

Court No. - 15

Case :- CRIMINAL APPEAL No. - 184 of 2008

Appellant :- Pappu Singh And 2 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Mohd. Abid Ali,Atiya Abid

Counsel for Respondent :- Govt. Advocate,Mahendra P Singh

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Ms. Atiya Abid, learned counsel for the appellants as well as learned Additional Government Advocate for the State, Shri Mahendra P Singh, learned counsel for the complainant/informant and perused the record.

2. The instant appeal has been filed by the appellants **Pappu Singh @ Shiv Baran Singh, Raghvendra Singh** and **Satti Prasad Singh** against the judgment and order dated 10.01.2008 passed by the Additional Sessions Judge/Special Judge (Essential Commodities Act), Unnao in Sessions Trial No.670 of 2004 (State vs. Pappu Singh and others), arising out of Case Crime No.101 of 2004, under Sections 147, 148, 308/149, 323/149, 504, 506 I.P.C., Police Station Makhi, District Unnao, whereby the appellants were acquitted for the offence under Sections 147, 148, 308, 504, 506 I.P.C. and were convicted for the offence under Sections 323/34, 325/34 I.P.C. and were sentenced to undergo six months rigorous imprisonment each with regard to offence under Section 323/34 I.P.C. and to undergo three years rigorous imprisonment with fine of Rs.1,000/- each with regard to offence under Section 325/34 I.P.C. with default clause. All the sentences were directed to run concurrently.

3. Brief facts giving rise to the instant appeal appears to be that an F.I.R. was lodged by the informant Anil Singh at Police Station Makhi, District Unnao alleging therein that he is a license holder of a Fair Price Shop and on the relevant day, son of accused Satti Prasad Singh namely Pappu Singh @ Shiv Baran Singh was illegally demanding 20 liters of kerosene oil to which he refused, on which Pappu Singh @ Shiv Baran Singh, Satti Prasad Singh and Raghvendra Singh assaulted him with *lathi-danda* and axe (kulhari). On an alarm raised, his father Lalta Singh and brother Deepu @ Pradeep came to his rescue and they were also assaulted. His father Lalta Singh sustained serious injuries and he fainted on the spot. The incident was witnessed by Chhanga Singh, Bedab Singh and many other

villagers, who have accumulated at the scene of the crime. On the basis of this information, F.I.R. at Case Crime No.101 of 2004, under Sections 147, 148, 308/149, 323/149, 504, 506 I.P.C., Police Station Makhi, District Unnao was registered and the investigation commences. Three injured persons were medically examined and the injured Lalta Singh is shown to have sustained seven injuries on different parts of his body and all these injuries were of the nature of lacerated wounds and contusions and injury no.4 noticed on his nose was advised for X-ray and his nasal bone was found fractured.

4. 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 all the appellants/accused persons under Sections 147, 148, 308/149, 323/149, 504, 506 I.P.C. The trial court framed charges against the appellants under Sections 147, 148, 308/149, 323/149, 504, 506 I.P.C. to which they denied and claimed trial.

5. The prosecution in order to prove its case beyond reasonable doubt has relied on the oral testimony of P.W. 1 Anil Singh (informant), P.W.-2 Lalta Singh (injured), P.W.-3 Pradeep Singh @ Deepu (injured), P.W.-4 Dr. Satya Prakash, Radiologist, P.W.-5 Dr. Shiv Kumar, P.W.-6 Sub Inspector Tulsiram (investigating officer) and P.W.-7 Constable Dinesh Srivastava and apart from the above mentioned oral evidence, the prosecution has also relied on documentary evidence e.g. tehreer F.I.R., chik F.I.R., site plan, medical injury reports of the injured persons, radio-logical reports and charge sheet etc.

6. After conclusion of the evidence of the prosecution, statement of the appellants/accused persons was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and they all claimed that at the relevant point of time, they were not present at the scene of crime and they have been falsely implicated. In defence, the appellants have also produced documentary evidence e.g. ration card of Shiv Baran Singh, Satti Prasad Singh and Ram Baran Singh.

7. Learned trial court after appreciating the evidence available on record found the case of the prosecution proved only to the extent of Section 323/34 and 325/34 I.P.C. and convicted the appellants under aforesaid penal sections and sentenced them in the manner as stated in the second paragraph of this judgement.

8. Learned counsel for the appellants vehemently submits that she under instructions is not challenging the impugned judgement and order so far as the conviction of the appellants is

concerned, however, the trial court has committed manifest illegality in not considering the release of the appellants on probation, which was a mandatory exercise keeping in view the provisions as contained under Section 360 Cr.P.C. Elaborating further, it is submitted that the incident in question had occurred on 25.04.2004 and thereafter no untoward incident had occurred between the parties and the matter has also been compromised and confinement of the appellants in prison may generate another round of litigation and bad blood between the parties.

9. Learned counsel for the appellants also submits that so far as the merits of the judgment with regard to the conviction of the appellants in the relevant penal sections is concerned, he is not having any grievance pertaining to the same. However, he is aggrieved by the fact that while sentencing the appellants for committing the offences under Sections 323/34, 325/34 I.P.C., the trial court has not considered the mandatory provisions of Sections 360 and 361 of the Cr.P.C. as well as Sections 3, 4 and 5 of the Probation of First Offenders Act, 1958 and, therefore, a serious illegality has been committed by the trial court and, thus, it was the duty of the trial court to have considered the case of the appellants for extending the benefit of Probation of First Offenders Act and, therefore, as the appellants are not previous convict, benefit of Probation of First Offenders Act may be extended to the instant appellants.

10. Learned A.G.A. on the other hand opposed the submissions made by learned counsel for the appellants on the ground that the appellants have brutally assaulted three injured persons and therefore, they are not entitled for probation.

11. Shri Mahendra P. Singh, learned counsel for the complainant/ informant fairly acknowledges that the parties have compromised the matter and they are living in peace since long and bad blood has not remained between them and they also settled the dispute.

12. Having heard learned counsel for the parties and having perused the record, it is evident that though learned counsel for the appellants has not challenged the judgment and order of the trial court so far as the conviction of the appellants under Sections 323/34, 325/34 I.P.C. is concerned, but in order to satisfy its judicial conscience, this Court has gone through the record and found that three injured persons, who have been testified before the trial court, as prosecution witnesses have in one voice stated the manner in which the occurrence had taken place assigning specific role of assault to the appellants. The two Doctors, who have been testified as P.W.-4 and P.W.-5, have corroborated the oral testimony of injured witnesses of

fact. The law with regard to the weight-age which may be given to the testimony of injured witness is now well-settled and the evidence of 'injured witness' is to be treated on higher pedestal than other prosecution witnesses. Thus, keeping in view the quality of evidence, which was placed before the trial court, this Court is of the considered opinion that the prosecution was able to prove its case before the trial court beyond reasonable doubt and, therefore, no illegality appears to have been committed by the trial court in convicting the appellants for the offence under Sections 323/34, 325/34 I.P.C. Thus, the judgment of the trial court, so far as the conviction of the appellants with regard to Sections 323/34, 325/34 I.P.C. is concerned, is **affirmed**.

13. Coming to the question of sentencing, the mandate, which has been given under Section 360 Cr.P.C., is loud and clear and the procedure, which has been enshrined under Section 360 Cr.P.C., is to be followed by the trial court in letter and spirit unless the release of an accused person on probation is barred therein or in any special statute. Perusal of the sentencing part of the impugned judgement and order would reveal that the prayer for releasing the appellants by extending benefit of probation was pleaded before the trial court, however, in the considered opinion of this Court, the same has not been dealt with in right perspective especially when conviction of the appellants was being done under Sections 323, 325 I.P.C. that too with the help of Section 34 of the I.P.C. and no previous conviction or criminal history of the appellants/accused persons was placed before the trial court, the trial court, in the considered opinion of this Court, should have extended the benefit of Section 4 of the Probation of First Offenders Act to the appellants.

14. Now the situation has also changed and it has been 20 years since the incident had occurred and since then the parties are stated to be living in peace. Learned counsel for the complainant/informant has fairly accepted that the matter has also been compromised between the parties, thus, in the considered opinion of this Court, benefit of Section 4 of the Probation of First Offenders Act may safely be extended to the instant appellants- **Pappu Singh @ Shiv Baran Singh, Raghvendra Singh and Satti Prasad Singh**.

15. Resultantly, the appeal is **partly allowed** and while conviction of the appellants for committing the offences under Sections 323/34, 325/34 I.P.C. is maintained and judgment of the trial court in this regard is affirmed, the appellants are granted the benefit of Section 4 of the Probation of First Offenders Act and appellants- **Pappu Singh @ Shiv Baran Singh, Raghvendra Singh and Satti Prasad Singh** are

released on probation of keeping peace and good behaviour for **01 year from today**. Appellants shall file personal bond of Rs.25,000/- and two sureties of the like nature to the satisfaction of the trial court and also an undertaking that they shall keep peace in the society and shall not commit any such offence in future.

16. In case of breach of any of the aforesaid condition, appellants will subject themselves to undergo the sentence, as imposed by the trial court.

17. 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 :- 22.8.2024

Anupam S/-