

High Court of Judicature at Allahabad (Lucknow)

Neutral Citation No. - 2024:AHC-LKO:82820

Judgment Reserved on 19.11.2024

Judgment Delivered on 11.12.2024

Court No.-14

Case :- CRIMINAL APPEAL No. - 583 of 2023

Appellant :- Moti

Respondent :- State Of U.P. Thru. Prin. Secy. Home
Civil Secrt. Lko.

Counsel for Appellant :- Ganga Singh

Counsel for Respondent :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Shri Ganga Singh, learned counsel for the appellant, Shri Rajesh Kumar Singh, learned A.G.A.-I for the State and perused the entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 28.09.2021 passed by the learned Additional Sessions Judge-I, Balrampur in Sessions Trial No.34 of 2017 arising out of Case Crime No.1342 of 2016, under Section 307 of Indian Penal Code¹, Police Station Pachpedwa, District Balrampur, whereby the appellant has been convicted and sentenced to undergo seven years rigorous imprisonment for the offence under Section 307 I.P.C.

¹ hereinafter referred to as "I.P.C."

with a fine of Rs.7,500/- and in default of payment of fine, he has further been directed to undergo six months' additional imprisonment.

3. The prosecution's case, in brief is that on 08.10.2016, the informant's father, Guru Prasad Yadav, was sitting in the Hanuman temple. Suddenly, with the intent to kill, accused/ appellant, Moti, resident of Gram Chapiya, struck the informant's father on the head with a brick. This caused a severe head injury, resulting in profuse bleeding. Upon hearing the commotion, the accused/appellant, Moti fled away from the place of incident. The informant, Dhudhnath Yadav, immediately took his father to the hospital in Lucknow. After undergoing an ultrasound and X-ray, it was found that several bones in the head of the father of the informant were fractured. The incident was witnessed by villagers, Jhoku Chaurasiya, Vinod Yadav, Bachaa Ram Chaurasiya and other residents of the village.

4. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, Doodhnath Yadav, the first information report, Ext. Ka-2 came to be lodged against the accused/ appellant under Section 307 I.P.C.

5. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 of Code of Criminal

Procedure², prepared the site plan, Ext. Ka-5 and upon completion of investigation, submitted charge-sheet, Ext. Ka-4 against accused-appellant.

6. Charges for the offences under Section 307 I.P.C. was framed against the accused/ appellant, who denied the charges and claimed to be tried.

7. In order to bring home guilt of the accused/ appellant, the prosecution has examined Doodhnath Yadav, complainant as P.W.-1, Jokhu Prasad Chaurasiya as P.W.-2, Vinod Kumar as P.W.-3, Bacharam as P.W.-4, Constable Rajesh Kumar Yadav as P.W.-5, Guru Prasad as P.W.-6, Investigating Officer Ajay Kumar Yadav as P.W.-7 and Dr. Udit Singhal as P.W.-8.

8. The accused/ appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case. He also claimed to be innocent.

9. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

10. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 28.09.2021 whereby the accused/ appellant came to be convicted as aforesaid.

² hereinafter referred to as " Cr.P.C"

11. Aggrieved by the aforesaid impugned judgment and order dated 28.09.2021, the accused/ appellant has preferred the instant criminal appeal.

12. Learned for the accused/ appellant has submitted that the finding of guilt of the accused/ appellant arrived at by the learned trial court is perverse and contrary to the evidence available on record.

13. His further submission is that the appellant was falsely implicated in this case due to prior enmity. He has also submitted that there are material contradictions in the testimonies of prosecution witnesses, which were not appreciated by the learned trial court in the correct perspective while giving the finding of guilt against the appellant. Therefore, the conviction of the appellant under Section 307 I.P.C. and the sentences awarded therefor are palpably illegal and deserve to be set aside.

14. He has also submitted that the appellant has already served out sentence awarded by the learned trial court by means of impugned judgment and order dated 28.09.2021.

15. Learned for the accused/ appellant has, thus, prayed to set aside the impugned judgment and order dated 28.09.2021 and to acquit the accused/ appellant accordingly.

16. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 28.09.2021, which is well discussed and reasoned. The accused/ appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses.

17. His further submission is that the learned trial court, after due appreciation of the testimonies of prosecution witnesses, has rightly given the finding of conviction of the appellant. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

18. At the outset, it is relevant to mention that Constable Rajesh Kumar Yadav has been examined as P.W.-5. He prepared the written report and proved the First Information Report as Ext.-2. He also prepared the Xerox copy of the G.D. and proved the same as Ex. Ka-3. Investigating Officer, Ajay Kumar Yadav has been examined as P.W.-7, who proved the chargesheet as Ex.-4. This witness also prepared the site plan and proved it as Ex. Ka-5. He further prepared an arrest memo and proved it as Ex. Ka-6. Dr. Udit Singhal has been examined as P.W.-8. He treated the injured, Guru Prasad and prepared the summary and discharge

papers and proved them as Ex. Ka-7. He also prepared the CT scan report and proved it as Ex. Ka-8.

19. Having heard learned counsel for the accused/appellant and the learned A.G.A. for the State, and upon perusal of the record, it transpires that on 08.10.2016, the father of the informant, namely, Guru Prasad Yadav, is stated to have been assaulted by the present appellant with a brick. PW-1, Doodhnath Yadav, has proved the written report as Ext. Ka-1 and has stated that on 08.10.2016, his father, Guru Prasad Yadav, was assaulted by the present appellant with a brick. PW-2, Jokhu Prasad Chaurasiya, who is stated to be an eyewitness, has also stated that he saw the present appellant assaulting the injured, Guru Prasad Yadav, with a brick. Likewise, PW-3, Vinod Kumar, has also stated that he witnessed the incident, wherein the appellant assaulted the injured, Guru Prasad Yadav. The injured has been examined as PW-6, who has also stated that on 08.10.2016, he was assaulted by the present appellant with a brick. He has further stated that the appellant hit him more than once with a brick. From a perusal of the statements of the witnesses of fact, PW-1, Doodhnath Yadav, PW-2, Jokhu Prasad Chaurasiya, PW-3, Vinod Kumar and PW-6, Guru Prasad Yadav, it appears that there is a deviation in their testimonies in respect of the place of occurrence, which is stated to be a temple.

20. Thus, a threadbare analysis of the testimonies of witnesses of fact, PW-1, Doodhnath Yadav, PW-2, Jokhu Prasad Chaurasiya, PW-3, Vinod Kumar and PW-6, Guru Prasad Yadav, shows that the prosecution has successfully proved that on 08.10.2016, the appellant assaulted the injured, Guru Prasad Yadav, with a brick, causing him various injuries. According to PW-8, Dr. Udit Singhal, these injuries were sustained on the skull, where there was a fracture and the injured, Guru Prasad Yadav, remained under treatment for a long period. However, it remains to be seen whether the injured, Guru Prasad Yadav, was assaulted by the present appellant with the intention to commit murder, which is a question of fact to be determined on a case-to-case basis.

21. It is borne out from the records that the injured, Guru Prasad Yadav, was assaulted by the present appellant with a brick. There is nothing to suggest that he had brought this brick with him to the place of occurrence. It is the prosecution's own case that the injured, Guru Prasad Yadav, had no enmity with the appellant. Thus, in the facts of this case and having regard to the place and manner of assault, as also the fact that the assault was made with a brick, it is held that the appellant, on 08.10.2016, while assaulting the injured, Guru Prasad Yadav, with a brick, which was witnessed by PW-2, Jokhu Prasad Chaurasiya, PW-3, Vinod Kumar, and PW-6, Guru Prasad Yadav and proved by PW-8, Dr. Udit Singhal, committed an offense under

Section 308 IPC., particularly when in the facts of this case as also having regard to the manner of commission of offence-in-question, the intention to kill, which is a necessary ingredient to constitute an offense under Section 307 of the IPC, could not be inferred or established.

22. In the aforesaid view of the matter, the present appellants deserved to be convicted for the offence under Section 308 I.P.C. and his conviction under Section 307 I.P.C. recorded by the learned trial Court deserves to be set aside for aforesaid reason.

23. For the aforesaid overall reasons, the present criminal appeal is **partly allowed**. The conviction of the present appellant for the offence under Section 307 I.P.C. and sentence of seven years rigorous imprisonment awarded therefor vide impugned judgment and order dated 28.09.2021 is hereby set aside. The present appellant is hereby convicted for the offence under Section 308 I.P.C., for which, the appellant is awarded three years' imprisonment with a fine of Rs.7,500/- and in default of payment of fine, they shall undergo six months' additional imprisonment.

24. The accused-appellant is in jail. In case, he has already served out the sentence awarded to him for the offence under Section 308 I.P.C., he will be released forthwith, if he is not wanted in any other case.

25. It is also directed that the period already undergone by the accused-appellant, in the aforesaid Sessions Trial Nos.34 of 2017, either as under trial or post-conviction, shall be adjusted towards the sentence awarded by this Court in terms of Section 428 Cr.P.C.

26. The aforesaid amount of fine shall be deposited by the accused-appellant within a period of four weeks from the date of his release. After the deposit of the aforesaid amount of fine, the same shall be given to the injured/victim as compensation.

27. It is directed that the accused-appellant shall furnish personal bonds and two sureties in the like amount to the satisfaction of the court concerned within four weeks from the date of his release from jail in compliance with the provisions of Section 437A Cr.P.C.

28. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ e-mail.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 11.12.2024
A.Dewal