

Neutral Citation No. - 2025:AHC:4454

Court No.83

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 12 of 2025

Appellant :- Smt. Meenakshi Sahu

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- Gyanendra Singh

Counsel for Respondent :- G.A.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard learned counsel for the appellant, learned A.G.A. for the State and perused the record.
2. The present Criminal Appeal under Section 372 Cr.P.C., has been filed by the complainant appellant Meenakshi Sahu to set aside the impugned judgment and order dated 28.11.2024 passed by learned III Additional Civil Judge (J.D.)/Judicial Magistrate, Banda in Case No. 1411/9/2024 (Smt. Meenakshi Sahu Vs. Dheerendra Sahu and others) under Sections 323, 504, 506 IPC, Police Station-Kotwali Nagar, District-Banda acquitting the respondents accused Nos. 2 to 5.
3. Before assessing the legal aspect of the issue, the factual aspect of the matter is as follows:-

The complainant lodged a complaint alleging that on 22.01.2016 when she and her father went to pursue the case no. 254/2015 under Section 125 of Cr.P.C. before learned Principal Judge, Family Court, Banda, at around 1:20 pm whey they came out of the court premises, seeking date in the matter, her husband Dheerendra Sahu, father-in-law Shiv Prasad Sahu, Baghwan Das Sahu intercepted them under an over-bridge near the Kothi of Vivek Singh, hurled abuses and forcefully dragged her in their four wheeler. When she and her father resisted, the passers by, namely Shan, son of Hakim Khan and Chandrabhan, son of Heera Lal and several others intervened. The accused threatened them to to withdraw the cases otherwise they would be put in peril. The complainant was assaulted with kicks and fists on her stomach and felt extreme pain. They threatened to transfer all the cases to Lucknow and rushed away. The complainant and her father

immediately went to Police Station-Kotwali Nagar, Banda but no FIR was lodged. Hence, the present complaint.

4. During trial proceedings, the statement of the complainant was recorded on oath under Section 200 Cr.P.C. and of the witnesses P.W.-2 Bhola Prasad Sahu and P.W.-3 Mohd. Shan Khan under Section 202 Cr.P.C. and the respondents accused were tried under Sections 323, 504 and 506 IPC. While proceeding under Section 244 Cr.P.C., the complainant was examined as P.W.-1, Bhola Prasad Sahu examined as P.W.-2 and Mohd. Shan was examined as P.W.-3 and the accused respondents were charged under Sections 323, 504 and 506 IPC. Thereafter, the respondents accused were examined under Section 313 Cr.P.C. who denied the incident stating that they were falsely implicated.

5. The complainant P.W.-1 Meenakshi Sahu in her examination-in-chief being examined under Section 244 Cr.P.C. deposed that on the date of incident 22.01.2016, she came to the Family Court to pursue the maintenance proceedings. The accused Dheerendra Sahu and his father Shiv Prasad and Sunil Sahu were also present. After seeking date in the matter, the complainant and her father came out the court premises, the accused intercepted them near the Kothi of Vivek Singh under an over-bridge, hurled abuses and dragged her forcefully inside their four wheeler. The complainant and her father resisted and the passers-by witnessed the incident and intervened and saved them. The respondent accused threatened them for dire consequences and assaulted her with kicks on her stomach due to which, she felt severe pain in the abdomen. Similarly, P.W.-2 Bhola Prasad Sahu, the father of the complainant supported the prosecution version and admitted in his cross-examination that he knew the passers by Shan Khan since past ten years. He visited his shop to do some electric wiring, therefore, he was well acquainted with him. P.W.-3 Mohd Shan Khan, who was a passer by and witnessed the incident deposed in his examination-in-chief that he saw a girl and her father being assaulted by four persons so he intervened to save them.

Meenakshi Sahu was dragged forcefully to sit inside the car and was kicked on her stomach and was threatened that she should withdraw all the cases and that her father would be killed. The said witness in his cross-examination admitted that he knew the first informant since past 15 years and had worked in her house as an electrician.

6. The deposition of all prosecution witnesses has been perused and it can be safely concluded that though **P.W.-1, P.W.-2 and P.W.-3** in their examination-in-chief have supported the prosecution case but it is evident that the complainant Meenakshi Sahu and the respondents accused Dinesh Sahu were married couple and due to estranged relationship, several matrimonial disputes for Dowry Demand and Domestic Violence are pending between them. A suit for maintenance under Section 125 Cr.P.C. was also pending between the parties. It also appears that at the time of cross-examination the witnesses could not disclose the features and colour of the four wheeler. It also transpires that the instant complaint was registered by moving an application under Section 156(3) Cr.P.C. after a duration of about four months. P.W.-2 Bhola Sahu in his cross-examination stated that after the incident they were afraid and as their clothes were dirty so they rushed to their home. Even P.W.-3 deposed that after the incident, the complainant and her father did not give any information to the police station which thus indicates that the complainant did not go to the police station and returned to her home. There are major contradictions in their complaint and their deposition. P.W.-1 and P.W.-2 in their evidence had deposed that the place of incident was about one kilometer away from police chauki and P.W.-3 Shan Khan in his cross-examination stated that the place of incident from Police chauki was almost five hundred meters which also indicates that the complainant victim should have first rushed to the police station to lodge the FIR but instead they rushed back to their home. Even a District Women Hospital was also available nearby at the distance of about 600-700 meters but the victim and her father did not go to the

hospital for any medical aid. All these instances taken together makes the incident doubtful. The unnatural conduct of the victim which a prudent man ought to have done has not been found. It also indicates that the complainant and the first informant were not present at the spot. The complainant in her complaint stated that the incident took place at 1:20 pm on the other hand she had disclosed that at 1:20 pm she had sought the time from the Family Court and then left the premises then how can the two events take place simultaneously. The complainant and her father in their testimony had stated P.W.-3 as a passer by and subsequently in their cross-examination they disclosed that they knew P.W.-3 Shan Khan for the past ten years. Even Mohd. Shan Khan in his examination-in-chief admitted that he knew the first informant since past 15 years and had done the electricity repairing work in their house. Therefore, P.W.-3 was not a passer by or an independent witness but rather he was known to the complainant. The complainant has suppressed the material fact which also goes to doubt the prosecution case. The complainant has raised an objection to the plea of alibi raised by the respondents accused on the ground that the respondents accused had taken the plea of alibi to save themselves that at the time of the incident as they were at some other place. Here in the instant matter from the facts and circumstances, it can be safely concluded that no such incident took place as alleged and in order to harass the respondents accused, a false case has been registered. When the incident has not been proved so there is no question to determine the plea of alibi raised by the respondents accused.

7. The deposition of every prosecution witnesses has been keenly perused and before proceeding further, it would be appropriate to take note of laws on the appeal against acquittal:-

(i) In the case of ***Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790***, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the

High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that:

"The High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities."

(ii) In ***Jayamma vs. State of Karnataka, 2021 (6) SCC 213***, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court.

(iii) In a recent judgement of this Court in ***Virendra Singh vs. State of U.P. and others, 2022 (3) ADJ 354 DB***, the law on the issue involved has been considered.

(iv) Similar view has been reiterated by Hon'ble Apex Court in ***Rajesh Prasad vs. State of Bihar and another, (2022) 3 SCC 471***.

(v) Since, it is a Government Appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently, in the case of ***Mallapa and others Vs. State of Karnataka***, the Apex Court has held as under :-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

8. It has been contended by learned counsel for the appellant that the learned court below has not properly appreciated the facts and has given the benefit of doubt to the accused pertaining to an offence committed under Sections 323, 504, 506 IPC. It has also been asserted that the testimony of P.W.-1, P.W.-2 and P.W.-3 are not trustworthy and reliable. There are major contradictions in the statements of the witnesses. There is no medico-legal report to substantiate the allegations. The incident is imaginary without any basis. The disputes amongst the parties is matrimonial in nature and in order to exert pressure upon the other party, a false case has been lodged against the respondents accused. The prosecution witnesses have failed to prove the place of the incident and the alleged vehicle used.

9. From the perusal of records, it can be deduced that the appellant could not prove their case beyond reasonable doubt nor could prove the place of incident. The evidence of the prosecution is highly unreliable and untrustworthy as there are major contradictions.

10. Thus, after analysing the entire evidence on record and after critically evaluating the submissions advanced and the findings recorded by the learned Trial Court, the Court is of the view that the judgment of the trial court does not suffer from any illegality and non-appreciation of evidence. The

reasoning adopted by the learned trial Judge is quite sound and sustainable which do not warrant any interference.

11. It can be safely concluded that the trial court has taken a plausible and possible view of the matter on appreciation of entire evidence on record which cannot be substituted by this Court by taking a different view as per the law discussed above. The findings recorded by the Trial Courts are palpably wrong, manifestly erroneous and demonstrably unsustainable.

12. Accordingly, the instant appeal lacks merit and is liable to be **dismissed**.

Order Date :- 9.1.2025

Monika