

Court No. - 15

Case :- CRIMINAL APPEAL No. - 764 of 2008

Appellant :- Guddu

Respondent :- State of U.P.

Counsel for Appellant :- Prashant Kumar,H.A.B.Sinha

Counsel for Respondent :- Govt.Advocate,Vineet Kumar
Misra

Hon'ble Mohd. Faiz Alam Khan,J.

1. Shri Aakash Srivastava and Shri Apoorva Srivastava, Advocates have filed their '*power/vakalatnama*' on behalf of the appellant, the same is taken on record. They further submit that some reasonable time be granted for the purpose of preparing the appeal.

2. The appellant- Guddu in pursuance of the earlier order of this Court is present before this Court. He further submits that he has been falsely implicated in this case and the trial court has committed manifest illegality in appreciating the evidence available on record and, therefore, he be permitted to argue his case in person.

3. Having regard to all the facts and circumstances of the case, the appellant, who is present personally before this Court, is permitted to pursue his appeal.

4. Heard appellant- Guddu in person as well as learned A.G.A. for the State and perused the record.

5. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- Guddu against the judgment and order of the trial court dated 15.03.2008 passed by Special Judge, S.C./S.T. Act, Fast Track Court No.6, Hardoi, in

Sessions Trial No. 607 of 99, arising out of Case Crime No. 103 of 97, under Sections 504, 506 I.P.C. & 3(1)(x) of S.C./S.T. Act, Police Station Mallawan, District Hardoi, whereby the appellant has been convicted for committing offences under Sections 504, 506 I.P.C. & 3(1)(x) of S.C./S.T. Act, and have been sentenced for a maximum rigorous imprisonment of one year pertaining to offence under Section 506 I.P.C. with fine of Rs. 500/- along with default clause.

6. The necessary facts required for disposal of the instant appeal appears to be that, a written communication/application was given by the informant of this case, namely, Sudha Devi to the S.P. Hardoi on 10.01.1997 alleging therein that a 'theft' was committed in her house on 28.12.1996 and the information of the same was given at Police Station Mallawan, District Hardoi and on 29.12.1996 when after giving information of theft to the PS concerned, she was returning to her house, the appellant was sitting at his shop and he intercepted her and her husband and intimidated her and also addressed her with casteist remarks. However, 'chowkidar' of the village intervened and it is on his intervention no untoward incident could occur. It is further stated that the appellant also threatened her by saying that he would beat them by them tying with the tree of 'neem' and would also burn them by pouring kerosene and she had not seen the 'aura' of 'thakurs'.

7. On the basis of this written information, an inquiry appears to have been made by the concerned S.H.O. and ultimately an F.I.R. at Case Crime No. 103 of 1997, under Sections 380, 504, 506 I.P.C. & 3(1)(x) of S.C./S.T. Act was lodged at Police Station Mallawan, District Hardoi and investigation commences.

8. The investigating officer after recording the statements of

various witnesses and also after preparing the site plan, found the case of the prosecution doubtful with regard to the commission of theft and also exonerated the two other accused persons named in the F.I.R., namely, Nanhe and Prabhu and submitted charge sheet only against the appellant- Guddu, under Section 504 & 506 I.P.C. and 3(1)(x) of SC/ST Act.

9. The trial court framed the charges against the appellant under Sections 504, 506 I.P.C. & 3(1)(x) of S.C./S.T. Act, to which, he denied and claimed trial.

10. The prosecution in order to prove its case beyond reasonable doubt has presented P.W.-1/Sudha Devi (Informant), P.W.-2/Chowkidar of the village, namely, Puttu, P.W.-3/Ramraj, P.W.-4/investigating officer of the case, namely, Shri Pradeep Kumar Gupta and apart from it, the trial court has relied on documentary evidence e.g. Tehrir, F.I.R., Chik F.I.R., G.D. Qayami, site plan and charge sheet.

11. After conclusion of the evidence of the prosecution, the statement of the appellant/accused was recorded under Section 313 Cr.P.C., wherein he denied all the evidence produced by the prosecution and claimed that he has been falsely implicated in this case and also produced Munnu Singh as D.W.-1 in support of his evidence, who has stated that no such incident, as claimed by the prosecution, has taken place.

12. The trial court after perusing the evidence available on record, found the case of the prosecution proved against the appellant and convicted him under Sections 504, 506 I.P.C. & 3(1)(x) of S.C./S.T. Act and sentenced him in the manner described in the 5th paragraph of this judgment.

13. The appellant, who is present in person before this Court, vehemently submits that the trial court has committed manifest

illegality in appreciating the evidence available on record and apart from the statement of P.W.-1/Sudha Devi, and her husband P.W. 3/Ram Raj there was no other independent witness presented by the prosecution who could corroborate the allegations, as P.W.-2/Puttu, who had claimed himself to be the 'chowkidar' of the village and to have seen the incident has not supported the case of prosecution. Thus, the two witnesses who were intact before the trial court were inimical witnesses and their testimony should have been appreciated with a great amount of caution and the trial court has failed to acknowledge and appreciate the material contradictions/embellishments appearing in the evidence of these prosecution witnesses.

14. It is further submitted that the case of the prosecution has become doubtful since inception as the investigating officer himself has not found the case of the prosecution as genuine, as the genesis of the incident i.e. 'theft' in the house of informant was not verified by the investigating officer and prosecution appears to have concealed the true story and has not come with clean hands and have suppressed the genesis of the incident, thus the subsequent part of the prosecution story should not have been believed by the trial court.

15. It is further submitted that the appellant is not having any criminal antecedents and as he was not related to the two accused persons against whom a complaint has been made by the informant of committing theft in his house, there was no occasion available to him to have intercepted the informant and her husband and to have addressed them with casteist remarks or to have extended intimidation.

16. It is further submitted that when the star witness of this crime, namely, Puttu Chowkidar of the village has not

supported the case of prosecution and P.W.1/ Sudha Devi (informant) was inimical towards the appellant and P.W.-3 was the husband of the informant/P.W.1, it was evident on the face of the record that the appellant has been framed in a false case and, therefore, there was no occasion for the trial court to have believed and acted upon the unreliable testimony of these witnesses and, therefore, the conviction and sentence done by the trial court is erroneous and the impugned judgment and order is required to be interfered and the appellant is entitled for acquittal.

17. Learned A.G.A. on the other hand submits that the allegation of the FIR has been supported by the informant/Smt. Sudha, who was testified as P.W.1 before the trial court as well as P.W.3, husband of the informant, namely, Ram Raj and as there was no lacuna in the investigation of the case, the trial court appears to have not committed any mistake in convicting and sentencing the appellant and, therefore, no interference in the impugned judgment is required.

18. 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 at the relevant day and time when the informant was returning after lodging of the F.I.R. pertaining to the theft committed in her house by the two co-accused persons, the appellant, who was sitting at his shop intercepted them and started addressing them with casteist remarks and also threatened them of their lives and also threatened that he will beat them by tying with the 'neem' tree and will also burn them by pouring kerosene oil.

19. It appears to be an admitted situation that part story of the informant pertaining to the 'theft' committed in her house by the two co-accused persons, namely, Nanhey and Prabhu was not

believed by the Investigating Officer and they were exonerated and charge sheet could only be filed against the appellant, that too under Sections 504, 506 I.P.C. & 3(1)(x) of the S.C./S.T. Act, thus, the investigating officer did not believe the case of informant that any theft was committed in her house by Nanhey and Prabhu who are shown to be associated with the appellant.

20. At this juncture, it may be recalled that the whole efficacy of the case of the prosecution was standing on the foundation that a theft had taken place in the house of the informant and she has lodged a complaint in this regard with the concerned police station with regard to the theft committed by co-accused persons- Nanhey and Prabhu and being associated with these co-accused persons and feeling aggrieved by the same the appellant had intercepted the informant and her husband and has addressed them with casteist remarks and has also threatened them of their lives. Surprisingly despite the co-accused- Nanhey and Prabhu were exonerated by the Investigating Officer, no protest petition etc. has been moved by the informant before the trial court. Therefore, the finding of the investigating officer with regard to the exoneration of co-accused- Nanhey and Prabhu was accepted by the informant and if the part of commission of theft in the house of the informant is separated from the other part of the prosecution story, the remaining part appears to be highly doubtful in that case as the motive to commit the offence would not be available to the appellant. To express in clear terms if theft has not been committed by co-accused persons Nanhey and Prabhu in the house of the informant, there was no occasion for her to have approached the concerned police station for the purpose of lodging complaint against the co-accused persons, Nanhey and Prabhu and resultantly in this scenario no motive would have been available to the appellant to extend threat and intimidation

to the informant and her husband, therefore, the story of the prosecution, as developed before the trial court, was not reaching to the benchmark of proof beyond reasonable doubt.

21. It is to be recalled that the only independent witness, who was shown to have witnessed the incident was P.W.2- Puttu Chaukidar and he has not supported the version of the prosecution before the trial court and has chosen to become hostile. He has categorically stated that no such incident as shown by the informant had ever occurred. The law in this regard is well settled that the evidence of a hostile witness is not washed away from the record and despite impeachment under Section 154 of the Indian Evidence Act if any part of his/her evidence remains reliable, the same may be safely acted upon and believed by the trial court. This Court sees no reason as to why independent witness who is/was also Chaukidar of the village and was shown to be present at the spot would tell lie before the trial court, therefore, the evidence of this witness, namely, P.W.2- Puttu Chaukidar may not be lightly brushed aside. Moreso in the background that other than Puttu Chaukidar there were only two witnesses, namely, P.W.1- Sudha Devi and her husband P.W. 3- Ram Raj who appears to be highly inimical towards the appellant.

22. It is further revealed that if the testimony of the remaining two intact witnesses, namely, P.W.1- Smt. Sudha and her husband P.W. 3 Ram Raj is scrutinized, it will emerge that there are various contradictions, embellishment and improvements in their testimony and therefore keeping in view all the facts and circumstances of the case, their evidence was not reliable and should not be accepted by the trial court and the case of the prosecution, in the considered opinion of this Court, was not proved before the trial court beyond reasonable doubt.

23. A criminal trial starts in the presumption of innocence in favour of the accused and therefore it is always the duty of the prosecution to tender such evidence before the trial court, which may negate the initial presumption of innocence, in other words the evidence produced by the prosecution must be so strong that the presumption of innocence which is in favour of the accused persons must vanish, which unfortunately is not the case with the instant case.

24. Having regard to all the facts and circumstances of the case, this Court is not having any doubt that the trial court has committed manifest illegality in convicting the appellant for the offence which appears to have not been committed by him.

25. In result, the appeal filed by the appellant- Guddu is, hereby, **allowed** and the impugned judgment and order of the trial court is, hereby, **quashed/set-aside**.

26. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case unless his detention is required with regard to any other criminal case.

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

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

Order Date :- 29.8.2024
Praveen/Muk/-