

Neutral Citation No. - 2024:AHC-LKO:50958

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1811 of 2008

Appellant :- Udaiveer Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Ram Kushal Tiwari

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Ramashanker Pandey, Advocate holding brief of Shri Ram Kushal Tiwari, learned counsel for the appellants 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 appellants- **Udaiveer Singh alias Babloo** and **Banarasi** against the impugned judgment and order of the trial court dated 05.08.2008 passed by Additional Sessions Judge/Special Court, S.C./S.T. (P.A.) Act/F.T.C. Ist Court Room No.10, Sultanpur in Special Trial No. 124 of 1999 (State vs. Udaiveer Singh alias Babloo and another), arising out of Case Crime No. 128 of 1998, under Sections 323/34, 506 I.P.C. & Section 3(1)(10) of S.C./S.T. (P.A.) Act, Police Station Jagdishpur, District Sultanpur, whereby both the appellants have been convicted for committing offence under Sections 323/34 I.P.C. as well as under Section 3(1)(10) of S.C./S.T. (P.A.) Act and have been sentenced for one year imprisonment pertaining to Section 3(1)(10) of S.C./S.T. (P.A.) Act and six months' simple imprisonment with regard to Section 323/34 I.P.C.with fine and also with default clause.

3. The necessary facts required for disposal of the instant appeal appears to be that, on 14.03.1998 an F.I.R. has been lodged by the informant- Smt. Kevla Devi at Police Station Jagdishpur, District Sultanpur alleging therein that she belong to 'Pasi' (harijan) caste and on 13.03.1998 at about 4:00 pm. when she was sitting at the door of her house, the

appellants/accused persons arrived at her house and started addressing her with casteious remarks and also started abusing her and when she asked them to refrain from this, accused Udaiveer Singh assaulted her with '*bhala*' while accused Banarasi assaulted her with '*fists* and '*kicks*' and when her husband Dayaram arrived, he was also assaulted. The incident is stated to have been seen by Ramraj Singh, Birju and Ramgan Singh.

4. On the basis of the aforesaid written information, an F.I.R. at Case Crime No. 128 of 1998, under Sections 323, 504, 506, 324 I.P.C. & under Section 3(1)(10) of S.C./S.T. (P.A.) Act, was registered against the accused persons and the investigation started.

5. The injured persons, namely, informant- Smt. Kevla Devi and Daya Ram were medically examined for their injuries on 14.03.1998 at C.H.C. Jagdishpur. Two contusions on right hip and elbow joint were found on the person of injured Dayaram. All these injuries were opined to be simple and were about one day old and were caused by hard and blunt object. While in medical examination report of Smt. Kevla Devi, one injury of the nature of lacerated wound, 1.5 cm. x 0.5 cm., bone deep has been found on the left foot and this injury was also opined as simple and was assessed as one day old and it was opined by the doctor that the same has been caused by hard and blunt object.

6. The investigating officer after recording of the statement of the informant and other prosecution witnesses as well as after visiting the place of occurrence and preparing the site plan, submitted the charge sheet against the appellants.

7. The charges against the appellants were framed under Sections 323/34, 506 I.P.C. as well as under Section 3(1)(10) of S.C./S.T. (P.A.) Act, to which, they denied and claimed trial.

8. The prosecution in order to prove its case beyond reasonable doubt has presented P.W.-1/Smt. Kevla Devi(Informant), P.W.-2/Dayaram,

P.W.-3/Dr. Brijesh Kumar Yadav, P.W.-4/Constable Kailash Nath Tiwari, and apart from the above-mentioned oral evidence, the prosecution has also relied on documentary evidence e.g. Chik F.I.R., Injury reports of the injured persons Dayaram and Smt. Kevla Devi as well as the charge sheet and site plan.

9. After conclusion of the prosecution evidence, the statement of the accused persons was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and refused if any evidence in their defence.

10. The trial court after appreciating the evidence available on record found the case of the prosecution proved beyond reasonable doubt and convicted the appellants for committing offences under Sections 323/34 I.P.C. and Section 3(1)(10) of S.C./S.T. (P.A.) Act and sentenced them in the manner described in the 2nd paragraph of this judgment.

11. Aggrieved by the same, the appellants has preferred this appeal.

12. Learned counsel appearing 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 while there were material contradictions in the oral account of the incident *vis-a-vis* the medical evidence, same have not been appreciated in right perspective by the trial court.

13. Elaborating further, it is submitted that it was the case of the prosecution that the informant- Smt. Kevla Devi has been assaulted by one of the appellant with '*bhala*' which is a sharp edged weapon. However, no injury of the nature of 'incised' wound has been found on the person of Kevla Devi and the case of the prosecution was also not proved before the trial court for the reason that investigating officer of the case was not produced by the prosecution for the reasons best known to it and the appellants have been prejudiced in not cross-examining the

investigating officer on vital points and, therefore, they have prejudiced in defending themselves.

14. It is also submitted that there are material contradictions, embellishments in the statement of two witnesses of fact and despite many other witnesses are shown to be present at the spot, no effort has been made by the prosecution to present these independent witnesses in support of the allegations and, therefore, in support of the allegations there is only interested testimony of the two injured witnesses which could not be relied and, thus, the trial court has committed manifest illegality.

15. It is also submitted that if the whole evidence produced by the prosecution is taken into consideration, it will emerge that the prosecution has miserably failed to prove its case beyond reasonable doubt and the trial court has committed material illegality in not according benefit of doubt to the appellants. Thus, the impugned judgment and order of the trial court be set-aside and the appellants be acquitted of all the charges framed against them.

16. Learned A.G.A. on the other hand submits that two witnesses of fact, namely, Smt. Kevla Devi and Dayaram have been produced before the trial court who were injured persons and the testimony of the injured persons should be kept at a higher pedestal, thus the prosecution has proved its case beyond reasonable doubt. The oral evidence is also corroborated by the medical evidence and, thus, no illegality has been committed by the trial court.

17. Having heard counsel for the parties and having perused the record, it is to be recalled that in all the cases of criminal nature the criminal trial starts with an initial presumption of innocence in favour of an accused person(s) and, thus, in all criminal cases it is the duty of the prosecution to prove its case beyond all reasonable doubts and if there is any flaw, hitch or reasonable doubt, the benefit of the same should have been extended to the accused persons.

18. So far as the evidence produced in the instant case is concerned, it is crystal clear case of prosecution that at the relevant point of time the appellant no.1-Udaiveer Singh had assaulted the informant (P.W.-1/Smt. Kevla Devi) with '*bhala*', which is a sharp edged object and it has not been specified by the prosecution that the '*bhala*' was not having a sharp edge. The injury which is shown to have been sustained by the informant/Smt. Kevla Devi is 'lacerated' wound and this material inconsistency/contradiction has not been explained by the prosecution and, thus, the trial court *prima facie* appears to have erred in arriving at a finding that there is no contradiction between the ocular and the medical evidence tendered before it.

19. It is also evident from the record that the investigating officer of the case has not been produced before the trial court and no acceptable reason has been given in the judgment by the trial court for his non production and secondary evidence of a fact could only be produced when the primary evidence could not be produced without delay and certainly had the investigating officer been produced, the accused persons might have cross-examined him on certain vital aspects of the matter, including the statement of the witnesses recorded under Section 161 Cr.P.C. in order to assess as to whether any material improvements or contradictions are emerging in the statement of the witnesses recorded under Section 161 Cr.P.C. by the investigating officer *vis-a-vis* the statement of the prosecution witnesses recorded before the trial court. Thus, the accused persons appears to have been prejudiced by non-examination of the investigating officer, that too without any justifiable reasons.

20. It is also to be recalled that various independent witnesses are shown to be present at the relevant point of time, however, no explanation has been given for their non-examination. Generally non examination of those witnesses may not be fatal but when the oral evidence in this case is running contrary to the medical evidence, the absence of independent witnesses is fatal to the prosecution. The injuries sustained by the two

injured persons are of simple in nature. The day of incident is shown to be of the 'holi' and the defence of the appellant is that while playing 'holi' these minor injuries in normal set of circumstance may be sustained.

21. So far as the conviction of the appellants pertaining to Section 3(1) (10) of S.C./S.T. (P.A.) Act is concerned, in the considered opinion of this Court, when the story of the prosecution is doubted with regard to the incident of causing injury to the informant and her husband, the other part of the same could also not be believed. There are other inherent inconsistencies and weaknesses in the evidence of prosecution witnesses, which renders their statement as unreliable. It is to be recalled that evidence of injured witnesses should be at a higher pedestal but for this it must be proved that injured witnesses have sustained injuries in the alleged incident.

22. In nutshell, in the considered opinion of this Court, the prosecution has failed to prove its case beyond reasonable doubt and, thus, the trial court appears to have committed material illegality in convicting the appellants for the offences, which in the opinion of the Court, has not been proved beyond reasonable doubt by the prosecution before the trial court. Thus, the impugned judgment and order of the trial court dated 05.08.2008 is liable to be set-aside, while the appeal preferred by the appellants is required to be allowed and the appellants are entitled to be acquitted of the charges framed against them.

23. In result, the appeal filed by the appellants- **Udaiveer Singh alias Babloo** and **Banarasi** is, hereby, **allowed** and the impugned judgment and order of the trial court dated 05.08.2008 passed by the Additional Sessions Judge/Special Court, S.C./S.T. (P.A.) Act/F.T.C. Ist Court Room No.10, Sultanpur in Special Trial No. 124 of 1999 (State vs. Udaiveer Singh alias Babloo and another), arising out of Case Crime No. 128 of 1998, under Sections 323/34, 506 I.P.C. & Section 3(1)(10) of S.C./S.T. (P.A.) Act, whereby the appellants have been convicted for committing offence under Sections 323/34 I.P.C. as well as under Section 3(1)(10) of

S.C./S.T. (P.A.) Act and have been sentenced for one year imprisonment pertaining to Section 3(1)(10) of S.C./S.T. (P.A.) Act and six months' simple imprisonment with regard to Section 323/34 I.P.C. with fine is, hereby, **quashed/set-aside** and the appellants are acquitted of all the charges framed against them.

24. The appellants appears to be on bail, their sureties are discharged. They need not to surrender unless their detention is required with regard to any other criminal case.

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

26. A copy of this order be immediately sent to the trial court through the Sessions Judge concerned for compliance and information.

Order Date: 26.07.2024

Praveen/-