

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1121 of 2005

Appellant :- Ravindra Nath Verma And 2 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- S.P.Maurya,Laxmi Kant Pathak

Counsel for Respondent :- Govt.Advocate

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Laxmi Kant Pathak, learned counsel for the appellants, as well as learned A.G.A. for the State, and perused the entire file, including trial court record.

2. This criminal appeal under section 374(2) CrPC has been preferred against the judgment and order dated 16th August, 2005 passed by the learned Additional District and Sessions Judge, FTC Ist, Sultanpur in Sessions Trial No.177 of 2003 (State Vs. Ram Jagat and others).

3. Vide the said judgment and order appellants- **Ravindra Nath Verma, Har Dayal Verma** and **Govind Dayal Verma** have been convicted and sentenced as follows:-

i. U/s 325/34 IPC, three years rigorous imprisonment and fine of rupees one thousand on each of the appellants; and

ii U/s 323/34 IPC, three months rigorous imprisonment;

It has been directed that in case of non-deposition of the amount of the fine, the appellants shall undergo one month's additional simple imprisonment and all the sentences would run concurrently.

4. Learned counsel for the appellants submits that he, under the instructions, is not challenging the impugned judgment and order, so far as the conviction part of the same is concerned, however, the appellants are aggrieved by the fact that the trial court, while sentencing them, has not even considered the mandatory provisions of sections 360 and 361 of CrPC and 'The Probation of Offenders Act, 1958' (hereinafter referred to as the 'Act of 1958'), while at the time of awarding the sentence, it was the duty and obligation both upon the trial court to have considered the possibility of release of the appellants on probation as it was established before the trial court that the instant is the first offence of the appellants and the occurrence has taken place without there being any premeditation or conspiracy and the same was in the heat of the movement and parties were also

related to each other. It is further submitted that the appellants are litigating before the trial court as well as before this court bonafidely and have cooperated in expeditious disposal of the case and they are not having any previous criminal antecedents. It is further submitted that appellant no. 1- Ravindra Nath Verma is aged about 52 years of age at present and appellant no. 2- Har Dayal Verma is aged about more than 65 years of age, while appellant no. 3- Govind Dayal Verma is also aged about more than 52 years of age and after the conviction of the appellants by the impugned judgment and order of date 16.08.2005, no untoward incident between the parties has occurred.

5. It is vehemently submitted that the appellants are ready to compensate the victims/injured by paying them Rs.39,000/- (rupees thirty-nine thousand). It is further submitted that at the time of convicting and sentencing the appellants, it was the duty of the trial court to have considered the release of the appellants on probation which has not been considered by the trial court in correct perspective and has been rejected without assigning any cogent and acceptable reason. Thus, the appellants be released on probation for keeping peace and good behavior/conduct.

6. Learned A.G.A. submits that two persons, namely, Ram Dayal and his son Jitendra Pratap have been brutally assaulted by the appellants and having regard to the manner in which the injuries have been caused, the appellants are not entitled for the benefit as enshrined under Act 1958.

7. Having heard learned counsel for the parties and having perused the record, though learned counsel for the appellants is not challenging the impugned judgment and order passed by the trial court, so far as the conviction part of the appellants is concerned, but this court, in order to satisfy its judicial conscience, has gone through the judgment passed by the trial court as well as the evidence available against the appellants and found that the informant as well as his son Jitendra Pratap got injured in the incident and they both have been testified as PW-1 and PW-2 and in their statements they have categorically stated about the manner of assault inflicted upon them by the appellants. The oral testimony of these witnesses has been corroborated by the medical evidence as Dr. Sumnesh Singh has been testified before the trial court as PW-3 who has corroborated the oral testimony of the two injured persons and, thus, having regard to the quality of evidence produced before the trial court, the case of the prosecution was proved beyond any reasonable doubt and, thus, in the considered opinion of this court, no illegality or to say any irregularity has been committed by the trial court so far as the conviction of the appellants under sections 325/34 and 323/34 IPC is concerned and, thus, to that extent, the impugned judgment and order passed by the trial court is hereby **affirmed**.

8. So far as the submission advanced by the learned counsel for the appellants that the trial court has not considered the release of the appellants for the purpose of keeping peace and good behavior/conduct, as was mandatory for the trial court to have considered the same in view of the relevant provisions of sections 360 and 361 of CrPC and the Act of 1958, I find substance in the submission advanced by the learned counsel for the appellants as the trial court has not considered the release of the appellants by extending the benefit of the Act of 1958 and it has been mentioned only that a request has been made to release the appellants by giving them the benefit of first offenders and no discussion has been made by the trial court in this regard nor any evidence has been discussed for the purpose of release of the appellants- convicts by extending the benefit as provided under the Act of 1958.

9. It is to be recalled that the judgment and order passed by the trial court, so far as the criminal trial is concerned, is divided into two parts. In the first part the duty of the trial court is to consider the culpability of the accused persons in order to assess as to what offence has been committed by the accused persons and once the trial court has reached to a conclusion having regard to the quality of evidence produced before it that a particular offence, as defined under the IPC or any other penal provision, has been committed by the accused persons, the duty of the trial court is to convict them under those penal sections.

10. The next part of the judgment and order of the trial court starts thereafter in order to inflict proportionate punishment on the person who has been convicted. This exercise of inflicting appropriate/proportionate punishment is independent of the first part of the judgment and for that purpose (for inflicting of appropriate punishment) the duty of the trial court is to consider the evidence which has been tendered before it by the prosecution, afresh and to release the convicted persons having regard to the provisions contained under sections 360 and 361 of CrPC and sections, 3, 4 and 5 of the Act of 1958. Unfortunately, the trial court in sentencing part of the judgment has only recorded the submission made by the learned counsel for the accused persons to release the appellants by giving benefit of the Act of 1958 but it has failed to discuss any evidence or any circumstance which may be available on record in order to exercise discretion. Thus, this exercise is bound to be undertaken in appeal as the appeal is in continuation of the trial.

11. Perusal of the record would reveal that the incident of *mar-peat* has occurred in a spur of moment, without there being any premeditation or any conspiracy. The parties are stated to be related to each other. General role of assault with lathi and danda has been assigned to all the accused persons and no overt-act or specific role of assault has been assigned to any of the accused persons/appellants so

far as inflicting of injuries on the head of Ram Dayal, which has been found fatal, is concerned, therefore, it emerges that the trial court has convicted the appellants for committing the offences under sections 325 and 323 IPC with the help of section 34 IPC i.e vicariously, as there was no sufficient evidence available before the trial court to gauge/assess the direct role of assault of any accused person pertaining to inflicting the injuries sustained by the injured-Ram Dayal on his head. The judgment of the trial court would also reveal that there is no evidence tendered before the trial court pertaining to any criminal antecedent of the appellants. Thus, it may safely be presumed that at that point of time the appellants/accused were not having any criminal antecedent to their credit except the case in which they were being tried.

12. Coming to the injuries sustained by two injured persons, it also appears to be an admitted situation that only one injury sustained by injured Ram Dayal has been found to be grievous and the trial court has itself not found the said injury to attract the penal provision of section 308 IPC and it also appears to be an admitted case that the State as well as the complainant/informant are not aggrieved by the passage of the impugned judgment and order or to say by non-conviction of the appellants under section 308 IPC as no appeal or revision has been preferred by either State or complainant against the impugned judgment and order of conviction.

13. Thus, keeping in view all the facts and circumstances of the case in totality and also having regard to the fact that the incident of *mar-peeet* is of the year 2002 and the impugned judgment and order has been passed by the trial court in the year 2005 and for the last 19 years the appeal is pending before this court for disposal and, in the meantime, no untoward incident has occurred between the parties and, it may be safely presumed that since the solitary incident pertaining to the instant case the parties are living in peace and having regard to the peculiar facts and circumstances of the case, in the considered opinion of this Court, the benefit Section 4 of the Act, 1958 may be extended to the appellants subject to the payment of compensation by them as provided under Section 5 of Act of 1958.

14. Thus, the judgment and order of the trial court, so far as the conviction part is concerned, is hereby **affirmed**. However, the judgement and order of the trial court is modified, so far as the sentencing part is concerned. Resultantly, the appeal is **allowed partly** with following modification.

15. The conviction of the appellants-convicts recorded by the trial court under sections 323/34 and 325/34 IPC is **upheld**. However, sentencing of the appellants- convicts is modified to the tune that they are provided the benefit of Section 4 of the Act of 1958 and are released on probation on the condition that they will keep peace and

good behavior/conduct for two years from today and shall file two sureties each to the tune of Rs. 50,000/- along with their personal bond before the court below and also an undertaking to the effect that they shall maintain peace and good behavior/conduct during the period of two years from today and will not indulge themselves into any criminal activity.

16. In case of 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. The bonds aforesaid will be filed by the accused-appellants within one month from today before the trial court.

17. As provided under Section 5 of the Act of 1958, each of the appellants shall deposit compensation of Rs. 13,000/- (Rupees thirteen Thousand only), Total Rs. 39,000/- (rupees thirty nine thousand) in the trial court within one month from today, which the trial court shall, on due identification/verification, shall pay to the victim, namely, Ram Dayal and, if he is no more, to his legal heirs in equal proportion, as the case may be.

18. If the amount of Rs. 39,000/- (Rs. 13,000/- by each of the appellants) is not deposited 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.

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

Order Date :- 1.4.2024

MVS/-