

(2015) 04 AHC CK 0234

In the Allahabad High Court

Case No : Government Appeal No. 1535 of 2014

State of Uttar Pradesh

APPELLANT

Vs

Raj Bahadur and Others

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 376, 395, 397

Citation : (2015) 6 ADJ 396

Hon'ble Judges : Ravindra Singh, J;Raghvendra Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Raghvendra Kumar, J—Heard learned A.G.A. for the State of U.P. and perused the lower Court record. This application has been moved on behalf of the State of U.P. to grant leave to appeal against the judgment and order dated 1.2.2007 passed by Additional Sessions Judge, Khurja, District Bulandshahar in S.T. No. 1324 of 1999 whereby the accused-respondents have been acquitted for the offence punishable under Section 395 and 397 I.P.C.

2. From perusal of the record and the impugned judgment dated 1.2.2007, it reveals that the F.I.R. of this case has been lodged by Om Prakash Sharma on 28.10.1992 at 3.05 a.m. in respect of the incident allegedly occurred on 28.10.1992 at about 2.00 a.m. in which the accused-respondents are named as accused, two miscreants were unknown alleging therein that about 2.00 a.m. five miscreants entered into his house, they did marpeet with the inmates of the house and started looting of the articles. They, looted the licensee D.B.L. gun, No. 7500720 and 25 12 bore cartridges. The miscreants were identified in electric light. In the said incident the wife of the first informant, his son, his Sadhu (sister-in-laws husband) and his wife had sustained injuries. List of the looted articles was also provided. The injured Munish Kumar son of Fattea Singh was medically examined on 28.10.1992 at 4.30 a.m. He has sustained two

lacerated wounds. The injured Sonu son of Om Prakash was medically examined on 28.10.1992 at 5.00 a.m. He has sustained lacerated wound and contused traumatic swelling. The injured Pappu son of Jagdish was medically examined on 28.10.1992 at 4.00 a.m. He has sustained seven lacerated wounds. The injured Smt. Sharda wife of Om Prakash Sharma was medically examined on 28.10.1992 at 5.35 a.m., she had sustained three injuries caused by hard and blunt object. After completing the investigation, the Investigating Officer submitted the charge-sheet dated 18.2.1993 against the accused-respondents for the offence under Section 395/397 I.P.C. on which learned magistrate took cognizance on 13.12.1993. Thereafter the case was committed to the Court of sessions. The trial Court framed charges against the accused-respondents for the offence punishable under Section 395 and 397 I.P.C. On 25.1.2000.

3. At the stage of trial from the side of prosecution P.W. 1, Sonu Sharma, P.W. 2, Smt. Sharda, P.W. 3, Pappu, P.W. 4 Rajkumar Verma, P.W. 5 constable Pawan Singh have been examined. Thereafter the statements of the accused-respondents were recorded under Section 313 Cr.P.C. No witness from the side of the defence has been examined.

4. From perusal of the deposition of the witnesses, it reveals that P.W. 1, Sonu Sharma who had sustained injuries in the said incident supported the prosecution story. In examination chief, he deposed the names of the accused-respondents who were identified by him at the time of commission of the alleged offence, but in cross-examination he admitted that at the time of commission of the alleged offence, he was aged about 14 years. At the time of commission of offence some of miscreants were covering their faces and remaining were not covering their faces. The miscreants were five in number, but he stated that he was not knowing whether the case under Section 302, 376 I.P.C. was proceeded against his father Om Prakash Sharma who lodged the F.I.R. He further stated that he was not having any knowledge that one Mahipal, uncle of the accused Ramvir was witnesses against Om Prakash Sharma in case under Section 302, 376 I.P.C.

5. The deposition of P.W. 2, Smt. Sharda shows that she had identified the miscreants in the electric light. She disclosed the names of the accused-respondents. She also sated that she was having no knowledge that the accused-respondents were having enmity with her husband and she was not remembering that any case was proceeded against him and she denied the suggestion that on account of partibandi, the accused Ram Bahadur and Ramvir were named.

6. The deposition of P.W. 3 Pappu shows that he was knowing the accused-respondents who were resident of his village but they had not committed dacoity and not caused injuries to the injured persons. Consequently, he was declared hostile.

7. The deposition of P.W. 4, Ram Kumar Verma shows that on 28.10.1992, he was posted as Store Keeper of S.S.M.J. Hospital, Khurja where Dr. H.M.

Srivastava was the Superintendent. He has identified his signature, the injuries of the injured persons were written by him, the same were proved.

8. It is a case in which no looted property has been recovered from the possession of the accused-respondents. The first informant Om Prakash Sharma could not be examined on account of his death. The suggestion has been given that the first informant was an accused in case under Section 302, 376 I.P.C. in which one Mahipal, uncle of the accused Ramvir was witness. It has not been properly replied by the witness by showing their ignorance. Whereas the copy of the judgment and order dated 7.9.1998 passed by learned IIIrd Additional Sessions Judge Bulandshahar in S.T. No. 453 of 1985 connected with 275 of 1990 and 617 of 1990 has been filed which shows that the first informant of this case, namely, Om Prakash Sharm was charge-sheeted and his case was committed to the Court of sessions. In that case Mahipal Singh was witness.

9. In such circumstances, the trial Court has considered the entire evidence available on record and recorded the finding of acquittal. The impugned judgment does not show that any material evidence was not considered by the trial Court or the accused persons have been acquitted on imagination or the view taken by trial Court was not possible. The impugned judgment by which the accused persons have been acquitted is not suffering from any illegality or irregularity. The possible view of the acquittal has been taken by the trial Court. It does not require any interference in the impugned judgment. Therefore, the prayer for granting leave to appeal is refused. Accordingly, this application is dismissed.