

Neutral Citation No. - 2024:AHC:132463

Court No. - 86

Case :- JAIL APPEAL No. - 5278 of 2013

Appellant :- Sajid Alias Gunga

Respondent :- State of U.P.

Counsel for Appellant :- From Jail, Anand Prakesh Panday A/C

Counsel for Respondent :- A.G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Challenge in this appeal is an impugned judgment and order dated 01.02.2013 passed by the Additional Sessions Judge (Ex Cadre), Court No. 2, Allahabad whereby the convict appellant was convicted in Sessions Trial No. 1308A of 2009 in Session Trial No. 13 of 2000, under Sections 392, 397 and 411 I.P.C. and was sentenced to rigorous imprisonment for a period of ten years alongwith fine of Rs. 5,000/- with default sentence, rigorous imprisonment for a period of ten years under Section 397 I.P.C. and rigorous imprisonment of three years under Section 411 I.P.C. and all the sentences were ordered to run concurrently.

2. The prosecution case as unfolded in the F.I.R. is that four unknown miscreants carrying bombs committed dacoity in the house of informant on 05.02.2000 at about 3.30 A.M. The bombs were thrown by them during the occurrence and many valuables, cash and other articles were taken by the miscreants. The F.I.R. was lodged against total of seven unknown accused persons. During investigation, the accused persons were arrested by the police and some of the jewellerys, which were robbed in the incident, were retrieved by the police from the possession of the present appellant and after investigation, charge sheet under Sections 392, 397 and 411 I.P.C. was submitted by the police to the court.

3. The offence being exclusively triable by court of sessions was committed to the court of Sessions on 04.12.2009 and charge under Sections 392, 397 and 411 I.P.C. was framed against the appellant to which he denied and claimed to be tried.

4. The prosecution in order to prove its case has relied upon the oral evidence of PW-1 Mohd. Hamid Ansari informant and PW-2 S.I. Kuldeep Tiwari, the Investigating Officer of the case.

5. To corroborate the oral evidence, documentary evidence has also been relied upon by the prosecution and written report Ext. Ka1, memo of supurdagi Ext. Ka-2, Site plan Ext. Ka-2, memo of identification Ext. Ka-3, charge sheet Ext. Ka-4 alongwith case property ring material Ext. Ka-1 and golden bangles material Ext. Ka-2 were produced.

6. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C. and incriminating evidence and circumstances appearing against him were put to him.

7. Notably in his statement under Section 313 Cr.P.C. the appellant admitted his guilt before the trial court and stated that he is a poor and helpless person and there is no one with him to do pairvi of his case. He confesses his guilt. He is languishing in jail since 07.03.2000 and he further made a request to acquit him considering his incarceration period.

8. The learned trial court on the basis of evidence on record and considering the confession made by the accused appellant in his statement under Section 313 Cr.P.C. found him guilty under Sections 392, 397 and 411 I.P.C. and awarded him sentence as mentioned hereinabove.

9. Learned Amicus Curiae appearing for the appellant made a request that the appellant is languishing in jail for a period of about 24 years in this case and even if his conviction and sentence awarded by learned trial court is affirmed by this Court, he should not be put behind the bar for any further period. It is further submitted that the maximum

period of sentence awarded to the appellant was ten years as all the sentences had to run concurrently and he has undergone default period as well alongwith actual period of sentence. In this manner, learned Amicus Curiae has confined his argument to the incarceration period of the appellant and he has made a prayer to release him in this case.

10. Per contra, learned A.G.A. has opposed the prayer made by learned Amicus Curiae and it is submitted that it is a case of dacoity committed by the appellant alongwith his associates and in the incident bombs were used and thrown and after creating a scene of fear and nuisance dacoity was committed in the house of the informant and several articles were looted. Considering the gravity and seriousness of the offence, learned A.G.A. has prayed for dismissal of this appeal but however, he could not deny the detention period which was already undergone by the appellant in jail in the case in hand.

11. So far as merit of the present case is concerned, PW-1 informant in his examination-in-chief has corroborated the prosecution version. He has proved the factum of dacoity committed in his house in the incident by some unknown miscreants and he also proved the fact that bombs were thrown with intention to kill them by miscreants amongst whom 2-3 persons were identified by him and he also affirms that one suitcase, clothings, golden bangles, necklace, four golden rings, wallet, driving licence, hand watch and Rs. 35,000/- were also looted in the incident. The F.I.R. of this case was lodged by him on a written report which was written and signed by him and the said report has been proved as Ext. Ka-1.

12. The recovery of some of the looted articles was made by the police and PW-1 was called to identify it on 05.02.2000 and on his identification suitcase and clothings were given to him and memo of supurdagi was also prepared which has been proved by the informant/PW-1 as Ext. Ka-2. PW-1 further states that he had gone to jail for identification of the present appellant Gunga who was identified

by him and subsequently the ring, which was retrieved by the police, was identified by him before the court.

13. PW-1 has been cross examined at length by the defence but however, there is nothing adverse to the prosecution in the entire cross examination of PW-1. His testimony has been consistent throughout. He is reliable and trustworthy witness and supports the prosecution case.

14. PW-2 S.I. Kuldeep Tiwari is the Investigating Officer of this case who has proved the golden ring and bangles which were retrieved by the police during investigation. The golden ring was retrieved from the possession of co-accused Asfaq and bangles were recovered from the possession of co-accused Nafees @ Heeru and he has proved the aforesaid articles as material Ext. Ka-1 and material Ext. Ka-2. He further states that one wallet was recovered from the possession of Nafees and Gunga. The proceedings of investigation have been affirmed by this witness. He made an inspection of place of the occurrence on the pointing out of the informant and prepared the site plan Ext. Ka-2 which was proved by him in his evidence. He has further proved the memo of identification as Ext. Ka-3 and charge sheet Ext. Ka-4.

15. The statements given by PW-2 in his cross examination were also perused by this Court and it was found that no material contradiction was made by this witness. This witness has been broadly cross examined on the point of place of occurrence but the site plan Ext. Ka-2 available on record shows almost the same scene of the place of occurrence as stated by PW-2 and contradictions, if any, on this point are minor and negligible. The witnesses of fact have been interrogated by the Investigating Officer PW-2. It is to be noted here that Ext. Ka-2 has been endorsed twice over the site plan and identification memo by the trial court inadvertently.

16. The learned trial court on the basis of evidence on record and also considering the confession made by the appellant in his statement under

Section 313 Cr.P.C. recorded his conviction under Sections 392, 397, 411 I.P.C. The evidentiary value of a statement made by the accused under Section 313 Cr.P.C. wherein an admission of his guilt has been made by him, has been clarified in ***Paul v. State of Kerala (2020) 3 SCC 115*** like this – “A statement made by accused under Section 313 CrPC even if it contains inculpatory admissions cannot be ignored and the court may, where there is sufficient evidence available, proceed to enter a verdict of guilt.”

17. It is also to be pointed out that the learned trial court has used the word ‘statement of the accused’ which was recorded after prosecution evidence was over whereas it was the statement of the accused under Section 313 Cr.P.C. but this part was omitted by the learned trial court. However, this Court takes the statement of the accused as statement under Section 313 Cr.P.C.

18. This Court finds that the evidence on record is sufficient to record the conviction of the present appellant under Sections 392, 397 and 411 I.P.C. which the prosecution has successfully proved beyond reasonable doubt. This Court is satisfied that the conviction recorded against the appellant deserves to be confirmed and there is no material contradiction in the evidence of the prosecution witnesses on record. The informant who is the witness of fact appearing as PW-1 and the Investigating Officer of the case appearing as PW-2 have proved the case successfully. The documentary evidence is also sufficient to corroborate the oral evidence and to prove the guilt of the appellant. Hence in my view the appeal is liable to be dismissed.

19. Before parting with the judgment, the Court takes notice of the fact as mentioned in the impugned judgment itself that the learned trial court has mentioned that the convict in this case is languishing in jail since 07.03.2000. The jail report dated 17.11.2013 is also on record which reflects that on that date the appellant had already undergone for a period of 12 years and two months and since 17.11.2013 till date for a period of about 11 years he is continuously languishing in jail. The latest

report sent by the Senior Superintendent, Central Jail, Naini, Prayagraj dated 03.08.2024 is available on record wherein the Jail Superintendent has informed the Court that after completing the entire period of sentence alongwith default sentence as imposed by learned trial court the accused has been released on 14.04.2014 from the Jail and proportionate fine of Rs. 2100/- was also paid by him and now he is not detained in jail in this case.

20. In view of that, it is not required at all to send the appellant again to jail to serve the period of incarceration as imposed upon him by the impugned judgment and order. The appellant is free, he need not to surrender or to deposit any amount of fine. The Jail Appeal is dismissed accordingly and impugned judgment and order is confirmed.

20. Sri Anand Prakesh Panday, learned amicus curiae, who appeared for the appellant, shall be paid Rs. 15,000/- for the assistance and legal service provided by him in conducting this appeal for the appellant.

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

Order Date :- 07.08.2024
Rmk.