

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2538 of 2008

Appellant :- Sant Ram

Respondent :- State of U.P.

Counsel for Appellant :- Naveen Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Naveen Kumar Pandey, learned counsel for the appellants, as well as learned A.G.A. for the State and gone through the record.

2. 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.154 of 1996 (State Vs. Santram and others), arising out of Case Crime No.049A of 1987 lodged at police station Paraspur, district Gonda whereby the appellants have been convicted under sections 325 and 323 IPC and sentenced to undergo rigorous imprisonment for maximum period of three years with fine stipulations

3. Learned counsel for the appellants submits that the trial court has committed illegality in appreciating the evidence available on record and in convicting the appellants for committing the offence under sections 325 and 323 IPC. It is vehemently submitted that the trial court has not considered that the injuries have been inflicted by the appellants and other accused persons in exercise of their right of self-defence and as the house-breaking in the night was being done by the informant and his associates, the exercise of self-defence was perfectly justified as there was no ample time available to the appellants and other accused persons to approach the public authority and, therefore, they were having every right to defend their life and property and only proportionate force has been used and the trial court has not considered this aspect of the matter.

4. It is further submitted that general allegations of assault has been levelled against four accused persons and three of them, including appellant no. 2 of the instant appeal, namely, Saliq Ram, have died and, thus, in absence of any specific averment either in the FIR or in the statement of the prosecution witnesses, including injured one, it was not

ascertained as to who from amongst the accused persons was the author of the injuries sustained by Rajnarain whose small finger of left-hand has been found fractured. It is further submitted that two persons from the side of the accused persons i.e. appellants- Santram and Saliq Ram (since deceased) have also sustained injuries and this aspect of the matter has also not been considered by the trial court and the way in which the request of the appellants to consider their request of release on probation has been considered may not be appreciated and when it was a cross-case and it was evident that the right to self-defence has not been exceeded, it was perfectly a case where the appellant-accused persons may be released on probation for keeping peace and tranquility.

5. Learned counsel for the appellant 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, so far as the conviction of the appellant under sections 325 and 323 IPC is concerned and the grievance of the appellants is that though it was requested to the trial court that the release of the appellants on 'probation' may be considered having regard to section 360 CrPC and sections 3, 4 and 5 of The Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act of 1958'), however, the trial court has negated the request only by saying that there is no ground to release the appellants on probation. It is further submitted that the alleged incident is shown to have occurred in the year 1987 and the judgment of the trial court was passed on 22.10.2008 and, thus, as of now 37 years have elapsed since the commission of the alleged offence and thereafter the parties appear to be living in peace. It is further submitted that the surviving appellant- Santram is ready to pay compensation to the victim-injured- Rajnarain in view of the provisions contained under section 5 of the Act of 1958 and, thus, he be released on probation for keeping peace and tranquility.

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, the impugned judgment and order is not required to be interfered with by this court.

7. Having heard learned counsels for the parties and having perused the record, it is reflected that FIR of the instant case has been lodged against four accused persons, namely, Santram, Saliq Ram, Ganesh and Gajraj

Pandey and two accused persons, namely, Ganesh and Gajraj Pandey had died during the course of trial and the case pending against them was abated and the trial of two accused persons-appellants, namely, Santram and Saliqram was done by the trial court and they were convicted under sections 325 and 323 IPC and sentenced to under go rigorous imprisonment of 3 years and 6 months respectively and were acquitted of all the charges levelled against them under sections 342 and 308 IPC. One of the appellant, namely, Saliqram has died during the pendency of the instant appeal and the appeal was abated to his extent and survives only for appellant- convict- Santram.

8. Though conviction of the appellant under sections 325 and 323 IPC has not been challenged by the learned counsel for the appellant, but this court in order to satisfy judicial conscience has gone through the evidence available on record and found that two injured, namely, Rajnarain and Raghubar Dayal had sustained injuries in the incident from the side of the complainant/informant of the instant case. Both these witnesses have been produced before the trial court as PW-2 and PW-4 and have corroborated the case of the prosecution. Dr. A.H. Khan who has been produced before the trial court as PW-10 has corroborated the evidence of witnesses of fact. There appears no discrepancy or material improvement in the testimony of the prosecution/eye-witnesses, including injured witnesses. Thus, in the considered opinion of this court, no illegality appears to have been committed by the trial court in convicting the appellant and co-convict-Saliqram (since deceased) for committing offence under sections 323 and 325 IPC, therefore, the view of the trial court in this regard is affirmed.

9. Coming to the sentencing part of the judgment, it is evident that the trial court has brushed-aside the request of the convicted persons, including the appellant before this court, to release him on probation on the ground that there was no reasonable ground for the same. In the considered opinion of this court assigning of reasons along with the findings is the soul of a judicial order. When the trial court had endeavoured to negate the benefit of Act of 1958 to the appellant, it was its duty to record reasons for the same. Thus, failing in giving reasons for refusing to extend the benefit of the Act of 1958, in the considered opinion of this court, may not be appreciated. Hence, a fresh exercise is required to be done by this court in order to arrive as to whether there are sufficient grounds available on

record to extend the benefit of the Act of 1958 in favour of the surviving appellant.

10. It appears to be an admitted situation that in the instant case two persons, namely, Rajnarain and Raghubar Dayal got injured from the side of the informant of the instant case. In the cross-case which has been tried along with the instant case appellant- Santram and deceased-appellant- Saliq Ram had also sustained injuries in the incident. Perusal of their injuries would reveal that the same may not be self-inflicted. The incident also appears to have taken place at once, without there being any premeditation or design by the accused persons. One of the injured, namely, Rajnarain is shown to have sustained fracture on his little finger and other injuries sustained by him and another injured persons are simple in nature. The incident had occurred on 27.03.1987. About 37 years have elapsed thereafter and no untoward incident had occurred between the parties and it may be inferred that the parties are living in peace after the solitary incident. In cross-case the accused persons have been tried by the trial court in Sessions Trial No. 279 of 1996 and they (Ramnarain, Rajnarain and Raghuvar Dayal) have been convicted under sections 457 and 380/511 IPC and have been sentenced to under rigorous imprisonment for maximum period of 3 years with fine stipulation. In cross appeal convicts have been provided benefit of the Act of 1958.

11. Thus, keeping in view all the facts and circumstances of the case and the age of the appellant as of today, in the considered opinion of this court, the surviving appellant- Santram is 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 appellant in the relevant penal provisions done by the trial court is hereby confirmed, while the appeal preferred by the appellant is partly allowed. He is provided the benefit of Section 4 of the Act of 1958 and is released on probation of good conduct on the condition that he will keep peace and good behavior/conduct for one year from today and shall file two sureties to the tune of Rs. 50,000/- along with his personal bond before the trial court and also an undertaking to the effect that he shall maintain peace and good behavior/conduct during this period of one year from today and will not indulge himself into any criminal activity.

13. In case, breach of any of the condition mentioned above is proved, appellant will be subjected to undergo the whole sentence, as inflicted by the trial court. The bond aforesaid will be filed by the appellant 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.

Order Date :- 26.9.2024
MVS/-