Officer recorded the statements of the witnesses and collected materials against the appellants. Upon conclusion of investigation, he submitted a charge-sheet under Sections 2/3 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 against the accused persons. The Trial Court framed the charges under Section 2/3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, to which the accused persons denied and claimed to be tried.

5. The prosecution in support of its case, examined PW-1, Ishtiyak Ahmad, S.H.O., PW-2, Anil Kumar Kushwaha, Sub Inspector, PW-3, Janmejy Sachan, Sub Inspector. The documentary evidence Exhibits Ka-1, Gangster Chart and other papers were also produced before the Court.

6. Upon conclusion of evidence of the prosecution witnesses, the statements of the accused persons under Section 313 CrPC were recorded in which they denied police evidence and stated that they have been falsely implicated by the police. It has also been stated that accused persons belong to one family and there is no criminal history against them.

7. The learned Special Judge (Gangster Act), after scrutinizing the statements of the prosecution witnesses and other material on record, came to the conclusion that from the prosecution evidence, involvement of the accused persons is fully proved and as such convicted and sentenced the accused persons, as stated above.

8. Learned Counsel for the appellants has argued that the appellants have been falsely implicated in the prosecution case and in the F.I.R. registered under U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, no public witness has been shown. Moreover, during trial also, no public witness has been examined to prove that the accused-appellants have formed a gang and they are involved in anti-social activities. It

is further submitted that only one case, i.e. Case Crime No. 285 of 2009, is shown in the gang-chart against the appellants, yet the Gangsters and Anti-Social Activities (Prevention) Act, 1986, has been imposed upon them. It has also been argued that only the Police personal has been examined before the Court and on their statement appellants have been roped in the said Act, while without eye-witness or independent-witness conviction of the appellants in the said Act is improper and against the law. It has also been submitted by the learned counsel that in the case which has been made the basis to impose the provisions of Gangster Act against the accused, he has already been granted bail by the Court. Contention is that the provisions of the Act have been ill-used by the Police in order to perpetuate the detention of the applicant in jail anyhow even though the offence under the aforesaid Act is not made out. Submission is that the applicant is not a "Gangster" and has never acted or conducted himself as such. Counsel for the applicant has also tried to demonstrate that the alleged previous offence which is said to have been committed by the applicant can at the most be said to be stray incident of breach of law having no nexus with the definition of a "Gangster", as has been provided in the Act.

9. On the other hand, learned State Counsel has submitted that the applicants are said to constitute an 'organized gang'. One Mahesh is 'leader of the Gang'. This gang is involved in the crimes like 'murder' and several other anti-social activities. There is also case-history of the appellants. The learned Special Judge has passed the impugned order of conviction after proper appreciation of material on record and there is no illegality or infirmity in the said judgment. The judgment is perfectly just, legal and valid in the eyes of law, however, he could not dispute the submissions made by the learned counsel for the appellants.

10. Having heard the submissions of learned counsel for the parties and going through the material on record, this Court finds force in the arguments as advanced by the learned counsel for the appellants that there is no public witness in the said F.I.R. nor any public or independent witness has been examined before the trial court and only on the basis of statement of the Police personnel and on case shown in the gang-chart conviction has been made under the Gangsters and Anti-Social Activities (Prevention) Act, 1986. The chief plank of the

submissions made on behalf of accused is that in the case which has been made the basis to impose the provisions of Gangster Act against the accused, was of the year 2009. Contention is that the provisions of the Act have been ill-used by the Police in order to perpetuate the detention of the applicant in jail anyhow even though the offence under the aforesaid Act is not made out. Submission is that the applicant is not a gangster and has never acted or conducted himself as such. Counsel for the applicant has also tried to demonstrate that the alleged previous offence which is said to have been committed by the applicant can at the most be said to be stray incident of breach of law having no nexus with the definition of a "Gangster" as has been provided in the Act. Thus, the appeal deserves to be allowed.

11. Accordingly, in view of the submissions and observations made above, the appeal is **allowed**. The judgment and order dated 15.02.2019 passed by the Special Judge, Gangster Act/Vth Additional Sessions Judge, Sitapur, in Criminal Case No.56 of 2013, State vs. Mahesh and Others, arising out of Case Crime Numbers 480 of 2009, 478 of 2009 & 479 of 2009, under Section 3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station- Sakran, District- Sitapur, convicting and sentencing the appellants, namely, **Rakesh, Prakash and Gaya Prasad** under Section 3 of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, for two years Rigorous Imprisonment with fine of Rs. 5,000/- each, with default stipulation, is hereby reversed and set aside.

12. The appellants are on bail. They need not to surrender. Their personal-bonds and sureties are discharged. File be consigned to records.

13. Lower court record be sent back forthwith, for necessary compliance.

14. Let the copy of this judgment be sent to the court below.

(Shamim Ahmed, J.)

Order Date :- 16.12.2023

A.Nigam