

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2673 of 2004

Appellant :- Bhagoo And 3 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Ran Vijay Singh,B K Kuldeep

Counsel for Respondent :- Govt.Advocate

Hon'ble Shamim Ahmed,J.

1. List of cases has been revised and the case is being taken up in the revised call for hearing.
2. Heard learned counsel for the parties.
3. The instant Criminal Appeal under Section 374 (2), Cr.P.C. has been moved on behalf of the appellants against the judgment and order 4.10.2004 passed by the learned Addl. Sessions Judge/F.T.C.-V, Sultanpur in Sessions Trial No. 7 of 1997, State vs. Bhaggu & Ors., P.S. Dhammaur, District Sultanpur, convicting each of the appellants under sections - 323/34, 324/34, I.P.C. and releasing them on probation of one year, on each of them submitting a personal bond and two surety-bonds, each of Rs. 5000.00 before Probation Officer within 15 days.
4. As per report of the Chief Judicial Magistrate, Balrampur, dated 25.9.2023, Appellant No. 1 Bhaggu has died about four years ago, thus, this appeal in respect of Appellant No. 1 Bhaggu stands abated.
5. The prosecution against the appellants starts with an F.I.R. lodged by the informant Ram Dhani Yadav at P.S. Dhammaur, District Sultanpur, stating therein that on 21.7.1995 he was sitting at his door. At that time the appellants, yielded with farsa and lathi, started demolishing the wall made of sariya, of his neighbour Ram Garib. Ram Garib was refusing them. Ram Garib ran towards North, shouting. At a distance of about 10-11 steps the accused made him fall and started beating him with lathi. On the laram raised by the informant and Ram Garib, several village persons reached the spot and intervened. The accused left Ram Garib, considering him as dead, and went away from there.

6. On the basis of written report submitted by the informant, the first information report was lodged against the appellants at Police Station Dhammaur, District Sultanpur.
7. The Investigating Officer during investigation visited the place of occurrence and prepared the site plan and even recorded the statement of witnesses and after completing the investigation submitted the charge sheet against the accused persons, including the present appellants, under the aforesaid sections.
8. After submission of charge sheet before Court of learned Magistrate the said case was committed to the Court of Session wherein it was registered as S. T. No. 7 of 1997 and charges were framed against the accused persons, to which the accused / appellants denied and claimed to be tried.
9. In order to substantiate its case, prosecution examined as many as 5 witness in its support.
10. That after closing of the evidence, statements of accused/ appellants under section 313 Cr.P.C. were recorded by the trial court explaining the entire evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and concocted.
11. In defence, one witness was produced by the accused/ appellants before the learned trial court.
12. Thereafter, the learned trial court after hearing learned counsel for both the parties and appreciating the entire evidence oral as well as documentary, found the accused / appellants guilty and convicted all four of them, as above.
13. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction, the accused-appellants have preferred the present appeal.
14. Learned counsel for the appellants submits that the appellants are age-old persons. The order passed by the learned trial court is against the evidence on record. The prosecution has failed to produce any independent and reliable witness to prove its case. The prosecution witnesses are wholly interested witnesses and are inimical to the appellants. The investigation has been wholly unfair and tainted one wherein all possible efforts has been made to create false evidence against the appellants. The finding of guilt recorded by the trial court is

based on no legal and reliable evidence and is result of only conjectures and surmises. Approach of the trial court is wholly perverse to the evidence on record. Direction given to the appellants to appear before the Probation Officer, Faizabad, and to abide by his directions is wholly illegal and against the provisions of law relating to making of supervision order under sub-Section (4) of Probation of Offenders Act, 1958. Payment of compensation under Section 5 of Probation of Offenders Act, 1958 is also wholly illegal and baseless and not sustainable in law at all. The order of conviction is not sustainable in law and is liable to be set aside and the appellants are liable to acquittal of all the charges leveled against them.

15. Per contra, learned A.G.A. has opposed the contentions raised by learned Counsel for the appellants and submits that the impugned order has rightly been passed by the trial court, as in the order dated 4.10.2004 passed by the learned Addl. Sessions Judge/F.T.C.-V, Sultanpur, the court below has considered all the facts and evidence available on record for passing appropriate orders in accordance with law and gave the appellants benefit of Section 4 Probation of Offender Act for a period of 1 year vide the aforesaid order, thus, the order in question appears to be sustainable in the eyes of the law, hence, no interference by this Court is required in the matter and present appeal being devoid of merit and substance may be dismissed.

16. After considering the submissions advanced by learned counsel for the parties and after perusal of record, this Court finds that so far as sentence regarding appellants is concerned, it is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual case. In the present case, the court below has rightly considered the age of the appellants while passing the order of conviction and gave the benefit of Section 4 of Probation of Offender Act to the appellants.

17. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of Court to constantly remind itself that right of victim, and be it said, on

certain occasions persons aggrieved as well as society at large can be victims, never be marginalized. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that Courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime, which has been committed not only against individual victim but also against society to which criminal and victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to society's cry for justice against the criminal'. [Vice **Sumer Singh Vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder Vs. Puran, (1990) 4 SCC 731, M.P. Vs. Saleem, (2005) 5 SCC 554, Ravji Vs. State of Rajasthan, (1996) 2 SCC 175**].

18. Hence, applying the principles laid down by the Apex Court in the aforesaid judgments and having regard to the totality of facts and circumstances of case, nature of offence and the manner in which it was executed or committed, I find that punishment imposed upon the appellant by Trial Court in impugned judgment and order is not excessive or exorbitant and no question arises to interfere in the matter on the point of punishment imposed upon them.

19. In view of the above facts and circumstances, impugned judgment and order dated 4.10.2004 deserves to be affirmed and appeal is liable to be dismissed.

20. In the result, the Criminal Appeal is **dismissed**. Impugned judgment and order dated 4.10.2004, detailed above, is hereby confirmed/affirmed.

21. Copy of this order along with trial Court record be sent to Court concerned forthwith.

(Shamim Ahmed, J.)

Order Date :- 11.3.2024

A.Nigam