

Court No. - 15

Case :- CRIMINAL APPEAL No. - 878 of 2009

Appellant :- Ganga Ram

Respondent :- State of U.P.

Counsel for Appellant :- Janardan Singh

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Janardan Singh, learned counsel for the appellant, as well as learned A.G.A. for the State and gone through the record.

2. The instant criminal appeal under section 374(2) CrPC has been filed against the impugned judgment and order dated 26th March, 2009 passed by the learned Additional Sessions Judge/Fast Track Court No. 4, Gonda in Sessions Trial No.106 of 2007 (State Vs. Ganga Ram and others), arising out of Case Crime No.019 of 1998 lodged at police station Dhanepur, district Gonda whereby the appellants have been convicted under section 457 IPC and sentenced to undergo rigorous imprisonment of three years along with fine of Rs. 2,000/- each with default clause.

3. Brief facts, giving rise to the instant appeal, are in terms that an FIR was lodged by informant of this case at police station Dhanepur, district Gonda that the appellants had entered into his house in the intervening night of 29th/30th January, 1998 and, on hearing some noise when he came out of his house, the appellants started throwing bricks on them whereby Shivanand, Narainchand and Ashwani Kumar sustained injuries. It is further stated that the appellants have been identified and seen in the light of torches. They have also taken household utensils and Rs. 3,000/- cash. On the basis of this information, an FIR at

case crime no. 019 of 1998, under section 459 IPC was lodged and the investigation commenced.

4. During the course of investigation, injured Narainchand, Shivanand and Ashwani Kumar were medically examined for their injuries on 30.01.1998 at district hospital, Gonda and two injuries of simple nature have been found on the person of injured- Narainchand, one injury in the nature of lacerated wound has been found on the person of injured- Shivenand and one simple injury in the nature of abrasion has been found on the person of injured Ashwani Kumar.

5. After completion of investigation, charge-sheet was filed against the appellants under section 459 IPC.

6. Charges were framed against the appellants under section 459 IPC to which they denied and claimed trial.

7. The prosecution, in order to prove its case, examined in oral evidence PW-1 (injured-Shivanand), PW-2 (injured-Narainchand), PW-3 (injured- Ashwani Kumar), PW-4 (Shiv Kumar), PW-5 (S.I. Manmohan Mishra) and also relied on the documentary evidence e.g. chik-FIR, tahrir-FIR, G.D. Kaymi, site-plan, injury reports of the injured persons, charge-sheet etc.

8. After completion of the evidence by the prosecution, statements of the appellants were recorded under section 313 CrPC wherein they denied the evidence produced by the prosecution and claimed that they have falsely been implicated, however, they have not produced any evidence in support of their defence.

9. The trial court, after appreciating the evidence available on record, has not found the case of the prosecution proved under section 459 IPC and, therefore, while acquitting the appellants for the offence under section 459 IPC, convicted and sentenced them for committing the offence under section 457 IPC in the

manner described in 2nd paragraph of this judgment.

10. Learned counsel for the appellants submits that though the trial court has committed illegality in appreciating the evidence available on record, but he, under instructions, is not challenging the impugned judgment and order, so far as the conviction of the appellants under section 457 IPS is concerned and the grievance of the appellants is that it was the duty of the trial court to have considered the release of the appellants on 'probation' having regard to section 360 CrPC and sections 3, 4 and 5 of The Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act of 1958'), however, the trial court has not even discussed the probable release of the appellants on probation and, therefore, material illegality has been committed by the trial court. It is further submitted that the alleged incident is shown to have occurred in the year 1998 and the judgment of the trial court was passed on 26.03.2009 and, thus, as of now 26 years have elapsed since the commission of the alleged offence and since the parties appear to be living in peace as it has come before the trial court that the appellants are the residents of a nearby village and are known to the informant and his family members. It is further submitted that the appellants are also ready to pay compensation to the victims in view of the provisions contained under section 5 of the Act of 1958 and, thus, the appellants be released on probation for keeping peace and tranquility.

11. On the other hand, learned AGA representing the State, submits that there is no illegality in either conviction or sentencing the appellants and no interference is required in the impugned judgment and order.

12. Having heard learned counsel for the parties and having perused the record, it is reflected that though the conviction of

the appellants have not been challenged by the learned counsel for the appellants, however, this court in order to satisfy judicial conscience has gone through the impugned judgment and the evidence which is available on record of the trial court and find that the allegation of the FIR has been corroborated by the four prosecution witnesses of fact. Out of these four prosecution witnesses, three prosecution witnesses, namely, Narainchand, Shivanand and Ashwani Kumar were the injured witnesses and injuries sustained by them were medically examined and noted by the doctor. Thus, the oral testimony of injured witnesses is corroborated by the medical evidence. Thus, having regard to all the facts and circumstances of the case and the evidence available on record, I do not find any illegality committed by the trial court so far as the conviction of the appellants under section 457 IPC is concerned and, therefore, the judgment passed by the trial court so far it is concerned with the conviction of the appellants under section 457 IPC is hereby **confirmed/affirmed.**

13. Coming to the question of extending the benefit of section 4 of the Act of 1958 to the appellants, the record would reflect that three persons are shown to have sustained simple injuries and household utensils and Rs.3,000/- cash are shown to have been stolen by them. The incident is of night and the appellants are shown to have been identified in the light of torches. Admittedly, the incident had occurred 26 years ago and thereafter no untoward incident appears to have occurred and the parties thereafter also appear to be living in peace. No criminal history of the appellants has been alleged nor any previous conviction is shown. The trial court has not even discussed section 360 CrPC or section 4 of the Act of 1958 in sentencing part of the judgment. Thus, having regard to all the facts and circumstances of the case and reasons narrated herein

before, in the considered opinion of this court, the benefit of section 4 of the Act of 1958 may safely be extended to the appellants and the trial court in this regard appears to have committed illegality in not considering the release of the appellants on probation. Resultantly, the appeal is ***allowed partly*** with following modification.

14. The conviction of the appellants recorded by the trial court under section 457 IPC is ***affirmed***. However, sentencing of the appellants is modified to the extent that they are provided the benefit of Section 4 of the Act of 1958 and are released on probation of good conduct for one year on the condition that they will keep peace and good behavior/conduct during this period and shall file two sureties each to the tune of Rs. 50,000/- along with their personal bonds before the trial court and also an undertaking to the effect that they shall maintain peace and good behavior/conduct during this period of one year from today and will not indulge themselves into any criminal activity.

15. In case, breach of any of the condition mentioned above is proved, appellants will be subjected to undergo the whole sentence, as inflicted by the trial court under section 457 IPC. The bonds aforesaid will be filed by the appellants within one month from today before the trial court.

16. As provided under Section 5 of the Act of 1958, each of the appellants shall also pay/deposit compensation of Rs. 7,000/- (Rupees Seven Thousand) (total Rs.21,000/-, Rupees Twenty One Thousand) within thirty days from today, which the trial court, on due identification/verification, shall pay to the victims, namely, **Narainchand, Shivanand and Ashwani Kumar** in equal share (Rs.7,000/- to each appellant) and if they are unfortunately no more, to their legal heirs, in equal

proportion, as the case may be.

17. If the aforesaid amount of Rs.21,000/- (Rupees Twenty One Thousand) is not paid/deposited by the appellants within the time indicated above, the trial court shall treat the same as breach of condition of personal bond and shall issue coercive process against the defaulting appellant, requiring him to serve out the punishment, as awarded by the trial court under section 457 IPC.

18. Let copy of this judgement as well as the record of trial court be transmitted to the concerned trial court forthwith for necessary compliance.

Order Date :- 3.9.2024

MVS/-