

Court No. - 86

Neutral Citation No. - 2024:AHC:140556

Case :- CRIMINAL APPEAL No. - 3758 of 2004

Appellant :- Ram Kishan And Another

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Kumar Singh, Mukhtar Alam, Raj Narayan Tiwari, Vivek Kumar Singh

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 record.
2. The instant criminal appeal has been preferred by the convicts appellants Ram Kishan and Hari challenging the judgment and order of conviction and sentence dated 07.07.2004 passed by the Additional Sessions Judge Fast Track Court No. 1, Baghpat in Session Trial No. 494 of 2001 arising out of Case Crime No. 217 of 2001, under Sections 323/34, 504 I.P.C., Police Station Baghpat, District Baghpat whereby they have been convicted and sentenced for the offence under Section 323/34 I.P.C. for rigorous imprisonment of one year with fine of Rs.1,000/- alongwith default sentence and under Section 504 I.P.C. for six months rigorous imprisonment with fine of Rs.500/- alongwith default sentence.
3. Feeling aggrieved with the aforesaid judgment and order passed by the Additional Sessions Judge/Fast Track Court No. 1, Baghpat in Session Trial No. 494 of 2001 arising out of Case Crime No. 217 of 2001, under Sections 308, 504 I.P.C., Police Station Baghpat, District Baghpat, the present criminal appeal has been preferred by both the convicts.
4. The prosecution case as unfolded in the F.I.R. is that a quarrel took place between the accused persons Ram Kishan alongwith Hari and informant Vijendra Singh on his shop for the reason of payment of Pepsi cold drink and cigarette as well as match box and informant was

assaulted by them by kicks and fists and also by some iron angle rod. He sustained injuries and was medically examined. The F.I.R. was lodged and after initiation of prosecution, both the accused persons Ram Kishan and Hari were convicted under Section 323/34 and 504 I.P.C. and were sentenced as mentioned hereinabove.

5. The F.I.R. in this case was lodged on 12.06.2001 at 18.15 P.M. and injured informant was medically examined on the same day at 6.30 P.M. in Community Health Center, Baghpat and doctor has found following injuries over his body:-

(1) Incised wound 3 cm. x 04. cm x bone deep (sick) present on (L) side head 8 cm. above (L) ear pinna margin clear cut, tattooing backwards, bleeding on touch present.

Patient was complaining of headache & vomiting.

(2) Red contusion 6 cm. x 2 cm. bleeding present on outer aspect of (R) upper arm, 11 cm. above (R) elbow.

(3) Red contusion 3 cm. x 1.5 cm. on back of (R) hand present obliquely.

(4) Red contusion 6 cm. x 1.5 cm. on back of (R) chest, 4 cm. below scapula.

(5) Red contusion 7 cm. 1 cm on inner aspect of (R) thigh.

(6) Abraded contusion 8 cm. x 2 cm. on outer aspect of (R) thigh, 9 cm. above knee point c/o pain Abd.

Opinion:- Above mentioned injury no. (2) is caused by sharp edged weapon and K.U.O.

Adv. X-ray. Rest injuries are simple in nature caused by blunt weapon.

Duration fresh.

6. The doctor found that injury no. 2 was caused by some sharp edged weapon and it was kept under observation and advised for X-ray

and rest of the injuries were found simple in nature and caused by hard and blunt object and duration was fresh.

7. The matter was investigated by the Investigating Officer and after concluding the investigation, charge sheet was submitted under Sections 308 and 504 I.P.C. against both the accused persons Ram Kishan and Hari.

8. The accused persons appeared before the Court and offence being exclusively triable by Sessions Court was committed to the Sessions Court by the Chief Judicial Magistrate, Baghpat on 20.09.2001.

9. The learned Sessions Judge, Baghpat proceeded to frame charge against both the accused persons under Sections 308/34 and 504 I.P.C., which they denied the charges and claimed to be tried.

10. In order to prove its case, the prosecution has produced PW-1 informant/injured Vijendra Singh, PW-2 Ranveer Singh, PW-3 Jagveer, PW-4 Dr. R.G. Verma Medical Officer, PW-5 Constable 408 Yashveer Rana scribe and PW-6 S.I. Udaiveer Singh Investigating Officer and to corroborate the oral evidence, the prosecution has further relied upon documentary evidence written report Ext. Ka-1, F.I.R. Ext. Ka-2, affidavit to S.P. dated 29.06.2001 by informant Ext. Ka-3, affidavit to S.P. dated 29.06.2001 by witness Ranveer Ext. Ka-4, affidavit to S.P. dated 29.06.2001 by witness Jaiveer, injury report Ext. Ka-5, chik F.I.R. Ext. Ka-6, registration G.D. Ext. Ka-7, site plan Ext. Ka-8 and charge sheet Ext. Ka-9.

11. 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 concocted and documentary evidence in support of defence case was also adduced but further no oral defence evidence was produced.

12. PW-1 Vijendra Singh is the injured/informant of this case who supports the prosecution version in this case and states that when the accused persons came on 12.06.2001 by a scooter quarrel took place between both sides for payment of some material and further when the accused persons proceeded without payment and started their scooter, he caught the scooter whereupon they belaboured with kicks and fists and accused Ram Kishan with an angle (iron rod) made assault upon his head and they also hurled abuses. Witness Jaiveer and Ranveer witnessed the incident and he sustained injuries. Further he proved the written report given in police station alongwith affidavit and same were proved by him as Ext. Ka-1 and Ka-2.

13. PW-2 Ranveer is the eye witness of this case and he corroborates the prosecution case and gives ocular version of this case. PW-2 proves the affidavit given to S.P. as Ext. Ka-3.

14. In the same fashion PW-3 Jaiveer Singh also corroborates the testimony of PW-1 and PW-2. He further proves the affidavit given to S.P. as Ext. Ka-4.

15. PW-4 Dr. R.G. Verma is Medical Officer who conducted the medical examination of the injured on 12.06.2001 at 6.30 P.M. at C.H.C., Baghpat. He has proved the injury report as Ext. Ka-5 and further states that injuries are likely to be caused on 12.06.2001 at 5.00 P.M. by kicks and fists and some angle iron rod. The injury no. 1 was kept under observation and advised for X-ray. All other injuries were simple in nature caused by any hard and blunt object.

16. PW-5 constable Yashveer Rana is the scribe who has proved the chick F.I.R. and registration G.D. as Ext. Ka-6 and Ka-7 and further states that the F.I.R. was lodged on 12.06.2001 at 18.00 P.M.

17. PW-6 S.I. Udaiveer Singh, the Investigating Officer of the Case in his evidence has corroborated the proceedings of investigation and he also proves the site plan as Ext. Ka-8 and charge sheet as Ext. Ka-9.

18. In the present matter PW-1 Vijendra Singh is the injured witness and PW-2 Ranveer Singh and PW-3 Jaiveer Singh are the eye witnesses who have well supported the prosecution case.

19. Learned counsel for the appellants has submitted that the prosecution story is bogus and the evidence rendered to prove the same was also insufficient to prove the guilt against the appellants beyond reasonable doubt. It is also submitted that the medical evidence does not corroborate the prosecution version in material terms. It is further submitted that both the eye witnesses of the case are not natural or reliable and there are material contradictions in the deposition of the injured PW-1 and so called eye witness PW-2 and PW-3. Further other points have been raised by learned counsel for the appellants and it has also been vehemently argued that the defence side had prayed for grant of probation to the appellants in this matter because they had no criminal antecedents to their credit and maximum period of their sentence was for a period of one year only but the learned trial court without assigning any reason turned down the prayer made by the appellants to release them on probation extending benefits of provisions under Section 360 Cr.P.C. and Section 4 of the Probation of Offenders Act in their favour.

20. Per contra, learned A.G.A. opposes the submissions made by learned counsel for the appellants and it has been submitted that conviction recorded by learned trial court and sentence imposed upon the appellants is proper and genuine in the circumstances of this case. It is also submitted that the prosecution case rests upon the ocular version of two eye witnesses and injured witness as well and they prove the prosecution case sufficiently. It is also argued that the medical evidence fully supports the prosecution version and all the injuries, which were found during medical examination of the injured, are of the same nature as the prosecution claims in the F.I.R.

21. Motive as a mental element though plays a significant role in any criminal trial but it is not a universally acceptable rule. Motive has its

relevance if a case is based upon circumstantial evidence but if the case rests upon eye-witness account and there is sufficient evidence of fact regarding the guilt of the accused, motive has no importance at all. It is true that no enmity between the parties has come to picture but it has always to be kept in mind that motive exists in the mind of the assailant and the prosecution/ victim/ injured in any case can never be in a position to explain as to why the assailant made an assault upon the injured or deceased and the presence of element of motive can be gathered from the facts and circumstances of the case, manner of assault, weapon used, participation of accused in the crime etc.

22. Reliance has been placed upon ***Bikau Pandey Vs. State of Bihar (2003) 12 SCC 616*** by the learned AGA wherein it has been held that when the direct evidence establishes the crime, motive is of no significance and pales into insignificance.

23. There are a catena of decisions on the point that in a case based upon the eye witness account, the motive loses its significance. In ***Deepak Verma Vs. State of Himachal Pradesh (2011) 10 SCC 129*** It has been held as under:

“...Proof of motive is not a sine qua non before a person can be held guilty of commission of crime. Motive being a matter of mind, is more often than not difficult to establish through evidence.”

24. The prosecution story as narrated in the F.I.R. and corroborated by the witnesses of fact is to the effect that the quarrel between the accused and the injured took place on account of payment of some material, which were purchased by accused persons from the shop of PW-1 the injured and it resulted into a sudden assault upon the injured, hence the motive in this case accrued on the spot itself.

25. To proceed further it is desirable to have a glance of Section 308 I.P.C. which is extracted below:-

“308. Attempt to commit culpable homicide.—

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be

guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

26. In the facts and circumstances of the present case, it is found that the injuries were caused to the injured in grave and sudden provocation but it is to be kept in mind that if the act is done with such knowledge or intention under such circumstances that if the accused caused death of the injured by his act, he would be punished for culpable homicide not amounting to murder. The learned trial court has explained the nature and scope of the offence punishable under Section 308 I.P.C. and has drawn a conclusion that although the factum of assault made by both the accused persons by kicks and fists is proved but they only caused simple injuries to the injured and, therefore, it was found that the offence against both the accused persons was not proved for being punished under Section 308 I.P.C. but an offence under Section 323 I.P.C. is proved against both the appellants.

27. Learned trial court has also discussed the medical evidence pertaining to the injured PW-1.

28. The injury report of the injured has been proved by PW-4 Dr. R.G. Verma as Ext. Ka-5.

29. The medical examination of the injured was performed on 12.06.2001 at 6.30 P.M. whereas the incident occurred on the same day at 5.00 P.M. hence, the medical evidence although assailed by the defence, corroborates the prosecution version but it is notable that no X-ray was performed in respect of injury no. 1 and there is no supplementary medical report on record. Since all the injuries are simple in nature, learned trial court opined that the accused persons did not make any assault upon the injured with intention or knowledge to cause culpable homicide not amounting to murder but their intention was only to cause simple injuries to the injured by use of kicks and fists and I find

himself in conformity with the opinion expressed by the learned trial court.

30. The F.I.R. of this case was lodged without any delay. The incident occurred on 12.06.2001 at 5.00 P.M. whereas the F.I.R. was lodged at 18.15 P.M. on the same day, hence the F.I.R. is not a result of consultation and deliberations and the prompt F.I.R. rules out the possibility of false implication in the facts and circumstances of the case in hand. There appears no possibility of false implication of the accused persons and the witnesses as well seem to have no intention like that. The injury report of the injured has been prepared on the back page of Chitthi Majrubi which again shows that the injured was taken to the police station first and after lodging of the F.I.R., he was sent for medical examination by the police itself and all these circumstances rule out the possibility of false implication of the accused persons. Written report has been well proved by the informant/injured himself as Ext. Ka-1 and the F.I.R. and registration G.D. are also proved by PW-5, the scribe as Ext. Ka-6 and Ka-7

31. Apart from the injured, eye witnesses PW-1 and PW-2 also deposed before the trial court in the same tone and they have narrated the incident with almost common averments. There is no material contradiction found in the deposition of witnesses of fact. The place of occurrence was inspected by the Investigating Officer PW-6 on the pointing out of the informant himself and he has prepared the site plan Ext. Ka-8 and proved it as well. The place of occurrence shown in Ext. Ka-8 is also almost the same as narrated by PW-1, PW-2 and PW-3. The prosecution story is well supported by the medical evidence as well.

32. On the basis of the aforesaid facts and deposition of the witnesses, the learned trial court correctly opined that the prosecution has proved its case beyond reasonable doubt but however the learned trial judge concluded that the ingredients of Section 308 I.P.C. are not fully satisfied in this matter although the contents of Sections 323/34, 504 I.P.C. are proved on the basis of cogent evidence and he proceeded

to convict the accused persons for the same. In my considered view the trial court has committed no illegality in holding the same. The present appeal having no perversity is not liable to be interfered with by this Court.

33. Learned counsel for the appellants in the last has made submission that since the accused persons are having no criminal history to their credit and the occurrence happened in a spur of moment and they have been convicted only under Sections 323/34 and 504 I.P.C. and maximum sentence awarded to them is for a period of one year only alongwith fine of Rs.1,000/-, it would be more proper and expedient in the interest of justice if the appellants were released on probation for the aforesaid offences. It is further submitted that since the conviction of the appellants was recorded in the year 2004 and appeal has also been pending since the year 2004, no fruitful purpose will be served if the sentence for rigorous imprisonment as recorded against the appellants is acted upon. It is further submitted that since the appellants have no criminal history to their credit, they should be given benefit of the provisions of Section 360 Cr.P.C. and also provisions of the Probation of Offenders Act, 1958 or the Children Act, 1960.

34. Per contra, learned A.G.A. vehemently opposed the prayer to release the appellants on probation but however he did not dispute the fact that the matter in question was the sole criminal case against the appellants and they have no other criminal history to their credit.

35. Before proceeding into this aspect, it is desirable that the provisions of Section 360 Cr.P.C. should be perused, which are as hereinunder:-

"When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years, or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and

receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour;

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by Sub-Section (2).

Where proceedings are submitted to a Magistrate of the first class as provided by Sub-Section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

In any case in which a person is convicted of theft, theft in a building, dishonest in is appropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law;

Provided that the High Court or Court of Session shall not under this Sub-Section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

The provisions of sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

The Court, before directing the release of an offender under Sub-Section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may after hearing the case, pass sentence.

Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

36. Section 4 of the Probation of Offenders Act, 1958 provides that:-

"(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

37. The convicts appellants have been convicted under Sections 323/34 and 504 I.P.C. During the trial, no criminal history of the appellants was brought to the notice of the Court and since they were having no criminal history to their credit their entitlement for release on probation deserves to be considered. The appellants also fulfill the legal requirements enumerated under Section 360 of Cr.P.C. and Section 4 of the Probation of Offenders Act.

38. In *Sitaram Paswan Vs. State of Bihar (2005) 13 SCC 110*, it has been held by the Hon'ble Apex Court that the circumstances of the case, nature of offence and character of the offender must be considered by the Court while exercising the discretionary power. Powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with

death or imprisonment for life. This power can be exercised by the Court even at the appellate or revisional stage.

39. On the other hand, learned AGA has pointed out that there is no report of probation officer on record, which may be required prior to the passing an order for extending benefit of Section 4 of the Probation of Offenders Act, 1958 to the appellants whereas learned counsel for the appellants has made a request that since the matter relates to the year 2004 and the offence is said to be committed in the year 2001 and the appellants before the Court are old persons at present, to call for a report to the Probation Officer would not serve any practical purpose for the sake of granting probation to the appellants.

40. In the facts and circumstances of the case and keeping in view the period of the offence which occurred in the year 2001 and also the fact that no other criminal history except the said case to the credit of the present appellants has been brought to the notice of this Court or of the trial court as well further they are old persons and have been running to this Court for a period of about twenty years, I am inclined to grant the benefit of Section 4 of the Probation of Offenders Act, 1958 and also the benefit of the provisions of Section 360 of Cr.P.C. to the appellants and on these grounds, the impugned judgement and order dated 07.07.2004 convicting the present appellants under Sections 323/34 and 504 I.P.C. is upheld but however it is modified in respect of the sentence awarded to them by the learned trial court and sentence imposed upon the appellants under Sections 323/34 and 504 I.P.C. for one year imprisonment alongwith fine and six months imprisonment alongwith fine respectively is substituted for their probation and both the appellants are directed to be released on probation on their entering into a bond without surety before the concerned probation officer for a period of one year from today.

41. Accordingly, the present appeal is **partly allowed**.

42. Let the record of this case be transmitted to the concerned trial court alongwith a copy of this judgment for further information and necessary compliance.

Order Date :- 31.8.2024
Rmk.