

Court No. - 15

Case :- C2714/RIMINAL APPEAL No. - 2519 of 2008

Appellant :- Moon Singh

Respondent :- State of U.P.

Counsel for Appellant :- Atul Verma

Counsel for Respondent :- G.A.

along with

Case :- CRIMINAL APPEAL No. - 2655 of 2008

Appellant :- Sankar Gautam

Respondent :- State of U.P.

Counsel for Appellant :- Rajendra Prasad

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Ali Moid, Advocate holding brief of Shri Atul Verma, learned counsel for the appellant- Moon Singh in Criminal Appeal No.2519 of 2008 and Shri Rajendra Prasad, learned counsel for the appellants- Sankar Gautam and Santosh Kashyap in Criminal Appeal No.2655 of 2008 are present while no one is present for the appellants in other two connected appeals bearing Criminal Appeal Nos.2637 of 2008 and 2662 of 2008. Thus, the Criminal Appeal Nos.2519 of 2008 and 2655 of 2008 are de-linked from the Criminal Appeal Nos. 2637 of 2008 and 2662 of 2008.

2. The above mentioned both appeals for the sake of convenience and on the ground that they are emerging from the same case crime number and against the same judgment are being disposed of by passing this common order.

3. Heard Shri Ali Moid, Advocate holding brief of Shri Atul Verma, learned counsel for the appellant- Moon Singh in Criminal Appeal No.2519 of 2008 as well as Shri Rajendra Prasad, learned counsel for the appellants- Sankar Gautam and Santosh Kashyap in Criminal

Appeal No.2655 of 2008, learned A.G.A. for the State and perused the record.

4. The instant criminal appeals under Section 374(2) Cr.P.C. has been preferred by the appellants- **Moon Singh, Sankar Gautam and Santosh Kashyap** against the impugned judgment and order of the trial court dated 31.10.2008 passed by Additional Sessions Judge, Fast Track Court No.-III, Lucknow in Sessions Trial No. 413 of 2007 (State vs. Manoj Kumar & others) arising out of Case Crime No. 14 of 2007, under Sections 147/ 148/ 149/ 307 I.P.C., Police Station- Kaiserbagh, Distric- Lucknow, whereby the appellants have been convicted and sentenced for one year imprisonment for the offence committed under Section 147 I.P.C. and fine of Rs.1000/- and sentenced for two years imprisonment for the offence under Section 148 I.P.C. and fine of R.2000/-along with fine and also with default clause.

5. Learned counsel for the aforesaid appellants vehemently submit that the trial Court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellants for the offence which has never been committed by them.

6. It is further submitted that there was absolutely no evidence with regard to any role played by the appellants in the commission of the alleged crime even if the case of the prosecution is believed as it is. However, the trial Court has drawn a new case out of the evidence produced by the prosecution witnesses which was even not alleged by the prosecution before the trial Court.

7. It is next submitted that the simple case of the prosecution before the trial Court was that at relevant point of time on an information provided by the informant, the police party had gone to apprehend the accused persons sitting in a park and on seeing the police personnel, they started firing. The instant appellants are not shown to have fired

any gun shot towards the police party nor there is any evidence, which may reflect that any rioting etc. was committed by the appellants and the trial court has not found the appellants guilty of offence under Section 307 I.P.C., thus, there was absolutely no evidence before the trial Court to have convicted them for committing offence under Sections 147 and 148 I.P.C. Thus, the judgment of the trial Court is liable to be interfered and the appellants are entitled to be acquitted of all the charges framed by trial Court against them.

8. Learned A.G.A. on the other hand submits that no illegality has been committed by the trial court in convicting and sentencing the appellants as they were part and parcel of the same transaction and thus, the impugned judgment/ order is not liable to be interfered with.

9. Having heard learned counsel for the parties and having perused the record, it is reflected from the record of the trial Court that a first information report was lodged by the S.I. N.K. Pandey alleging that on 21.01.2007 on an information provided by the informant, the police party had gone to trace the accused persons of the Case Crime No. 318 of 2006, registered with the same police station under Section 394 I.P.C. pertaining to the loot committed by some unknown persons and when the police party approached the accused persons sitting in the park, two accused persons i.e. Mahesh Rajpoot and Manoj Kumar Sharma started firing on the police party, however, the gun shot did not hit any police personnel and all the seven accused persons were arrested. The firing is shown to have been made by co-accused Manoj Kumar Sharma and Mahesh Rajpoot, while the other persons are shown only their associates.

10. The charge sheet was submitted by the Investigating Officer in this case against all the accused persons and the trial court has framed charges against all the appellants under Sections 147, 148, 307 read with 149 and 307 read with Section 34 of the I.P.C., and framed additional charges against Manoj Kumar and Mahesh Rajpoot under

Section 3/ 25 of the Arms Act also, to which the appellants and other co-accused persons pleaded not guilty and claimed trial.

11. The prosecution in order to prove its case before the trial Court has produced in oral evidence P.W.-1/ S.I. N.K. Pandey, P.W.-2/ S.I. Vishwanath Yadav, P.W.-3/ constable Ram Surat Kannaujia, P.W.-4/ S.I. Ganesh Prasad and also relied on various documentary evidence e.g. F.I.R., Chik F.I.R., G.D. Kaimi, charge sheet, site plan etc.

12. After conclusion of the evidence of the prosecution, the statement of the accused persons was recorded under Section 313 Cr.P.C. and the appellants have denied all the evidence produced by the prosecution and also produced in their defence D.W.-1/ Nitin Srivastava and D.W.-2/ Kailash Narayan.

13. The trial court after hearing the accused persons and also appreciating the evidence available on record found the case of the prosecution proved, so far as the appellants are concerned only under Sections 147 and 148 of the I.P.C. and convicted them for the said offences and sentenced in the manner described in the fourth paragraph of this judgment. Aggrieved by the same, these appeals have been preferred by the appellants.

14. 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 in relation to an F.I.R. earlier lodged at Case Crime No.318/ 2006 under Section 394 I.P.C. at Police Station-Kaiserbagh, Lucknow, on an information given by the informant of that case that the accused persons who might have committed the said offence were at present sitting in a park, the police party approached that park and when they were about to apprehend the accused persons sitting in the park, they were fired at by the two accused persons, namely, Mahesh Rajpoot and Manoj Kumar Sharma and the other accused persons including the appellants before this Court were also

found with them. The perusal of the evidence which has been placed before the trial Court would reveal that there is no evidence produced by the trial court pertaining to any rioting committed by the accused persons and only recovery of certain incriminating material is shown from them.

15. For the sake of convenience, the relevant provisions of the Indian Penal Code are reproduced as under:-

"Section 146 - Rioting - Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Section 147 - Punishment for rioting - Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 148 - Rioting, armed with deadly weapon - Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 149 - Every member of unlawful assembly guilty of offence committed in prosecution of common object - If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 34 - Acts done by several persons in furtherance of common intention - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

16. Perusal of the record would further reveal that the trial Court has

framed charges against all the accused persons under Sections 147, 148, 149 and 307/ 34 I.P.C. The trial Court did not find the case of the prosecution proved pertaining to Section 307 I.P.C. either with the help of Section 34 or Section 149 I.P.C., so far as the appellants are concerned and they have been acquitted of the charges framed against them under Section 307 I.P.C. read with Section 149 and 34 I.P.C. Thus, it may be inferred that the trial Court did not find that the appellants before this Court were having any common intention or part and parcel of an unlawful assembly, the common object of which was to commit the offence under Section 307 I.P.C. However, the trial Court has proceeded to convict the appellants for committing offence under Section 147 and 148 I.P.C.

17. It is to be recalled that Section 148 of the I.P.C. could only attract when the accused person is having or possessing any deadly weapon while the appellants before this Court as per the admitted case of the prosecution were not possessing any deadly weapon and only some money is shown to have been recovered from them. Therefore, this Court is of the considered view that Section 148 of the I.P.C. may not attract even if the case of the prosecution, as the same was before the trial Court, is believed in its letter and spirit. Thus, a patent illegality appears to have been committed by the trial Court in convicting the appellants for committing offence under Section 148 I.P.C.

18. Coming to Section 147 I.P.C., the rioting has been defined under Section 146 of the Indian Penal Code. It says, "*whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting*". As per the admitted case of the prosecution, as soon as the police party had entered into the park, they were fired upon by the two accused persons and thereafter, immediately, they were arrested and the trial court has not found the case of the prosecution proved either under Section 149

of the I.P.C. or with the help of Section 34 I.P.C. Therefore, it may safely be presumed that there was no connivance, pre-meditation or common intention amongst the accused persons and then the trial Court acquitted all the appellants under Section 149 I.P.C. The acquittal of the appellants under Section 149 I.P.C., in the considered opinion of this Court would be sufficient to infer that they were not part and parcel of any illegal assembly, therefore, there was absolutely no evidence before the trial Court pertaining to formation of any unlawful assembly to have convicted the appellant for committing the offence under Section 147 I.P.C..

19. Having regard to above discussions, it is evident that there was absolutely no evidence with the trial Court to have convicted the appellants either under Section 147 or 148 I.P.C., moreso when the trial Court had itself reached to a conclusion that the appellants could not be convicted for committing offence under Section 307 I.P.C. either with the help of Section 34 I.P.C. or Section 149 I.P.C., thus, for the reasons mentioned above, the impugned judgment and order may not sustain and the same is **set aside**.

20. In result, the appeals are **allowed** and the appellants are acquitted of all the charges framed against them by the trial Court.

21. The appellants appears 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.

22. Having regard to the provisions contained under Section 437-A of the Cr.P.C., each of the appellants shall file his personal bond with **two sureties** of **Rs. 25,000/-** 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.

23. A copy of this order be immediately sent to the special/trial court

through the Sessions Judge concerned for information.

24. The record of trial Court shall remain with this Court for the purpose of hearing in Criminal Appeal Nos. 2637 of 2008 and 2662 of 2008.

(Mohd. Faiz Alam Khan,J.)

Order Date :- 25.9.2024
Gurpreet Singh