

A.F.R.

Reserved

Neutral Citation No. - 2023:AHC-LKO:65232

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1067 of 2010

Appellant :- Nankau And Another

Respondent :- State of U.P.

Counsel for Appellant :- Pradeep Kumar Singh, Anshubhan Singh, Manish Bajpai

Counsel for Respondent :- Govt. Advocate, Anil Pratap Singh, Sunil Kumar Singh

Hon'ble Shamim Ahmed, J.

1. List of cases has been revised and the case is being taken up in the revised call for hearing.
2. Heard learned counsel for the parties and perused the record.
3. The instant Criminal Appeal under Section 374(2) Cr.P.C. has been moved on behalf of the appellants against the order dated 26.03.2010 passed by learned Additional Sessions Judge / Fast Track Court, Room No.VI, Lucknow in Sessions Trial No.1216 of 1999, Crime No.77/1998, Police Station Thakurganj, District Lucknow (State Vs. Nankau & Another), convicting and sentencing the appellants for rigorous imprisonment of six months under Section 323 I.P.C., one year rigorous imprisonment under Section 504 I.P.C., two years rigorous imprisonment under Section 506(2) I.P.C. and two years rigorous imprisonment alongwith fine of Rs.500/- (in default three months rigorous imprisonment) under Section 3(1)(X) S.C./S.T. Act.
4. The prosecution case in brief is that on 06.03.1998, the complainant Ram Dulare submitted a written report in Police Station Thakurganj, District Lucknow, wherein it had been stated that on the

date of incident at about 08:00 A.M., when the complainant was standing at his door, the accused appellants came to his door. The complainant asked them why they had lodged a case in Court as he was not having any dispute. On hearing this, the accused persons started abusing him in filthy languages and when the complainant forbade them not to abuse, the accused persons had beaten the complainant with lathi and danda. On being beaten, the complainant shouted and made hue and cries. On listing the hue and cries made by the complainant, the neighbors, Shyam Lal, Chunna and Hashim arrived at the spot of incident, who tried to save the complainant but the accused persons had beaten them also. Thereafter, when other persons started to rescue them, the accused fled away by giving threats that they will kill the complainant.

5. On the basis of written report, submitted by the first informant, the first information report was lodged as Case Crime No.77 of 1998, under Sections 323, 504 and 506 I.P.C. and Section 3(1)(X) of S.C./S.T. Act at Police Station Thakurganj, District Lucknow.

6. The case was handed over to Investigating Officer, who visited the place of occurrence, recorded the statement of the witnesses and prepared the site plan and after completing the investigation, submitted the charge sheet against the appellants under Sections 323, 504 and 506 I.P.C. and Section 3(1)(X) of S.C./S.T. Act.

7. On the basis of Charge-sheet appellant-accused were summoned by the Court and charges were framed against them under Sections 323, 504 and 506 I.P.C. and Section 3(1)(X) of S.C./S.T. Act. The appellants-accused denied the charges and claimed to be tried.

8. Prosecution in order to substantiate the charges against appellants-accused examined Ram Dulare, the complainant as P.W.-1, Shyam Lal, the injured and eye witness as P.W.-2, Hashim, the injured and eye witness as P.W.-3, Constable Munni Lal, scribe of written

report as P.W.-4, I.O. Virendra Pratap Singh as P.W.-5 and Dr. M.N. Siddiqui, who examined the injured persons as P.W.-6.

9. After closing of the evidence, statement of accused / appellants under section 313 Cr.P.C. was recorded by the trial court explaining the entire evidence and other circumstances, in which the appellants denied the prosecution story and the entire prosecution story was said to be wrong and concocted.

10. No witness in defence was adduced by the accused persons before the trial court.

11. After having heard the rival submissions of parties, the Trial Court found appellants-accused guilty, therefore, convicted and sentenced them for rigorous imprisonment of six months under Section 323 I.P.C., one year rigorous imprisonment under Section 504 I.P.C., two years rigorous imprisonment under Section 506(2) I.P.C. and two years rigorous imprisonment alongwith fine of Rs.500/- (in default three months rigorous imprisonment) under Section 3(1)(X) S.C./S.T. Act.

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

13. 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. The findings of the learned court below is based on conjectures and surmises. Benefits of latches of prosecution is accorded to the prosecution by the learned court below.

14. Learned counsel for the appellants has further contended that the learned court below has not considered the explanations of circumstances submitted on behalf of the defence while passing the

impugned judgment and order of conviction. The learned trial court has not considered the fact that all the witnesses are interested and tutored and even the prosecution has failed to prove its case beyond all reasonable doubts. As such, he submits that the learned trial court has erred in law and passed the impugned order, therefore, the same is liable to be set aside and the instant appeal is liable to be allowed.

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. The F.I.R. was also immediately lodged and the prosecution witnesses have also proved the commission of offence, 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 innocent unless proven guilty. 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 supported the prosecution story. It is based on testimony of interested or tutored prosecution 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.

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. Perusal of the statement of eye witness P.W.-1 Ram Dulare, who is the complainant, shows that he has reiterated the version of F.I.R. and stated that on date of incident at about 08:00 A.M., when he was standing at his door, the accused appellants came to his door. He asked them why they had lodged a case in Court as he was not having any dispute. On hearing this, the accused persons started abusing him in filthy languages and when he forbade them not to abuse, the accused persons had beaten him with lathi and danda. On being beaten, he shouted and made hue and cries. On listing the hue and cries made by him, the neighbors, Shyam Lal, Chunna and Hashim arrived at the spot of incident, who tried to save him but the accused persons had beaten them also. Thereafter, when other persons started to rescue them, the accused fled away by giving threats that they will kill the complainant.

21. Similarly P.W.-2 Shyam Lal, an eye witness also reiterated the same as P.W.-1 Ram Dulare. He also stated that on hearing hue and cries made by the Ram Dulare, he reached on the spot of incident, where he saw that the accused persons were beating him with lathi and danda and were also abusing him in filthy languages. He also stated that when he tried to rescue the Ram Dularey, the accused persons had also beaten him.

22. Further P.W.-3 Mohd. Hashim, who is also an eye witness and has stated in his testimony that on hearing hue and cries made by the Ram Dulare, he reached on the spot of incident and saw that the accused persons were beating him with lathi and danda and were also abusing him in filthy languages. He also stated that when the Shyam Lal tried to rescue the Ram Dularey, the accused persons had also beaten him.

23. PW-4 Constable Munni Lal had stated in his testimony before the learned trial court that he has scribed the written report into first information report.

24. P.W.-5 Virendra Pratap Srivastava, the Investigating Officer of the case has proved the site plan as Ex. Ka-4 and Charge Sheet as Ex. Ka-5.

25. P.W.-6 Dr. M. N. Siddiqui had stated in his examination-in-chief that he had examined the injured Ram Dularey on 06.03.1998 at about 11:10 A.M. He also stated that he examined injured Shyam Lal and Hashim. He had also prepared medical report of the injured Ram Dularey, Shyam Lal and Hashim. He further stated that all the injuries were simple and fresh which may be caused by scratches.

26. It is true that no independent witnesses were examined by the prosecution. P.W.-2 Shyam Lal and P.W.-3 Hashim are interested and tutored witness as they live in close proximity of the complainant. Appreciating the testimony of interested or partitioned witness, in **Masalti and Ors. v. The State of Uttar Pradesh**, AIR 1965 SC 202, Hon'ble Court was pleased to observe as under:-

“There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders

are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is a partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

27. Discussing reliability of testimony of a interested witness Hon'ble Apex Court in **S. Sudershan Reddy & Ors. v. State of A. P. (2006) 10 SCC 163** was pleased to observe as under:-

" relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible."

28. The testimony of a witness cannot be rejected only on the basis of interestedness. Moreover, it is also against human nature that related witness will spare real culprit and implicate innocent person. If evidence of an interested or related witness is in consonance with probabilities and consistent, his evidence is credible evidence and can be relied upon.

29. Thus testimony of a witness cannot be discarded on the ground of nterestedness or their evidence has to be examined carefully and consciously. It is duty of Court to separate grain from chaff.

30. In order to find out truth, most of the Courts do not ask questions to the witnesses to shift the grain from the chaff. Practice of leaving witnesses to the Advocates, when a witness is tutored or interested, 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.

31. 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 neighbors, interested and tutored, it is beyond apprehension that they instead of naming out real culprit, they would falsely implicate the accused persons knowing them innocent. Enmity with regard to another case has also been admitted between the parties.

32. This Court has gone through the impugned judgment and evidence on record. The trial court relying on the testimony of witnesses, even though who are interested and tutored, 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.

33. *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.

34. 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 26.03.2010 passed by learned Additional Sessions Judge / Fast Track Court, Room No.VI, Lucknow in Sessions Trial No.1216 of 1999, Crime No.77/1998, Police Station Thakurganj, District Lucknow (State Vs. Nankau & Another) is **set aside and reversed**. The appellants, namely, appellant no.1 Nankau and appellant no.2 are **acquitted** of charges under Sections 323, 504, 506(2) I.P.C. and Section 3(1)(X) of S.C./S.T. Act. Their personal bonds and surety bonds are canceled and sureties are discharged.

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

Order Date :-10.10.2023
Piyush/Arvind