

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1547 of 2008

Appellant :- Deena Nath Tewari @ Pattu

Respondent :- State of U.P.

Counsel for Appellant :- Pankaj Verma

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 criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Deena Nath Tewari @ Pattu** against the impugned judgment and order of the trial court dated 30.06.2008 passed by Additional Sessions Judge/Fast Track Court, Room No. 1 Gonda, in Sessions Trial No. 117 of 2006 (State vs. Deena Nath Tewari), arising out of Case Crime No.110 of 2005, under Section 457, 511, 323 and 307 I.P.C., Police Station Kotwali Nagar, District Gonda, whereby the appellant has been convicted for committing offence under Sections 457, 511, 323 and 307 I.P.C. and has been sentenced for a rigorous imprisonment of four years with fine of Rs.1000/- under Section 457/511 I.P.C. and six months rigorous imprisonment with fine of Rs. 400/- for committing offence under Section 323 I.P.C. along with fine and also with default clause.

3. Learned counsel for the appellant while drawing the attention of this Court towards the impugned judgment passed by the trial court, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellant for the offence which has never been committed by him.

4. It is further submitted that the trial court has failed to understand that it was a dispute between the tenant (appellant) and the landlord (informant) and the same has been given the colour of attempt of 'house trespass', while there was only a simple scuffle between the appellant and the informant and the same was not a case at all of attempt to house break in the night and the same has been wrongly perceived by the trial court.

5. It is further submitted that even if the case of the prosecution is taken on its face, none of the prosecution witness has stated to have seen the appellant attempting to break the lock which was allegedly installed on the door of the house of the appellant and, therefore, this story appears to have been concocted and manufactured by the informant in order to falsely implicate the appellant.

6. It is next submitted that the trial court has also failed to consider the release of the appellant on probation and even has not considered this aspect of the matter, which was a mandatory exercise in view of Section 360 of the Code of Criminal Procedure. It is, thus, submitted that the impugned order be set-aside and the appellant be acquitted of the charges wherein he has been convicted by the trial court.

7. Learned A.G.A. on the other hand submits that no illegality or to say any irregularity has been committed by the trial court in convicting and sentencing the appellant.

8. Perusal of the record would reveal that the story of the prosecution, as is reflected from the record, is in terms that in the intervening night of 27/28.03.2005 at about 2:00 am. the appellant was attempting to enter into the house of the informant by breaking open the lock installed at the main gate of his house along with some unknown person. However, he

was intercepted and assaulted the informant and on an alarm raised, the other tenants of the informant, namely, Shyam Sunder Srivastava, Rajesh Kumar Gupta, Raj Roshan Singh and neighbours Ramesh and Ramu arrived and apprehended the appellant on the spot and the appellant was taken to police station whereon an F.I.R. at Case Crime No. 110 of 2005, under Sections 457, 511, 323 and 307 I.P.C. was registered.

9. During the course of investigation, the informant- Subhash Chandra Pandey was medically examined on 28.03.2005 at 4:00 am. and multiple abrasions have been found on his head while abrasions have been found on the back of right hand and on chest along with complained of pain in the body and according to the doctor the injuries were fresh and may be caused by hard and blunt object. On the next day, the informant has hand over the various keys allegedly possessed by the appellant at the time of the incident and a '*plass*' allegedly blood stained whereby the informant was assaulted.

10. The investigating officer has submitted charge sheet against the appellant and the trial court has framed charges against the appellant under Sections 457, 511, 323 and 307 I.P.C., to which, the appellant pleaded not guilty and claimed trial.

11. The prosecution before the trial court has relied on the oral testimony of P.W.-1/Subhash Chandra Pandey (Informant), P.W.-2/Ramu, P.W.-3/Dr. Shyam Sunder, P.W.-4/Raj Roshan Singh, P.W.-5/Dr. Javed Hayat, P.W.-6/Sub Inspector Suresh Ram, P.W.-7/Head Constable Satya Narayan Pandey along with various documentary evidence e.g. Tehrir, *Fard Baramadgi*, medical examination report, site plan, charge sheet, Chik F.I.R. and G.D. Qayami.

12. After completion of the evidence of prosecution, the

statement of the appellant/accused person was recorded under Section 313 Cr.P.C., wherein he denied all the evidence produced by the prosecution and further stated that he was a tenant in the building of the informant and it is only on account of the 'tenant-landlord dispute' he has been falsely implicated in this case and he has also sustained injuries, however, his case was not considered by the investigating officer.

13. The trial court after appreciating the evidence available on record found the case of the prosecution proved with regard to Sections 457, 511 and 323 I.P.C. and the appellant was accordingly convicted therein and sentenced in the manner shown in the 2nd paragraph of this judgment.

14. Aggrieved by the same, the appellant has preferred the instant appeal.

15. Perusal of the record, in view of the submissions advanced by learned counsel for the parties, would reveal that two of the prosecution witnesses, namely, P.W.-2/Ramu and P.W.-3/Dr. Shyam Sunder Srivastava have admitted in their statements recorded before the trial court that appellant at the relevant point of time was the tenant of the informant. It is also reflected from the record that none of the prosecution witness has claimed to have seen the appellant attempting to enter into the house of the informant and all of them have stated that when they arrived at the scene of crime the appellant was assaulting the informant and a scuffle was going on and he had already been detained by the informant. Thus, there is no evidence with regard to the fact that the appellant had attempted to enter into the house of the informant. Moreover, Section 457 I.P.C. is an offence of its own class and it is not only the illegal entry of an accused in the premises of an owner which may attract Section 457 of the I.P.C., the 'house trespass' in order to attract Section

457 I.P.C. must be with the intention of committing an offence punishable with imprisonment and the scuffle or the incident according to the own admission of the informant had occurred or taken place outside his house. Therefore, in the considered opinion of this Court, Section 457 of the I.P.C. may not be attracted even if the case of the prosecution is taken on its face. Therefore, it is evident that the trial court has committed patent illegality in finding the case of the prosecution proved with regard to the commission of offence under Section 457/511 of the I.P.C.

16. It is also reflected that it has been specifically stated by the appellant in his statement recorded under Section 313 Cr.P.C. that he is/was the tenant of the informant and this fact was also corroborated by P.W.-2/Ramu and P.W.-3/Dr. Shyam Sunder. Therefore, in this background, it was the duty of the trial court to appreciate the evidence of the prosecution witnesses with some amount of caution as there was always an apprehension that in the landlord-tenant dispute, it may also be a case of false implication. The trial court appears to not have taken any exercise to procure any medical examination report in view of the statement of the appellant given under Section 313 Cr.P.C., wherein he has specifically claimed to have sustained injuries. However, it is also evident that in his statement recorded under Section 313 Cr.P.C. the appellant has not shown any intention to produce any witness in support of the allegations that he also sustained injuries. Therefore, at the stage of appeal it may not be presumed that without there being any evidence available on record that the appellant has also sustained injuries in the incident. Thus, as reflected from the record and the evidence of the prosecution witnesses that an incident of 'simple marpeet' or 'scuffle' had taken place outside the house of the informant wherein he had sustained minor/simple injuries. Therefore,

keeping in view all the facts and circumstances of this case, in the considered opinion of this Court, the trial court has committed illegality in convicting the appellant for committing offence under Section 457 and 511 I.P.C., while there is no error/illegality so far as the conviction of the appellant under Section 323 I.P.C. is concerned. Therefore, the conviction of the appellant only **under Section 323 I.P.C.** is **affirmed** while the judgment of the trial court is set aside to this extent.

17. At this juncture, it is vehemently submitted by learned counsel for the appellant that it was a mandatory duty/exercise to be undertaken by the trial court as provided under Section 360 of the Cr.P.C. to foresee as to whether the convicted person may be released on bail. The impugned judgment would evidently demonstrate that the trial court has not even considered the release of the appellant on bail. Thus, prima facie Section 360 of the Cr.P.C. as well as Section 4 of the Probation of First Offenders Act, 1958 appears to have been violated by the trial court and in this regard a fresh exercise is to be undertaken by this Court in order to foresee as to whether the appellant may be released by giving benefit of Section 4 of the Probation of First Offenders Act, 1958.

18. The appellant in his statement recorded under Section 313 Cr.P.C. on 20.06.2008 has stated his age to be of 27 years. Thus, he was a young man at the relevant point of time. The injuries sustained by the informant/injured were of simple in nature. About 16 years have elapsed since the happening of the incident and nothing has been brought before this Court which may suggest that any untoward incident had taken place thereafter between the parties. Thus, this Court may safely presume that the parties were living in peace since the happening of the aforesaid incident. It is also reflected from the record that once

the appellant was tenant of the informant and none of the prosecution witness has claimed to have seen the appellant attempting to break in the house of the informant.

19. Thus, keeping in view all the facts and circumstances of this case, in the considered opinion of this Court, it was/is a fit case wherein the benefit of Section 4 of the Probation of First Offenders Act, 1958 may safely be extended to the appellant.

20. Thus, having regard to the reasons given herein-before, the instant appeal preferred by the appellant- **Deena Nath Tewari @ Pattu** is **partly allowed**, while the conviction of the appellant under Section 323 I.P.C. is sustained and his conviction by the trial court for committing offence under Section 457/511 I.P.C. is hereby, **set-aside** and the benefit of Section 4 of the Probation of First Offenders Act, 1958 is extended to him.

21. However, the sentencing of the appellant is modified to the extent that he is provided the benefit of Section 4 of the Probation of First Offenders Act, 1958 and is released on probation of good conduct for **one year** on the condition that he will keep peace and good behavior/conduct during this period and shall file two sureties to the tune of Rs. 25,000/- along with his personal bonds 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. In case any breach of any of the condition mentioned above, is proved, he will be subjected to undergo the sentence as directed by the trial court. The bonds aforesaid will be filed by the accused-appellant within two months from today, before the trial court.

22. As provided under Section 5 of the Act, appellant-

Deenanath Tiwari shall deposit compensation of Rs.8,000/- (Rupees Eight Thousand only) in the trial court within two months from today, which the trial court shall, on due identification, shall pay to the informant, namely, Subhash Chandra Pandey, if he is alive or to his legal heirs, as the case may be.

23. If the amount of Rs.8000/- is not deposited by the appellant, the trial court shall treat the same as breach of condition of personal bond and shall issue coercive process e.g. warrant of arrest against the appellant to serve out the punishment, as imposed by the trial court.

24. Let the copy of this judgment as well as the trial court record, if received, be transmitted to the concerned trial court forthwith for necessary compliance.

Order Date :- 23.9.2024
Praveen