

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2714 of 2008

Appellant :- Dujai and Others

Respondent :- State of U.P.

Counsel for Appellant :- Sunil Kumar Singh, Aakash Srivastava, Anjali Verma, Rinku Verma

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard Ms. Anjali Verma, Advocate holding brief for Shri Rinku Verma, learned counsel for the appellant, 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- **Kamlesh and Raj Karan** against the impugned judgment and order of the trial court dated 24.11.2008 passed by Additional Session Judge, F.T.C., Court No.32, District-Barabanki, in Sessions Trial No. 03 of 2005 (State vs. Dujai and others), arising out of Case Crime No. 167 of 1995, under Sections 147, 148, 452, 323 I.P.C., Police Station Kothi, District Barabanki, whereby the appellants have been convicted and sentenced under Sections 148 and 323 I.P.C. for one year rigorous imprisonment, under Section 147 I.P.C. for six months rigorous imprisonment, under Section 452 I.P.C. for three years rigorous imprisonment along with fine and also with default clause.

3. Appellant No.1- **Dujai** has died during pendency of this appeal and proceedings of this appeal has been abated so far he is concerned.

4. Ms. Anjali Verma, learned counsel appearing for the surviving appellant No.2- Kamlesh and appellant No.3- Rajkaran vehemently submits that the trial Court has committed material illegality in appreciating the evidence available on record and has convicted the appellants for the offence which has never been committed by them.

5. It is further submitted that only two prosecution witnesses, namely, P.W.1/ Kandhai Lal and P.W.2/ Manraja who claimed to have seen the occurrence have been presented. However, their testimony/ evidence was full of inconsistencies, inherent weaknesses and there were material contradictions and improvements in their testimony, therefore, the same should not have been relied by the trial Court.

6. It is further submitted that six injuries of simple nature have been found on the person of P.W.1/Kandhai Lal Pasi, however, the same were not commensurate with the oral evidence produced by the prosecution and there was material contradictions in the oral and medical evidence produced before the trial Court, however, the same were not appreciated in right perspective by the trial Court, as in the First Information Report and in the statement of the prosecution witnesses, the assault with '*Kanta*' and '*knife*' was also alleged apart from '*laathi*' and in absence of any specific allegation against any particular accused, it may not be determined as to what weapon has been used by a specific appellant and therefore, in this regard, the benefit of doubt should have been extended to the appellants.

7. It is further submitted that the trial Court has not considered the submissions made before it by the appellants that their case is such whereon the benefit of First offenders Act, 1958 should have been given to the appellants and the same submission has been dealt with by the trial Court in utter disregard to the settled principles on the basis of which the benefit of probation of First offenders Act, 1958 is required to be extended and therefore, material illegality has been committed by the trial Court in this regard also.

8. Learned AGA on the other hand supported the impugned judgment by submitted that there are no contradictions in the testimony of the two prosecution witnesses, one of whom was an injured person and the injuries which have been sustained by him could not self-manufactured and thus the same were corroborated by the medical

evidence. Thus, no illegality has been committed by the trial Court.

9. 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 the relevant date and time the appellants have entered into the house of the P.W.1/ Kandhai Lal Pasi and assaulted him and his wife and also dragged informant for the purpose of causing his death. It is also alleged that the accused persons/appellants were armed with '*laathi, kanta and chaku*'. During the course of investigation, the injured P.W.1/Kandhai Lal Pasi was examined by P.W.5/ Dr. P.C. Shukla, who has found six injuries on the different part of the body of the informant and injury Nos. 1 to 3 were kept under observation while injury Nos. 4 to 6 were assessed as simple, however, no fracture has been found anywhere. Thus, injuries sustained by P.W.1/ Kandhai Lal Pasi, were assessed as of simple in nature. The Investigation Officer has submitted charge-sheet against all the accused persons. The accused persons Vanshu and Devi Sharan appear to have died during the course of the trial and the charges under Sections 147/34, 148/34, 452/34 and 307/34 IPC were framed against the surviving accused persons, namely, Dujai, Satguru, Kamlesh, Mansharam and Rajkaran, who denied the charges and claimed the trial. During the course of trial, accused Satguru and Mansharam have also died and the proceedings of the case were abated so far as they are concerned.

10. The prosecution in order to prove its case relied on the oral testimony of P.W.1/ Kandhai Lal Pasi, P.W.2/ Smt. Manraja, P.W.3/ Constable Vindhyanchal Singh, P.W.4/ S.I. Kamlesh Kumar Mishra and P.W.5/ Dr. P.C. Shukla and apart from the oral evidence, he has also relied on documentary evidence e.g. *Tehreer* F.I.R, chik F.I.R, GD kaimi, site plan, charge-sheet, medical reports etc.

11. After the conclusion of the evidence of the prosecution, the statements of the accused persons were recorded under Section 313

Cr.P.C., wherein they denied the evidence produced by the prosecution, however, they did not produced any evidence in their defence.

12. The trial Court, after providing an opportunity of being heard to the prosecution and accused persons, found the case of the prosecution proved with regard to Sections 323, 147, 148 and 452 IPC and convicted and sentenced the accused persons described in the manner described in the second paragraph of this judgment.

13. I have considered the evidence of the prosecution witnesses available on record in the background of the submissions advanced by learned counsel appearing for the appellants, Ms. Anjali Verma and find that about six injuries of the nature of lacerated wounds and contusions have been found on the different parts of the body of the injured including vital part- head. P.W.5/ Dr. P.C. Shukla in his statement has corroborated the evidence of P.W.1/ Kandhai Lal Pasi, P.W.2/ Smt. Manraja. P.W.2/ Smt. Manraja Appears to be A natural witness of the crime, as she was the wife of the P.W.1/ Kandhai Lal Pasi and as the crime is alleged to have been committed inside the house, no other person of the village may witness the same.

14. At this juncture, Section 134 of Indian Evidence Act, 1872 requires to be recalled which emphasises that it is the quality not the quantity of the evidence which matters for the purpose of conviction. Thus, it is the reliability, trustworthiness of the prosecution witnesses which is required to be seen and not the plurality of the witnesses. In this regard, the law laid down by the Hon'ble Apex Court in the case of ***Vadivelu Thevar vs The State Of Madras*** MANU/SC/0039/1957, which has been followed consistently in ***Lallu Manjhi and Ors. Vs. State of Jharkhand***; MANU/SC/0004/2003 etc. may be recalled, wherein it is provided that the conviction may be safely done on the basis of the evidence of a single witness if his/her evidence is of the nature of reliable. As stated earlier, the two prosecution witnesses

produced before the trial Court, one of whom was injured have corroborated the evidence with each other's testimony and their testimony has also found corroboration by the medical evidence. Thus, in the considered opinion of this Court, there appears no illegality in the judgment of the trial Court so far as conviction of the appellants under Section 323, 147, 452 IPC is concerned. However, the conviction of the appellants with regard to Section 148 IPC is not commensurate to the evidence available on record as no injury which may be inflicted by any deadly weapon like *chaku* and *kaanta* has been found on the person of the injured P.W.1/ Kandhai Lal Pasi. Thus, so far as the conviction of the appellants is concerned, the view of the trial Court with regard to conviction of the appellants only under Sections 323, 147, 452 IPC is affirmed.

15. Now, coming to the question of sentencing as it has been vehemently submitted by learned counsel for the appellants that their submissions with regard to release on probation has not been properly dealt with by the trial court. The record would reveal that though the trial Court has recorded the submissions of learned counsel for the accused persons with regard to their release on probation, however, in the considered opinion of this Court, the same has not been dealt with appropriately.

16. It is to be recalled that sentencing is a very delicate exercise which has to be done independently by a Criminal Court after finding the accused persons guilty. In this regard, if the accused persons are willing to adduce any evidence, an opportunity in their defence must also be provided to them and the Court independently may peruse the whole evidence produced before it for the purpose of providing appropriate/ proportionate punishment. Thus, when this exercise has not been undertaken by the trial Court, it has to be taken afresh by this Court.

17. Perusal of the record would reveal that it was only P.W.1/ Kandhai

Lal Pasi, who has sustained six injuries. All these injuries are simple in nature, as there is no supplementary report with regard to any fracture etc. sustained by him. The offence appears to have committed in the heat of passion and many persons are shown to have assaulted and six simple injuries have been found on the person of the injured P.W.1/ Kandhai Lal Pasi. The incident is of the year 1995. The trial Court had decided the case in the year 2008 and now we are in the year 2024, thus, almost twenty nine years have elapsed since the incident. Thus, if the sentencing as imposed by the trial court would be allowed to remain on record it may generate another round of litigation between the parties, who prima facie appears to be living in peace since the occurrence, as no untoward incident has been reported between them till now. Thus, for the reasons mentioned herein-before, this Court is of the considered view that it was a case where the Probation of First Offenders Act, 1958 should have been granted to the appellants. Thus, the instant appeal filed by the appellants- **Kamlesh and Raj Karan** is **partly allowed** and the conviction of the appellants, as recorded by the trial court under Section 148/34 of the I.P.C. is **set-aside** and the appellants are acquitted of the charges framed against them under Section 148/34 of the I.P.C., while the conviction of the appellants by the trial Court only with regard to Sections 323/34, 147/34 and 452/34 IPC is ***affirmed***.

18. However, the sentencing of the appellant is modified to the extent that they are provided the benefit of Section 4 of the Probation of First Offenders Act, 1958 and are released on probation of good conduct for **two years** on the condition that they will keep peace and good behavior/conduct during this period and shall file two sureties to the tune of Rs. 50,000/- along with their personal bonds before the trial court and also an undertaking to the effect that they shall maintain peace and good behavior/conduct during this period of two years from today and will not indulge themselves into any criminal activity.

18. 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.

19. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellants shall file his personal bond with two sureties of Rs. 50,000/- 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.

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

(Mohd. Faiz Alam Khan,J.)

Order Date :- 27.9.2024
Gurpreet Singh