

Court No. - 15

Case :- CRIMINAL APPEAL No. - 888 of 2009

Appellant :- Binnu Singh @ Viney Kumar Singh

Respondent :- State of U.P.

Counsel for Appellant :- Ashok Kumar Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Avinash Srivastava, Advocate, holding brief of Shri Ashok Kumar Srivastava, 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) Cr.P.C. has been filed against the impugned judgment and order dated 21.03.2009 passed by the learned Additional Sessions Judge/F.T.C., Court No. 7, Pratapgarh in Sessions Trial No.90 of 2000 (State Vs. Binnu Singh @ Viney Kumar Singh), arising out of Case Crime No.081 of 1998, under sections 323 and 504 I.P.C. read with sections 3(1)(10) S.C./S.T. Act lodged at Police Station Lalganj, district Pratapgarh whereby the appellant- **Binnu Singh @ Viney Kumar Singh** has been convicted under section 323 I.P.C. read with section 3(1)(10) S.C./S.T. Act and sentenced to undergo six months' imprisonment with fine of Rs.1000/- under section 323 IPC and six months' rigorous imprisonment with fine of Rs.1000/- under section 3(1)(10) with default clause.

3. The brief facts, necessary for disposal of the instant appeal, are in terms that an F.I.R. has been lodged by informant- Somai Chamar by moving a written application before the Station House Officer of police station Lalganj, district Pratapgarh alleging therein that on the relevant day and time when he was going to his home the appellant who was standing with three unknown persons, had abused him and also assaulted him and Ramlal with kicks and fists and the incident has been witnessed by Indrapal and Ramasrey and many other persons and they both have sustained injuries. Both the alleged injured persons were medically examined at Community Health Centre, Lalganj on 11.02.1998 at 7 and 7.30 p.m., however, no visible injury has been found on their person and they have only complained of their pain on left hand, back of neck, hip and head.

4. The investigating officer, after investigating the case, submitted charge-sheet against the appellant under sections 323 and 504 I.P.C. read with section 3(1)(10) S.C./S.T. Act.
5. The trial court framed charges against the appellant under sections 323 and 504 IPC read with section 3(1)(10) S.C./S.T. Act to which he denied and claimed trial.
6. The prosecution, in order to prove its case, has produced informant-Somai as PW-1, constable- Badelal as PW-2, Dr. R. S. Triapthi as PW-3 and investigating officer- Sitaram as PW-4 and apart from oral evidence has also relied on the documentary evidence e.g. Tahrif F.I.R., Chik F.I.R., G.D. Kaymi, injury reports of the two injured persons, site-pan and charge-sheet.
7. The appellant in his statement recorded under section 313 Cr.P.C. has denied all the evidence produced by the prosecution and stated that he has been falsely implicated in this case.
8. The trial court, after appreciating the evidence available on record, did not find the case of the prosecution prove against the appellant with regard to offence under section 504 IPC and acquitted him with regard to that offence, however, convicted him under sections 323 IPC read with section 3(1)(10) S.C./S.T. Act and sentenced him in the manner stated in the second paragraph of this judgment.
9. Learned counsel for the appellant while referring to the impugned judgment and order vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record. The attention of this court has been drawn towards the provisions of section 3(1)(10) S.C./S.T. Act in order to show that section 3(1)(10) S.C./S.T. Act would only attract if there is intentionally insult/intimidation with an intention to humiliate a member of scheduled caste/scheduled tribe within the public view/domain. It is highlighted that though the special/trial court has not found the case of the prosecution proved so far as section 504 I.P.C. is concerned which means that the trial court has come to the conclusion that there was no abuses hurled by the appellant, and even thereafter has proceeded to convict him for committing the offence under section 3(1)(10) S.C./S.T. Act. Thus, contrary findings have been recorded

by the trial court. It is also submitted that so far as the offence under section 323 I.P.C. is concerned, no visible injury has been found either on the person of informant or the other person. The alleged injured, namely, Ramal was not produced before the trial court as a witness. Thus, the judgment of the trial court is based on surmises and conjectures and the prosecution has miserably failed to prove its case beyond reasonable doubt. Thus, the appellant is entitled to be acquitted.

10. Learned A.G.A., on the other hand, submits that no illegality has been committed by the trial court so far as the conviction of the appellant under section 323 I.P.C. read with section 3(1)(10) S.C./S.T. Act is concerned as the prosecution is not obliged to prove the case beyond all doubt, rather the duty of the prosecution is to prove its case beyond reasonable doubt. There is no doubt emerging in this case. Thus, no interference is required in the impugned judgment and order.

11. Having heard learned counsel for the parties and having perused the entire record, it is reflected that the case of the prosecution against the appellant was with regard to assaulting the informant and one Ramlal by appellant and three unknown persons who have not been charge sheeted by the investigating officer and also of hurling of abuses by appellant and also of insulting in public view. Submission of learned counsel for the appellant is that one alleged injured- Ramlal has not been produced before the trial court and the only witness of fact informant- Somai (PW-1) has been produced and his evidence is not reliable, moreover, the trial court has committed illegality in convicting the appellant under section 3(1)(10) S.C./S.T. Act when he has been acquitted under section 504 I.P.C. It appears to be an admitted situation that in the F.I.R. lodged by the informant (PW-1)- Somai it was alleged that the appellant in association with three unknown persons had abused him and one Ramlal and also assaulted them with kicks and fists and when his statement was recorded by the trial court he has stated the same version, however, the trial court did not believe the evidence of the informant so far as hurling of abuses is concerned. Section 3(1)(10) S.C./S.T. Act may be attracted when intentionally and knowingly a person belonging to scheduled caste/tribe community is insulted and since the appellant has been acquitted by the trial court for committing offence under section 504 I.P.C., in the considered opinion of this court, there was no material available before the

trial court to convict the appellant for committing the offence under section 3(1)(10) S.C./S.T. Act. It has also emerged from the record that no visible injury has been found on the person of the informant- Somai or another injured- Ramlal, who was not produced before the trial court for the reasons best known to the prosecution.

12. In the above background, before the trial court, there was evidence of solitary witness- Somai (PW-1). The law with regard to the cases based on evidence of solitary witness is no more *res integra* and the same has been set at rest by catena of judgments propounded by the Hon'ble Supreme Court. In this regard the first case which may be addressed is the case of '**Vadivelu Thevar V/s. State of Madras; MANU/SC/0039/1957: AIR 1957 SC 614**', wherein the evidence of solitary witness has been classified in three categories i.e. (i) wholly reliable (ii) wholly unreliable (iii) partly reliable and partly unreliable and with regard to cases pertaining to solitary witness it is propounded that a conviction may safely be recorded on the basis of the evidence of solitary witness as section 134 of the Indian Evidence Act talks about the quality and not the quantity of the evidence but to convict a person on the basis of evidence of solitary witness his evidence must be of the nature of 'wholly reliable'.

13. The ratio propounded in the case of *Vadivelu Thevar V/s. State of Madras* (supra) has been followed in the case of **Lallu Manjhi vs. State of Jharkhand, MANU/SC/0004/2003 : AIR 2003 SC 854** and thereafter in many cases and this is the consistent view of the Apex Court. If the evidence of PW-1 (informant- Somai) is appreciated in the background of above legal proposition, it will emerge that he may not be categorized as 'wholly reliable' as the allegation of physical assault has also been levelled and there is no visible injuries found on the person of alleged injured persons. Hence, in the considered opinion of this court, the trial court has committed illegality in convicting and sentencing the appellant and the appellant appears to have been convicted for the offence which has never been committed by him.

14. In view of the reasons narrated herein before and the law laid down by the Hon'ble Supreme Court, the appeal preferred by the appellant - **Binnu Singh @ Viney Kumar Singh** is **allowed** and the impugned judgment and order passed by the trial court is **set-aside**.

15. The appellant appears to be on bail, his sureties are discharged. He need not to surrender in this case.

16. 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.

17. A copy of this order, along with record of the trial court, be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date :- 12.9.2024
MVS/-