

RESERVED JUDGMENT

Reserved on- 13.3.2024

Delivered on- 29.4.2024

Court No. - 27

Case :- CRIMINAL APPEAL No. - 2425 of 2009

Appellant :- Mohd. Umar

Respondent :- State of U.P.

Counsel for Appellant :- R.K. Saini

Counsel for Respondent :- Govt. Advocate

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Case :- CRIMINAL APPEAL No. - 2424 of 2009

Appellant :- Mohd. Umar

Respondent :- State of U.P.

Counsel for Appellant :- R.K. Saini

Counsel for Respondent :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. The instant Criminal Appeals under Section 374 (2), Cr.P.C. have been moved on behalf of the appellant Mohd. Umar against the judgment and orders dated 18.09.2009 passed by the learned Addl. Sessions Judge/F.T.C. No. 4, Gonda, in Session Trial Nos. 254 of 2008, State vs. Mohd. Umar, arising out of Case Crime No. 448 of 08 under Sections 307/149, 147, 148, I.P.C., P.S. Kotwali Nagar, Gonda, convicting and sentencing the appellant under section - 307 (Part-1), I.P.C. to undergo 4 years simple imprisonment and fine of Rs. 5000 /-, with default stipulation, and in Session Trial Nos. 255 of 2008, State vs. Mohd. Umar, arising out of Case Crime No. 449 of 08 under Section 3/25, Arms Act, P.S. Kotwali Nagar, Gonda, convicting and sentencing the appellant under section - 3/25, Arms Act to undergo 3 years simple imprisonment and fine of Rs. 1000 /-, with default stipulation. Both these appeals arises out of the same set of facts, hence, both of them are being decided by a common judgment. For the sake of convenience, Criminal

Appeal No. 2425 of 2009 is being taken up as a leading file.

2. The prosecution starts with an F.I.R. lodged by the S.H.O., P.S. Kotwali Nagar, Gonda, on 23.7.2008 at about 2.50 hrs., *inter alia*, alleging therein that on 23.7.2008 alongwith other cops was on patrolling duty in the area, when he was informed by the S.O.G Team that near Tractor Factory before Aman Motors four-five persons were in attempt to commit a vehicle-loot, if a haste is made, they may be arrested. Believing on this information, the informant's team alongwith the S.O.G. team moved towards the said place and no sooner did they reach the spot, they saw five persons towards right side of the road. On indication by the informer, they were stopped. One of them shouted, 'Kafeel, Munna Kale! the Police have arrived, kill them. All of a sudden, the person who was shouting, fired a shot on the Police team with the countrymade pistol held by him, however, the Police team escaped and caught hold of him at about 1.00 a.m. in the night. Rest of the co-accused managed to flee from there. On askance, that persons told his name Mohd. Umar (appellant). On searching his person, from the right hand one countrymade pistol of 315 bore, two live cartridges were recovered. On asking about the persons who had fled from the spot, Mohd. Umar told that they all have come from Kanpur to commit truck-loot. He also told their names and residences.

3. The Investigating Officer during investigation visited the place of occurrence and prepared the site plan and even recorded the statement of witnesses and after completing the investigation submitted the charge sheets in Case Crime Nos. 448 of 2008 under Sections 307/149, 147, 148, I.P.C., P.S. Kotwali Nagar, Gonda, and also in Case Crime No. 449 of 08 under Section 3/25, Arms Act, P.S. Kotwali Nagar, Gonda, against the appellant, under the aforesaid sections.

4. After submission of charge sheets before Court of learned Magistrate the said case was committed to the Court of Sessions wherein it was registered as S. T. No. 254 of 2008 arising out of Case Crime No. 448 of 2008 under Sections 307/149, 147, 148, I.P.C., P.S. Kotwali Nagar, Gonda, and S. T. No. 255 of 2008 and arising out of Case Crime No. 449 of 08 under Section 3/25, Arms Act, P.S. Kotwali Nagar, Gonda, and charges were framed against the appellant, to which he denied and claimed trial.

5. In order to substantiate its case, prosecution examined as many as four witnesses, namely, P.W. 1 Sri Tauhid Alam (Incharge S.O.G.), Sri P.W. 2 informant Surendra Pratap Singh (Incharge Inspector), P.W. 3 Sri Mangla Singh Yadav (Head Moharrir) and P.W. 4 Sri Rishi Narayan Singh (Investigating Officer).

6. That after closing of the evidence, statement of accused/appellant under section 313 Cr.P.C. was recorded by the trial court explaining the entire evidence and other circumstances, in which the appellant denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

7. In defence, no witness was got examined by the accused/appellant before the learned trial court.

8. Learned trial Court on appreciation of the evidence and argument advanced by the parties pronounced the judgment on 18.09.2009 by concluding the case and convicted the appellant for commission of the said offence and sentenced them as hereinabove.

9. Learned counsel for the appellant submitted that the learned trial Court has not considered the material evidence available

on record and committed grave error of law in not considering the material contradiction and omission in the statements of prosecution witnesses. He further submitted that the alleged firearm injury has not been told by the prosecution nor the incident shown in the F.I.R. is proved by the statements of the prosecution. He further submitted that appellant is young and having no criminal antecedents and facing trial. He further submitted that the learned trial Court ignored that Police was inimical to the appellant due to the case filed against his father. That in the F.I.R. five persons are shown trying to commit robbery at about 1.00 O'clock in the night, but only appellant is shown to have been arrested. He is shown to have fired on the Police Party, however, no one has got any injury in the firing. It has further been stated that he has falsely been implicated in the case. In fact, the appellant's father was accused in Case Crime No. 182 of 2007, P.S. Khodare, District Gonda. During investigation of this case Police had got annoyed of the appellant. In Case Crime No. 182 of 2007 final-report was submitted, however, due to annoyance with the appellant the Police picked him up from the house at Kanpur two-three days before the alleged date of incident and Rs. 19000.00 was taken away from him and two days after his arrest implicated him in the present case. In this case only Police is witness and no public witness is there in this case. Chargesheet has been filed only against the appellant, while five persons are said to be involved in the present case. Order passed by the learned trial Court is without application of judicial mind towards the facts mentioned above, which are on record.

10. Learned counsel for the appellant further submitted that the Police had challaned the appellant under Sections 147, 148 and 307, I.P.C., and Section 3/25, Arms Act, however, the learned trial court did not find the ingredients of Sections 147 and 148,

I.P.C. and acquitted him under these sections, however, the learned trial court erred in law in appreciating the fact that offence against the appellant is also not covered under Section 307 of IPC and Section 3/25 Arms Act, hence, the impugned order is liable to be set aside.

11. Learned counsel for appellant further submitted that the seized article was not sealed on the spot and no evidence was produced by the prosecution before the court that prosecution has properly deposited seized article in Malkhana' and no 'Malkhana' register was produced before the trial court during evidence, so offence under Section 25 of Arms Act against appellant Mohd. Umar was not properly proved and trial Court committed error to convict him under Section 25 of Arms Act. So, learned counsel for the appellants prayed for allowing the appeal and setting aside the judgment.

12. Learned counsel for the State, on the other hand, supported the impugned judgment and prayed for dismissal of this appeal by submitting that appellant has fired on the Police Party while trying to run away. Hence, he is not entitled for any relief from this Court.

13. In background of the arguments advanced by learned counsel for both parties, the point of consideration is whether the findings of the learned trial Court in convicting and sentencing the appellants under Section 307 of IPC and Section 25 of Arms Act are erroneous in eyes of law.

14. After considering the arguments advanced by the learned counsel for the parties and going through the records, this Court finds favour in the arguments advanced by the learned counsel for the appellant that in the F.I.R. five persons are shown trying

to commit robbery at about 1 O'Clock, but only appellant is shown to have been arrested; he is also shown to have fired on the Police Party, however, no one has got any injury in the firing; appellant has been challaned under Sections 147, 148 and 307, I.P.C., and Section 3/25, Arms Act, however, he has been acquitted under Sections 147 and 148, I.P.C.; the appellant's father was accused in Case Crime No. 182 of 2007, P.S. Khodare, District Gonda, therefore, possibility of the Police personnel being annoyed of the appellant, cannot be ruled out; in the present case only Police is witness and no public witness is there in this case; Chargesheet has been filed only against the appellant, while five persons are said to be involved in the present case. In these facts and circumstances of the case, the appeal deserves to be allowed.

15. In view of the discussion made above, this appeal is **allowed**. The judgment and orders dated 18.09.2009 passed by the learned Addl. Sessions Judge/F.T.C. No. 4, Gonda, in Session Trial Nos. 254 of 2008, State vs. Mohd. Umar, arising out of Case Crime No. 448 of 08 under Sections 307/149, 147, 148, I.P.C., P.S. Kotwali Nagar, Gonda, convicting and sentencing the appellant under section - 307 (Part-1), I.P.C. to undergo 4 years simple imprisonment and fine of Rs. 5000 /-, with default stipulation, and in Session Trial Nos. 255 of 2008, State vs. Mohd. Umar, arising out of Case Crime No. 449 of 08 under Section 3/25, Arms Act, P.S. Kotwali Nagar, Gonda, convicting and sentencing the appellant under section - 3/25, Arms Act to undergo 3 years simple imprisonment and fine of Rs. 1000 /-, with default stipulation, are hereby **set aside**. Personal and surety-bonds are hereby discharged.

16. Fine amount, if any, deposited by the appellant before the trial Court shall be given to him.

17. Copy of this order be sent to learned trial court concerned for information. Let record be also sent to concerned trial Court.

18. Let a copy of this order be placed on the file of Criminal Appeal No. 2424 of 2009.

(Shamim Ahmed, J.)

Order Date :- 29.4.2024
A.Nigam