

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1755 of 2008

Appellant :- Mahendra Singh

Respondent :- State of U.P.

Counsel for Appellant :- Sunil Kumar Singh, Pawan Kumar Pandey

Counsel for Respondent :- Govt. Advocate

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- **Mahendra Singh** against the impugned judgment and order of the trial court dated 31.07.2008 passed by Special Judge, S.C./S.T. Act/Fast Track Court-6, Hardoi, in Sessions Trial No. 1937 of 1998 (State vs. Mahendra Singh), arising out of Case Crime No. 52 of 1995, under Sections 323, 504 and 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act, Police Station Sandila, District Hardoi, whereby the appellant has been convicted for committing offence under Sections 323, 504 I.P.C. and 3(1)(x) of the S.C./S.T. (P.A.) Act and has been sentenced for rigorous imprisonment of one year with fine of Rs.300/- under Sections 323, 504 I.P.C. and one year rigorous imprisonment with fine of Rs. 300/- for committing offence under Section 3(1)(x) of the S.C./S.T. (P.A.) Act 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 convicted the appellant for the offences under Sections 323, 504 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act, while it was evident and established that even if any 'scuffle' or 'verbal altercation' has taken place, the same has

taken place within the house of four walls of the informant and the same was not in the public view and, therefore, the relevant provisions of the S.C./S.T. Act would not attract in this case.

4. It is further submitted that the trial court has committed material illegality in convicting the appellant on the same set of evidence while the other accused persons have been acquitted and the allegations in the statements of all the prosecution witnesses of fact produced before the trial court are same against all the accused persons and no differentiation in this regard has been made. Therefore, the trial court has committed illegality in segregating the appellant for the purpose of conviction without there being any evidence available on record in this regard.

5. It is further submitted that there was inherent contradictions, inconsistencies and inherent weaknesses in the statement/evidence of the prosecution witnesses of fact and, therefore, the case of the prosecution was not proved before the trial court beyond reasonable doubt and, thus, the impugned judgment and order is liable to be interfered and the appellant is entitled to be acquitted.

6. Learned A.G.A. on the other hand submits that no illegality has been committed by the trial court as the oral allegations were supported by the medical evidence and, thus, the judgment and order of the trial court is not be interfered.

7. Having considered the submissions made by learned counsel for the parties, it is reflected that on a written application moved by the informant- Chandrika, an F.I.R. under Sections 452, 323, 504, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act was registered at Case Crime No. 52 of 1995. It was alleged in the F.I.R. that the appellant and other co-accused persons

acquitted by the trial court, have entered into the house of the informant and addressed him with casteist remarks and also beaten him and his family members.

8. During the course of trial, the informant- Chandrika was medically examined, however, no visible injury has been found on his person. Likewise P.W.-2/Deshraj was also medically examined and no visible injury has been found on his person as well. It was P.W.-3/Dulara on whose person a 'yellowish contusion' has been found on the medial side of left forearm and according to the doctor the injury was simple and was caused by friction and was about four days' old. P.W.-3/ Smt. Dulara was medically examined on 08.05.1995 at 4:20 pm.

9. The investigating officer has submitted charge sheet against all the accused persons named in the F.I.R. and the trial court has also framed charges against all the accused persons under Sections 323/34, 504, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act.

10. The prosecution in order to prove its case relied on the oral testimony of P.W.-1/Chandrika (informant), P.W.-2/Deshraj, P.W.-3/Smt. Dulara apart from P.W.-4/Doctor V. P. Singh and P.W.-5/Constable 834 Ramshabd Prajapati and also on the documentary evidence e.g. Tehrir, Medical report of injured Deshraj, Medical report of injured Chandrika, Medical report of injured Dulara, Chik F.I.R., Copy of G.D., Site Plan and Charge sheet.

11. After completion of the evidence of the prosecution, the statement of the appellant/accused person was recorded under Section 313 Cr.P.C., wherein he denied all the evidence tendered by the prosecution and has stated that he has been falsely implicated in this case, however, did not adduce any

evidence in his defence.

12. The trial court after analyzing and appreciating all the evidence available on record has acquitted all other accused persons of all the charges framed against them and convicted the appellant for committing offence under Sections 323, 504 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act and sentenced in the manner described in the 2nd paragraph of this judgment.

13. Perusal of the record, in the background of the submissions made by learned counsel for the parties, would reveal that all the witnesses of fact, namely, P.W.-1/Chandrika (informant), P.W.-2/Deshraj, P.W.-3/Smt. Dulara, have stated that all the accused persons had entered into their home and it was there the informant was addressed with casteist remarks and in this regard, the submission of learned counsel for the appellant is that, the offence has not been committed in public view.

14. Perusal of the evidence available on record, would fortify the submissions made by learned counsel for the appellant, as is reflected from the evidence of all three witnesses of fact that they in one voice have stated that the incident had occurred inside their house and all other witnesses are shown to have arrived thereafter. Thus, keeping in view the evidence available on record, an illegality appears to have been committed by the trial court in ignoring this fact that even if any incident had occurred, the same had occurred within the four walls of the house of the informant and, therefore, was not in public view. Therefore, in the background of the evidence tendered before the trial court, the conviction of the appellant under Section 3(1)(x) of the S.C./S.T. (P.A.) Act appears to be without there being any evidence available on record.

15. It is also reflected that the trial court has segregated the appellant for the purpose of conviction in the background of the answer given by P.W.-1/Chandrika and P.W.-3/Smt. Dulara, with regard to the fact that the incident had occurred because a 'pair of shoe' was to be prepared for the appellant and, thus, held that it was he, who has initiated the quarrel. However, the trial court appears to have ignored the fact that all the witnesses of fact have alleged allegations of '*marpeet*' against all the accused persons named in the F.I.R. and, thus, only on account of answers given by the prosecution witnesses of fact in their cross-examination, the in-chief-examination of these witnesses may not be brushed aside, wherein identical allegations have been levelled.

16. It is to be recalled that though the principle of *falsus in uno* and *falsus in omnibus* is not applicable in India but non-availability of that principle may not empower the trial court to segregate the evidence of witnesses of fact in order to arrive at a different case than claimed by the prosecution. In simple words, it is the duty of the trial court to appreciate the evidence and to separate the truth from the falsehood, but only to the extent where the truth and falsehood could be separated, but when the truth and the falsehood are so intermixed that in the process of segregating them a new case is emerging, in that case, the evidence of the witnesses may be discarded.

17. It is also to be taken into cognizance at this stage that the principle of parity is recognized by the criminal jurisprudence since long. The other accused persons against whom identical allegations were levelled, have been acquitted by the trial court and only the answers given by the two witnesses in their cross-examination have been taken by the trial court to segregate and separate the case of the appellant only on account of the fact

that the shoes in question were to be delivered to the appellant. In the considered opinion of this Court, this evidence alone was not sufficient to segregate and separate the appellant for the purpose of conviction, as identical general allegations of physical assault were levelled against all the accused persons including the appellant and this Court in earlier part of this judgment has held that the conviction of the appellant under Section 3(1)(x) of the S.C./S.T. (P.A.) Act may not be upheld.

18. Thus, having regard to all the facts and circumstances of the case, in the considered opinion of this Court, the trial court has committed manifest illegality in convicting the appellant under Sections 323, 504 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act and, therefore, the impugned judgment and order of the trial court may not sustain the test of law and for the reasons mentioned herein-above, the instant appeal preferred by the appellant- **Mahendra Singh** is **allowed** and the impugned judgment and order of date 31.07.2008 passed by the special/trial court is, hereby, **set-aside/quashed**.

19. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

20. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellant shall file his personal bond with **two sureties** of **Rs. 25,000/-** before the trial court for the purpose of securing his presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal appeal is filed against this judgment.

21. A copy of this order be immediately sent to the special/trial court through the Sessions Judge concerned for information.

Order Date :- 23.9.2024/Praveen