

Court No. - 82

Case :- CRIMINAL APPEAL No. - 616 of 1986

Appellant :- Riyasat And Others

Respondent :- State

Counsel for Appellant :- Shamsuddin,Adeel Ahmad
Khan,Mayank Mohan Dutt Mishra

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the appellants and learned A.G.A. for the State.
2. The instant criminal appeal has been preferred by the appellants against the judgement and order dated 31.01.1986 passed by VI-Additional Sessions Judge, Gorakhpur in Session Trial No.36 of 1983, arising out of Case Crime No.143-A, under Sections 395, 397, 447, 448 IPC, Police Station Ghugli, Gorakhpur, District Pilibhit and were sentenced to undergo for rigorous imprisonment of six months under Section 147 IPC and to undergo six months rigorous imprisonment under Section 323/149 IPC. All the sentences shall run concurrently.
3. Initially, six persons were named as accused in this case and they faced trial and after conviction, the instant appeal was filed by all of them but subsequently, during the pendency of appeal, appellant no.1 Riyasat, appellant no.2 Abdul Hasan, appellant no.3 Iqbal and appellant no.4 Izhar died and the appeal abates against them and the present appeal is now being contested by two surviving appellants, namely appellant no.5 Wazim and appellant no.6 Chinak respectively.

4. The prosecution story in brief as culled out in the First Information Report that the named accused persons, namely, Riyasat, Abul Hasan, Iqbal, Izhar, Wazim and Dheemak having lathi, danda, revolver and sphere in their hands came to the house of the complainant on 07.07.1981 at about 10:00 a.m. and asked him to oust from his house and when it was protested, the informant and his wife were assaulted by the said weapons and they also robbed domestic articles and forcefully took possession of the house of the informant.

5. The F.I.R. was lodged and the injured persons were medically examined. After investigation, charge sheet was submitted into the matter.

6. The case being exclusively triable by the Sessions Court was committed to Sessions where charges were framed against the accused persons under Sections 395, 397, 447, 448 IPC to which they denied and claimed for trial.

7. The prosecution in order to prove its case relied upon oral evidence of P.W.-1 Karmullah the informant, P.W.-2 Iltaf, the eye witness, P.W.-3 head constable Bachcha Lal, the scribe, P.W.-4 Dr. R.K. Tiwari and P.W.-5 S.I. Ganpati Ram, the Investigating Officer and further to corroborate the oral evidence the prosecution further relied upon documentary evidence as well. In documentary evidence written report Ex.Ka.-1, chik FIR Ex.Ka.-2, G.D. Ex.Ka.-3, site plan Ex.Ka.-4, charge sheet Ex.Ka.-5 and injury report Ex.Ka.-6 have been produced.

8. After conclusion of the prosecution evidence, the incriminating evidence and circumstances were put to the accused persons in their statements under Section 313 Cr.P.C. wherein they claimed the prosecution evidence to be false and fabricated. It has further been submitted that informant and his companions wanted to take forceful possession of the house of accused Riyasat and in accomplishment of the same, they made an assault upon the accused Riyasat which was reported to police and in order to defend themselves, the informant and his companions lodged the false F.I.R. in this case.

9. The accused persons produced the copy of the F.I.R., G.D., injury report, certified copy of judgement passed in Criminal Revision No.24 of 1985 and copies of pariwar register for House Nos.16 & 51 as documentary defence evidence Ex.Kha-1 to Ex.Kha-5 and no oral evidence has been adduced by them.

10. The learned trial court at the outset proceeded to find out the fact as to whether the complainant was in possession of house no.51 at the time of the occurrence where from he was allegedly ousted by the accused persons. The learned trial court considering the evidence on record found that it was an admitted case of both the parties that the house aforesaid is a disputed property and has already been attached under Section 145 Cr.P.C. and the said proceeding is still going on.

11. P.W.-1 in his statement admits that his parental house is also situated in the same village where the

disputed house is constructed. In his cross examination P.W.-1 states that when he came back to his house from the police station, he came to know that some husk was kept by the accused persons in the said house and this fact was not known to him when he was going to lodge the report.

12. On the contrary in the F.I.R. itself it has been mentioned that the accused persons had forcibly kept some husk in his house. Now the question arises that when the informant was not aware of this fact that husk has already been kept by the accused persons how he could say that at the time of lodging of the F.I.R. he was not aware of this fact.

13. In his cross examination, P.W.-1 states that at the time of attachment of the house, he was residing in the same whereas P.W.-2 Iltaf in his cross examination states that at the disputed door where police has kept the lock, two more locks are also found there. Significantly, P.W.-2 does not explain that the locks in the said house belonged to the informant or the accused persons. Hence, the evidence on record shows that the house in dispute was already attached under the orders of the Magistrate and the police had locked it prior to the incident. Hence, the prosecution story which starts with the allegation that the accused persons at the time of the incident forcibly ousted the informant from his house and also robbed some articles from the said house. In these circumstances, the prosecution case on the point of the possession of the

informant and his family members over the house no.51 becomes highly suspicious which hits the origin of the prosecution story.

14. So far as F.I.R. on the case is concerned, no doubt it was lodged promptly on the same day at 04:00 pm. P.W.-1 the informant has proved the written report as Ex.Ka.-1 and P.W.-3 the scribe has also proved chick F.I.R. and registration G.D. as Ex.Ka.-2 & Ex.Ka.-3. No doubt a prompt FIR is a sign of genuineness of prosecution story and the promptness in lodging the FIR makes it free from deliberations and consultations but the truthfulness of the contents of the FIR is yet to be examined on the basis of evidence on record.

15. Learned AGA has submitted that the prosecution case has been well supported by the medical evidence. Informant/injured has been medically examined by P.W.-4 Dr. R.K. Tiwari, who finds following injuries upon the body of the informant/injured:-

“(i) खरासदार निलगू निशान 3 सेमी X 1 ½ सेमी० दाहिने गाल के हड्डी वाले भाग पर। चोट का रंग लाल था।

(ii) फटा हुआ घाव 2.5 सेमी X .5 सेमी X .4 सेमी० सर पर बाये तरफ करीब बीच की लाईन में। चोट का रंग लाल था। खून के थक्के घाव के चारो ओर मौजूद थे।

(iii) खरासदार निलगू निशान 4 सेमी X 1 सेमी बायें पंजे पर। चोट का रंग लाल था।

(iv) निलगू निशान 7.5 सेमी X 1.5 सेमी बायें तरफ पीठ की हड्डी के नीचले सिरे से चार सेमी नीचे। चोट का रंग लाल था।

(v) निलगू निशान 6 सेमी X 1 ½ सेमी० पीठ पर बायें तरफ चोट नं० 4 से 2 के पीछे।

(vi) निलगू निशान 3.5 सेमी X 1 सेमी चूतड़ पर बायीं तरफ। हड्डी के ऊपरी सिरे से ठीक नीचे। चोट का रंग लाल था।

(vii) निलगू निशान 8.5 सेमी X 1 सेमी पीठ पर दाहिनी तरफ करीब बीच में चोट का रंग लाल था।”

16. The nature of the injuries caused to the informant/injured clearly shows that there is no injury which could be inflicted by the use of sphere or revolver. The learned trial court opined that if the accused persons came to the house of the informant with intention to belabour him and to take forceful possession of the house they would certainly use the weapons carried by them but the non user of sphere and revolver is indicative to the fact that the prosecution version as mentioned in the F.I.R. is an exaggerated version of the incident.

17. In the same manner the articles which were robbed from the house of the informant have also been mentioned in the FIR which include one quintal iron rod and 7000 bricks as well. P.W.-1 has stated that all the 7000 bricks were taken away by the accused persons over there head and were kept at the door of the house of accused Riyasat. However, the Investigating Officer of the case reached the place of occurrence on the same day when F.I.R. was lodged but surprisingly he did not find any brick at the door of the disputed house or at the house of accused Riyasat. Further, the Investigating Officer did not recover any robbed article from the house of the accused persons. No iron rod has also been retrieved by the police in this case. Hence, the averments made in the F.I.R. are false and not trustworthy and that is why the learned trial court also negated the factum of decoity.

18. P.W.-2 Iltaf states that the accused persons were present on the spot for a period of nine minutes only. The prosecution story at this juncture becomes improbable because in all probabilities it was not plausible for the accused persons to take away 7000 bricks and one quintal iron rod from the house in question to the house of Riyasat within a period of nine minutes only.

19. On the basis of evidence on record after scrutinizing it, the learned trial court has reached a logical conclusion that both the parties were having dispute in connection with house no.51 and at the time of the incident, both the parties reached there and a free fight took place between them wherein P.W.-1 the informant/injured sustained simple injuries. However, the evidence on record is not capable of showing as to which party was aggressor.

20. It was brought to the notice of this Court that to establish the factum of cross case, the accused persons have produced the copy of F.I.R., G.D., injury report, copy of pariwar register and also copy of judgement passed in Criminal Revision No.24 of 1985 as documentary evidence but however, to establish a case as a cross case it was also required from the accused persons to file the statement of witnesses recorded in the cross case which was registered as S.T. No.154 of 1984. For want of the aforesaid document, it cannot be said that the present case is a cross case of S.T. No.154 of 1984 (Criminal Appeal No.694 of 1986).

21. The learned trial court some how ignored the injuries sustained by the accused Riyasat, who claims to get injuries in the same occurrence. This Court cannot lose site of statement of P.W.-4 Dr. R.K. Tiwari, who medically examined the informant Karmullah on 07.07.1981 and also medically examined accused Riyasat Ali on the same date at 09:30 AM and found following injuries to his body as himself deposed by P.W.-4. The injuries found on the body of accused/injured Riyasat Ali were as follows:-

- “1- कटा हुआ घाव 6 सेमी x 0.8 x हड्डी तक गहरा सर के दाहिने तरफ दाहिने भौ से आठ सेमी उपर चोट का रंग लाल था। सीरम वह रहा था। चोट तिरछा था।
2. खराशदार निलगू निशान 3.5 सेमी x 1-1/2 सेमी बाये कलाई के पृष्ठ तल पर कलाई के जोड़ से ठीक नीचे। चोट का रंग लाल था।
3. निलगू निशान 7 सेमी x 1-1/2 सेमी बाये हाथ के पृष्ठ तल पर। जोड़ से ठीक नीचे। चोट का रंग लाल था।
- 4- खराशदार निलगू निशान 3 सेमी x 2 सेमी स्करोटम के दाहिनी तरफ जिसमे सूजन एवं टेंडरनेस था। चोट का रंग लाल था।”

22. P.W.-4 states that injury no.1 might be caused by some sharp edged weapon like gadasa and other injuries might be caused by hard and blunt object like lathi. Injury no.4 was kept under observation. The original record of S.T. No.154 of 1984 was placed before this witness wherein the original medical report of Riyasat Ali was available and on the basis of the same, the copy thereof was filed by P.W.-4 on the record of the present case and he proved it as Ex.Kha-1.

23. It is true that Karmullah the informant sustained injuries in the incident but at the same time, this Court cannot ignore the injury sustained by accused Riyasat Ali. P.W.-1 Karmullah in his deposition states that he tried to defend himself with the aid of some wooden scale but he cannot tell as to who got injuries by such assault but at the same time, P.W.-2 the eye witness states that the wooden scale used by Karmullah for his defence inflicted no injury to any person and in this way, the prosecution is trying to conceal the real facts and origin of the occurrence.

24. Since the prosecution by ignoring the factum of injuries sustained by one of the accused has tried to conceal the origin and real facts relating to the occurrence, a legal question arises as to what should be the reasonable and logical consequence of the present matter.

25. In **Nand Lal and others Vs. State of Chhattisgarh (2023) 10 SCC 470**, the Hon'ble Apex Court has held that:-

“We will first consider the issue with regard to non-explanation of injuries sustained by accused No. 11 Naresh Kumar. In the case of Lakshmi Singh and Others v. State of Bihar, which case also arose out of a conviction under Section 302 read with Section 149 of the IPC, this Court had an occasion to consider the issue of non-explanation of (1976) 4 SCC 394 injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus:

“12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in

the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. ”

26. Although P.W.-1 in this case is an injured witness and his evidence is placed upon a distinguished place and his presence over the spot cannot be disputed but in case of admitted previous enmity possibility of false implication cannot be ruled out. The prosecution was under obligation to explain the injuries which were not so simple sustained by accused Riyasat Ali which was not discharged and thus the genesis of the incident is also found to be suppressed and in such a situation where the injuries sustained by

the accused remained unexplained, the accused persons are certainly entitled for benefit of doubt. Hence, the prosecution failed to prove its case beyond reasonable doubt.

27. Keeping in view the entire facts and circumstances and evidence on record, this Court is of the view that appellant no.5 **Wazim** and appellant no.6 **Chinak** respectively are entitled for benefit of doubt.

28. Accordingly, the present criminal appeal is **allowed** and the impugned judgement and order dated 31.01.1986 passed by VI-Additional Sessions Judge, Gorakhpur in Session Trial No.36 of 1983, arising out of Case Crime No.143-A, under Sections 395, 397, 447, 448 IPC, Police Station Ghugli, Gorakhpur, District Pilibhit is hereby set aside. The appellants are on bail. They need not surrender. Their sureties are discharged and personal bonds are cancelled.

29. Let a copy of this order be sent to the court concerned for necessary compliance.

Order Date :- 12.11.2024

Sanjeet