

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1380 of 2008

Appellant :- Raju Lodh

Respondent :- State of U.P.

Counsel for Appellant :- A. Rafique, Anurag Singh

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. In pursuance of the earlier order of this Court, a report has been submitted by the Chief Judicial Magistrate, Sitapur of date 29.05.2024 enclosing therewith the report of the Superintendent of Jail, District Jail Sitapur of date 29.05.2024, whereby it is informed that the appellant was released from the prison on 01.06.2011 after having undergone the whole of the sentence imposed by the trial court and he is in jail under a warrant issued by the Chief Judicial Magistrate, Sitapur from 24.04.2024.

2. Heard Shri Anurag Singh, learned counsel for the appellant as well as learned A.G.A. for the State and perused the record.

3. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellant- **Raju Lodh** against the judgment and order of the trial court dated 21.01.2008 passed by the Court of Additional Sessions Judge/F.T.C. Court No.7, Sitapur in Sessions Trial No. 521 of 2007 and 522 of 2007, arising out of Case Crime No. 154 of 2007, under Sections 307, 392, 411 I.P.C. and Case Crime No. 155 of 2007, under Section 25 of the Arms Act, Police Station Kotwali Sitapur, District Sitapur, whereby the appellant has been convicted for committing offences under Sections 392, 411 I.P.C. and 25(1) (b) of the Arms Act and have been sentenced for five years, two years, and one year rigorous imprisonment, respectively along

with fine of Rs. 3000/- and 500/- along with default clause with the stipulation that all imprisonment would run concurrently.

4. The factual matrix pertaining to the instant appeal is that, an F.I.R. was lodged by Harinam Gupta at Police Station Kotwali Sitapur, District Sitapur on 02.02.2007 at about 7:45 pm. with the allegations that he along with his friend Sanjay Maurya was returning from Sitapur on Motorcycle No. U.P.34F/9358 and was going to his village Naseerapur and when they arrived near the mango orchard of one Darshan Lal, two persons have intercepted their motorcycle and while taking out country made pistol snatched away Rs.1200/- from the informant and a wrist watch from Sanjay Maurya, who was travelling with the informant and on an alarm raised by them, Shiv Kumar Rathaur, Ramesh Kumar and many other persons of the village assembled and apprehended the accused persons, on which, one of the miscreant has fired towards the villagers, however, the bullet could not hit anyone and the villagers apprehended the miscreant who had fired along with country-made pistol of 0.315 bore and on being interrogated, he told his name as Raju Lodh. However, the other accused person/miscreant fled away from the scene and he could also not be identified. The appellant was also manhandled by the crowd and Rs. 1200/-, which was *looted* from the pocket of the informant and the watch of Sanjay Maurya was recovered from his possession along with two live cartridges of 0.315 bore were also recovered and the appellant was taken to the police station along with the above articles where the F.I.R. was lodged at Case Crime No. 154 of 2007 and Case Crime No. 155 of 2007, under Sections 307, 392, 411 I.P.C. & Section 25 of the Arms Act, Police Station Kotwali Sitapur, District Sitapur.

5. After investigation, the charge-sheet was submitted against

the appellant under Sections 392, 307, 411 I.P.C. & Section 25(1)(b) of the Arms Act and the trial court also framed the charges against the appellant in the above-mentioned penal sections, to which, the appellant denied and claimed trial.

6. The prosecution in order to prove its case before the trial court has produced oral evidence i.e. P.W.-1/Informant Harinam Gupta, P.W.-2/Sanjay Maurya (other victim) P.W.-3/Ramesh, P.W.-4/Netram, P.W.-5/Sub Inspector Pratap Narayan Saxena (Investigating Officer) and apart from the above-mentioned oral evidence, the prosecution has also relied on documentary evidence e.g. Chik F.I.R., Tehrir F.I.R., Prosecution Sanction for prosecuting the appellant under Section 25(1)(b) of the Arms Act, Chik F.I.R., G.D. Kayyami, Site Plan and Charge sheet.

7. After completion of the evidence of prosecution, the statement of the appellant/accused person was recorded under Section 313 Cr.P.C., wherein he denied the evidence produced against him by the prosecution and has stated that he has been falsely implicated in this case and the villagers are giving false evidence against him. In his defence, the appellant has filed a copy of Chik F.I.R. pertaining to Case Crime No. 317 of 2005, under Section 384 and 504 I.P.C.

8. The trial court after analyzing and appreciating all the evidence available on record has convicted the appellant for committing the offences under Sections 392, 411 I.P.C. and Section 25(1)(b) of the Arms Act in the manner, as stated in the second paragraph of this judgment and aggrieved by the same, the appellant has preferred instant appeal.

9. Shri Anurag Singh, learned counsel appearing for the appellant, at the outset submits that he is not challenging the conviction part of the judgment, as the appellant has already

undergone whole of the sentence imposed by the trial court, but the appellant is aggrieved by the sentencing part, as the trial court has neither considered the release of the appellant on probation and has given a higher punishment, while it was evident that it was a case of 'private arrest' and there were many discrepancies in the statement of the prosecution witnesses. Thus, the trial court should have passed an order of sentencing by awarding much lesser sentence.

10. Learned A.G.A. on the other hand submits that there is no illegality in the impugned judgment and order and the case of the trial court was proved beyond reasonable doubt before the trial court, as the appellant was apprehended on the spot and he also fired gun shots on the villagers and looted money as well as the 'wrist watch' also recovered from his possession, thus, no interference is required in the impugned judgment and order of the trial court.

11. Having heard learned counsel for the parties and having perused the record, though, it is evident that learned counsel for the appellant has not pressed the appeal so far as the conviction part of the judgment is concerned, but this Court in order to satisfy its judicial conscience has gone through the judgment of the trial court *vis-a-vis* the evidence produced by the prosecution and have found that after committing loot of Rs. 1200/- from informant and of wrist watch from another person accompanying the informant, along with his companion, the appellant was arrested by the villagers and after being arrested, Rs. 1200/- and the wrist watch is shown to have been recovered from his possession. There were other allegations with regard to the firing of gun shot by the appellant towards the villagers, which has not been believed by the trial court. There are three prosecution witnesses of fact, who apparently are not having

any enmity with the appellant as they are residents of a different village and in this regard, the appellant has also not taken any defence pertaining to his involvement in the crime on the basis of any enmity.

12. Thus, having regard to the quality of evidence produced before the trial court, I do not find any illegality committed by the trial court in appreciating the evidence available on record and so far as the conviction part of the judgment is concerned and the same requires no interference.

13. Coming to the sentencing part of the judgment, the trial court has sentenced the appellant under Section 392 I.P.C. for five years and under Section 411 I.P.C. for two years and under Section 25(1)(b) of the Arms Act for one year along with fine and default clause.

14. Section 392 I.P.C. provides a maximum punishment of ten years' if the offence has not been committed on any highway. It is evident that the offence has not been committed on any highway. For Section 411 I.P.C. the maximum punishment has been provided of three years. There is no minimum punishment provided either for Section 392 and 411 I.P.C.

15. The law with regard to the sentencing is now no more *res integra* and the same has been settled by Catena of Judgments passed by the Hon'ble Supreme Court and the rule of proportionality should be adhered to and applied by the criminal courts and the punishment should be commensurate and proportionate to the crime committed by a convict. There are various other factors which are required to be taken into consideration by the trial court while sentencing an accused person (s) e.g. his age, his background and the circumstances under which the offence has been committed and the possibility

of rehabilitation of the convict. In the case at end, there was no evidence before the trial court which may suggest that the appellant has already been convicted for any offence nor any criminal history of the appellant was alleged and as is evident it was a case of private arrest and no injury of any kind was sustained by anyone. Thus, *prima facie*, it appears to be the solitary case wherein the appellant was involved.

16. Thus, in the considered opinion of this Court, a lenient approach should have been adopted by the trial court, *more so* when it was a case of 'private arrest', as the appellant is shown to have been arrested by the public.

17. Thus, keeping in view all the facts and circumstances of the case while maintaining the conviction of the appellant, as accorded by the trial court under Sections 392, 411 I.P.C. & 25(1)(b) of the Arms Act, the sentencing of the appellant is modified in terms that now the appellant is sentenced for a maximum imprisonment of three years with regard to Section 392 I.P.C. and one year each for Section 411 I.P.C. & 25(1)(b) of the Arms Act.

18. In result, the instant criminal appeal filed by the appellant- **Raju Lodh** is **partly allowed** and while the conviction of the appellant under Sections 392, 411 I.P.C. and 25(1)(b) of the Arms Act, is maintained, as accorded by the trial court, his sentencing is modified in terms that now the appellant is sentenced for a maximum imprisonment of three years and fine of Rs. 3000/- with regard to Section 392 I.P.C. and one year each for Section 411 I.P.C. with fine of Rs.500/- & 25(1)(b) of the Arms Act. In default of payment of Rs. 3000/- for section 392 I.P.C. and Rs. 500/- for Section 411 I.P.C., the appellant shall undergo simple imprisonment of one month and 15 days, respectively.

19. As per the report submitted by the Jail Superintendent of District Jail, Sitapur, the appellant has undergone whole of his sentence, as imposed by the trial court along with the default sentence for not depositing the fine. Therefore, the appellant is imprisoned in jail only on account of the non-bailable warrants issued by this Court executed by the Chief Judicial Magistrate concerned.

20. Thus, it is directed that the appellant shall be immediately released from the prison if his detention is not warranted in any other case. However, within 30 days of his so release from the prison, the appellant shall file a personal bond of Rs. 10,000/- and one surety of the same amount under Section 437-A of Cr.P.C. to ensure his presence before the superior court if any criminal appeal or the S.L.P., as the case may be, filed against the judgment and order of this Court.

21. A copy of this order be immediately sent to the trial court through the **Special Messenger** or through any fastest mode of communication i.e. FAX or E-mail, as the case may be, for the purpose of compliance.

22. It is highlighted that since the appellant appears to have already undergone whole of the imprisonment, as modified by this Court, the trial court would at once sent a 'Release Order' (*Rihai Parwana*) to the jail authorities as soon as the copy of this order is received by the trial court, without any further delay.

Order Date :- 30.5.2024
Praveen