

Court No. - 53

Case :- CRIMINAL APPEAL No. - 11527 of 2024

Appellant :- Durg Singh

Respondent :- State of U.P.

Counsel for Appellant :- Bhanu Prakash Verma

Counsel for Respondent :- G.A.

Connected with

Case :- CRIMINAL APPEAL No. - 11453 of 2024

Appellant :- Radhey Shyam

Respondent :- State of U.P.

Counsel for Appellant :- Bhanu Prakash Verma

Counsel for Respondent :- G.A.

And

Case :- CRIMINAL APPEAL No. - 11509 of 2024

Appellant :- Balveer

Respondent :- State of U.P.

Counsel for Appellant :- Bhanu Prakash Verma

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

(Order on Criminal Misc. Suspension of Sentence Applications)

1. This criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellants **Durg Singh, Radhey Shyam and Balveer** against the conviction and sentence recorded vide judgment and order dated 11.11.2024 passed by the Additional Sessions Judge, Court No.1, Mathura in Session Trial No. 215 of 2006 (State of U.P. Vs. Rewati and others), arising out of case Crime No. 392 of 2005, under Sections 323/34, 324/34, 325/34, 304/34, 504, 506 I.P.C., Police Station Highway, District Mathura. The appellants were convicted and sentenced for the offences under Section 323/34 I.P.C. for six months imprisonment alongwith fine of Rs.1,000/- each with default sentence, under Section 324/34 I.P.C. for two years imprisonment alongwith fine of Rs.1,000/- with default sentence and under Section 325/34 I.P.C. for three years imprisonment alongwith fine of Rs. 2,000/- with default sentence. They were further convicted and sentenced for the offence under Section 304 Part-I read with Section 34 I.P.C.

for ten years imprisonment alongwith fine of Rs.10,000/- with default sentence. They were also convicted and sentenced for the offences under Section 504 I.P.C. for six months imprisonment alongwith fine of Rs.1,000/- with default sentence and under Section 506 I.P.C. for one year imprisonment alongwith fine of Rs.2,000/- with default sentence. All the sentences were directed to run concurrently.

2. Heard learned counsel for the appellants-applicants as well as the learned A.G.A. for the State.

3. By means of the bail application, the appellants-applicants seek suspension of sentence and grant of bail.

4. The prosecution has come forward with a case that on 22.12.2005 at about 12.15 in the noon when the informant was going alongwith his father Jagdish Singh from the railway station, all of sudden Rewati son of Bhajanlal, Balveer and Radhy Shyam having lathi and danda and Durg Singh having spade made assault upon his father due to old animosity. On his shrieks witness Karan Singh and Km. Raniya came there to rescue but they were also assaulted. The father of the informant sustained serious injuries and he was admitted in a private hospital and Mohan Singh son of Jagveer Singh and Guddu son of Amar Singh saw the occurrence. F.I.R. was lodged and during investigation, father of the informant died and matter was converted under Section 304 I.P.C. The injured persons were medically examined and after initiation of the prosecution, all the appellants were convicted under Sections 323/34, 324/34, 325/34, 304 Part-I read with Section 34, 504 and 506 I.P.C. and were sentenced as mentioned hereinabove. Earlier charge sheet was submitted against the accused appellant Durg Singh whereas accused Radhey Shyam and Balveer were summoned by the court by invoking its power under Section 319 Cr.P.C.

5. It is submitted by learned counsel for the appellants that the appellants-applicants are innocent, they have not committed the alleged offence but they have been falsely implicated in this case. It is further submitted that the prosecution case is based on false and fabricated facts. In fact, it was case of accident and injuries sustained by the inured are not the result of assault made by the appellants. They have been falsely implicated in this case only on account of old animosity. It is next submitted that the accused appellants Radhey Shyam and Balveer are constables in R.P.F. and at the time of incident they were on their duty. It is next submitted that medical evidence does not corroborate the prosecution

version. The doctor, who performed the postmortem of the deceased, has deposed before the court that he had seen stitched wounds to the deceased. He has further stated that the stitched wounds were sustained before 10-15 days of the occurrence. It is also submitted that the prosecution has utterly failed to show as to by which doctor and at which hospital, the deceased was medically examined for the first time. It is next submitted that there are material contradictions in the statements of PW-1 and PW-3 and if reliance is placed upon evidence of PW-3, daughter of the deceased, she has stated that on the fateful day her father had not gone anywhere from the house.

6. It is further submitted that the accused appellant Radhey Shyam and Balveer Singh are not named in the F.I.R. and they have been wrongly summoned under Section 319 Cr.P.C. It is next submitted that only general role of assault has been assigned to the appellants and no specific role or weapon of assault has been assigned to any specific accused appellant. Although it has been alleged that the appellant Durg Singh was having spade and the deceased sustained serious injuries by use of spade as well but however, it is to be noted that no incriminating article has been discovered by the police during investigation on the pointing out of any of the accused persons. It is also submitted that PW-1 and PW-3 are son and daughter of the deceased and as such, they are interested witnesses. PW-3 also states that her father sustained not only spade injury but injury sustained by lathi as well. It is also submitted that the evidence of witnesses of fact is not consistent and as per PW-9 he had seen only head injury to the deceased and this statement contradicts the statement of PW-3. It is also submitted that the learned trial court ignoring the legal principles applicable in this matter recorded the conviction of the appellants in an arbitrary manner. It is also submitted that the appellants were on bail during trial and they have not misused the liberty of bail. It is also submitted that the appellants are languishing in jail since 11.11.2024 having no criminal history to their credit and hearing of the appeal may take some time, therefore, appellants may be enlarged on bail.

7. Per contra, learned A.G.A. vehemently opposed the submissions made by learned counsel for the appellants and it has been submitted that the present case is based on eye witness account and the injured witness and other witnesses of fact have properly explained the prosecution case and corroborated the same. It is further submitted that the injuries sustained by the deceased are in consonance with the weapon claimed to be used in the incident by

the prosecution. It is next submitted that all the accused persons made assault upon the deceased Jagdish Singh and this fact has been corroborated by witnesses of fact. The medical evidence totally corroborated the prosecution version. Several injuries have been sustained by the deceased which are proved by cogent testimony of the medical witnesses.

8. I have considered the rival submissions made by learned counsel for the parties and have gone through the entire record including the impugned judgment.

9. Having regard to the facts and circumstances of the case, sentence awarded to the appellants and also keeping in view the plea of alibi taken by the defence and defence witnesses and evidence produced before the court have not been appreciated by learned trial court in legal manner, the silence of the prosecution on the point as to where the deceased was medically examined for the first time and where his injuries were made stitched injuries, no recovery of any weapon used in the occurrence, the criminal record of the appellants and also considering the fact that the appellants Radhey Shyam and Balveer were not named in the F.I.R. whereas the prosecution case is based on eye witness account, the appellants were on bail during trial and they have not misused the liberty of bail, without further commenting on the merits of the case, I am inclined to release the appellants-applicants on bail.

10. Let the above named accused-appellants **Durg Singh, Radhey Shyam and Balveer** be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned.

11. On acceptance of bail bond and personal bonds, the concerned court shall transmit photostat copies thereof to this Court for being kept on record.

12. However, during pendency of the appeal, the execution of sentence/order appealed against shall remain suspended and half of the fine amount, as imposed by the trial Court, shall be deposited by the accused-appellants within a period of two months from the date of release and remaining half of the fine amount shall remain stayed.

Order on appeal

Office is directed to prepare the paper books and list this appeal in due course.

Order Date :- 4.6.2025

Rmk.