

Court No. - 16

Case :- CRIMINAL APPEAL No. - 911 of 2006

Appellant :- Smt. Sona Devi And Another

Respondent :- State of U.P.

Counsel for Appellant :- Atul Verma, Hari Krishna Verma

Counsel for Respondent :- Govt. Advocate

along with

Case :- CRIMINAL APPEAL No. - 864 of 2006

Appellant :- Smt. Prema Devi

Respondent :- State of U.P.

Counsel for Appellant :- Atul Verma, Hari Krishna Verma

Counsel for Respondent :- Govt. Advocate

Hon'ble Mohd. Faiz Alam Khan, J.

1. All the above criminal appeals are connected with each other and for the sake of convenience and in order to avoid multiplicity and repetition of the consideration of arguments and recording of finding, all the criminal appeals are being disposed of by this common order.

2. Heard Shri Hari Krishna Verma as well as Shri Sanjeet Kumar Patel, learned counsels for the appellants as well as learned A.G.A. for the State and perused the record.

3. The instant criminal appeals have been preferred by the appellants namely **Smt. Sona Devi, Ram Bahal** and **Smt. Prema Devi** against the judgment and order dated 22.04.2006 passed by the Additional District and Sessions Judge/F.T.C. Court No.3, Gonda in Sessions Trial No.274 of 2004 (State vs. Ram Bahal and Others), arising out of Case Crime No.74 of 2000, under Sections 308/34, 504, 506 I.P.C., Police Station Tarabganj, District Gonda, whereby the appellants were convicted for the offence under Section 308/34 I.P.C. and were sentenced to undergo rigorous imprisonment for three years each for committing offence under Section 308/34 I.P.C. and fine of Rs.1,000/- each, in default, three months extra simple imprisonment.

4. Brief facts necessary for disposal of the above criminal appeals are in terms that on 22.05.2000, an oral information was given by the informant at Police Station Tarabganj, District Gonda in terms that on 22.05.2000, son of the informant had taken pet animals for tying at the their place and one of the

animals had gone to the main door of the house of appellant/accused Ram Bahal and when the said animal was being taken back, the appellants started assaulting the son of the informant and on an alarm raised, the informant and many other villages arrived at the spot.

5. On this information non cognizable report bearing No.36 of 2000, under Section 323, 504 I.P.C. was registered at Police Station Tarabganj, District Gonda.

6. The informant on 25.05.2000 had moved an application under Section 155(2) Cr.P.C. before the Chief Judicial Magistrate, Gonda for investigation and the Chief Judicial Magistrate, Gonda had directed for submission of injury reports of the injured on which injury reports were submitted and thereafter an order for investigation was passed by the Chief Judicial Magistrate, Gonda.

7. 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 all the appellants/accused persons under Sections 308, 323, 504 I.P.C. The case on being committed to the Court of Sessions, charges against the appellants were framed under Sections 308/34, 504, 506 I.P.C. to which they denied and claimed trial.

8. The prosecution in order to prove its case has presented P.W. 1 Guru Prasad (informant), P.W.-2 Ramjeet (injured), P.W.-3 Constable Dal Bahadur Singh, P.W.-4 Sub Inspector Haricharan Ram, P.W.-5 Rafiullah Khan (Chief Pharmacist) and P.W.-6 Shivbar Pandey (Pharmacist). Apart from the above documentary evidence, the prosecution has also relied on documentary evidence e.g. non cognizable report, order of the Chief Judicial Magistrate for investigation, application moved by the informant under Section 155 (2) Cr.P.C., injury report of the injured, charge sheet etc.

9. After conclusion of the evidence of the prosecution, statement of the appellants/accused persons was recorded under Section 313 Cr.P.C., wherein they denied the evidence produced by the prosecution and has taken a defence that son of the informant had fallen from a tree and had sustained injuries and on the basis of prior enmity, a false case has been cooked up against them.

10. Learned trial court after appreciating the evidence available on record found the case of the prosecution proved beyond reasonable doubt and convicted the appellants for committing

offence under Section 308/34 I.P.C. and sentenced them in the manner as shown in the third paragraph of this judgement.

11. The appellants before this Court being aggrieved by the impugned judgement and order of the trial court preferred these appeals challenging the impugned judgement and order.

12. Learned counsels for the appellants vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record and despite the case of the prosecution was not proved beyond reasonable doubt, has convicted them for committing offences, which were never committed by them.

13. It is vehemently submitted that there are material contradictions and inherent weaknesses in the statement of the informant P.W.-1 Guru Prasad, who has claimed himself to be an eye witness of the incident and also in the evidence of the injured person P.W.-2 Ramjeet pertaining to the weapon of assault. It is also submitted that in the F.I.R. no weapon of assault has been mentioned which means that the injured person has been allegedly assaulted by fists and kicks, however, in the application moved under Section 155(2) Cr.P.C., introduction of a lathi has been made and thereafter in the statement of the injured and informant recorded before the trial court lathi and iron rod has been stated by which the injured is shown to have been assaulted and thus the whole case of the prosecution appears to be false and should not have been believed by the trial court due to the improvement made by the witnesses.

14. It is further submitted that there are other material contradictions in the testimony of the prosecution witnesses pertaining to the manner in which the incident has been seen by the informant and it is prima facie evident that perhaps P.W.-1 Guru Prasad was not the eye witness of the incident. It is also submitted that the judgement and order passed by the trial court is based on surmises and conjectures, therefore, is liable to be set aside.

15. Learned A.G.A. on the other hand submits that in the F.I.R. as well as in the statement of the witnesses recorded during the course of investigation and also before the trial court the prosecution is firm on the issue that the injured Ramjeet was assaulted by the appellants, however, as the witnesses and injured person are having a rural background, they might have been overawed by the environment of the Court during cross examination and if any stray statement have been given by them, only on that count, their testimony may not be disbelieved. It is further submitted that the prosecution has

proved its case beyond reasonable doubt before the trial court and no illegality has been committed by the trial court in convicting the appellants.

16. Having heard learned counsel for the parties and having perused the record, it is evident that case of the prosecution as is evident from the F.I.R. as well as from the statement given by the injured person and other prosecution witnesses during the course of investigation is to the tune that on 22.05.2000 when the pet animals of the informant were taken by the P.W.-2 Ramjeet, one of such pet animals had gone to the main door of the house of the appellant - Ram Bahal and when the son of the informant namely Ramjeet had gone to take it back, he was assaulted by the appellants. Perusal of the non cognizable report bearing N.C.R. No.36 of 2000, under Sections 323, 504 I.P.C. would reveal that no weapon of assault has been mentioned therein, however, in the statement of P.W.-1 - Guru Prasad recorded before the trial court, he has stated that he after hearing alarm had gone to the spot and has seen the appellants assaulting his son. In this regard the trial court has specifically observed in paragraph 13 of its judgement that this statement of P.W.-1 (informant) prima facie suggests and proves that the injured Ramjeet was assaulted in furtherance of a common intention with lathi, fists and kicks. It is submitted that it is not evident as to how the trial court has recorded this conclusion and when the informant has not stated anything pertaining to the use of lathi in his statement, which has even been quoted by the trial court in paragraph no.13 of its judgement, the conclusion of the trial court with regard to the assault by lathi, which has been attributed on the basis of the evidence given by P.W.-1 informant Guru Prasad is not based on the evidence available on record.

17. In this regard, statement of P.W.-2 Ramjeet is also significant, wherein he has stated that he was assaulted by iron rod and thereafter two ladies also joined the appellants Ram Bahal in assaulting him. In this regard, the trial court in paragraph 15 of its judgement has stated that though P.W.-1 has not mentioned any weapon in the N.C.R. and the 'lathi was for the very first time mentioned by him in an application moved for the investigation of the case under Section 155(2) Cr.P.C. and P.W.-2 is stating to have been assaulted by an iron rod, but the trial court justified this material contradiction in terms that as the statement of witnesses are being recorded after a gap of five years after the incident, this discrepancy may not be fatal. I am not in agreement with the conclusions drawn by the trial court. In every criminal case, there are some facts which reflects the core case of the prosecution, to which the prosecution is bound to prove beyond any shadow of doubt in

order to convict the accused person(s). There may be some ancillary and insignificant facts in a criminal case to which perhaps prosecution is not obliged to prove beyond reasonable doubt. The factum that the appellants have assaulted the injured person and also by which weapon were the core of the case of the prosecution and same should have been proved before the trial court by leading evidence of impeccable nature and with the standard of proof beyond reasonable doubt and therefore, when there are material contradictions in the use of weapon in the statement of the injured P.W.-2 Ramjeet and the informant P.W.-1 Guru Prasad, the necessary corollary of this material contradiction is that either informant or the injured is not speaking truth before the trial court as well during investigation and therefore it was not at all safe for the trial court to have believed their statements.

18. It is to be recalled that it is not the quantity of evidence, which is important for the disposal of a criminal case. Section 134 of the Indian Evidence Act clearly suggests that it is not the quantity, but quality of the evidence, which is required for conviction of an accused person and thus to convict a person for the offences, the evidence of the prosecution witnesses must be trustworthy, reliable and truthful.

19. Section 134 of Evidence Act did not require any particular number of witnesses to prove any fact. Plurality of witnesses in a criminal trial is not the legislative intent, it is not the quantity but quality which matters. Therefore, if the testimony of a witness is found reliable on the touch stone of credibility, accused can be convicted on the basis of testimony of even single witness. This principle was highlighted in "**Vadivelu Thevar V/s state of Madras; AIR 1957 SC 614**", wherein it is held by Hon,ble Apex Court that "The contention that in a murder case, the Court should insist upon plurality of witnesses, is much broadly stated. The Indian Legislature has not insisted on laying down that "no particular number of witnesses shall, in any case, be required for the proof of any fact" has enshrined the well recognized maxim that "Evidence has to be weighed and not counted." It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of single witness only could be available in proof of the crime, would go unpunished. It here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstance of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a

testimony is found by the court entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution."

"Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The Court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony.

20. **Vadivelu Thevar** case (supra) was referred to with approval in **Jagdish Prasad v. State of M.P.** (AIR 1994 SC 1251). It was held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'). But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise."

21. In **Lallu Manjhi vs. State of Jharkhand**, AIR 2003 SC 854 Hon,ble Supreme Court held that "The Law of Evidence does not require any particular number of witnesses to be examined

in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely **(i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable, nor wholly unreliable**. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness."

22. In *State of Gujarat vs J.P Varu* reported in 2016 Cr.L.J 4185 (Supreme Court) it has been propounded by the Supreme Court that, the burden of proof in criminal law is beyond all reasonable doubt. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favorable to the accused should be adopted.

23. In *AIR 2013 SUPREME COURT 3150, Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan* Hon,ble Supreme Court held that "Suspicion, however grave it may be, cannot take place of proof and there is a large difference between something that 'may be' proved and 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and

common sense."

24. Therefore, the gist of the aforesaid law propounded by the Hon'ble Supreme Court is that every accused person is presumed to be innocent till the prosecution, through reliable and acceptable evidence, proves its case beyond all reasonable doubt. In other words, in criminal trial, it is the duty of the prosecution to prove its case beyond all reasonable doubt. However, it is not each and every doubt which can be termed as reasonable and benefit of only that doubt can be extended to the accused persons, which is reasonable in the facts and circumstances of the case and which grow out of the evidence, itself.

25. Thus the above law reports would sufficiently demonstrate that if there are some minor contradictions, which may be ignored by the trial court in order to know as to what had happened at the relevant day and time when the alleged incident had occurred, but when the case of the prosecution is becoming doubtful pertaining to the incident and the weapon used therein, the benefit of the same must be extended to the appellant on the score that every accused person, who is being tried by a criminal court, is having a presumption of innocence with him.

26. No doubt in the instant case, the injured is shown to have sustained injury on his head, which is bone deep and at the time of examination, blood was also found oozing from it, but the question is as to whether this injury has been caused by fists and kicks, the answer of this question would be in negative and so far as the use of weapon lathi or iron rod is concerned, there are material contradictions in the statement of the informant P.W.-1 Guru Prasad and the injured P.W.-2 Ramjeet and at the cost of repetition it is highlighted that the informant has stated that he had seen the injured being assaulted with lathi, while the injured himself has stated to have been assaulted by an iron rod.

27. Thus having regard to all the facts and circumstances of the case, in the considered opinion of this Court, the trial court has committed manifest illegality in convicting the appellants on the basis of unreliable and doubtful evidence of the prosecution, therefore, the judgment and order dated 22.04.2006 passed by the Additional District and Sessions Judge/F.T.C. Court No.3, Gonda in Sessions Trial No.274 of 2004 (State vs. Ram Bahal and Others), arising out of Case Crime No.74 of 2000, under Sections 308/34, 504, 506 I.P.C., Police Station Tarabganj, District Gonda, whereby the appellants have been convicted and sentenced may not withstand the test of law and for the reasons stated above, is hereby **set aside** and the above criminal appeals preferred by the appellants namely **Smt. Sona Devi**,

Ram Bahal and Smt. Prema Devi are allowed.

28. The appellants are already on bail, they need not to surrender before the trial court unless they are warranted in any other case. Their bail bonds are cancelled and sureties are discharged. However, within 20 days from today, they will file personal bond of Rs.25,000/- and two sureties of the same amount before the trial court under Section 437-A Cr.P.C. for their presence before Hon'ble Supreme Court in case the order passed by this Court is assailed before the Supreme Court.

29. A copy of this order along with record of the trial court be immediately sent to the trial court concerned for compliance.

Order Date :- 24.5.2024

Anupam S/-