

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2496 of 2008

Appellant :- Raj Narain and others

Respondent :- State of U.P.

Counsel for Appellant :- Girdhari Lal Shukla

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Vakalatnama/power filed by S/Shri Pankaj Kumar Srivastava and Suresh Kumar Mishra, Advocates jointly, which is taken on record.
2. Appellants are personally present before this court pursuant to earlier order of this court whereby bailable warrants were issued against them.
3. Heard learned counsel for the appellants as well as learned A.G.A. for the State and gone through the record.
4. The instant criminal appeal under section 374(2) CrPC has been filed against the impugned judgment and order dated 22.10.2008 passed by the learned Additional Sessions Judge/Fast Track Court No. 5, Gonda in Sessions Trial No.279 of 1996 (State Vs. Rajnarain and others), arising out of Case Crime No.49 of 1987 lodged at police station Paraspur, district Gonda whereby the appellants- Raj Narain, Raghuwar Dayal and Ram Narain @ Ramayan have been convicted under sections 457 and 380/511 IPC and sentenced to undergo rigorous imprisonment for maximum period of three years along with fine stipulation and default clause.
5. Learned counsel for the appellants submits that though the trial court has committed illegality in appreciating the evidence available on record, but he, under instructions, is not challenging the impugned judgment and order, but the appellants are aggrieved by the manner in which their request for releasing them on probation by extending the benefit of section 360 CrPC and sections 3 and 4 of The Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act of 1958') has been refused and it was a case where the appellants should have been released on probation.
6. Learned AGA submits that no illegality or to say irregularity has been committed by the trial court in either convicting or sentencing the appellants and, thus, no interference is required by this court.

7. Perusal of record in the background of the submissions advanced by learned counsel for the appellants would reveal that the story of the prosecution before the trial court was that in the intervening night of 27/28.03.1987 at about 1 a.m. on the basis of prior enmity the appellants attempted the house-break of the informant and also made an attempt to commit theft, however, villagers apprehended them and in the process the appellants sustained injuries and after apprehending the appellants were taken to the police station where the FIR was lodged.

8. After submission of charge-sheet and framing of charges against the appellants under sections 457 and 380/511 IPC, the prosecution in order to prove its case before the trial court, has relied on oral evidence of witnesses, namely, Ganesh Shanker Pandey-PW- 1, Saliqram- PW-2, Santram- PW3, Rammilan- PW-4, Ramlakhan- PW-5, Constable Yogendranath Tiwari- PW-6, Dr. A.H. Khan- PW- 7 and also relied on various documentary evidence.

9. The appellants in their statements recorded under section 313 have denied all the evidence produced by the prosecution and in addition stated that on the basis of prior enmity the appellants were assaulted by the informant's side and were also apprehended. The appellants in their defence have also produced Patmeshwari Prasad Mishra as DW-1 and also presented some documentary evidence in the shape of copy of family register. It is also to be highlighted that along with the instant case the trial court on the same day has decided the cross-case of the instant case FIR of which was lodged by appellant- Ramnarain against accused- Santram, Saliqram, Ganesh and Gajraj Pandey and they were also convicted by the trial court vide order dated 22.10.2008 passed in Sessions Trial No.154 of 1996, arising out of case crime no.49-A of 1987 under sections 323 and 325 IPC and by passing separate order today the appeal preferred by appellants (surviving appellant- Santram) has been finally decided by extending him the benefit of the Act of 1958. Thus, it is evident that in the instant case as well as in the cross-case both the parties have sustained simple injuries as it may be inferred from the record that the two accused persons of the instant case have also sustained injuries. Thus, in the instant case and in its cross-case bearing case crime no. 49A of 1987 two persons from each side have sustained injuries.

10. Having considered all the facts & circumstances of the case and the

reasons narrated herein before, injuries sustained by two injured persons and having seen corroboration of the oral evidence with the medical evidence, I find that the trial court has not committed any illegality in convicting the appellants for committing offence under sections 457 and 380/511 IPC, more so, the appellants have been apprehended by the informant and their associates and were taken to the police station in custody. Thus, the impugned judgment passed by the trial court is not required to be interfered with so far as the conviction of the appellants is concerned.

11. Coming to the sentencing part of the judgment, it is evident that the trial court has not considered the submissions made by learned counsel for the appellants in its right perspective, thus, a fresh exercise is to be undertaken by this court. It appears to be an admitted situation that it is case which is also having a cross-case and in the cross-case the benefit of the Act of 1958 has been extended to the convicted persons- appellants of that appeal. The incident had occurred about 37 years ago and no untoward incident had occurred between the parties thereafter. Simple injuries were sustained by both the parties. The appellants, who are present before the court, appears to be old-aged and the sentence, as imposed by the trial court, in the considered opinion of this court, may generate another round of litigation between the parties. Thus, having regard to all the facts & circumstances of the case, the appellants are entitled to be given the benefit of section 4 of the Act of 1958.

12. Hence, for the reasons narrated herein before, the conviction of the appellants in the relevant penal provisions as recorded by the trial court is hereby **affirmed/confirmed**, while the appeal preferred by the appellant is **partly allowed**. They are provided the benefit of Section 4 of the Act of 1958 and are released on probation of good conduct on the condition that they will keep peace and good behavior/conduct for one year from today and each of them shall file two sureties to the tune of Rs. 50,000/- along with their personal bond before the trial court and also an undertaking to the effect that they shall maintain peace and good behavior/conduct during this period of one year from today and will not indulge themselves into any criminal activity.

13. In case, breach of any of the condition mentioned above is proved, the defaulting appellant(s) will be subjected to undergo the whole sentence, as

inflicted by the trial court. The bond aforesaid will be filed by the appellants within one month from today before the trial court.

14. Let copy of this judgment as well as the record of the trial court be transmitted to the concerned trial court forthwith for necessary compliance, if the same is not required in any other pending appeal.

Order Date :- 26.9.2024

MVS/-