

Court No. - 15

Case :- CRIMINAL APPEAL No. - 91 of 2009

Appellant :- Ram Pratap

Respondent :- State of U.P.

Counsel for Appellant :- Radhey Shyam Tiwari, Shahid Salam

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. This Court vide order dated 02.09.2024 had issued bailable warrants against the appellants and, on an application moved by them, the same were directed to be kept in abeyance. Since the learned counsel for the appellants fairly submits that he is ready to argue the appeal, the non-bailable warrants issued against the appellants is hereby **recalled/cancelled**.

2. Heard Shri Shahid Salam, learned counsel for the appellants, as well as learned A.G.A. for the State and gone through the record.

3. The instant criminal appeal under section 374 (2) Cr.P.C. has been filed against the impugned judgment and order dated 18.12.2008 passed by the Special Judge, S.C./S.T. Act/Additional Sessions Judge/F.T.C.-2, Faizabad (now Ayodhyaji) in Sessions Trial No.79 of 1998 (State Vs. Ram Bali Yadav and others), arising out of Case Crime No.052 of 1997, under sections 435, 323, 504 and 427 I.P.C. read with sections 3(2)(3) S.C./S.T. Act lodged at Police Station Ibrahimpur, district Ambedkar Nagar whereby the appellants- **Ram Pratap** and **Raj Pratap** have been convicted under sections 323 and 427 I.P.C. and sentenced to undergo six months' imprisonment with fine of Rs.500/- under the each sections of the IPC with default clause.

4. The brief facts, necessary for disposal of the instant appeal, are in terms that on a written application moved by informant-Nanhelal an FIR was registered at police station Ibrahimpur, district Ambedkar Nagar, alleging therein that on 08.03.1997 at about 11.30 a.m. the appellants and other accused persons had put on fire the thatch (*chhapper*) of the informant, demolished wall of the same and also hurled filthy abuses to the informant and they have also assaulted mother of the informant, namely, Karora Devi. On an alarm raised, Ramujagir, Ramratan and Bholanath arrived and rescued the informant and his mother.

5. On the basis of the written information, an FIR at Case Crime No. 052 of 1997, under sections 435, 323, 504 and 427 I.P.C. read with sections 3(2)(3) S.C./S.T. Act was lodged at Police Station Ibrahimpur, district Ambedkar Nagar and the investigation commenced.

6. During the course of investigation mother of the informant-Karora Devi was medically examined at Community Health Centre, Tanda on the same day and five simple injuries of the nature of abrasions were found on her body and, according to the doctor, the injuries were simple and were caused by hard and blunt object and were also fresh.

7. The investigating officer, after collecting the evidence, found the case of the informant sufficient for submission of charge-sheet and submitted the charge-sheet accordingly.

8. The trial court framed charges against the appellants under sections 435, 323, 504 and 427 I.P.C. read with sections 3(1)(x) and 3(2)(3) S.C./S.T. Act.

9. However, the appellants/accused persons had denied the charges framed against them and claimed trial.

10. The prosecution, in order to prove its case beyond reasonable doubt, examined Nanhelal (informant) as PW-1, Karora Devi (injured) as PW-2, Bholanath as PW-3, Ramesh (investigating officer) as PW-4 and Satish Chandra Sinha (doctor) as PW-5 and also relied on various documentary evidence i.e. Tahrir FIR, Chik FIR, GD Kaymi, Site-plan, injury report of Karora Devi and charge-sheet etc.

11. After completion of the evidence by the prosecution, statement of the appellants/accused persons were recorded under section 313 CrPC wherein they had denied the evidence produced by the prosecution and in their defence they had filed certified copies of the orders dated 04.03.1997, 22.08.1999 and 28.02.2000 passed in Original Suit No.146 of 197 (Balai Vs. Santram) whereby an interim injunction was granted on the land in dispute.

12. The trial court, after hearing learned counsels for the parties and after perusing the evidence available on record, had found the case of the prosecution proved beyond reasonable doubt against the appellants only with regard to sections 323 and 427 IPC and the appellants were acquitted of the charges framed against them under sections 435 and 504 I.P.C. read with sections 3(1)(x) and 3(2)(3) S.C./S.T. Act and sentenced them under sections 323 and 427 IPC in the manner stated in second paragraph of this judgment. Aggrieved by the same, the appellants have preferred the instant appeal.

13. Learned counsel for the appellants submits that the trial court has committed manifest illegality in appreciating the evidence available on record, but under instructions from the appellants, he is not challenging the impugned order, so far as the conviction of the appellants is concerned, however, the appellants are aggrieved by the fact that when they were

convicted only under sections 323 and 427 IPC it was incumbent upon the trial court to consider their release on probation, having regard to the provisions contained under section 360 CrPC and under section 4 of The Probation of Offenders Act, 1958 (hereinafter referred to as 'the Act of 1958'). Thus, the trial court has failed in its duty to extend the benefit of the Act of 1958 to the appellants.

14. Learned AGA, on the other hand, submits that the trial court has not committed any illegality so far as the sentencing of the appellants is concerned and inflicted proportionate punishment.

15. Having heard learned counsel for the parties, it is reflected that the appellants are not challenging their conviction under sections 323 and 427 IPC as it has been categorically submitted by the learned counsel for the appellants that they are not challenging the conviction and are only aggrieved by the fact that their release on probation has not been considered by the trial court which was a mandatory exercise.

16. Though learned counsel for the appellants has not challenged the impugned judgment, so far as their conviction under sections 323 and 427 IPC is concerned, but this Court, in order to satisfy its judicial conscience and in order to find out any illegality having been committed by the trial court in convicting the appellants, though the same has not been challenged by the appellants, has gone through the judgment of the trial court as well as record available and find that injured- Karora Devi was produced by the prosecution before the trial court as PW-2. She has categorically stated to have been assaulted by the appellants by kicks and fists. PW-5- Dr. Satish Chandra Sinha has also appeared before the trial court and proved the five simple injuries sustained by injured- Karora Devi. All the witnesses of fact appeared before the trial court

have also categorically stated about the manner in which the wall of the thatch (*chhapper*) was demolished by the appellants.

17. It is to be recalled that the principles of '*falsus in uno, falsus in omnibus*' is not applicable in the Indian scenario and the duty of the trial court, at the time of appreciation of evidence, is to separate the truth from the falsehood and if the truth, which has been separated from the falsehood, is reaching the bench-mark of proving the case beyond reasonable doubt, the conviction of the accused persons may safely be made.

18. Having considered all the facts & circumstances of the case and the evidence available before the trial court, this Court is of the considered view that no illegality has been committed by the trial court in convicting the appellants for committing the offence under sections 323 and 427 IPC and, therefore, the impugned judgment, so far as the conviction of the appellants under sections 323 and 427 IPC is concerned, is hereby ***affirmed***.

19. Coming to the question of sentencing, there cannot be any other view than the fact that having regard to the provisions contained under section 360 CrPC it is the mandatory exercise to be undertaken by the convicting court to foresee as to whether the convicts may be released on probation by giving the benefit of the Act of 1958 when their previous conviction has neither been pleaded nor proved. It does not mean that every convict is having a right to be released by getting the benefit of the Act of 1958, but it is the duty of every convicting court to at-least consider as to whether the convicted person may be released by giving benefit of the Act of 1958 unless the offence wherein he is being convicted is of such a nature that the said benefit cannot be granted to him.

20. Perusal of the impugned judgment and order would reveal that neither any previous conviction nor even previous criminal history of the appellants was pleaded by the prosecution nor proved and, therefore, the trial court had proceeded to sentence the appellants for committing the offence under sections 323 and 427 IPC. It is to be recalled that five simple injuries had been inflicted by the appellants on the person of injured- Karora Devi. The incident in question had occurred in the year 1997 and since then more than 27 years have elapsed and thereafter no untoward incident has been brought in the knowledge of this Court and it may be inferred that the parties are living in peace since then. Appellants are real brothers and no criminal history of them has been shown.

21. Thus, taking into consideration all the facts & circumstances and evidence available on record and for the reasons narrated herein before, this Court is of the considered view that the trial court has committed manifest illegality in not considering the case of the appellants for extending the benefit of the Act of 1958. Thus, in this regard the impugned judgment and order of the trial court is required to be interfered, so far as the sentencing part of the same is concerned.

22. Resultantly, the appeal is ***partly allowed*** with following modification.

23. The conviction of the appellants recorded by the trial court under section 323 and 427 I.P.C. 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.

24. 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 323 and 427 IPC. The bonds aforesaid will be filed by the appellants within one month from today before the trial court.

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

Order Date :- 18.9.2024

MVS/-