

Court No. - 9

Case :- APPLICATION U/S 378 No. - 241 of 2023

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

Opposite Party :- Salikram Kori And 2 Others

Counsel for Applicant :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Narendra Kumar Johari,J.

1. Office report shows that steps have not been taken by the State for service of notice upon respondents. However, we find that this is an appeal against acquittal accompanied by an application for grant of leave to appeal and the respondents are not required to be heard at this stage, therefore, we clarify our order dated 09.11.2023 to this extent. Notices need not be issued to the respondents.

2. Heard.

3. This Criminal Misc. Application under Section 378 Cr.P.C. has been filed by the State-appellant/applicant against the judgment and order dated 21.11.2022 passed by the Additional District and Sessions Judge, Court No. 8, District-Gonda.

4. By the impugned judgment the trial court has acquitted the accused/respondents no.1 to 3, namely, Salik Ram Kori, Santosh Kumar and Luv Kush in Sessions Trial No. 283 of 2015 arising out of case crime no. 199 of 2015 under Section 302/34 I.P.C., Police Station- Tarabganj, District- Gonda.

5. The contention of the learned A.G.A. is that P.W.-2 has supported the prosecution case but his testimony has been disbelieved on flimsy ground. There is also a submission that the blood found on the weapon used in the commission of

crime, which is a lathi and which was recovered on the pointing of the accused- Salik Ram, matched with the blood found on the clothes of the victim but this important aspect has also been lost sight off by the trial court which has acquitted the accused of the charge under Section 302, 34 I.P.C.

6. The recovery of lathi is on the pointing of the accused- Salik Ram and, therefore, even though it is a case of circumstantial evidence, the prosecution had proved its case beyond reasonable doubt but the trial court has passed a perverse order.

7. In a nutshell, F.I.R. was lodged by the son of the deceased on 22.7.2015 at 8:30 p.m. to effect that around 8:45 p.m.on 21.7.2015 his father left his house and did not return. The informant's son was under the impression that he had stayed back at the fields. When the informant went to the field in the morning at 6:00 a.m., he found the body of his father lying in the field of Krishna Ram Pandey. He suspected that murder of his father had been committed by Salik Ram Kori and his son Santosh and Luv Kush. After investigation charge sheet was filed against the said accused. The trial court has acquitted the accused from the said charge, as, it did not find the chain of events to have been proved nor to be complete.

8. We have heard and perused the records in the light of submission made by learned A.G.A.

9. It is not a case of direct evidence but one of circumstantial evidence. We have perused the testimony of P.W.-2- Murlidhar Mishra on which great reliance was placed by the State Counsel. P.W.-2 is not an eye witness. He has simply stated that deceased had informed him that in the evening of 21.7.2015 he had a tiff with Salik Ram Kori a little

while ago, and the latter had threatened him to teach a lesson very soon, therefore, the testimony of this witness is at best hearsay and not admissible in evidence as has rightly been held by the trial court.

10. P.W.-1 has stated that he discovered the body of the deceased in the morning of 22.7.2015 whereas the evidence shows that F.I.R. was lodged at 8:30 p.m. but there is no plausible explanation of delay in lodging F.I.R.

11. As regards recovery of lathi, the weapon allegedly used in the commission of the crime by the accused- Salik Ram, firstly, the said recovery was not on the pointing of Salik Ram while he was in police custody, as has rightly been opined by the trial court, therefore, it not a case to which Section 27 was attracted. Thus, there is no recovery on the pointing of the accused or in terms of Section 27 of the Evidence Act nor from his possession.

12. The trial court has also disbelieved the witness of such recovery of lathi i.e. P.W.-7-Bal Bhadra Pandey. P.W.-7 is 'pattidar' of the deceased Ghirau Pandey. He has stated that the police has not arrested the accused in his presence. He has also feigned ignorance as to when he met the police and when the accused has been arrested by the police. He has also stated that the Investigating Officer had got his signatures on papers but was unable to say as to how many papers had been signed by him. The trial court has rightly opined that said witness had signed the papers without reading its contents, therefore, his testimony is not sufficient to prove the recovery and recovery memo of lathi i.e. Exbt-Ka-11.

13. As regards motive for the crime, the P.W.-1-Shailendra Kumar Pandey in his testimony has stated about some incident

having taken place some six months ago wherein he had videographed an incident when the accused- Salik Ram was caught selling illicit liquor, however, no evidence in this regard was led and therefore, the trial court has rightly held that motive for the crime has not been proved, which is an important aspect in a case based on circumstantial evidence. There is no evidence of last seen.

14. P.W.-1 has stated that he saw several injuries on the body of his father, which had been caused by lathi and sharp edged weapon but the medical evidence does not support such contention, as there is no injury on the body of the deceased, which could be caused by sharp edged weapon.

15. P.W.-3- Yogendra Pratap Singh, who is Investigating Officer, has himself stated that the lathi/danda, which was recovered, is commonly found in the villages. Moreover, the record reveals that as regards the blood found on the said lathi/danda and that on the clothes of victim, no conclusive opinion could be expressed that they were of the same group.

16. We have also perused testimony of P.W.-6- Harigopal Pandey and we find that the trial court has rightly disbelieved his testimony for the reasons given in the impugned judgment. It is highly unbelievable that the accused shall be after committing the crime while they were allegedly running away and were seen and heard by the P.W.-6 would state that they had killed Ghirau and now he cannot chase them and that the other accused, who were sons of Salik Ram should not disclose this fact to anybody else.

17. We do not find any error in the judgement of the trial court on this count.

18. For all these reasons, we are of the opinion that in a case

based on circumstantial evidence, the prosecution has miserably failed to prove its case beyond reasonable doubt. The trial court has rightly acquitted the respondents. The chain of events necessary to point towards the guilt of the accused alone is neither proved nor complete. The judgment of the trial court contains a possible view, therefore, in view of the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Gopal Krishna** (2005) 9 SCC 291; **Sudershan Kumar Vs. State of Himachal** (2014) 15 SCC 666 & **Dilawar Singh Vs. State of Haryana** (2015) 1 SCC 737, no interference is called for with the judgment of the trial court. It is not a fit case for granting leave to appeal.

19. The application for leave to appeal is rejected. Consequently, the appeal also stands consigned.

20. The original record shall be transmitted back to the trial court for necessary action, if any, as per rules.

Order Date :- 4.1.2024
Anuj Singh