

Court No. - 16

Case :- CRIMINAL APPEAL No. - 2235 of 2008

Appellant :- Babu Lal

Respondent :- State of U.P.

Counsel for Appellant :- Madan Mohan Pandey

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. List has been revised.
2. Heard learned Counsel for the parties.
3. The present Criminal Appeal under Section 374(2) of the Cr.P.C. has been filed against the judgment and order dated 23.07.2008 passed by learned Additional Special Sessions Judge/S.C. & S.T. Act/F.T.C.-4, Court No.13, Sultanpur, in Special Sessions Trial No.9/2007 "State vs. Jagesar Verma and Others", arising out of Case Crime No./Court Case No.5/2005, relating to Police Station-Sangrampur, District-Sultanpur, by which the appellants have been convicted under Section 323/34 with a fine of Rs.300/- and in default of payment of fine two months imprisonment.
4. The prosecution case in brief is that the complainant as well as accused persons are resident of same village. There was some old enmity in between the parties. On 22.06.2005 at about 7:00 A.M., the accused persons were building a *chappar* on the agricultural land of the complainant, when the complainant stopped them from placing a *chappar* in her land, the accused persons got annoyed and started abusing with caustic words and caste language, and thereafter, when the complainant raised her voice they started beating the complainant, her husband and daughter-in-law. On hue and cry, the other family members reached the spot and tried to save them, they were also beaten brutally by the accused persons. The report regarding aforesaid incident was lodged on 27.09.2005 after moving an application under Section 156(3) Cr.P.C. before the concerned Magistrate, which was registered as Court Case No.05/2005 under

Section 323, 504 and 506 and Section 3(1)(x) of SC/ ST Act and charge sheet was submitted by the Investigating Officer under Sections 323, 504 and 506 I.P.C. and Section 3(1)(x) of SC/ST Act on 29.10.2005.

5. Charges were framed by the court below under Sections 323/34 and 506(2) I.P.C. and Section 3(1)(x) of SC/ST Act. The accused persons denied charges and sought trial.

6. Prosecution examined the informant/complainant, Ram Lali, as P.W.1, who reiterated the allegations mentioned in the FIR and she proved the lodging of first information report. Munnu Lal was produced as P.W.-2, who stated that on the date of incident he was present at the spot but in his statement under Section 161 Cr.P.C., he clearly stated that one day before the date of incident, he went to Ganga river to take bath and returned on the date of incident at about 7:30 A.M. i.e. after the alleged incident, and further he has not received any injuries in the alleged incident, which clearly shows that he was not present at the spot at the time of alleged incident. P.W.-3, Phool Kali, testified before the court that appellants had brutally beaten the complainant and her family members, she further stated that she tried to save his Father-in-Law and Mother-in-law but the accused persons beat her also, she also admitted that a case is pending regarding the land in dispute. P.W.-4, Dr. Vinod Singh, stated that he has prepared the injury report of P.W.1 and P.W.3 and also stated that they complained about pain in their body on the date of incident but the time of injury was about 6:20 A.M. and 6:00 A.M on 23.06.2005 and further stated that normally an injury caused by lathi blow leaves mark on the body for two weeks but when P.W.1 came for examination, there was no mark of lathi blow nor any kind of mark was seen on her body and in respect of P.W.3 he stated that during the course of examination, the colour of injury caused to her was blue that gives an impression that the injury was not new. P.W.5 Ramhit Saroj, the inscribe of F.I.R., did not state anything to falsify the story of prosecution. P.W.6 Aditya Kumar Shukl, Investigating Officer, stated that on the basis of complaint made by the complainant and statements of her family members, he visited the site and created site plan and he further stated that the land in dispute belongs to the

appellants for which they have filed an application before the Sud Divisional Engineer but the same has not been verified. He further stated that he does not know whether the complainant's husband is a security guard or not but as he has taken his statements in the present case, thus, he know him.

7. The accused were examined under Section 313 Cr.P.C. and they denied their involvements in the alleged incident and they further stated that there was some old enmity between the parties, therefore, they have been roped in this case and the police authorities also have falsely implicated them in the present case due to village politics.

8. The Doctor opined that the injuries which were received by the P.W.1 and P.W.3 were caused by friction and no opinion can be given. Duration about two weeks and injuries were simple in nature.

9. The trial court exonerated all the appellants from charges under Section 506(2) I.P.C. The trial court found that the offence under Section 506 (2) I.P.C. has not been proved against the appellants. The trial court further observed that so far as the charges under Section 3(1)(x) of the SC/ST Act are concerned, P.W.1 and P.W.3 gave contradictory statements, thus, trial court observed that the words which were used by the accused persons at the place of incident were not meant for public humiliation and consequently, exonerated the appellants under Section 3(1)(x) of the SC/ST Act, and offences under Section 323 read with Section 34 I.P.C. was found proved against the appellants. They were convicted and were awarded fine of Rs.300/- each and in case of default of payment, the appellants have to undergone imprisonment for two months.

10. The counsel for the appellant has submitted that the first information report was lodged after filing an application under Section 156(3) Cr.P.C. against the appellants only and thereafter questions was made by the police stating whether the informant/complainant will recognize the accused persons and informant/complainant replied that she knows them well as they resident of same village. He has further submitted that no recovery of any arm was made by the police

from the appellant as the incident took place in the month of June, 2005 and report was lodged in the month of September, 2005. He has further submitted that the offences against the appellants were not found to be proved since allegation in the FIR was that appellants caused injuries to the informant/complainant by the *lathi* and *danda*. The injuries from the *lathi* and *danda* in the nature of contusion with swelling and blue marks on injury. The injuries on the persons of the informant/complainant and also the other injured, Phool Kali, shows that they were caused by friction and not by any hard and blunt object. He has submitted that the prosecution has failed to prove its case beyond reasonable doubt but the court below without applying its judicial mind and without perusing the material facts placed on record convicted the appellants under Section 323/34 I.P.C. He has further submitted that the doctor has given opinion that the injuries were not caused due to blow by *lathi* and *danda*, rather they appear to be caused by friction and also they are simple in nature and they appear to be old injuries.

11. Learned A.G.A. has opposed the aforesaid arguments and has submitted that the judgment of the court below is justified and calls for no interference.

12. After having heard the rival submissions of parties, the Trial Court found appellants-accused guilty, therefore, convicted and awarded them fine of Rs.300/- each under Section 323/34 I.P.C., and in default of payment of fine, they shall undergo imprisonment for two months.

13. Feeling aggrieved by the judgment of conviction and sentence passed by Trial Court, the appellants-accused have preferred this appeal.

14. Learned Counsel for the appellants has contended that the judgment and order passed by the Trial Court is wrong both on facts and law. The learned trial court had misread and misconstrued the statements of prosecution witnesses.

15. Opposing the contention of learned Counsel for the appellant-accused, the learned A.G.A. has contended that sufficient evidence was given by the prosecution to prove the factum of assaulting the injured by the accused persons,

though, the F.I.R. could not be lodged immediately due to inaction on the part of police authorities, as such, the impugned order does not require any interference by this Court and the appeal is liable to be dismissed.

16. Through out the web of the Criminal Jurisprudence, one golden thread is always seen that it is the duty of the prosecution to prove the guilt of the accused. This burden of proof on prosecution to prove guilt is also known as presumption of innocence. The presumption of innocence, sometimes refer to by the latin expression "ei incumbit probatio qui dicit, non qui negat" (the burden of proof is on one who declares, not to one who denies) is the principle that one is considered innocence unless proven guilt. In criminal jurisprudence every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. The prosecution may obtain a criminal conviction only when the evidence proves the guilt of accused beyond reasonable doubt.

17. In the present case, almost all the prosecution witnesses have stated their own version of the prosecution story. Thus, the testimony appears to be based on interested witnesses from which guilt of accused may be inferred.

18. Witnesses may be categorized into three distinct categories. They may be wholly reliable. Similarly there may be witnesses who can be considered wholly unreliable. There is no difficulty in placing reliance or disbelieving his evidence when an evidence is wholly reliable or wholly un-reliable, but difficulty arises in case of third category i.e. where witness is neither wholly reliable nor wholly unreliable. Hostile/ interested witness ordinarily falls in category of those witnesses who are neither wholly reliable nor wholly un-reliable. Hon'ble Apex Court in ***Khujji @ Surendra Tiwari Vs. State of M.P. AIR 1991 SC page 1853*** was pleased to observe as under :-

“The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be

dependable on a careful scrutiny thereof.”

19. The principle of “*falsus in uno falsus in omnibus*” (false in one thing, false in everything) has no application in India. It is duty of Court to separate grain from chaff. Keeping in view the above principles Hon'ble Apex Court in the case of ***Sucha Singh v. State of Punjab, AIR 2003 SC 3617*** was pleased to observe as under :-

“even if major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus (false in one thing, false in everything) has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, truth is the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.”

20. Similarly in ***Paramjeet Singh v. State of Uttarakhand; AIR 2011 SC 200*** also Hon'ble Apex Court was pleased to observe as under:-

“When the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth.

His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony”.

21. It feels pain to observe that in our present system of trial despite having sufficient power to the judge to ask questions to the witnesses in order to find out truth, most of them do not ask questions to the witnesses to shift the grain from the chaff. Practice of leaving witnesses to the Advocates, when a witness becomes hostile or is a interested witness, is not un-common in the trial Courts. Time and again Hon'ble Apex Court has reminded that a Judge does not preside over a criminal trial merely to see that no innocent man is punished, but a Judge also presides to see that a guilty man does not escape. Both are public duties, which the Judge has to perform. Therefore, the trial Court must shed their inertia and must intervene in all those cases where intervention is necessary for the ends of justice.

22. No proper explanation of injuries on the person of injured witnesses have been given. Mere suggestion is not sufficient. Moreover it itself indicates a false case. All the witnesses being the close relatives, it is beyond apprehension that they instead of naming out real culprit, they would falsely implicate the accused persons knowing them innocent.

23. This Court has gone through the impugned judgment and evidence on record. The trial court relying on the testimony of witnesses, even though who were interested witnesses, has concluded that the accused had assaulted the injured persons. Looking into the totality of statement of witnesses, the conclusion drawn by the trial court cannot be said to be reasonable.

24. It is established principle of law of evidence that statement of witness is to be read as a whole and conclusion should not be drawn only by picking up a single sentence of the statement of a witness. Thus the trial court has overlooked the material evidence available on record with regard to guilt of accused and to

that extent conclusion drawn by the trial Court suffers with patent infirmity and perversity and therefore, liable to be reversed and set aside.

25. Thus in view of above, after analysis of circumstances of present case in the light of aforesaid settled legal principles, I come to the conclusion that the trial court has erred passing the impugned judgment and order, therefore, this appeal succeeds and is ***allowed***. The judgment and order dated 23.07.2008 passed by learned Additional Special Sessions Judge/S.C. & S.T. Act/F.T.C.-4, Court No.13, Sultanpur, in Special Sessions Trial No.9/2007 "State vs. Jagesar Verma and Others", arising out of Case Crime No./Court Case No.5/2005, relating to Police Station-Sangrampur, District-Sultanpur, by which the appellants have been convicted under Section 323/34 with a fine of Rs.300/- and in default of payment of fine two months imprisonment is ***set aside*** and ***reversed***. The appellants, namely, appellant no.1 Babu Lal, appellant no.2, namely-Ram Asarey and appellant No.3, namely-Raj Bahadur Verma are acquitted of charges under Section 323/34. Their personal bonds and surety bonds are canceled and sureties are discharged.

26. Let record of lower Court be sent back to Court concerned along with copy of judgment and order for information.

Order Date :- 2.2.2024

Piyush/-