

Court No. - 16

Case :- GOVERNMENT APPEAL No. - 20 of 2024

Appellant :- State Of U.P. Thru Prin. Secy. Home Lucknow

Respondent :- Shriram Yadav And Another

Counsel for Appellant :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned A.G.A. for the State-Appellant and perused the record of the trial Court.

2. By means of instant application moved under Section 18 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, the State has requested to grant leave to appeal against the impugned judgment and order dated 12.02.2024 passed by learned Special Judge, Gangster Act/Additional Session Judge, Court No.5, Unnao in Sessions Trial No. 301 of 2012 (State vs. Shrimam Yadav and others), arising out of Case Crime No. 50 of 2011, under Section 2/3 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, Police Station Fatehpur-84, District Unnao, whereby the accused persons/respondents have been acquitted by the trial Court of all the charges framed against them.

3. Learned A.G.A. while drawing the attention of this Court towards the impugned judgment and order dated 12.02.2024, submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has passed the judgment of acquittal only on the basis of '*surmises and conjectures*', while the case of the prosecution was proved beyond reasonable doubt.

4. It is further submitted that in order to prove its case, the prosecution has produced five prosecution witnesses and it was evident beyond reasonable doubt before the trial court that a 'gang' has been formed by the respondents/accused persons in order to earn illegal money by committing crimes and, thus, the trial court has given much weightage to the minor discrepancies and embellishments which have occurred in the statement of the prosecution witnesses and these minor contradictions are natural to emerge in the testimony of the witnesses and, therefore, the duty of the trial court was to see the case of the prosecution in broad spectrum and, thus, leave to appeal be granted to the State and the impugned judgment and order dated

12.02.2024 be set-aside.

5. Having heard learned A.G.A. for the State and having perused the record of the trial Court, it is reflected that case of the prosecution in brief is that, an F.I.R. was lodged by the informant on 13.01.2011 at Police Station Fatehpur-84, Unnao alleging there in that the respondents have formed a gang, which is indulged in committing offences for the purpose of earning illegal money and they have also accumulated properties out of the proceeds of the offences mentioned in the gang chart. On the basis of this first information report, which was registered at the concerned police station at case crime no. 50 of 2011, under Section 2/3 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, the investigation commences and after recording of the statement of the prosecution witnesses and completing other formalities the investigating officer was of the view that sufficient material is available to submit a report against the accused persons under Section 173(2) Cr.P.C. and, thus, the charge sheet has been filed.

6. The trial court has framed charges against the respondents/accused persons under Section 2/3 of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, to which the respondents denied and claimed innocence.

7. During the course of trial, the prosecution has presented P.W.-1/Head Constable Dinesh Singh, P.W.-2/Sub Inspector Vinod Kumar Mishra, P.W.-3/Inspector Anjul Chaturvedi, P.W.-4/Inspector Adesh Chandra, P.W.-5/Retired Deputy S.P. Bhagwan Das Kathoriya.

8. Apart from the oral evidence, the prosecution has also relied on the documentary evidence e.g. Chik F.I.R./Exhibit-ka-1, General Diary, Exhibit-ka-2, Gang Chart, Exhibit-ka-3, Sanction for Prosecution, Exhibit-ka-4, Charge Sheet, Exhibit-ka-5, Photo copy of original charge-sheet, Exhibit-ka-6.

9. The trial court by passing the impugned judgment and order dated 12.02.2024 found that the prosecution has failed to prove its case beyond reasonable doubt and has acquitted the respondents of all the charges framed against them.

10. Aggrieved by the same, the State has preferred this application for grant of leave to appeal.

11. Perusal of the judgment and order of the trial court would manifestly reveal that after considering the statement of the witnesses of fact testified by the prosecution i.e. P.W.-2/Sub

Inspector Vinod Kumar Mishra, who is the investigating officer, P.W.-3/Inspector Anjul Chaturvedi, who at the relevant point of time was the S.H.O. of concerned police station, P.W.-4/Inspector Adesh Chandra, who was also posted as the S.H.O. of concerned police station at the relevant point of time as well as P.W.-5/Retired Deputy S.P. Bhagwan Das Kathoriya, who had been an investigating officer in one of the cases shown in the gang chart pertaining to the S.C./S.T. Act, the trial court concluded that the prosecution has failed to prove that any 'gang' has been formed by the accused persons for the purpose of earning any physical or economical benefit. It is also concluded that no property of any of the accused person has been shown or proved to be existing, which might have been shown to have been earned with the proceeds of the alleged crime.

12. The judgment and order of the trial court would reveal that in order to arrive the findings mentioned herein-before, the trial court has considered and appreciated the evidence of the prosecution witnesses of fact and after noticing certain major discrepancies and embellishments and inherent weaknesses found that their testimony is not truthful and trustworthy in support of the charges framed against the accused persons.

13. It is also evident that in the cross-examination, it has been admitted by the prosecution witnesses of fact that they do not have any knowledge whether any of the accused person has been convicted of any offence mentioned in the gang chart, while it has been argued with considerable force before the trial court on behalf of the accused persons that in the gang chart so far as the accused/respondent- Shriram Yadav is concerned, four criminal cases have been shown against him, out of which, in two cases, he has been acquitted and there was suspicion with regard to the acquittal of the accused persons pertaining to the criminal cases registered under Section 302 I.P.C. and 25 of the Arms Act. Admittedly, there was no evidence produced before the trial court, which may suggest that any property has been earned or made by the accused persons from the proceeds of the crime earned from the cases mentioned in the gang chart. The trial court has meticulously discussed the evidence of the prosecution witnesses of fact and has arrived at a conclusion that the prosecution has failed to prove its case beyond reasonable doubt.

14. It is to be recalled that an accused of a crime is having an inherent presumption of innocence and for the conviction of an accused the duty of the prosecution is to prove its case beyond reasonable doubt and if in this process prosecution fails in its duty to prove its case beyond reasonable doubt, the benefit of

that reasonable doubt is bound to be exercised in favour of the accused persons.

15. It is also to be recalled that by the acquittal of an accused person, the presumption of innocence, which was existing in his favour from beginning has further fortified and, therefore, very strong reasons and grounds are required for making any interference in a judgment of acquittal and the same could only be made if it is shown that the impugned judgment and order is *prima facie* frivolous and not based on the evidence available on record and is perverse and if it is not shown, no interference should be made in the judgment of acquittal.

16. I have considered the judgment of the trial court *vis-a-vis* the evidence produced before the trial court and have found that the prosecution had miserably failed to prove its case beyond reasonable doubt and, thus, there is neither any illegality nor any irregularity in the impugned judgment and order of acquittal recorded by the trial court.

17. In result, I do not find any merit in the application moved by the State for grant of leave to appeal and the same is, hereby, ***rejected***.

18. Since application for grant of leave to appeal has been rejected, the memorandum of appeal also does not survive. Consequently, the appeal is also **dismissed**.

19. A copy of this order be sent to the trial court for information and compliance.

Order Date :- 24.5.2024
Praveen