

Court No. - 15

Case :- CRIMINAL APPEAL No. - 301 of 2009

Appellant :- Ramesh Chandra and another

Respondent :- State of U.P.

Counsel for Appellant :- Devendra Tiwari, Rajesh Kumar
Agnihotri, Shailendra Tripathi

Counsel for Respondent :- Govt. Advocate

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard 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 namely **Ramesh Chandra** and **Ram Ladaite** against the judgment and order dated 27.01.2009 passed by Special Judge, S.C./S.T. (P.A.) Act/Fast Track Court No.6, Hardoi in Sessions Trial No.187 of 1998 (State vs. Ramesh Chandra and another), arising out of Case Crime No.91 of 1993, under Sections 504, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act, Police Station Sursa, District Hardoi, whereby the appellants have been acquitted for committing offence under Section 506 I.P.C. and have been convicted for committing offence under Sections 504 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act and have been sentenced to undergo one year rigorous imprisonment along with fine of Rs.250/- each for committing offence under Section 504 I.P.C. with default clause and to undergo one year rigorous imprisonment along with fine of Rs.250/- each for committing offence under Section 3(1)(X) 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 on 26.06.1993 F.I.R. has been lodged by the informant Radhe Shyam at Police Station Sursa, District Hardoi that the appellants are indulged in defrauding the villagers and misappropriating their money in the name of providing them loan and despite taking money from the informant, they failed to arrange any loan and on 20.06.1993, when he was coming with Parashuram and Rampal at about 05:00pm., when inquired about the loan file, the appellants addressed him with castiest remark and also intimidated him of his life.

4. On the basis of this written information, an F.I.R. at Case Crime No.91 of 1993, under Sections 504, 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 Sursa, District Hardoi 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 appellants under Sections 504, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act.

6. On the case being committed, the trial court framed the charges against the appellants under Sections 504, 506 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act, to which, the appellants 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 Radhe Shyam, P.W.-2 Parashuram, P.W.-3 Rampal and P.W.-4 Constable Ram Autar 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 appellants/accused was recorded under Section 313 Cr.P.C., wherein they have stated that the appellant no.1 Ramesh Chandra at the relevant point of time was appointed as Seasonal Ameen in Pargana Ahirori, Tehsil Hardoi and there was a bank loan on the informant and one Seasonal Ameen namely Surendra Singh had gone to recover the same, in the process adopted, the land of the informant was auctioned, he mistook the appellant as Surendra Singh and lodged F.I.R.

9. The trial court after appreciating the evidence available on record did not find the case of the prosecution proved under Section 506 I.P.C. and found the case of the prosecution proved against the appellants only under Sections 504 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act and convicted them under Sections 504 I.P.C. and Section 3(1)(X) of the S.C./S.T. Act 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 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 two star witness of this crime namely P.W.-2 Parashuram and P.W.-3 Rampal did not support the case of the prosecution, the trial court has believed

and relied upon the statement of solitary witness i.e. informant while it was evident that he has lodged the F.I.R. in retaliation of the fact that his land was sold in an auction as he failed to pay bank loan. It is further submitted that evidence of the solitary witness (informant) may not be termed as reliable and trustworthy and the same is full of embellishment and should not have been acted upon in absence of any corroborative evidence.

11. It is further submitted that the trial court has wrongly placed the burden of proving certain facts on the accused persons while it would always be the duty of the prosecution to prove its case beyond reasonable doubt and thus the impugned judgement and order of the trial court is full of surmises and conjecture and therefore, the conviction of the appellants is bad and 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 appears to have been committed by the trial court and the appellants have been rightly convicted, 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 as is evident from the record, is in terms that the allegations of addressing the informant with castiest remark and also of intimidating him has been levelled by the informant. In the F.I.R. the motive of the crime has been alleged as certain money has been taken by the appellants to procure a bank loan to the informant twice and when the appellants failed to procure the same, the informant had asked for his money back and the appellants instead of paying back the money, addressed the informant with castiest remarks and also intimidated him. Judgement of the trial court as well as record of the trial court would reveal that nothing with regard to preparation of any file or any document for the purpose of procuring loan from any bank has been stated or produced before the trial court, thus in support of the allegations of taking money in the name of preparation of file, there is only and only statement/evidence of the informant. It is also reflected that despite clear stand taken by the appellants that one of the appellant at the relevant point of time was Seasonal Ameen and F.I.R. of this case has been lodged in retaliation, this argument has not been given due weightage by the trial court probably for the reason that the accused persons have also not produced any evidence on record, but a glaring irregularity, which is emerging from the record is that the trial court at many places of the judgement has stated that as the accused persons have failed to establish

certain facts by cross examining the prosecution witnesses, the benefit of the same would go to the prosecution. It is to be recalled that in criminal jurisprudence, there is no reverse burden on the accused to prove his defence unless and until it is warranted by any legal provision in any act. Similar provision is not existing in S.C./S.T. Act and even in case where presumption has been given, it would always be the duty of the prosecution to prove initial facts on the basis of which such presumption provided in any law may be taken. Thus if any laxity has been committed by the counsel for the accused person during the course of trial while cross examining the prosecution witnesses, the benefit of the same may not be extended to the prosecution for the simple reason that it would always be the duty of the prosecution to prove its case beyond reasonable doubt even if no cross examination is done by the defence or accused person as the case may be.

14. It is also to be highlighted at this juncture that two independent public witnesses namely P.W.-2 Parashuram, P.W.-3 Rampal were shown to be the persons, who had seen the crime and they have categorically denied to have seen any such occurrence. There cannot be any doubt in the proposition that in view of Section 134 of the Indian Evidence Act, it is the quality of evidence and not quantity, which matters but when the evidence of the solitary witness of the crime is 100% reliable, it is the duty of the court to search for corroboration and if there is no corroboration from any documentary or oral evidence, the benefit of the same is bound to be extended in favour of the accused person, who is also carrying presumption of innocence. Thus it is to be recalled that the trial court in its judgement has wrongly recorded that by non production of the investigating officer, no prejudice has been caused to an accused person. The manner of contradicting the prosecution witnesses has been defined under Section 145 of the Indian Evidence Act and when the investigating officer has not appeared in the witness box, an accused would be prejudiced in his defence as he will not have any opportunity to contradict the witnesses of fact, in this case the informant by his previous statement given to such investigating officer. Secondly the secondary evidence could only be given when the primary evidence is not available. In an eventuality when attendance of the investigating officer may not be procured with some amount of hardship, the trial court would have been justified in recording the statement of secondary witness, but when the attendance of the investigating officer may be procured then leading of the secondary evidence is not permissible either by oral or documentary evidence.

15. Thus in nutshell what is reflected from the record is that in support of the allegations of castiest remark only interested

testimony of the informant is available and two independent witnesses produced before the trial court in the shape of P.W.-2 Parashuram, P.W.-3 Rampal has not supported the case of the prosecution and there is no medical evidence or any other evidence with which the evidence of the informant may be corroborated and also keeping in view the fact that the evidence of the informant/P.W.-1 is not 100% reliable, the benefit of reasonable doubt, which is emerging from the evidence of the prosecution, may safely be extended to the appellants.

16. 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.

17. In result, the appeal filed by the appellants- **Ramesh Chandra** and **Ram Ladaite** 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 27.01.2009 passed by Special Judge, S.C./S.T. (P.A.) Act/Fast Track Court No.6, Hardoi in Sessions Trial No.187 of 1998 (State vs. Ramesh Chandra and another) so far as it relates to the appellants is hereby **set-aside**.

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 appellant 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.

20. 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 :- 19.9.2024

Anupam S/-