

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1817 of 2008

Appellant :- Ajay Kumar Singh

Respondent :- State of U.P.

Counsel for Appellant :- Dinesh Upadhyay, Chandan Srivastava, Nadeem Murtaza, Yogesh Somvanshi

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Shri Nadeem Murtaza, Shri Chandan Srivastava, Shri Wali Nawaz Khan and Ms. Snigdha Singh, learned counsels 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- **Ajay Kumar Singh** against the judgment and orders dated 02.08.2008 and 08.08.2008 passed by Special Judge, S.C./S.T. Act/F.T.C.-2, Faizabad (now Ayodhya) in Sessions Trial No.787 of 1996 (State Vs. Raj Karan & others) and connected S.T. No.1112 of 1996 (State vs. Ajay Kumar Singh), arising out of Case Crime No.177 of 1995, under Sections 147, 323, 504, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act, Police Station Inayat Nagar, District Faizabad/Ayodhya, whereby the appellant has been acquitted for committing offence under Sections 147, 506 I.P.C. and has been convicted for committing offence under Section 323 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act and has been sentenced to undergo six months simple imprisonment along with fine of Rs.500/- for committing offence under Section 323 I.P.C. with default clause and to undergo six months simple imprisonment along with fine of Rs.1000/- for committing offence under Section 3(1)(x) of S.C./S.T. Act with default clause. All the sentences were directed to run concurrently.

3. The necessary facts required for disposal of the instant appeal appears to be that an F.I.R. has been lodged by the informant Dularpati by moving a written application before the Station House Officer, Police Station Inayat Nagar, District Faizabad/Ayodhya alleging therein that on relevant day and time, on the abuses and instigation given by other accused persons, accused persons namely Shiv Bahadur Singh, Ajay Kumar Singh (instant appellant), Krishna Kumar Singh assaulted her with bamboo (lathi) and on an alarm raised by her, her 'jethani' arrived at the scene and she was also assaulted and

on hearing noise and alarm, villagers Ram Baran, Sitapati and Mahagu arrived, on seeing them, the accused persons fled away from the scene of crime.

4. On the basis of this written information, an F.I.R. at Case Crime No.177 of 1995, under Sections 147, 323, 504, 506 I.P.C. and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act was lodged at Police Station Inayat Nagar, District Faizabad (now Ayodhya) and investigation commences and during the course of investigation, the injuries sustained by Dularpati were examined and one lacerated wound on her head and contusion on her tongue was noticed along with complaint of pain in her back. The injuries were found fresh and caused by some hard and blunt object.

5. The investigating officer during the course of investigation has inspected the spot, recorded the statement of witnesses, prepared site plan and after finding sufficient material submitted charge sheet against the instant appellant under Sections 147, 323, 504, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act.

6. On the case being committed, the trial court framed the charges against the appellant under Sections 147, 323/149, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act, to which the appellant denied and claimed trial.

7. The prosecution in order to prove its case beyond reasonable doubt has relied on the testimony of P.W.-1 Mahagu, P.W.-2 Dularpati (informant), P.W.-3 Moida, P.W.-4 Raj Karan, P.W.-5 Dr. S. Mishra and P.W.-6 Avinash Chandra Thakur (investigating officer) and apart from it, the prosecution has relied on documentary evidence e.g. tehrir, F.I.R., chik F.I.R., site plan and charge sheet etc.

8. After conclusion of the evidence of the prosecution, the statement of the appellant/accused was recorded under Section 313 Cr.P.C., wherein he denied all the evidence produced by the prosecution, however, no evidence in defence has been produced.

9. The trial court after appreciating the evidence available on record did not find the case of the prosecution proved with regard to other accused persons namely Raj Karan, Shiv Bahadur Singh, Krishna Kumar Singh, Sanjay Singh and Ram Singh and acquitted them of all the charges framed against them, however, the case against the appellant under Section 323 I.P.C. and Section 3(1)(x) of the S.C./S.T. Act was found proved

and appellant was convicted therein and sentenced in the manner described in the 2nd paragraph of this judgment. Aggrieved by the impugned judgement and order, this appeal has been preferred by the appellant.

10. Learned counsels for the appellant while drawing attention of this Court towards the impugned judgement and order of the trial court and evidence of the prosecution witnesses available on record vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record while on the same set of evidence, other accused persons, who were similarly situated as of the appellant, have been acquitted and without making any differentiation, the same evidence has been used against the appellant for his conviction that too under Section 323 I.P.C. and 3(1)(x) of the S.C./S.T. Act.

11. It is vehemently submitted that in the F.I.R. allegations of assault on the head of the injured Dularpati were levelled against three accused persons including appellant, however, without there being any basis, the trial court has found the appellant as the author of that injury while the injured/informant Dularpati in her cross examination has admitted in categorical terms that her statement in the F.I.R. with regard to the fact that the injury has been caused by one Krishna Kumar Singh is correct. Thus there was no material or reliable evidence before the trial court on the basis of which it may be held that impugned injury has been caused by the appellant.

12. It is further submitted that the trial court has not found any evidence with regard to forming of any unlawful assembly and thus in absence of the same and keeping in view the admission of the injured Dularpati with regard to the fact that three persons have assaulted her, the conviction of the appellant may not be justified in absence of any reliable/acceptable and trustworthy evidence.

13. It is further submitted that it is admitted by the prosecution witnesses specially P.W.-2 Dularpati that castiest remarks were not addressed in presence of any other person, thus the offence as per own admission of the star witness of this crime has not been committed in public view, therefore, invocation of Section 3(1)(x) of the S.C./S.T. Act has been wrongly made against the appellant. It is also submitted that the evidence produced before the trial court by the prosecution was not reaching the bench mark of 'proof beyond reasonable doubt', thus the appellant is entitled to be acquitted of all the charges framed against him and the impugned judgement and order is liable to be set aside

to this extent.

14. Learned counsels for the appellant has relied on the following laws : (1) ***Javed Shaukat Ali Qureshi Vs. State of Gujarat***; (2023) 9 SCC 164, (2) ***Ramesh Chandra Vaishya Vs. State of U.P and another***; 2023 SCC Online SC 668, (3) ***Narain Vs. State of M.P.***; (2004) 2 SCC 455, (4) ***Saheb, S/o Maroti Bhumre etc. Vs. State of Maharashtra***; Criminal Appeal Nos.313-314 of 2012 and (5) ***Raksha Ram Verma Vs. State of U.P.***, Criminal Appeal 362 of 2009.

15. Learned A.G.A. on the other hand supported the impugned judgement and order passed by the trial court by submitting that injured witness of this crime is Dularpati and she has taken the name of the appellant as the person, who has assaulted her on her head and having regard to the nature of injury, no illegality appears to have been committed by the trial court, therefore, no interference in the impugned judgment is required.

16. Having heard learned counsel for the parties and having perused the record, it is reflected that in nutshell allegation against the appellant and other accused persons initially named in the F.I.R. were in terms that they were cutting babool tree owned by informant Dularpati and when they were objected, it was on the instigation of the other person, the appellant along with two other accused persons assaulted Dularpati and her 'jethani' Mohida and also addressed her with casties remarks. The attention of this Court has been drawn towards the statement of the star witness of this crime namely Dularpati in order to show that even if the case of the prosecution is taken on its face, it would emerge that even if any castiest remarks were addressed, there were no other person than the family members of the P.W.-2 Dularpati. In her in chief examination, Dularpati has admitted that when the incident had occurred, there was no other person present on the spot. Perusal of the statement of Dularpati would also reveal that she has alleged in her examination-in-chief that she was assaulted by all the accused persons, however, she has specifically stated to have been assaulted by Krishna Kumar Singh, Sanjay Singh and Ajay Kumar Singh (appellant), however, in the last part of her examination-in-chief, she has accused the appellant for assaulting her. In her cross examination, at one place she has stated that it has been correctly stated in the F.I.R. that she has been assaulted by Shiv Bahadur Singh.

17. It is on the basis of this evidence, it is vehemently submitted by learned counsel for the appellant that the trial court has committed an illegality in appreciating the evidence of this star witness in order to exonerate other accused persons and

convicting the appellant and reliance in regard has been placed on ***Javed Shaukat Ali Qureshi (supra)***, wherein the Hon'ble Supreme Court has held that when there is similar or identical evidence of eyewitnesses against two accused persons by assigning same or similar role, the Court cannot convict one accused persons and acquit the other. In such a case, the cases of both the accused persons will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused persons, which will amount to discrimination.

18. In this regard, it is also pertinent to have a look on the F.I.R. lodged by the informant P.W.-2 Dularpati, who, in the considered opinion of this Court, is the star witness of the alleged crime and it is evident that she in the F.I.R. has also assigned the role of assault to Shiv Bahadur Singh, appellant and Krishna Kumar Singh, thus material improvement is emerging in the statement of P.W.-2 Dularpati as made in the F.I.R., given to the investigating officer under Section 161 Cr.P.C. and recorded before the trial court as P.W.-2.

19. It is to be emphasized that the duty of the trial court at the time of appreciating the evidence of the prosecution witnesses is to separate the truth from the falsehood and this process is justifiable to the extent where the truth, in the opinion of the trial court, may be separated from the falsehood, but where the truth and falsehood are so intermixed that they could not be separated and in an effort to separate them, a new case is emerging, in the considered opinion of this Court, that evidence is liable to be discarded. The evidence of the star witness of this crime namely Dularpati, in the considered opinion of this Court, may never be termed as reliable having regard to her admission that it is not only the appellant who has assaulted her but there were other two accused persons, who have also assaulted her, which as highlighted by learned counsel for the appellant is not corroborated with the medical evidence available on record as only two visible injuries are shown to have been sustained on her head.

20. The other witnesses, who have been testified by the prosecution, in the considered opinion of this Court, is not having any significance on account of the fact that two of such witnesses namely P.W.-1 - Mahagu and P.W.- 4 Ram Karan have not supported the case of the prosecution while P.W.-3 Moida has stated that she was also assaulted, but no visible injury was found on her person, however, even if the statement of this witness namely Moida is taken on its face, it will emerge that she has also stated that she was assaulted by the appellant

and another person Krishna Kumar Singh and accused Krishna Kumar Singh has been acquitted by the trial court, therefore, keeping in view all the facts and circumstances of the case, it is not emerging from the evidence produced before the trial court that it was only and only the appellant, who has assaulted the P.W.-2 Dularpati and if it is believed for a moment that there were other persons also involved in the incident as stated by witness Dularpati then there was no evidence before the trial court on the basis of which segregation of the appellant may be made in order to hold that he is the author of injuries sustained by injured Dularpati. It is also recalled that since the trial court has not found any case of the prosecution proved under Section 147 I.P.C. the appellant can only be convicted with regard to the role played him in the commission of offence and he could not be held vicariously and since the injured/informant Dularpati has assigned the role of assault to many persons, injuries sustained by her cannot be attributed to the appellant alone. At this juncture, it is also highlighted when from the same set of evidence two possible views are emerging the view, which is in favour of the accused, should be adopted for the reason that accused person of a crime is having presumption of innocence in his favour.

21. Keeping in view all the facts and circumstances of the case and the evidence produced before the trial court and for the reasons mentioned above, in the considered opinion of this Court, the case of the prosecution was not proved beyond reasonable doubt and the trial court appears to have committed illegality in convicting the appellant for the offence which appears to have not been committed by him.

22. In result, the appeal filed by the appellant- **Ajay Kumar Singh** is hereby **allowed** and the appellant is acquitted of all the charges framed against him by the trial court. The impugned judgment and order dated 02.08.2008 and 08.08.2008 passed by Special Judge, S.C./S.T. Act/F.T.C.-2, Faizabad (now Ayodhya) in Sessions Trial No.787 of 1996 (State Vs. Raj Karan & others) and connected S.T. No.1112 of 1996 (State vs. Ajay Kumar Singh) so far as it relates to the appellant is hereby **set-aside**.

23. 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.

24. 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.20,000/- 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.

25. A copy of this order along with record of the trial court, if not required in any other case, be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date :- 21.9.2024

Anupam S/-