

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2219 of 2008

Appellant :- Shalindra Kumar Pandey

Respondent :- State of U.P.

Counsel for Appellant :- Umesh Singh, Ajay Vikram, Manas Kumar

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Shri Ajay Vikram, learned counsel for the appellants informs that appellant no.1/Shailendra Kumar Pandey has died.

2. As per the report of the Chief Judicial Magistrate, Sultanpur of date 07.09.2024, a copy of which is also available on record, it is reported that appellant no.1/Shailendra Kumar Pandey has died on 26.11.2021. The Chief Judicial Magistrate, Sultanpur along with its report has enclosed the report of the Police Station Akhand Nagar, District Sultanpur as well as the death certificate of appellant no.1-Shailendra Kumar Pandey, issued by the Registrar (Birth and Death). Thus, the appellant no.1/Shailendra Kumar Pandey appears to have died and the proceedings of this appeal so far as the **appellant no.1/Shailendra Kumar Pandey** is concerned, are **abated** for him.

3. Shri Ajay Vikram, learned counsel for the appellant, submits that he is ready to argue the appeal on behalf of the appellant no.2- Hanuman Pandey.

4. Heard Shri Ajay Vikram, learned counsel for the appellant- Hanuman Pandey as well as learned A.G.A. for the State and perused the record.

5. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Hanuman Pandey** against the impugned judgment and order of the trial court dated 05.09.2008 passed by

Additional Sessions Judge/Fast Track Court-I, Room No.10, Sultanpur in Special Trial No. 06 of 2008 (State vs. Shailendra Kumar Pandey and others), arising out of Criminal Case No. 460 of 2006, under Sections 452, 323/34, 504, 506 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act, Police Station Akhand Nagar District Sultanpur, whereby the appellant has been convicted for committing offence under Section 3(1)(x) of the S.C./S.T. (P.A.) Act along with Section 323/34 I.P.C. and has been sentenced for a maximum imprisonment of one year 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.

6. The necessary facts required for disposal of the instant appeal appears to be that, an F.I.R. was lodged by the informant Ram Karan at Police Station Akhand Nagar, District Sultanpur, alleging that he had taken Rs. 3,500/- as 'loan' from the appellant no.1- Shailendra Kumar Pandey for expenses required to be incurred in the 'terahvin ceremony' of his father and Rs. 24,600/- were returned to him along with the interest. However, even after payment of the loan, he was demanding Rs. 25,000/- more and on this enmity on 07.09.2006 at about 2:00 pm. the appellants entered into his house along with his father Ram Lakhan and on the instigation by father Ram Lakhan, they assaulted his mother Bhajji Devi and nephew Brahmdev and also addressed them with casteist remarks. On an alarm raised by them, villager Ram Nayak and Om Prakash arrived and intervened and rescued them.

7. On the basis of this written information, an F.I.R. at Case Crime No. 460 of 2006, under Sections 452, 323, 504, 506 I.P.C. and 3(1)(x) of the S.C./S.T. (P.A.) Act was registered and investigation commences.

8. During the course of investigation, apart from recording of the statement of the informant and other witnesses, the injuries sustained by the two injured persons, namely, Smt. Bhajji Devi and Brahmdev were also examined by Dr. P.C. Jain and Smt. Bhajji Devi has sustained one contusion on her right elbow while injured Brahmdev is shown to have

sustained one abraded contusion on left elbow and one contusion at the 'eliech crust' (chest). Both the injured have also complained of pain. However, the doctor assessed these injuries as 'simple' and caused by hard and blunt object and were also found them fresh.

9. The investigating officer after investigation submitted the charge sheet against the appellants and the trial court has framed charges against them under Sections 452, 323/34, 504, 506 I.P.C. and 3(1)(x) of the S.C./S.T. (P.A.) Act.

10. The prosecution in order to prove its case has testified before the trial court as P.W.-1/Ram Karan, P.W.-2/Brahmdev, P.W.-3/Bhajji Devi, P.W.-4/Constable Awadhesh SinghYadav and P.W.-5/Ramchandra Verma (Pharmacist) and apart from the above-mentioned oral evidence, the prosecution has also relied on documentary evidence e.g. Tehrir F.I.R., Chik F.I.R., G.D. Qayami, Injury reports of both injured persons, Site Plan and charge-sheet, etc.

11. After the conclusion of the evidence of the prosecution, the statement of the appellants/accused was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and did not adduce any evidence in support of their defence.

12. The trial court after appreciating the evidence available on record has found the case of the prosecution proof to the extent of Section 323/34 I.P.C. and Section 3(1)(x) of the S.C./S.T. (P.A.) Act, while appellants were acquitted of the charges framed under Sections 452, 504 and 506 I.P.C. By the impugned judgment and order, the trial court has also acquitted Ram Lakhan Pandey of all the charges framed against him.

13. Aggrieved by their conviction and sentence, appellant- Shailendra Kumar Pandey and Hanuman Pandey has preferred the instant appeal.

14. As stated, by passing a separate order today, as appellant-Shailendra Kumar Pandey has died during the pendency of the instant appeal, the proceedings of this appeal has been abated against him.

15. Shri Ajay Vikram, learned counsel appearing for the appellant-Hanuman Pandey, 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 has convicted the appellant only on the basis of *surmises and conjectures*.

16. It is further submitted that even if the case of the prosecution is taken on its face and as has been stated by the witnesses, including the injured witnesses before the trial court, a quarrel had occurred inside the house of the informant and, therefore, if any offence is committed at all, the same has been committed within the four walls of the house of the informant and the same was not in public view. Thus, none of the provision of S.C./S.T. Act would attract against the appellant and the trial court has not considered this aspect of the matter in right perspective.

17. It is further submitted that the motive of the alleged crime was only available to the appellant- Shailendra Kumar Pandey from whom the informant is stated to have taken money as a loan and, therefore, the name of the appellant Hanuman Pandey has been dragged into this case only for the purpose of pressurizing him.

18. It is next submitted that a simple case of 'scuffle' has been given the colour of offences committed under S.C./S.T. Act, while no offence has been committed with the intention of humiliating the victims or injured persons and only on the basis that they belongs to 'Scheduled Caste' and, therefore, the charged pertaining to Section 3(1)(x) of the S.C./S.T. (P.A.) Act was not proved before the trial court.

19. It is further submitted that both injured persons cumulatively have sustained only three very simple injuries, which may be self-manufactured and, moreover, these injuries have not been proved before the trial court, as the doctor who had allegedly examined these two injured persons was not produced before the trial court and the injuries have been proved by producing a 'pharmacist' of the government hospital, which in all probability is not authorized or qualified to prove the injuries and, therefore, it may not be taken as truth that the two injured persons have sustained injuries in the scuffle.

20. It is further submitted that the alleged incident is shown to be of 07.09.2006 and, therefore, no untoward incident has been reported between the parties, which prima facie proof of the fact that the parties are living at peace and, thus, when there was no offence pertaining to S.C./S.T. Act was emerging against the appellant, the benefit of the Probation of First Offenders Act, 1958 should have been given to the appellant.

21. Learned A.G.A. on the other hand submits that two injured persons have been assaulted with the intention of humiliating them only on the basis that they belongs to 'Scheduled Caste' and, therefore, no illegality has been committed by the trial court either in convicting or sentencing the appellants.

22. Having heard counsel for the parties and having perused the record, it is reflected that the allegations against the appellant, as is reflected from the F.I.R. and the statement of three prosecution witnesses testified before the trial court are in terms that on 07.09.2006 on the basis of prior enmity the appellants have entered into the house of the informant and also addressed them with casteist remarks and assaulted his mother Smt. Bhajji Devi and his nephew Brahmdev. It is evident from the statement of P.W.-1/Ram Karan, P.W.-2/Brahmdev and P.W.-3/Bhajji Devi, who admittedly at the relevant point of time were present in their house, where the offence is shown to have been committed that the

incident had occurred within the four walls of the house of the informant. Significantly two villagers which may be termed as independent witnesses have been shown in the F.I.R. to have witnessed the incident. However, for the reasons best known to the prosecution, they were not produced before the trial court as witnesses.

23. Thus, it may safely be taken from the evidence available on record that the offence, as alleged by the prosecution, has been committed within the house of the informant. There is no doubt in the proposition that to attract an offence under Section 3(1)(x) of the S.C./S.T. (P.A.) Act as was existing at the relevant point of time, the same is required to be committed in public view and since the alleged incident is shown to have been committed within the four corners of the house of the informant and no witness has been produced by the prosecution to have witnessed the same, there is no difficulty in inferring, on the basis of the evidence produced before the trial court by the prosecution, that the alleged incident had occurred within the four walls of the house of the informant and not in public view, thus, in the considered opinion of this Court, the trial court appears to have committed illegality in convicting the appellant for committing offence under Section 3(1)(x) of the S.C./S.T. (P.A.) Act.

24. So far as the offence committed by the appellant under Section 323 of the I.P.C., the trial court has convicted both the appellants with the help of Section 34 I.P.C. and it is inferred that the trial court could not infer from the evidence produced before the trial court as to which appellant had assaulted whom, as there are two injured persons. However, the allegations of '*marpeet*' are fortified and corroborated by the statement of all the three witnesses of fact. It is true that the doctor has not been produced to establish the injuries but the cross-examination which has been done with the pharmacist, who has been produced before the trial court as P.W.-5, would evidently reveal that this point has not been taken by the appellants/accused persons and it is also to be highlighted that the accused persons/convicts have also not make any

endeavor to summon the doctor in their defence and it may be safely inferred that accused persons were satisfied by the evidence tendered by the pharmacist in order to prove the injuries sustained by the two injured persons.

25. It is to be recalled that the accused persons may not play hide and seek with the prosecution and if they were aggrieved by the non-production of the doctor, this objection should have been taken by them before the trial court and they may also request the trial court to summon the doctor as their defence witness, however, they failed to do so. In the considered opinion of this Court, perusal of the evidence given by P.W.-1/Ram Karan, P.W.-2/Brahmdev and P.W.-3/Bhajji Devi, would prove beyond reasonable doubt that they have been assaulted by the appellants within the four corners of their house or at the most in their courtyard. However, the same was not within the public view. Therefore, keeping in view all the facts, circumstances of the case and the evidence available on record, this Court finds that no illegality has been committed by the trial court in convicting the appellants for committing offence under Section 323 read with Section 34 I.P.C. and judgment of the trial court is affirmed in this regard and judgment of the trial court is affirmed in this regard.

26. Now the question arises when the offence under Section 3(1)(x) of the S.C./S.T. (P.A.) Act is not found proved and the appellant has only been convicted, as affirmed by this Court under Section 323 read with Section 34 I.P.C. whether benefit of Probation of First Offenders Act, 1958 may be extended to the surviving appellant- Hanuman Pandey ?

27. This Court is of the considered view that the bar to enlarge an accused person (s) on Probation of First Offenders Act is only with regard to the offence committed under the relevant provisions of the S.C./S.T. Act and when the trial court as well as the appellate court is of the view that the appellant has not committed any offence under S.C./S.T. Act, the benefit of Probation of First Offenders Act may safely

be extended to the convict if he is otherwise entitled for the same. As this exercise, which was mandatory in view of Section 360 of the Cr.P.C. has not been undertaken by the trial court, as the appellant was convicted under 3(1)(x) of the S.C./S.T Act also, the same would have to be taken by this Court afresh. Perusal of the judgment and order of the trial court would evidently reveal that no criminal history of the surviving appellant- Hanuman Pandey has been alleged. The incident in question has occurred on 07.09.2006. Thus, 18 long years have elapsed thereafter. Nothing has been placed before this Court which may suggest that any untoward incident had occurred between the parties. Thus, in the considered opinion of this Court, it was a fit case, keeping in view Section 360 of the Cr.P.C. and Section 4 of the Probation of First Offenders Act, 1958 wherein the benefit of Section 4 of the Probation of First Offenders Act, 1958 may be extended to the appellant.

28. Thus, having regard to the reasons given herein-before, the instant appeal preferred by the surviving appellant- **Hanuman Pandey** is **partly allowed** with following modification.

29. The conviction of the appellant, as recorded by the trial court under Section 3(1)(x) of the S.C./S.T. (P.A.) Act is **set-aside** and the appellant is acquitted of the charges framed against him under Section 3(1)(x) of the S.C./S.T. (P.A.) Act, while the judgment of the trial court is **affirmed** so far as the conviction of the appellant under Section 323 read with Section 34 I.P.C. is concerned.

30. However, the sentencing of the appellant is modified to the extent that he is provided the benefit of Section 4 of the Probation of First Offenders Act, 1958 and is released on probation of good conduct for **one year** on the condition that he will keep peace and good behavior/conduct during this period and shall file two sureties to the tune of Rs. 50,000/- along with his personal bonds before the trial court and also an undertaking to the effect that he shall maintain peace and good

[9]

behavior/conduct during this period of one year from today and will not indulge himself into any criminal activity.

31. 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.

32. 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. 50,000/- 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.

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

Order Date: 17.09.2024

Praveen/-