

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2518 of 2008

Appellant :- Madhukar Shukla

Respondent :- State of U.P.

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

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Ms. Atiya Abid, learned counsel 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- **Madhukar Shukla** against the judgment and order dated 09.09.2008 passed by Additional Sessions Judge/F.T.C., Court No.10, Pratapgarh in Sessions Trial No.325 of 1998 (State vs. Madhukar Shukla), arising out of Case Crime No.256 of 1996, under Sections 323, 504 I.P.C. and 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Police Station Jethwara, District Pratapgarh, whereby the appellant has been acquitted for committing offence under Section 504 I.P.C. and has been convicted for committing offence under Sections 323 I.P.C. and 3(1)(10) of S.C./S.T. Act and has been sentenced to undergo six months rigorous imprisonment along with fine of Rs.1,000/- for committing offence under Section 323 I.P.C. with default clause and to undergo two years rigorous imprisonment along with fine of Rs.10,000/- for committing offence under Section 3(1)(10) 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 Shrilal Kori on 10.08.1996 alleging therein that on 23.07.1996 at between 7-8pm. when he was standing in front of the door of his house, the appellant arrived and asked him to work in his agricultural field, however, the informant extended an excuse on which he became angry and also assaulted him on his head with the butt of the country-made pistol, which he was carrying, whereby the informant sustained injury and on an alarm raised by him, his brother Shyam Lal and father Payag Deen arrived and on seeing them the appellant had fled away from the scene of the crime. It is also alleged that he also became fainted.

4. On the basis of this written information, an F.I.R. at Case

Crime No.256 of 1996, under Sections 323, 504 I.P.C. and 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act was lodged at Police Station Jethwara, District Pratapgarh and investigation commences.

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 323, 504 I.P.C. and 3(1)(10) of S.C./S.T. Act. It is also worthwhile to recall that during the course of investigation, the informant was medically examined on 13.08.1996 at 11:25am. by P.W.-3 Dr. Inayat Hussain and one healed wound was found on his head, which according to the Doctor was simple in nature and may be caused by blunt object and was about 20 days old and may be inflicted on 23.07.1996 between 7-8am.

6. On the case being committed, the trial court framed the charges against the appellant under Sections 323, 504 I.P.C. and 3(1)(10) of 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 informant Shrilal Kori, P.W.-2 Shyam Lal, P.W.-3 Dr. Inayat Hussain, P.W.-4 Bhola Prasad Awasthi and P.W.-5 Anil Kumar Rai 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 and also filed documentary evidence in support of his defence claiming that he is having an enmity with one Ravindra Nath Pandey and it is on his instigation, a false case has been lodged by the informant.

9. The trial court after appreciating the evidence available on record did not find the case of the prosecution proved under Section 504 I.P.C. and found the case of the prosecution proved against the appellant under Sections 323 I.P.C. & 3(1)(10) of S.C./S.T. Act and convicted him under Sections 323 I.P.C. & 3(1)(10) of S.C./S.T. Act and sentenced him 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 counsel for the appellant 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 while it was evident that the castiest remarks have been addressed in isolation without there being any person present, the trial court has convicted the appellant for committing offence under Section 3(1)(10) of S.C./S.T. Act and when if castiest remarks are not addressed in presence of any person or in public view, the applicant should not have been convicted under Section 3(1)(10) of S.C./S.T. Act.

11. It is further submitted that it was admitted by the informant in the F.I.R. that it is only after an alarm was raised by him, his father and brother had arrived, therefore, it was established before the trial court that they have not seen any occurrence, but the trial court has illegally relied on the evidence of P.W.-2 Shyam Lal and find corroboration with the evidence of P.W.-1 Shrilal Kori while it was evident that the evidence given by the informant P.W.-1 Shrilal Kori is false and has not been corroborated with any medical evidence. In this regard, learned counsel for the appellant has drawn attention of this Court towards the statement of P.W.-3 Dr. Inayat Hussain, where in his cross examination, he has admitted that the injury sustained by the informant was a healed wound and no parameter was used, which may suggest that it was a 'lacerated wound' or wound of any other nature and this injury might have been inflicted about 20-25 days ago. Thus the oral evidence was not corroborated by any medical evidence and therefore, the conviction of the appellant under Section 323 I.P.C. is also wrong.

12. It is vehemently submitted that the whole proceedings have been initiated on the basis of enmity of the appellant with one Ravindra Nath Pandey with whom the appellant is having many cases pending in different courts, therefore, the conviction of the appellant is bad and the impugned judgement and order is liable to be set aside.

13. 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 appears to have been committed by the trial court as oral evidence was supported by the medical evidence and no reliance may be placed on any hypothetical answer given by the Doctor while under cross examination, therefore, no interference in the impugned judgment is required.

14. Having heard learned counsel for the parties and having perused the record, it is reflected that the case of the prosecution as is evident from the record, is in terms that on the relevant day, when the informant was standing in front of his

house, the appellant arrived and asked him to work in his agricultural field and on denial, addressed him with castiest remarks and has also assaulted him on his head with the butt of the country-made pistol, whereby the informant sustained injury on his head and he also fainted. P.W.-1 Shrilal Kori is the informant and appears to be the star witness of this alleged crime. He maintained the story as narrated by him in the F.I.R., in his examination before the trial court also and it is stated that it is only when he had raised an alarm, his brother Shyam Lal and father Payag Deen had arrived on the scene of the crime and it is on this basis, it is submitted by learned counsel for the appellant that P.W.-2 may not be in a position to hear the castiest remarks allegedly addressed by the appellant to the informant as even if the statement of P.W.-2 Shyam Lal is believed as it is, it has been admitted by P.W.-2 Shyam Lal also that at the time of incident, he was sitting under 'neem' tree and the incident had happened in front of the house of the informant and nowhere it is shown that the 'neem' tree is situated at a distance where any conversation held in front of the house of the informant may be heard by a person sitting under the 'neem' tree. Thus what is reflected from the evidence available on record is that though the incident might have taken place within the sight of the P.W.-2, but he may not be in a position to hear the conversation, which had occurred between the appellant and the informant, therefore, it may safely be inferred, having regard to the evidence available on record, that the castiest remarks, even if addressed by the appellant, were not addressed in public view and in absence of any other person on the scene, the appellant should not have been convicted under Section 3(1) (10) of S.C./S.T. Act.

15. Coming to the conviction of the appellant under Section 323 I.P.C., it is to be recalled that the incident is of 23.07.1996 and the F.I.R. of the same has been lodged on 10.08.1996 while the informant was medically examined on 13.08.1996. At first it has not been explained as to why the F.I.R. has been lodged with such a delay. Though it is evident on record that the F.I.R. of this case has been lodged on the basis of an application moved to the District Magistrate, however, it was incumbent on the informant to have explained this delay. Moreover even if the delay, which had occurred in lodging the F.I.R., is ignored, the other glaring discrepancy, which is emerging in the story of the prosecution, is with regard to the injury sustained by the informant. The case of the prosecution is that the injury was sustained by the informant on his head by the butt of the country-made pistol, which the appellant was carrying with him. In this regard the nature and duration of the injury is of utmost importance. The Doctor namely P.W.-2 Inayat Hussain

has categorically admitted that since the wound was healed at the time of examination, he is/was not in a position to ascertain the nature of injury. Nothing has been brought on record, which may suggest as to why this fatal injury by which according to own version of the informant, he had fainted, was not treated anywhere specially in government hospital. The statement of P.W.-3 Dr. Inayat Hussain may not be lightly brushed aside, which he has given in his cross examination that there was no parameter available to him to gauge/assess the duration of the injury. It is to be highlighted that in his examination-in-chief, the Doctor has stated that this injury might have been caused to the informant on 23.07.1996, in contrast in his cross examination, the Doctor had admitted that the injury may be 20-25 days old and he is not having any parameter on the basis of which, he can tell the exact age of the injury. Thus what is evident on the record of the trial court is that the informant had approached the doctor on 13.08.1996 after many days of the occurrence of the incident and at the time of his medical examination, the wound sustained on his head was healed and the nature of injury could not be ascertained and thus the duration of the injury could also not be determined, which creates a vacancy and doubt as to whether this injury may be caused on 23.07.1996.

16. It is to be highlighted that a criminal trial starts with an initial presumption of innocence in favour of an accused person and thus it is the duty of the prosecution to negate that presumption by producing clinching evidence, which may reach the bench mark of proof beyond reasonable doubt and if on the evaluation of evidence produced before a criminal court any reasonable doubt is emerging, the benefit of the same should have been extended to the accused person and if on the basis of the same set of evidence, two possible views are emerging, the view, which is favouring to the accused person, having regard to the presumption of innocence, should have been exercised in favour of the accused person.

17. Having regard to the inconsistency appearing in the oral evidence viz-a-viz medical evidence produced by the prosecution in this case, this Court may safely infer that it was not proved before the trial court beyond reasonable doubt that the informant had sustained any injury on 23.07.1996 and having regard to the enmity, which the appellant is having with one Ravindra Nath Pandey, false implication may not be ruled out.

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 illegality in convicting the appellant for the offence which appears to have not been committed by him.

19. In result, the appeal filed by the appellant- **Madhukar Shukla** 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 09.09.2008 passed by Additional Sessions Judge/F.T.C., Court No.10, Pratapgarh, in Sessions Trial No.325 of 1998 (State vs. Madhukar Shukla) is hereby **quashed/set-aside**.

20. 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.

21. 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.

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

Order Date :- 5.9.2024

Anupam S/-