

Neutral Citation No. - 2024:AHC:150404

Court No. - 86

Case :- CRIMINAL APPEAL No. - 2462 of 1986

Appellant :- Kudoosh

Respondent :- State

Counsel for Appellant :- M.N. Tripathi, Rafiuddin Ansari

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. The present criminal appeal has been preferred by the accused appellant against the judgment and order dated 12.9.1986 passed by the Vth Additional Sessions Judge, Gorakhpur in Session Trial No. 432 of 1984, convicting the appellant under Section 307 IPC and sentencing him to undergo three years of rigorous imprisonment.

2. The prosecution story, as culled out from the record, is that on 19.3.1984 at about 10.15 p.m. while the informant Naim Ahmad alongwith his wife Smt. Razia Begum and children was having conversation at his door, accused Kuddoos came there and started hurling abuses to them and when his wife objected, he became annoyed and started causing injuries with knife with intention to kill her. The occurrence was witnessed by Abdul Karim, Abad, Sanaullah, Abdul Latif and Abdul Majid. The witnesses chased the accused but he fled away. The injured was medically examined at District Hospital, Gorakhpur. Investigation of the case started and the Investigating Officer after completing necessary formalities and collecting sufficient evidence, submitted the charge sheet under Section 307 IPC against the accused.

3. The case being exclusively triable by the Court of Sessions was committed to it by the Magistrate concerned.

4. The accused was charged under Section 307 IPC. He denied the charge and claimed for trial.

5. In order to prove its case, the prosecution relied upon the oral evidence of P.W.-1 Naim Ahmad, P.W.-2 Smt. Raziya Begum, eye witness/injured, P.W.-3 Dr. R.B. Dwivedi, P.W.-4 S.I. Ravindra Kumar Singh, Investigating Officer and P.W.-5 Dr. A. Kumar, Radiologist.

6. In order to corroborate the oral evidence, the prosecution has also relied upon the documentary evidence on written report Ext. ka-1, recovery memo of blood stained 'kathri' Ext. ka-2, injury report Ext. ka-3, chik F.I.R. Ext. ka-4, registration G.D. Ext. ka-5, site plan Ext. ka-6, blood soaked clothes of injured Ext. ka-7, charge sheet Ext. ka-8 and x-ray report Ext. ka-9 and x-ray plate material Ext. 1.

7. After conclusion of the prosecution evidence, statements of the accused person under Section 313 Cr.P.C. was recorded and the incriminating evidence and circumstances were put to him wherein he asserted that the prosecution evidence is false and fabricated and due to the animosity he has been falsely implicated in this case. In defence evidence, D.W.1 Sajjad Husain was examined to show the innocence of the accused person in the matter.

8. On the basis of aforesaid oral and documentary evidence, learned trial court recorded the conviction of the appellant and sentenced him, as mentioned herein-above.

9. Heard Shri Rafi Uddin Ansari, learned counsel for the appellant as well as the learned AGA and perused the entire record.

10. Learned counsel for the appellant, at the outset, submitted that he does not wish to press the appeal on merits and confine his arguments to the sentence part only. It is submitted that the sentence recorded by the learned trial court is too severe and harsh. The appellant was a young man at the time of incident and has already spent a period of incarceration for some days and is a repenting man. The appeal was filed in the year 1986 and about 38 years have passed. The incident is said to be occurred in the year 1984. It has been further submitted that the appellant has already suffered since long on account of the pendency of the present criminal proceedings going on against him. The Trial Court has passed a sentence of rigorous imprisonment for three years. It has been submitted that the sentence imposed by the trial court vide impugned judgment and order may be modified to the extent of the period already undergone.

11. Learned AGA opposed the prayer.

12. I have considered the rival submissions made by the learned counsel for the parties and gone through the entire record including the impugned judgment.

13. Though the learned counsel for the appellant has not pressed the appeal on merits but after perusing the record including the impugned judgment and the findings recorded by the trial court therein, I am of the view that the findings recorded by the trial court in the impugned judgment and order are in accordance with the facts and evidence and no interference is warranted with the same.

14. PW-1 / informant and PW-2 / injured, who were produced to give ocular evidence of the case, have corroborated the prosecution version. The deposition made

by them is sufficient to prove the guilt of the appellant. They have made specific statement that at the time of the occurrence, injury was caused by the accused Kuddoos with knife to Smt. Razia Begum, wife of the informant. She was medically examined and F.I.R. was lodged by her husband / PW-1. No inconsistent statement is found in the entire testimony of PW-1 and PW-2. PW-2 – Razia Begum / being the injured witness, carries a distinguished place so far as the prosecution case is concerned. She has also deposed that since her goat got free and went to the house of Kuddoos, he and his wife came to the house of PW-2 and started hurling her and when she protested, the accused Kuddoos made assault with knife upon her, who sustained serious injuries. Hence, no doubt, on the basis of the evidence of injured witness the prosecution has successfully proved its case. Medical evidence in this regard also corroborates the prosecution case and PW-3, the doctor, has found eight injuries, all incised wounds, upon the body of injured, Razia Begum. Injury nos.1 and 3 which were inflicted upon her abdomen and breast were serious and grievous in nature. The doctor PW-3 has also opined that on account of the injury no.1, which was cavity deep, death of the injured might be occurred.

15. PW-4, who is the Investigating Officer of this case, has proved the proceedings of investigation. From the perusal of cross-examination of this witness, it is found that some omissions and negligence has been made by him during investigation but same is not capable to hit the root of the prosecution case.

16. PW-5 is the radiologist, who was posted in Sadar Hospital, Gorakhpur. He has deposed that on 20.3.1984 he

prepared the x-report of the injured Smt. Razia and proved the x-ray report Ext. ka-9. He states that no bony injury was found in the abdomen and chest of the injured.

17. In support of his case, the defence has examined DW-1 Sajjad Husain. He has deposed that there was a dispute between the parties regarding goat. He further deposed that since Smt. Razia was not having a good character and people from other places came to her, she was assaulted by some other persons. He has also stated that since there was a dispute between the parties regarding goat, the accused appellant has been falsely implicated by Smt. Razia Begum. In the cross-examination he has stated that he reached the house of Smt. Razia Begum at about 7 – 8 p.m. and by that time she had sustained injuries. Hence, DW-1 is not the eye witness of the incident but since he has looked the injuries of the injured, this part of his deposition may be taken by the prosecution as assisting its version. Thus, the testimony of the DW-1 in respect of ocular version of the matter appears to be unreliable and the trial court has rightly discarded the same.

18. The informant PW-1 has asserted that when he alongwith his wife Smt. Razia Begum and children was chatting at his door, accused Kuddoos came there and started hurling abuses to them and when his wife objected, he became annoyed and started causing injuries with knife with intention to kill her.

19. The learned trial court has opined that from the evidence on record it is evident that the injury caused by the accused upon the injured lady was inflicted with

intention to kill her, which is an essential ingredient to record conviction under Section 307 IPC.

20. I also concur with the views expressed and conclusion arrived at by the trial court that the prosecution has succeeded to prove its case beyond reasonable doubt. The injuries caused to the injured by the appellant are found on the sensitive and vital part of the body of the injured lady and the element of 'intention to kill' is very well proved in this case. Hence, the accused-appellant was rightly held guilty for committing the offence under Section 307 IPC.

21. The submissions made by the learned counsel for the appellant take me to the quantum of sentence.

22. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the Court but the same has to be guided by certain principles. Hon'ble Supreme Court in **Raj Bala vs. State of Haryana & Ors (passed in Special Leave Petition (Crl.) Nos.4099-4100 of 2015)** and **Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323**, in this context, has observed that neither the personal perception of a Judge nor self adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion should not be in

the realm of fancy. It should be embedded in the conceptual essence of just punishment. A Court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

23. In the instant case, criminal machinery came into motion about 40 years ago and the present appeal has been pending for a long period of 38 years. At the time of recording of statement under Section 313 Cr.P.C., appellant was a young man. There is nothing on record to show that the appellant is previous convict or having any criminal antecedents. Also the accused-appellant alone cannot be held responsible for long delay in disposal of this appeal. He is an old person at present. It has been submitted and also finds support from the record that the appellant remained in custody for some considerable period of time in this case.

24. Hence, considering all aspects of the matter, in my view, no useful purpose would be served by sending accused-appellant in judicial custody at this stage, rather in the aforesaid peculiar circumstances, it would be in the interest of justice if in lieu of three years rigorous imprisonment he may be sentenced for the period already undergone by him in this case and also sufficient fine may be imposed upon him which would be an adequate punishment to him in the entire circumstances of this case. The appellant, who is an old man at present should be a repenting man.

25. Resultantly, the appeal is partly allowed. The conviction of the appellant for the offence under Section 307 IPC is upheld but the sentence of three years rigorous imprisonment awarded by the trial court vide impugned judgment and order is converted into the period already undergone by him alongwith a fine of Rs. 5,000/-.

26. Appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged. The amount of fine shall be deposited within two months from today failing which the appellant will have to undergo for one month imprisonment as default sentence.

27. A copy of this order alongwith trial court record be transmitted to the Sessions Judge, Gorakhpur for necessary compliance.

Order Date :- 11.9.2024

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