

Court No. - 16

Case :- APPLICATION U/S 378 No. - 66 of 2013

Applicant :- State of U.P.

Opposite Party :- Kripashanker And Ors.

Counsel for Applicant :- Govt. Advocate

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard learned AGA for the State and perused the record.
2. The instant application under Section 378(3) Cr.P.C. has been moved by the State for grant of leave to appeal against the impugned judgment and order dated 04.02.2013 passed by Additional Sessions Judge, Court No. 35, Barabanki, in Session Trial No. 1215/2010, State Vs. Kripashankar and others, arising out of Case Crime No.249 of 2009, under Sections 308/34, 323/34, 504, 506 IPC, Police Station Asandara, District Barabanki, whereby the accused persons have been acquitted of all the charges framed against them.
3. Learned AGA while drawing attention of this Court towards the impugned judgment and order of date 4.2.2013 submits that the trial court has committed manifest illegality in appreciating the evidence available on record while it was evident on the face of the record that 3 persons from the side of the prosecution have sustained fatal injuries and these injuries could not be self inflicted but the trial court appears to have given weightage to the injuries sustained by one person from the side of the accused persons, namely, Satish on whose persons 7 injuries are shown to have been sustained and on this background has inferred that it was the informant's side of this case which was aggressor.
4. It is vehemently submitted that conclusion of the trial court in this regard is not based on evidence available on record where the same is based on surmises and conjectures as the nature of injuries sustained by three injured persons from the side of the informant of this case vis-a-vis the nature of injuries sustained by the injured Satish from the side of accused persons would itself speak that the accused persons of this case were aggressor.
5. It is also submitted that the oral evidence of the injured

witnesses testified before the trial court was corroborated by the medical evidence and thus the case of prosecution was proved before the trial court beyond reasonable doubt. Thus leave to appeal be granted and the respondents be summoned.

6. Perusal of the record in the background of the submissions made by learned counsel for the State would reveal that the case of the prosecution as is evident from the record is that on 25.6.2008 about 4.30 p.m. the FIR of this Case was registered pertaining to the incident which had occurred on the same day at 3.00 p.m. wherein it is alleged that the respondents no.1 to 3 / accused persons had assaulted the informant's side by 'lathi and danda'.

7. The First Information Report was lodged under Sections 308, 323, 504, 506 IPC. After submission of the charge sheet the charges against the accused persons were framed under Sections 308/34, 323/34, 504, 506 IPC and the prosecution has testified P.W. 1- Harishankar (injured), P.W.2- Lavlesh Kumar (injured) and other official witness including P.W.5 Dr. Om Prakash Srivastava and also relied on various documentary evidence e.g. Tehrir, Chick Report, G.D. Qayami, X-ray report, medical report and charge sheet etc.

8. The accused persons in their statements recorded under Section 313 Cr.P.C. has denied the occurrence and further stated that in fact it was the accused persons who were assaulted by the informant and other persons of his side whereby one Satish Kumar who is the son of the Kripashankar has sustained various injuries and it is only on this account a false case has been manufactured in defence.

9. The trial court after appreciating the evidence available on record came to the conclusion that the informant's side of this case appears to be aggressor and they have failed to explain the injuries sustained by the injured Satish from the side of the accused persons and thus found the case of the prosecution highly doubtful and recorded a judgment of acquittal.

9. Perusal of the record would sufficiently demonstrate that it is a case where a cross FIR has also been lodged pertaining to the same incident, wherein one Satish is shown to have sustained 7 injuries and the informant's party of this case is accused of assaulting him while entering into his house. No doubt 3 persons from the side of the informant of this case are shown to have sustained injuries and one of the injured, namely, Harishankar Tiwari is shown to have sustained liner fracture of his head but the trial court after appreciating the evidence available on record has placed reliance on the fact that the First

Information Report from the side of the informant has been recorded with considerable delay and their medical report have also been of about 3 days delay and no explanation has been given as to why the First Information Report could not be lodged on same day while the First Information Report from the side of the applicants has been lodged in time on the same day when the incident was occurred. There is no doubt that by submitting the injury report pertaining to Satish the respondents have brought on record the medical injury report of Satish. The case of the prosecution in the cross case is that the informant of the instant case and other accused persons have entered in the house of Satish and assaulted him brutally whereby he has sustained 7 injuries. The concern of the trial court was that the case of the prosecution in this case is silent as to how injured Satish Kumar, from the side of the applicants has sustained 7 injuries and considering that the genesis of the incident has been suppressed by the prosecution coupled with the fact that there is delay in lodging the FIR as well as medical examination of the so called injured witnesses came to the conclusion that there appears reasonable doubt in the story of the prosecution of the instant case. A minute perusal of the judgment of trial court as well as the evidence available on record would reveal that there is no explanation as to why the injuries which have been sustained by the injured Satish from the side of the applicant has not been explained by the prosecution. No doubt that if the injuries sustained by an accused person of the crime are of minor or superficial nature, the same may be presumed self inflicted and need not be explained but the injuries which could not be self manufactured and are of grievous nature are required to be explained by the prosecution and failure to explain the same would make the case of prosecution as doubtful.

10. So far as the conclusion of the trial court in the impugned judgement that the prosecution has suppressed the genesis of the incident and while highlighting the various aspect of the evidence emerging in the testimony of the injured witness came to the conclusion that case of the prosecution is doubtful, is concerned, I do not find any good ground to doubt the same. The law with regard to dealing with the appeals wherein acquittal has been recorded by the trial court is not no more res integra. Every accused person of alleged crime is carrying a presumption of innocence and the same is fortified by the acquittal and thus very strong and cogent reasons are required for reopening the case, which unfortunately are lacking in this case.

11. Thus, I do not find that the trail court has committed any illegality while exonerating the accused persons in this case.

12. In result, I do not find any illegality in the judgement of the trial court and the application for leave to appeal moved by the State is hereby ***rejected***.

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

Order Date :- 1.4.2024

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