

Court No. - 86**Case :-** CRIMINAL APPEAL No. - 139 of 1995**Appellant :-** Ram Bharosey And Others**Respondent :-** State of U.P.**Counsel for Appellant :-** I.M. Khan, Hriday Raj Tripathi, Sabhajeet Yadav**Counsel for Respondent :-** Govt. Advocate**Hon'ble Nalin Kumar Srivastava, J.**

1. Heard learned counsel for the appellants, learned A.G.A. for the State and perused the records.
2. The present appeal has been preferred against the judgment and order dated 12.1.1995 passed by the IIInd Additional Sessions Judge, Rampur in Special Case No. 10 of 1993 (State Vs. Ram Bharosey and others), under Sections 323, 504 I.P.C. and Section 3(1)(X) of SC/ST Act, P.S. Khajuria, District Rampur, whereby all the three accused persons were convicted under Sections 323/34, 504 I.P.C. and Section 3(1)(X) of SC/ST Act and were sentenced for rigorous imprisonment for a period of three months under Section 323/34 I.P.C., rigorous imprisonment for one month under Section 504 I.P.C. and rigorous imprisonment for six months under Section 3(1)(X) of SC/ST Act and were acquitted under Section 324 I.P.C. and all the sentences were directed to run concurrently.
3. The prosecution case as culled out from the FIR is that on 29.4.1992 at about 9:00 P.M. at village Kartaul, Police Station Khajuria, District Rampur named accused persons Ram Bharosey, Ratan Lal and Subedar Khan in furtherance of the common intention of all voluntarily caused hurt to the informant Natthu Lal and his wife, who were members of SC/ST Community and also hurled abuses.

4. The injured persons sustained injuries and the matter was reported to the police. After investigation, charge-sheet was submitted against all the three named accused persons under Sections 323/34, 504 I.P.C. and Section 3(1)(X) of SC/ST Act.

5. The offence being exclusively triable by the Special Court. The matter was committed to the Special Court.

6. The accused persons Ram Bharosey, Ratan Lal and Subedar Khan were charged for the offence under Sections 323/34, 504 I.P.C. and Section 3(1)(X) of SC/ST Act. They denied all the charges and claimed for trial.

7. Subsequently, an additional charge under Section 324 I.P.C. was further framed against accused Subedar Khan of which he denied and claimed for trial and simultaneously additional charge under Section 324/34 I.P.C. was also framed against accused Ram Bharosey and Ratan Lal, to which they claimed for trial.

8. In order to prove its case, the prosecution has relied upon oral as well as documentary evidence.

9. In oral evidence, P.W.-1 Ram Swaroop, the eye-witness, P.W.-2 Amar Singh, the eye-witness, P.W.-3 Natthu Lal, the informant/injured, P.W.-4 Smt. Ramrati, the injured, P.W.-5 S.I. Iqbal Ahmad Kaleem, the I.O., P.W.-6 Constable Brij Kishore, the scribe, P.W.-7 Dr. O.P. Verma and P.W.-8 Constable Madan Pal Singh have been examined.

10. As documentary evidence, the prosecution has relied upon site plan Ex. Ka-1, copies of statement of witnesses Ex. Ka-2 and Ex. Ka-3, charge-sheet Ex. Ka-4 and NCR Ex. Ka-5, Medical Report Ex. Ka-6, Tarmimi (amended) GD Ex. Ka-7, GD for registration of NCR Ex. Ka-8.

11. After conclusion of the prosecution evidence, the incriminating evidence and circumstances were put to the accused persons in their

statement under Section 313 Cr.P.C, wherein they claimed the prosecution evidence as false and fabricated and a specific statement has been given by accused Subedar Khan that he has been assigned a role of teeth biting whereas he has no teeth in his mouth.

12. At the very outset, the Court take notice of this fact that out of three appellants, appellant nos. 2 and 3, Ratan Lal and Subedar Khan, have expired and the appeal, *qua* them, has already been abated on 8.8.2024 and the present appeal is effective only in respect of appellant no.1 Ram Bharosey.

13. Learned counsel for the appellant-Ram Bharosey has assailed the impugned judgment and order on so many grounds. It has been submitted that the eye-witnesses of this case are not reliable. P.W.-1 and P.W.-2 Ram Swaroop and Amar Singh who are said to be the independent eye-witnesses of the incident have been declared hostile by the prosecution and do not support the prosecution case in any manner and further they even deny the recording of their statement under Section 161 Cr.P.C. It has been further argued that there are material contradictions in the deposition made by P.W.-3 and 4 with the informant and injured witness of this case. It is further submitted that the medical evidence does not corroborate the prosecution version. There are several omissions and serious lacunas in the investigation of this case. It is also submitted that no specific role of assault has been assigned to the sole surviving appellant and only a general role of assault has been assigned to all the accused persons by the injured witness and the same statement has been made by P.W.-3, informant/eye-witness. It is further submitted that the impugned judgement suffers from serious perversity and is not sustainable under law and the appellant is liable to be acquitted.

14. *Per contra*, learned State Counsel vehemently opposed the present appeal. It has been argued that despite hostility of P.W.-1 and 2, the prosecution case has been well supported by the injured witness P.W.-4

herself and the informant/eye-witness of the case P.W.-3, the husband of P.W.-4. It is also submitted that every negligence or omission caused during investigation cannot be taken as fatal to the prosecution case. It is also submitted that the evidence of the doctor who medically examined P.W.-4, the injured, corroborates the prosecution version. It is also submitted that the injured and the informant of this case belong to SC/ST Community and despite having knowledge of this fact, the accused persons committed the crime against them at a public place and thereby an offence under the relevant provisions of SC/ST Act was also committed. On this ground, a prayer for dismissal of appeal has been made.

15. To start with the testimony of P.W.-1 and P.W.-2, who are said to be witnesses of fact in this case, but declared hostile by the prosecution during recording of evidence before the Court. It is found that the said witnesses do not support the prosecution case on any relevant point. Both the witnesses have categorically denied to have seen the alleged occurrence and they further denied even the recording of their statement under Section 161 Cr.P.C. by the I.O. No doubt, the prosecution case is not proved in any way on the basis of the testimony of witnesses P.W.-1 and P.W.-2.

16. But, however, P.W.-3, the informant who is also an eye-witness of the occurrence and P.W.-4, the injured witness, have been accepted as reliable witness of the prosecution.

17. The learned counsel for the appellant no.1 vehemently argued that P.W.-3, the informant, actually is not an eye-witness of the occurrence. During his examination-in-chief, he deposes the ocular evidence of the incident and supports the prosecution version as narrated in the NCR. He has stated that at the time of incident, when his wife was coming back after taking water from a 'Well', the accused persons started abusing her by hurling caste related abuses and when she protested, all the three

accused persons made an assault upon her and when the villagers came, she was rescued. She was medically examined and the matter was reported to the Police orally. When he was confronted in the cross-examination his evidence shattered. In the NCR, Ex. Ka-5, it is mentioned that the accused persons were hurling abuses to P.W.-3, the informant himself, but in his testimony recorded before the Court, P.W.-3 admits that the assault was not made upon him nor he was abused by the accused persons. But, how this fact was made in the NCR, Ex. Ka-5, he has been unable to explain it in this testimony. In fact this is not the case of the prosecution that P.W.-3, the informant, was abused or belaboured in any way by the accused persons, but it was his own wife who was the injured and victim of this case. But, Ex. Ka-5 NCR consists of the different set of facts which is a dent in the prosecution case. Further in his cross-examination, P.W.-3 states that he had reached the spot after half an hour when he heard the noise and when he reached the spot, he found some persons only standing over there and this statement is the indicative of the fact that he did not witness the incident.

18. The aforesaid statements of P.W.-1 in fact brings the prosecution story under a shadow of doubt. If P.W.-3 reached the spot half an hour after the occurrence, he could never be an eye-witness of the incident. Hence, whatsoever he has deposed before the Court is an outcome of the information gathered by him from other persons or his own wife and his own evidence falls into the category of heresy evidence from the category of ocular evidence which in law has no value.

19. P.W.-4 Ramvati, the wife of the informant is an injured witness. In her examination-in-chief she has uttered that when she was going back to her home after taking water from a well, the accused persons started abusing her and when she protested, the accused Subedar Khan made a bite in her chest and all the accused persons assaulted upon her with *lathi*, kicking and fisting. On her noise, her husband also came over there and

he was also belaboured by them. She sustained injuries and was medically examined on the next day at 11:00 A.M. and the matter was reported to the police by her husband.

20. It is interesting to note that nowhere in his testimony P.W.-3 utters a single word regarding his caste. Since a conviction has been recorded in this matter under Section 3(1)(X) of the SC/ST Act, it was obligatory upon the prosecution to prove that the accused persons intentionally insulted or intimidated with intention to humiliate the injured and informant who were members of SC/ST Community, on a place within public view and the accused persons were not the member of SC/ST Community. Since P.W.-3 nowhere states that he belongs to SC/ST Community and the accused persons do not belong to the same Community, the charge under Section 3(1)(X) of the SC/ST Act cannot be said to be proved as required by law. Even if, it is presumed that the occurrence happened on a public place within public view, it cannot be said only on the basis of caste of P.W.-4 the incident occurred with a member of SC/ST Community. Although, P.W.-4 at one place in her testimony states that she is a 'Jatav' by caste, but whether the accused persons intended to humiliate her as a member of SC/ST Community, is not clear from the evidence on record.

21. The testimony of P.W.-4 suffers from other inconsistencies as well which definitely affects the credibility of the prosecution case.

22. P.W.-4 in her cross-examination states that she was assaulted by the accused persons for about 1/2 hour which is the most exaggerated and inconsistent statement particularly in view of the injury report available on record, which shows the injuries simple in nature. Further, in her cross-examination, she states that numbers of public were present over there, but no one came forward to rescue her but she is unable to disclose the name of any of the witnesses who were present there. P.W.-4 has also narrated contradictory versions regarding her medical examination.

23. P.W.-4 has also stated that there was some animosity between both the parties prior to the incident and some applications were moved by the injured lady against the accused persons.

24. The learned counsel for appellant no.1 has vehemently argued that no person residing nearby the place of occurrence came forward to corroborate the prosecution case and the persons whose houses were shown in the site-plan Ex. Ka-1 have not witnessed the occurrence and one of them Ram Swaroop is a hostile witness when appeared before the court as P.W.-1. The learned counsel for appellant no.1 argued that the prosecution case is not supported by the evidence of independent witness and as a matter of fact except P.W.-4, there is no witness to support the prosecution case. P.W.-1 and P.W.-2 are the hostile witnesses and P.W.-3 avers the hearsay facts before the Court.

25. P.W.-7 the doctor had proved the injury report of the injured as Ex. Ka-6 and found ten injuries over her body. He has opined that the injuries are likely to be caused by some hard and blunt object within one day from the date of medical examination. In his cross-examination, he has clarified that teeth biting injury no. 10 is likely to be caused by teeth biting and other injuries might be caused if the injured falls upon any wood or uneven fence.

26. P.W.-7 the doctor who has proved the injury report as Ex. Ka-6 found following injuries upon the body of the injured:

- “i. Abraded contusion 5 cm X 2 cm right upper eye lid.*
- ii. Abraded contusion 4 cm X 2 cm on the left upper eye lid.*
- iii. Abraded contusion 6 cm X 2 cm on the left maxilla.*
- iv. Abraded contusion 10 cm X 6 cm on the left forearm below the elbow.*
- v. Abraded contusion 9 cm X 2 cm on the right arm.*
- vi. Abraded contusion 7 cm X 2 cm on the middle of right forearm.*

vii. *Multiple contusions in the area of 25 cm X 20 cm on the left thigh to knee.*

viii. *Abraded contusion 4 cm X 2 cm on the left leg.*

ix. *Abraded contusion 34 cm X 12 cm on the right leg.*

x. *Circular mark of abrasion on the left breast intermittent.”*

27. By no evidence, the prosecution succeeds to prove any specific role assigned to the sole surviving appellant in the commission of the crime. One specific role of teeth biting in the chest of the injured has been assigned to the accused-Subedar Khan, who is no more. Which weapon was taken by the present appellant has not been clarified in the ocular evidence. No weapon was recovered by the police.

28. The learned State Counsel argued that since P.W.-4 is the injured witness, her evidence bears a significant and distinguished value which ought to be respected in the criminal trial.

29. As discussed above, the testimony of an injured witness is always accorded a special evidentiary status.

30. In ***Shivalingappa Kallayanappa and Others Vs. State of Karnataka, 1994 Supp. (3) SCC 235***, it was held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence at scene stands established in case it is proved that he suffered the injury during the said incident.

31. Similar dictum of law was reiterated in ***State of U.P. Vs. Kishan Chandra and others, (2004) 7 SCC 629*** by observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing

can be elicited to discard his testimony, it should be relied upon [*vide Krishan v. State of Haryana (2006) 12 SCC 459*].

32. It is submitted that the injuries found upon the body of the injured are simple in nature, but at the same time since she had made a specific allegation that the injuries were caused by all the accused persons and it can be inferred from the evidence on record that in furtherance of common intention of all, the crime was committed by the accused persons.

33. From the aforesaid discussion, this Court finds that the theory of general abuse and infliction of the simple injuries over the body of the injured lady is proved beyond reasonable doubt on the basis of the evidence on record, but however, so far as the charge under Section 3(1)(X) of the SC/ST Act is concerned, the legal ingredients capable of establishing a charge under Section 3(1)(X) of the SC/ST Act are missing in this case. Hence, so far as the charge under Section 3(1)(X) of the SC/ST Act is concerned, the sole surviving appellant Ram Bharosey is entitled to get a benefit of doubt. However, so far as charges under Section 323/34 and 504 I.P.C. are concerned, the prosecution has successfully proved the charges beyond reasonable doubt.

34. Learned counsel for appellant no.1 has submitted that the sentence awarded by the learned trial court under Section 323/34 I.P.C. is rigorous imprisonment for a period of three months and under Section 504 I.P.C., it is rigorous imprisonment for a period of one month and no fine has been imposed upon him. It is humbly submitted that since the incident of this case occurred in the year 1992 and conviction was recorded in the year 1995 and the present appeal was also filed before this Court in 1995 and since then, the appellant is running to this Court in *parvi* of this appeal for a period of about 29 years and he may be a repenting person. In the impugned judgment it was endorsed upon by the trial court that the age of the appellant is 40 years in the year 1995 and now he should be an old

person of about 70 years of age. No fruitful purpose will be served to send him to jail to serve the sentence of imprisonment as awarded by the learned trial court. Hence, a prayer has been made to record the sentence only for fine instead of imprisonment of any period.

35. In the entirety of the facts and circumstances of this case, this Court genuinely feels that the purpose of justice may be served if sole appellant is sentenced under Sections 323/34 and 504 I.P.C. not with any period of imprisonment but with fine only as provided under Sections 323/34 and 504 I.P.C., wherein an accused may be convicted with fine only.

36. Resultantly, appeal is **partly allowed** in the aforesaid terms. Instead of recording a sentence for rigorous imprisonment, the appellant may be sentenced for fine only. The appellant is sentenced for fine of Rs. 1,000/- under Section 323/34 I.P.C. and Rs. 500/- under Section 504 I.P.C., which shall be deposited by the appellant within two months from today in default of which, he has to undergo ten days simple imprisonment. So far as conviction of the appellant under Section 3(1)(X) of SC/ST Act is concerned, since it is not proved beyond reasonable doubt as such no offence under the aforesaid section is not made out against the appellant, hence, the sentence awarded under the aforesaid section is hereby set aside.

37. Let the trial Court record be sent back along with the certified copy of this judgement for information and necessary compliance.

Order Date :- 8.8.2024

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