

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1119 of 2009

Appellant :- Madhav Prasad @ Phool Chandra Yadav

Respondent :- State of U.P.

Counsel for Appellant :- S.P.Tiwari

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.

2. The instant appeal has been filed by the sole appellant **Madhav Prasad @ Phool Chandra Yadav** against the judgment and order dated 25.04.2009 passed by the Additional Sessions Judge/F.T.C.-III, Faizabad in Sessions Trial No.355 of 2008 (State vs. Madhav Prasad @ Phool Chandra Yadav and another), arising out of Case Crime No.138 of 2006, under Sections 323, 504, 506, 354 I.P.C., Police Station Khandasa, District Faizabad, whereby the appellant was acquitted for the offence under Sections 323, 504, 506 I.P.C. and was convicted for the offence under Section 354 I.P.C. and was sentenced to undergo one year rigorous imprisonment.

3. Brief facts, which appears to be necessary for disposal of the instant appeal, are in terms that an F.I.R. was lodged by the informant Nizam by moving written application before the Station House Officer, Police Station Khandasa, District Faizabad alleging therein that in the intervening night, the appellant - Madhav Prasad @ Phool Chandra Yadav had come to his room situated on first floor of the building and has molested his wife and on 11.06.2006 at about 05:00pm he again came with his wife Madhuri Devi and assaulted him with *lathi-danda* and intimidated him of his life.

4. On the basis of this information, F.I.R. at Case Crime No.138 of 2006, under Sections 323, 504, 506, 354 I.P.C., Police Station Khandasa, District Faizabad was registered and the investigation commences. During the course of investigation, informant was medically examined on 12.06.2006 at about 10:30am. at P.H.C., Khandasa and five simple injuries of the nature of contusions and abrasions have been found on different parts of his body. All these injuries were stated to have been caused by some blunt object and were assessed as simple.

5. The investigating officer during the course of investigation has inspected the spot, recorded the statement of witnesses and after finding sufficient material submitted charge sheet against the instant appellant/accused person under Sections 323, 504, 506, 354 I.P.C. while charge sheet against his wife Madhuri Devi was submitted under Sections 323, 504, 506 I.P.C. The trial court framed charges against the appellant under Sections 323, 504, 506, 354 I.P.C. to which he denied and claimed trial.

6. The prosecution in order to prove its case beyond reasonable doubt has relied on the oral testimony of P.W. 1 Nizam @ Mohd. Nizam (informant), P.W.-2 Shahabuddin, P.W.-3 Smt. Nasreen Bano, P.W.-4 Nankuna Devi, P.W.-5 Dr. Anoop Kumar Shukla, P.W.-6 Sub Inspector Ram Sewak Pandey and P.W.-7 Sub Inspector Devanandan Upadhyaya and apart from the above mentioned oral evidence, the prosecution has also relied on documentary evidence.

7. After conclusion of the evidence of the prosecution, statement of the appellant/accused person was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and further stated that it was on 11.06.2006 at about 05:00pm. Shahabuddin, Nizam, Jabir and Nizamuddin had assaulted them with iron rod, whereby the appellant has sustained injuries. In this regard, the appellant in his defence has submitted a copy of the F.I.R. of cross case lodged at Case Crime No.138A of 2006 as well as his medical reports wherein one incised wound on his head and other injuries of the nature of abrasions and swelling were found on other part of his body. In the opinion of the Doctor, first injury on the head might have been caused by some sharp-edged weapon while other injuries have caused by some blunt object.

8. Learned trial court after appreciating the evidence available on record found the case of the prosecution not proved with regard to accused Madhuri Devi and she was acquitted of all the charges framed against her while with regard to appellant - Madhav Prasad @ Phool Chandra Yadav, charges were also found not proved under Sections 323, 504, 506 I.P.C., however, charge under Section 354 I.P.C. was proved against him and he was convicted under Section 354 I.P.C. and sentenced as stated in the second paragraph of this judgement.

9. Learned counsel for the appellant very fairly submits that the appellant is not aggrieved by his conviction under Section 354 I.P.C., however, having regard to the provisions contained under Section 360 Cr.P.C. and Sections 3, 4 and 5 of the Probation of First Offenders Act, 1958, the evidence and material, which was

placed before the trial court, it was a case, where benefit of First Offenders Act must have been given to the appellant and he should have been released on probation. It is further submitted that no criminal history of the appellant was placed before the trial court and trial court has disbelieved the case of the prosecution with regard to the Sections 323, 504, 506 I.P.C. and it was the case of cross version of the incident, wherein another F.I.R. has been lodged by the appellant and therefore, there was sufficient material in favour of the appellant. Thus, the appellant be given the benefit of the Probation of First Offenders Act, 1958 and be released on probation.

10. Learned A.G.A. on the other hand has opposed the submissions made by learned counsel for the appellant on the ground that having regard to the allegations levelled against the appellant, he is not entitled to be released on probation.

11. Having heard learned counsel for the parties and having perused the record, though conviction of the appellant under Section 354 I.P.C. has not been challenged by his counsel, however, in order to satisfy its judicial conscience, this Court has gone through the impugned judgement as well as material/evidence available on record and found that specific allegation of molestation has been levelled by the victim against the appellant and the same has also been corroborated by other eye witness and thus having regard to all the facts and circumstances of the case, in the considered opinion of this Court, charge under Section 354 I.P.C. was proved beyond reasonable doubt and no illegality, in the considered opinion of this Court, has been committed by the trial court in convicting the appellant for the offence under Section 354 I.P.C. Thus, the judgment of the trial court, so far as the conviction of the appellant with regard to Section 354 I.P.C. is concerned, is **affirmed**.

12. Now coming to the sentencing part of the impugned judgement and order as it is evident from Section 360 Cr.P.C. as well as Sections 3, 4 and 5 of the Probation of First Offenders Act, 1958, it is the duty of the convicting court to visualize as to whether a convicted person may be given the benefit of First Offenders Act when no criminal history of the convicted person has been alleged and the attending circumstances and facts of the case are of such a nature, where benefit of First Offenders Act may be extended to him/her.

13. Perusal of the record would reveal that the trial court though has noted in its judgement specifically in the sentencing part that parties are neighbours and living together since long and not found the charges proved under Sections 323, 504, 506

I.P.C. against the appellant, but without assigning any reason has rejected the request of the appellant to release him on probation by extending the benefit of Section 4 of the Probation of First Offenders Act, 1958.

14. In the considered opinion of this Court, not giving any reason in support of the finding would vitiate the basic right of an aggrieved person to know as to on what ground his prayer has been rejected. Thus, assigning reason specially for the trial court is the soul of that order. Thus non assigning any reason for not releasing the appellant on probation could not be appreciated by this Court, therefore, afresh exercise is required to be done by this Court in order to assess as to whether in this case the benefit of the Probation of First Offenders Act, 1958 may be extended to the appellant.

15. It cannot be disputed that the parties are neighbours and living together for a long time and the isolated incident is alleged to have occurred in the year 2006 and thereafter no untoward incident had occurred between them and thus it may be safely presumed that the parties are living at peace since then. The victim has not sustained any injury. Both the parties prima facie appears to have sustained minor injuries and the instant appellant has sustained an incised wound on his head and with regard to which he has also lodged a cross case, however, both the case appears to be not tried by the trial court simultaneously for the reasons best known to it and nobody is in a position to say as to whether any cross appeal has been preferred by the informant side, however, having regard to the facts and circumstances of the case and for the reasons mentioned herein-before, in the considered opinion of this Court, the request of the appellant to extend the benefit of Section 4 of the Probation of First Offenders Act, 1958 has not been correctly appreciated by the trial court while, in the considered opinion of this Court and in view of the attending circumstances, facts and evidence produced before the trial court they were sufficient enough to extend the benefit of Section 4 of the Probation of First Offenders Act, 1958 in favour of the appellant.

16. Thus, keeping in view all the facts and circumstances of the case, I am of the considered opinion that the benefit of Probation of First Offenders Act, 1958 could be extended to the instant appellant- Madhav Prasad @ Phool Chandra Yadav.

17. Resultantly, the appeal is **partly allowed** and while conviction of the appellant for committing the offence under Section 354 I.P.C. is maintained and judgment of the trial court in this regard is **affirmed**, the appellant is granted the benefit of

Section 4 of the Probation of First Offenders Act, 1958 and appellant- **Madhav Prasad @ Phool Chandra Yadav** is released on probation of keeping peace and tranquility **for 01 year from today**. Appellant shall file personal bond of Rs.25,000/- and two sureties of the like nature of the satisfaction of the trial court and also an undertaking that he shall keep peace in the society and shall not commit any such offence during this period.

18. In case of breach of any of the aforesaid condition, appellant will subject himself to undergo the sentence.

19. Let the copy of this order as well as the trial court record be transmitted to the trial court concerned, forthwith for necessary compliance.

Order Date :- 27.8.2024

Anupam S/-