

Court No. - 15

Case :- CRIMINAL APPEAL No. - 930 of 2008

Appellant :- Ram Prasad @ Nikku

Respondent :- State of U.P.

Counsel for Appellant :- P.K. Mishra

Counsel for Respondent :- Govt.Advocate

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Aishwarya Pandey, Advocate, holding brief of Shri P.K. Mishra, learned counsel for the appellant, as well as learned AGA for the State and perused the entire record, including trial court's record.

2. By means of the instant criminal appeal u/s 374(2) CrPC the appellant- **Ram Prasad @ Nikku** has challenged the judgment and order dated 19th March, 2008 passed by the Additional Sessions Judge/F.T.C.-2, Faizabad (now Ayodhya) in Sessions Trial No.847 of 1999 (State Vs. Ram Prasad alias Nikku), arising out of case crime no.094 of 1992 lodged at police station Kotwali Akbarpur, district Ambedkar Nagar whereby the appellant has been convicted under section 456 IPC to undergo six months' imprisonment with a fine of Rs.1,000/- and in case of non-deposition of the fine amount, to undergo one month's additional imprisonment.

3. The brief facts, as reflected from the record, are in terms that an FIR was lodged by informant- Mataru, alleging therein that in the intervening night of 23rd/24th March, 1992 he was sleeping in his house with his son- Jiyalal and his daughter-in-law- Ishrawati (wife of his another son, Heeralal) was sleeping alone inside the house and at about 4 a.m. in the morning he had awoken after hearing an alarm raised by Ishrawati and he saw appellant- Ram Prasad alias Nikku dragging his daughter-in-law- Ishrawati. On hearing alarm witnesses- Sukhlal and Funnalal and other inmates of the village assembled at the scene of occurrence and they apprehended the appellant in the house of informant and appellant was taken to the police station.

4. On the basis of the aforesaid written information, the FIR of the instant case was lodged under sections 456 IPC read with sections 3(1)(XI) SC/ST Act.

5. During the course of investigation, statements of various

witnesses, including of Ishrawati was recorded. The site-plant was also prepared and the investigating officer finding sufficient material submitted charge-sheet against the appellant under section 456 IPC read with section 3(I)(XI) SC/ST Act.

6. The trial court framed charges against the appellant under section 456 IPC read with sections 3(I)(XI) SC/ST Act to which the appellant pleaded not guilty and claimed trial.

7. The prosecution, in order to prove its case beyond reasonable doubt, has relied on the oral testimony of informant- Mataru testified as PW-1 and Jiyalal testified as PW-2 and apart from aforesaid oral evidence, the prosecution has also relied on the documentary evidence e.g. *chik* FIR, *tahrir* FIR, site-plan and charge-sheet etc.

8. After conclusion of the evidence by the prosecution statement of the appellant was recorded under section 313 CrPC wherein he denied the evidence produced by the prosecution and claimed to have been falsely implicated in the present case, however, the appellant did not produce any evidence or witness in support of his defence.

9. The trial court, after hearing the prosecution and accused, found the case of the prosecution proved beyond reasonable doubt and while acquitting the appellant of the charges under section 3(I)(XI) SC/ST Act convicted the appellant under section 456 IPC and sentenced him in the manner as described in 2nd paragraph of this judgment.

10. The appellant, being aggrieved by the same, has preferred the instant criminal appeal.

11. Learned counsel for the appellant, while drawing attention of this court towards the impugned judgment and order passed by the trial court, submits that the trial court has completely misconceived and misread the evidence made available on record as it was evident that the prosecution has miserably failed to prove its case beyond reasonable doubt and the appellant has been convicted on the basis of insufficient evidence. It is vehemently submitted that the conviction of the appellant has been done on the basis of the evidence of two interested witnesses, namely, Mataru (PW-1) and his son-Jiyalal (PW-2) and the sole star witness of this crime, namely, Ishrawati, who was stated to have been molested, was not produced before the trial court and the trial court interestingly, without there being any evidence or report from any competent authority, has believed her to be a dead person and proceeded further to convict the appellant.

12. It is vehemently submitted that in the FIR four prosecution witnesses were shown to have witnessed the incident. Informant- Mataru and his son Jiyalal are stated to be the witnesses of fact and other two witnesses, namely, Sukhlal and Funnanlal are stated to have died during the pendency of the trial and they were not produced before the trial court. Thus, in this backdrop, the duty of the trial court was to act proactively by adverting to section 311 CrPC and when the prosecution had not produced the star witness of this crime, namely, Ishrawati, the trial court should have summoned her in order to arrive at just conclusion.

13. It is vehemently submitted that so-much-so no formal witness was examined before the trial court for the reasons best known to the prosecution and, therefore, neither the FIR nor the charge-sheet nor the site-plan was proved and, hence, the trial court has committed manifest illegality in convicting and sentencing the appellant for the offence which has never been committed by him.

14. Learned AGA, on the other hand, submits that the prosecution was able to prove its case beyond reasonable doubt before the trial court and there is no illegality so far as the conviction and sentencing of the appellant is concerned.

15. Having heard learned counsel for the parties and having perused the record, it is reflected that in the FIR four persons have claimed to have seen the occurrence. It is the case of the prosecution that in the dying hours of the night the appellant had entered into the house of the informant and dragged his daughter-in-law- Ishrawati who was sleeping inside the house while the informant and his son Jiyalal were sleeping in a room other than the room wherein the prosecutrix/victim- Ishrawati was sleeping and on hearing an alarm they rushed to her room and found the appellant dragging her. It is also the case of the prosecution that after hearing alarm raised by prosecutrix-victim- Ishrawati, witnesses- Sukhlal and Funnanlal had also arrived at the scene of occurrence and thereafter the appellant was apprehended. There appears to be an admitted fact that the informant and the appellant are residents of the same village and they are also known to each other. It is also reflected from the record that apart from two prosecution witnesses, namely, Mataro (PW-1) and Jiyalal (PW-2) no other prosecution witnesses of fact or investigating officer etc was produced. Perusal of the whole judgment would fail to reflect as to why other prosecution witnesses were not produced by the prosecution and if they were not produced by the prosecution, why they have not been summoned by the trial court by invoking powers bestowed under section 311 CrPC?.

16. Significantly, the trial court has lightly brushed-aside significant issue of non-production of the star witness of this crime, namely, Ishrawati by casually stating that she is stated to have died and in the next breath it is stated by the trial court in the same judgment that no proof of her death has been presented before it. This court fails to understand that when there was no proof or evidence with regard to death of the prosecutrix/victim, why her testimony was not recorded by the trial court. She was the only important witness of the alleged crime as the alleged incident was admittedly happened with her. In this regard, if the defence taken by the appellant is perused/considered wherein he has stated that the informant of this case is having enmity with him and he has been framed in this case, it will emerge that the investigating officer of the case has also not been produced as a prosecution witness. It is to be recalled that the testimony of a witness may only be assessed on the anvil of cross-examination and the only important tool available to the defence in a criminal trial is to contradict a witness with his previous statement recorded by the investigating officer under section 161 CrPC in the manner provided under section 145 of the Indian Evidence Act. Non-production of the investigating officer without there being any reasonable and justifiable reason would certainly prejudice the accused in defending himself as he would not be in a position to cross-examine an important prosecution witness who is claiming to have recorded the statement of the prosecutrix/victim under section 161 CrPC. The testimony of the investigating officer in this case was important and significant in the background of the fact that the trial court has wrongly believed that the prosecutrix/victim of this case has unfortunately died while there was no material/evidence in support of this fact (death of the prosecutrix).

17. It is also to be recalled that a criminal trial proceeds with a presumption of innocence in favour of an accused and, therefore, in every criminal trial, it is the duty of the prosecution to prove its case beyond reasonable doubt. It is the duty of the court to act proactively and even if the prosecution has not produced certain important prosecution witnesses, the trial court would be perfectly justified in summoning such witnesses who have not been produced by the prosecution and their testimony appears to be significant and important for the just decision of the case. This principle has been enshrined under section 311 CrPC wherein a power has been bestowed on the court to summon any witness whose testimony is required/desired for the just disposal of the case. Coming to the factual matrix of the instant case and having gone through the whole record, this court is of the considered opinion/view that

the trial court has committed manifest illegality in convicting and sentencing the appellant for the offence which was not proved before the trial court. Thus, for the reasons mentioned herein before the impugned judgment and order passed by the learned trial court may not sustain and is liable to be interfered.

18. In result, the appeal is **allowed** and the impugned judgment and order is hereby **set-aside/quashed**.

19. 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.

20. 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.

21. Let a copy of this order, along with record of the trial court, be immediately sent to the trial court for compliance.

Order Date :- 20.8.2024

MVS/-