

Neutral Citation No. - 2024:AHC-LKO:75206

Court No. - 12

Case :- CRIMINAL APPEAL No. - 19 of 2008

Appellant :- Pramod Bajpai And 2 Ors.

Respondent :- State of U.P.

**Counsel for Appellant :- Suchenddra Sharma,Subodh
Awasthi,Wasim Ahmad**

Counsel for Respondent :- Govt. Advocate

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the parties.

2. The instant Criminal Appeal under Section 374 (2), Cr.P.C. has been filed by the appellants namely Pramod Bajpai S/o Mool Chand, Shailendra Bajpai and Gugul @ Girendra, both sons of S/o Pramod, against the judgment and order 20.12.2007 passed by the Additional Sessions Judge, (F.T.C. No.5), Sultanpur, in S.T. No.1017 of 2006, whereby appellant namely Pramod Bajpai, Shailendra Bajpai and Gugul @ Girendra (Gugloo @ Girendra mentioned in operative part of judgment, under appeal, dated 20.12.2007) have been convicted and sentenced to undergo rigorous imprisonment (R.I.) for 7 years and a fine of Rs. 5,000/- each, under Section 307/34 IPC and in default of payment of fine, the appellants shall undergo additional imprisonment for six months.

3. Brief facts of the case are to the effect that informant Amit Kumar Tiwari runs a shop in the name and style of Amit Ply House, Baragaon Road Maholi. On 16.01.2004

at about 06:30 P.M. while he was sitting on the shop, accused Pramod Bajpai, his sons Shailendra and Gugul alongwith other unknown persons had come to the shop and Pramod Bajpai fired a shot, which was missed and Gugul had fired a shot from 315 bore gun which had hit informant on left side and had deviated on making contact with diary put in the left pocket and the informant was saved luckily. Other accused persons have thrown two hand grenades, out of which, one had exploded in the shop while other was laying live.

4. The Investigating Officer, after completing the investigation, submitted the charge sheet against the accused/appellants under section(s) 307/34 I.P.C.

5. After submission of charge sheet Magistrate took cognizance and thereafter on 16.10.2006 the case was committed to the Court of Sessions where it was registered as Session Trial No.1017 of 2006, and accused/appellants were charged for the offence under Section 307 read with Section 34 IPC. The accused/appellants denied charges and claimed trial.

6. In order to substantiate its case, prosecution examined six witnesses namely Amit Kumar Tiwari (PW-1), Hari Krishan Tiwari (PW-2), Ram Prakash (PW-3), Dr. R.K.Dinkar (PW-4), C. Ram Autar Verma (PW-5), Retd. S.I. Vishram Singh Chandel (PW-6). All the witnesses supported the story of prosecution.

7. Upon closing of the evidence of prosecution, the statement(s) of accused/appellants under section 313 Cr.P.C. were recorded by the trial court, after explaining the entire

evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

8. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence oral as well as documentary, found the accused/appellants guilty and convicted them. The relevant portion of the judgment, under appeal, reads as under:-

"In the instant case it is true that no previous conviction is proved, or alleged by the prosecution. In the case no injury was caused to the informant, hence keeping in mind the entire facts and circumstances of the case, I am of the view that under Part I of Section 307 I.P.C. rigorous imprisonment for seven years and a fine of Rs.5,000/- been awarded to each of the accused shall be meeting the ends of justice. Order accordingly."

9. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the appellants have preferred the present appeal.

10. Learned counsel for the appellants submits that the accused-appellants have not been convicted previously for any offence and they are the first time offender. The learned counsel at the outset submits that he is not challenging the findings of the trial Court in the judgment and order of conviction, under appeal, and is confining his submission in the appeal only with respect to the order of sentence.

11. Learned AGA submitted that in view of injury caused and the lenient view taken by the trial Court for awarding the sentence no interference in the matter is required.

12. Though learned counsel for the accused/appellants has not disputed the findings of trial court based upon which the trial Court held that the accused/appellants were involved in the incident/crime in question. However I have gone through the record. The statement of injured victim PW-1/Amit Kumar Tiwari is quite clear and cogent and the same has been corroborated by other witnesses of the prosecution. It is well established that the evidence of an injured witness must be given due weightage as being an injured witness, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he/she has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. *[Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].*

13. It would be apt to indicate here that Amit Kumar Tiwari, upon whom fire was shot and his testimony is most

relevant, has not stated the facts related to intention or motive of the accused for committing the crime in the FIR.

14. Considered the aforesaid and perused the record.

15. In the instant case the statement of victim PW-1/Amit Kumar Tiwari appears cogent and credible and is supported by medical evidence. There is no major contradiction or infirmity in the statements of this witness. Considering the entire evidence it is apparent that accused/appellants were involved in the crime. Thus, the findings of guilt of the accused/appellants is based on evidence. Accordingly, on the point of conviction no interference is called for in the instant appeal.

16. On the part of sentence, this Court took note of following:-

(a) In the instant case, no injury was sustained by the victim.

(b) According to the record on 05.11.2007, the age of the accused/appellants namely Pramod Bajpai was about 50 years old, Shailendra Bajpai was about 24 years old and Gugul @ Girendra was about 21 years old.

(c) The accused/appellants are having no criminal history, as per record.

(d) The incident took place way back in the year 2004 and accused/appellants have suffered in the matter for the past about 20 years.

(e) Criminal antecedent of accused/appellants during these years have not been indicated.

(f) It would be apt to indicate here that Amit Kumar Tiwari, upon whom fire was shot and his testimony is most relevant, has not stated the facts related to intention or motive of the accused for committing the crime in the FIR.

(g) Para 37 of the judgment passed by the Hon'ble Apex Court in the case of *Surinder Singh vs. State (Union Territory of Chandigarh)* (2021) 20 SCC 24, which to the view of this Court is relevant, is extracted hereinunder:-

"37. Adverting to the facts of the case, in hand, we are of the considered view that at this stage, the sentence awarded to the appellant is no longer in degree to the crime which he has committed. Remitting the appellant to the rigours of imprisonment at this juncture of his life would not serve the ends of justice due to following mitigating factors:

37.1. No motive or element of planning has been proved by the prosecution in the present case which indicates the possibility that the offence could have been committed on impulse by the appellant. Hence, the culpability of the offender in such situations is less than that which is ascribed in premeditated offences as the commission of planned illegal acts denotes an attack on societal values with greater commitment and continuity in comparison to spontaneous illegal acts.

37.2. Even though the factum of injury may not have a direct bearing on a conviction under Section 307IPC, the same may be considered by a court at the time of sentencing. No doubt, the offence committed by the appellant squarely falls within the four corners of Section 307IPC, but fortunately neither the complainant nor any other person was hurt by the untoward act of the appellant.

37.3. The appellant has already undergone a sentence of 3 months and 19 days. Additionally, despite the occurrence taking place in 1999, there is no indication that the appellant has been involved in any untoward

activity before or after the incident. This highlights the appellant's good character and indicates that the incident can be interpreted as an isolated lapse of judgment. Further, the appellant's clean post-incident behaviour suggests that he is a rational individual who is capable of responding to the social censure associated with the offence. Hence, the passage of a long time period coupled with a clean record, both before and after the incident is definitely a factor that calls for mitigation of sentence.

37.4. *Barring this particular incident wherein he was under the influence of alcohol, the appellant had an unblemished service record with sixteen good citations in his favour. This indicates that he was a valuable member of society than the present criminal incident might lead one to assume. This is not to say that the courts should draw up a social balance sheet when sentencing, but only to take these positive social contributions as a factor for mitigation of sentence.*

37.5. *Lastly, it is to be noted that the appellant was suspended in the year 1999 and has also been subsequently dismissed from service in the year 2007. Hence, this should also be considered as a reasonable factor for mitigation because the dismissal and the consequent loss of social security benefits such as pension, also construes as a form of social sanction."*

17. Upon due consideration of aforesaid, this Court finds that ends of justice would be served if the accused/appellants are sentenced to the period already undergone.

18. In view of above, the instant appeal is **partly allowed**. Appeal against conviction is dismissed. Appeal against sentence is allowed. The accused/appellants sentenced to imprisonment already undergone and fine awarded by the trial Court.

19. The accused/appellants shall deposit the fine as imposed in the judgment under appeal, if not deposited till date.

20. A certified copy of the order be also sent to the court concerned for compliance.

21. Office is directed to communicate this order to the court concerned for necessary compliance.

22. Trial court record shall also be sent back to the district court concerned.

Order Date :- 14.11.2024

Vinay/-