

Court No. - 27

Case :- CRIMINAL APPEAL No. - 178 of 2009

Appellant :- Shafkat Ali and Others

Respondent :- State of U.P.

Counsel for Appellant :- Dinesh Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Dinesh Upadhyay, learned counsel for the appellants 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 appellants- **Shafkat Ali, Babu and Salim** against the judgment and order dated 19.01.2009 passed by Special Judge, S.C./S.T. Act, Faizabad (now Ayodhya) in Sessions Trial No.71 of 2003 (State vs. Shafkat Ali & Others), arising out of Case Crime No.253 of 1992, under Sections 323/34, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act, Police Station Purakalandar, District Faizabad (now Ayodhya), whereby the appellants have been convicted for committing offence under Sections 323/34, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act and they have been sentenced to undergo six-six months rigorous imprisonment along with fine of Rs.500/- for committing offence under Sections 323/34, 506(2) I.P.C. each with default clause and to undergo one year rigorous imprisonment along with fine of Rs.500/- for committing offence under Section 3(1)(X) of S.C./S.T. Act each 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 by moving a written information, informant Ram Bhulawan has lodged an F.I.R. at Police Station Purakalandar, District Faizabad (now Ayodhya) alleging that he had gone to Masaudha market and he met Shafkat Ali of his village in the market at about 06:00pm. and he had taken him to an orchard situated behind the market on the pretext that he is being called by Surendra Singh, Babu and Salim for some urgent work. It is further alleged that when the informant accompanied Shafkat Ali to the orchard, he found Surendra Singh, Babu and Salim and they all started alleging that he had stolen some articles and subjected him to assault with lathi-danda, on an alarm raised by him Ram Badal, Munni Lal and

many other persons arrived and rescued him on which all the four accused persons fled away.

4. On the basis of this written information, an F.I.R. at Case Crime No.253 of 1992, under Sections 323/34, 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 Purakalandar, District Faizabad (now Ayodhya) and the injuries sustained by the informant/injured were examined at Primary Health Centre, Masaudha, District Faizabad and one injury of the nature of lacerated wound was found on the right feet, while abrasion and swelling was found on the neck, left shin as well as left cheek. Injury No.3 was kept under observation and advised X-ray while other injuries were found simple and caused by hard and blunt object, however, no fracture etc. has been found beneath Injury No.1.

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

6. The trial court framed charges against the surviving appellants namely Shafkat Ali, Babu and Salim under Sections 323/34, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act, to which, they 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 Ram Badal, P.W.-2 Munni Lal, P.W.-3 Ram Bhulawan (informant), P.W.-4 Dr. G.C. Lal, and P.W.-5 Constable C.P. Ram Kalap Shukla and apart from it, the prosecution has relied on documentary evidence e.g. tehrir, F.I.R., chik F.I.R., site plan, injury report and charge sheet etc.

8. After conclusion of the evidence of the prosecution, the statement of the appellants/accused was recorded under Section 313 Cr.P.C., wherein they denied all the evidence produced by the prosecution, however, did not produce any evidence in their defence.

9. The trial court after appreciating the evidence available on record found the case of the prosecution proved against the appellants under Sections 323/34, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act and convicted them therein and sentenced them 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 appellants.

10. Learned counsel for the appellants while referring to the impugned judgement and order vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and while it was evident that out of three witnesses of fact produced by the prosecution, two prosecution witness no.1 Ram Badal and no.2 - Munni Lal, who were independent public witnesses, have not supported the case of the prosecution and the evidence of P.W.-3 Ram Bhulawan was not at all reliable, an illegality has been committed by the trial court in convicting the appellants.

11. It is further submitted that there is no evidence with regard to the fact that offence has been committed in public view and in fact the whole story of the prosecution was not at all proved. It is further submitted that even the investigating officer of the case was not produced and therefore, the accused persons have prejudiced in contradicting sole intact witness of the crime namely informant/injured Ram Bhulawan and no acceptable ground has been given by the trial court as to why the investigating officer has not been examined, thus the case of the prosecution was not proved before the trial court and thus the appellants are entitled to be acquitted of all the charges framed against them, therefore, the impugned judgement and order is liable to be set aside.

12. Learned A.G.A. on the other hand supported the impugned judgement and order passed by the trial court on the ground that no illegality or to say any irregularity appears to have been committed by the trial court/special court, therefore, no interference in the impugned judgment is required.

13. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution before the trial court was that on 30.08.1992 at about 06:00pm. the appellants have assaulted the informant/injured with lathi-danda and also addressed him with castiest remarks in an orchard situated behind the market. It is also evident that the prosecution has presented before the trial court P.W.-3 Ram Bhulawan, who is injured/informant and also independent public witnesses P.W.-1 - Ram Badal and P.W.-2 Munni Lal, interestingly, who did not support the case of the prosecution and became hostile. Thus in support of the allegations of the F.I.R., the sole evidence of P.W.-3 Ram Bhulawan was available before the trial court.

14. The law with regard to the manner in which the testimony of a sole witness of the crime is to be dealt with is now well

settled and in order to convict an accused person on the basis of solitary witness, his evidence must be reliable and trustworthy and in the facts and circumstances of the case worth of acceptance. Thus in other words there must not be any dent in the evidence of the solitary witness. Thus the evidence of P.W.-3 Ram Bhulawan is to be appreciated in the background of this principle. P.W.-3 Ram Bhulawan in his in chief has supported the case of the prosecution by stating that on the relevant day and time, he was taken by one of the appellants to an orchard situated behind the market and there he was addressed with castiest remarks and was also assaulted by all the accused persons with lathi-danda. In cross examination, it has been admitted by this witness that he was not having any prior enmity with the accused persons/appellants and an incident of theft had taken place in the house of Shafkat and appellants were inquiring from him with regard to the said incident of theft and he was not in knowledge as to who had committed theft. It is further stated by him that when he was called by one of the appellants he was alone. It is also admitted by him that incident had occurred in an orchard and he had accompanied Shafkat Ali and after crossing the market, they entered into the jungle, where the incident had occurred. It has been specifically admitted by him that witnesses Ram Badal and Munni Lal were not with him nor he had seen them. It is also admitted by this witness that the market is situated about 200 meters away from the place, where the incident had occurred. Interestingly this witness has stated that about 10-15 persons were sitting with the accused persons and had taken the name of other accused persons namely Bhulari, Surya Pal, Mahindra and many other unknown persons as associates of the appellants/accused persons and has stated that they all have assaulted him and he could not say as to who had assaulted with fist and kicks and who had assaulted him with lathi-danda. He has further stated that it was Surendra Singh, who had assaulted him with danda. He also failed to recollect as to who was the scribe of tehreer F.I.R. It is also admitted in his cross examination that he was assaulted for half of an hour. He admitted that all of his clothes were bloodstained, but these clothes were not collected by the investigating officer.

15. Keeping in view the evidence of this solitary witness, it appears that when the castiest remarks were addressed to the informant, he was alone. Thus the castiest remarks were not addressed to him in public view, therefore, in the considered opinion of this Court, Section 3(1)(X) of the S.C./S.T. Act could not attract against the appellants and thus the trial court has committed manifest illegality in convicting the appellants under Section 3(1)(X) of the S.C./S.T. Act.

16. So far as the character of the testimony of the solitary P.W.-3 Ram Bhulawan is concerned, he has sustained four simple injuries. He had improved the version of the incident, as stated by him in the F.I.R., in his statement recorded under Section 161 Cr.P.C. in material particulars, rendering his evidence as not reliable. It is admitted by him that apart from accused persons/appellants, there were many persons sitting with the accused persons and all of them have assaulted him and he could not see as to who has assaulted him with fists and kicks and who has assaulted him with lathi-danda and thereafter has improved the story further by stating that it was the accused Surendra Singh, who appears to have died during the course of trial and has not been convicted by the trial court, to have assaulted him. Thus even if the statement of this solitary witness is believed with regard to the assault, the injury with lathi-danda has been inflicted by co-accused Surendra Singh, who has not been convicted by the trial court.

17. Thus, having considered the whole evidence of the solitary witness, this Court is of the view that the same may not be labelled fully reliable or fully trustworthy and therefore, the trial court appears to have committed mistake in convicting the appellants for the offence, which appears to have not been committed by them and it appears to be a case, where benefit of doubt may safely be extended to the appellants, therefore, the conviction of the appellants under Sections 323/34, 506 I.P.C. may not sustain.

18. 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 an illegality in convicting the appellants for the offence which appears to have not been committed by them.

19. In result, the appeal filed by the appellants- **Shafkat Ali, Babu** and **Salim** is hereby **allowed** and the appellants are acquitted of all the charges framed against them by the trial court. The impugned judgment and order dated 19.01.2009 passed by Special Judge, S.C./S.T. Act, Faizabad (now Ayodhya) in Sessions Trial No.71 of 2003 (State vs. Shafkat Ali & Others), arising out of Case Crime No.253 of 1992, Police Station Purakalandar, District Faizabad (now Ayodhya) so far as it relates to the appellants is hereby **set-aside**.

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

21. 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.20,000/- 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.

22. 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 :- 15.10.2024

Anupam S/-