

HIGH COURT OF ALLAHABAD**Bench: Hon'ble Shamim Ahmed, J.****Date of Decision: April 1, 2024.**

CRIMINAL APPEAL No. – 88 of 2009

BHOLA ...APPELLANT**VERSUS****STATE OF U.P. ...RESPONDENT****Legislation:**

Section 374(2) of the Cr.P.C.

Sections 323/34, 504, 506 IPC

Section 3(1)(x) of SC/ ST Act

Subject: Appeal against the judgment and order convicting the appellant under Section 323/34 IPC for assault due to an old enmity and political rivalry.**Headnotes:**

Assault Incident due to Old Enmity – Conviction of Bhola under Sections 323/34 IPC by the Special Judge SC/ST Act for assaulting complainant Ramu due to old village enmity and political differences – Incident allegedly involving lathi beating [Paras 3, 4, 9]

Factual Background and Lower Court Proceedings – FIR lodged against Bhola for assaulting a Scheduled Caste individual, leading to trial and conviction. Charges included Sections 323, 504, 506 IPC, and Section 3(1)(x) of SC/ST Act. Trial court convicted under Section 323/34 IPC with a fine and additional imprisonment in default. [Paras 3-8]

Evidence Analysis – Hostile Witnesses and Contradictions – Multiple prosecution witnesses turned hostile, contradicting the FIR's allegations. Medical evidence indicated injuries were minor and not as severe as alleged. The appellant's involvement in the alleged assault remained unproven. [Paras 6, 9, 17-18, 21-22]

Legal Principles and Application – Emphasizes the presumption of innocence and the prosecution's burden to prove guilt beyond reasonable doubt. Hostile witnesses' testimonies scrutinized, revealing unreliable and contradictory statements. [Paras 15, 17-20]

High Court's Reasoning and Decision – High Court finds trial court's judgment flawed due to reliance on inconsistent and hostile witness testimonies. Acknowledges the necessity to separate 'grain from chaff' in witness accounts, leading to the conclusion that evidence against Bhola was insufficient. [Paras 22-24]

Conclusion – Acquittal of Appellant – High Court reverses Trial Court's judgment. Bhola acquitted due to lack of reliable evidence proving his involvement in the assault. [Para 24]

Decision – High Court allows appeal, setting aside trial court's judgment – Bhola acquitted of charges under Section 323/34 IPC – Appellant's bonds and sureties discharged [Para 24]

Referred Cases: Not Mentioned.

Representing Advocates:

Counsel for Appellant: Farooq Ayoob

Counsel for Respondent: G.A.

JUDGMENT

1. List has been revised.
2. Heard learned Counsel for the parties.
3. The present Criminal Appeal under Section 374(2) of the Cr.P.C. has been filed against the judgment and order dated 04.11.2008 passed by Special Judge SC/ST Act, Court No.6 Barabanki convicting and sentencing the appellant under Section 323/34 I.P.C. till the day of court and Rs.1000/- fine, and in default of payment of fine six months additional imprisonment will be imposed on the appellant.
4. The prosecution case in brief is that the complainant as well as accused persons are resident of same village. There was some old enmity in between the parties. On 15.08.1999 at about 9:05 A.M., the complainant, namely- Ramu lodged an F.I.R. stating therein that on 04.08.1999 at about 8:00 P.M., there was a minor scuffle between the children of complainant and accused persons, which was resolved but on the same day, the accused persons reached the door of the complainant, who belongs to Schedule Caste category and started abusing him with caustic words and thereafter, they started beating him with lathi. On hue and cry made, the nearby villagers arrived at the spot, then the accused persons fled from the spot threatening

the complainant that if dares to lodge a complaint against them they will kill him. Thereafter, the complainant after 11 days' of the said incident visited the police station concerned and lodged a F.I.R. which was registered as Crime No.82/1999 under Section 323, 504 and 506 and Section 3(1)(x) of SC/ ST Act and charge sheet was submitted by the Investigating Officer under Sections 323, 504 and 506 I.P.C. and Section 3(1)(x) of SC/ST Act.

5. Charges were framed by the trial court under Sections 323/34, 504 and 506 I.P.C. and Section 3(1)(x) of SC/ST Act. The accused person denied charges and sought trial.
6. Prosecution examined the informant/complainant, Ramu, as P.W.1, who reiterated the allegations mentioned in the FIR and he proved the lodging of first information report. Raj Kumar was produced as P.W.-2, who in his statement recorded before the trial court denied all the allegations leveled against the appellant and further stated that he knew both appellant and the complainant, no such incident took place as alleged by the prosecution, therefore, the P.W.-2 turned hostile before the trial court. P.W.-3, Ram Milan, testified before the court that no such incident took place as alleged by the prosecution, therefore, P.W.-3 also did not support the prosecution case and turned hostile. P.W.-4, Bhuvan Vikram Singh and P.W.-5, Ganga Prasad also reiterated the same version and they did not support the prosecution case and they also turned hostile. P.W.6 Ratan Prakash, Circle Officer, Investigating Officer, stated that on the basis of complaint made by the complainant and statements, he visited the site and created site plan and he further stated that he also recorded the statements of witnesses, namely-Ram Milan, Ganga Prasad, Bhuvan Vikram Singh and Raj Kumar, thereafter, he perused the injury report and statements of the witnesses and submitted the charge sheet against the accused persons. P.W.-7, Guru Prasad Arya, Constable, was posted with the Investigating Officer i.e. P.W.-6 and he verified his signatures and other documents produced by P.W.-6 during submission of charge sheet against the accused persons and he also prepared the chik F.I.R. and G.D. Entry. P.W.-8, Dr O.P. Singh, Medical Officer, Primary Health Centre, Daryabad, District-Barabanki stated in his statement recorded before the trial court that on 05.08.1999 at about 9:30 A.M. he conducted medical examination of the complainant, Ramu and prepared an injury report wherein, he has clearly stated that all the injuries were simple in nature and further stated that the injuries are one and a half day old and have been caused with some blunt object. Thus, on perusal of statement of P.W.-8, it appears that the injuries which were caused to the complainant were simple in nature and have been caused due to some minor scuffle.
7. The accused were examined under Section 313 Cr.P.C. and they denied their involvements in the alleged incident and they further stated that there was some old enmity between the parties, therefore, they have been roped in this case and the police authorities also have falsely implicated them in the present case due to village politics.

8. The trial court exonerated all the appellant from charges under Section 504 and 506 I.P.C. and Section 3(1)(X) of SC/ST Act. The trial court found that the offence under Section 504 and 506 I.P.C. and has not been proved against the appellant beyond reasonable doubt. The trial court further observed that so far as the charges under Section 3(1)(x) of the SC/ST Act are concerned, P.W.1 and P.W.2 to P.W.5 gave contradictory statements in this regard, thus, trial court observed that the words which were used by the accused persons at the place of incident were not meant for public humiliation and consequently, exonerated the appellant under Section 3(1)(x) of the SC/ST Act, and offences under Section 323 read with Section 34 I.P.C. was found proved against the appellant and thereby, convicting and sentencing the appellant under Section 323/34 I.P.C. till the day of court and Rs.1000/- fine, and in default of payment of fine six months additional imprisonment will be imposed on the appellant.
9. The counsel for the appellant has submitted that the first information report was lodged due to enmity between the parties. Both the complainant and the appellant belong to different political parties and the issue involved in this case is due to political rivalry, no such incident ever took place as alleged by the prosecution. He further submitted that even P.W.2 to P.W.5 turned hostile and did not support the prosecution case. He has further submitted that the offences against the appellant were not found to be proved since allegation in the FIR was that appellant caused injuries to the informant/complainant by the lathi and danda. The injuries from the lathi and danda in the nature of contusion with swelling and blue marks on injury. The injuries on the persons of the informant/complainant, shows that they were caused by some blunt object, which are simple in nature. He has submitted that the prosecution has failed to prove its case beyond reasonable doubt but the trial court without applying its judicial mind and without perusing the material facts placed on record convicted the appellant under Section 323/34 I.P.C.
10. Learned A.G.A. has opposed the aforesaid arguments and has submitted that the judgment of the trial court is justified and calls for no interference.
11. After having heard the rival submissions of parties, the Trial Court found appellant-accused guilty, therefore, convicting and sentencing the appellant under Section 323/34 I.P.C. till the day of court and Rs.1000/- fine, and in default of payment of fine six months additional imprisonment will be imposed on the appellant.
12. Feeling aggrieved by the judgment of conviction and sentence passed by Trial Court, the appellant-accused have preferred this appeal.
13. Learned Counsel for the appellant 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.

14. Opposing the contention of learned Counsel for the appellant-accused, 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, though, the F.I.R. could not be lodged immediately due to inaction on the part of police authorities, as such, the impugned order does not require any interference by this Court and the appeal is liable to be dismissed.
15. 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 referred 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.
16. In the present case, almost all the prosecution witnesses have stated their own version of the prosecution story. Thus, the testimony appears to be based on interested witnesses from which guilt of accused may be inferred.
17. 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. Hostile/ interested witness ordinarily falls in category of those witnesses who are neither wholly reliable nor wholly unreliable. Hon'ble Apex Court in *Khujji @ Surendra Tiwari Vs. State of M.P.* AIR 1991 SC page 1853 was pleased to observe as under :-

"The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether, but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof."
18. 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."

19. Similarly in *Paramjeet Singh v. State of Uttarakhand*; AIR 2011 SC 200 also Hon'ble Apex Court was pleased to observe as under:-

"When the witness was declared hostile at the instance of the public prosecutor and he was allowed to cross examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony".

20. It feels pain to observe that in our present system of trial despite having sufficient power to the judge to ask questions to the witnesses in order to find out truth, most of them do not ask questions to the witnesses to shift the grain from the chaff. Practice of leaving witnesses to the Advocates, when a witness becomes hostile or is an interested witness, is not uncommon 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.

21. 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 close relatives, it is beyond apprehension that they instead of naming out real culprit, they would falsely implicate the accused persons knowing them innocent.

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

were interested witnesses and also turned hostile at the stage of trial, 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.

23. 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.
24. 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 in law while passing the impugned judgment and order, therefore, this appeal succeeds and is allowed. The judgment and order dated 04.11.2008 passed by Special Judge SC/ST Act, Court No.6 Barabanki convicting and sentencing the appellant under Section 323/34 I.P.C. till the day of court and Rs.1000/- fine, and in default of payment of fine six months additional imprisonment will be imposed on the appellant is set aside and reversed. The appellant, namely, Bhola is acquitted of charges under Section 323/34. His personal bonds and surety bonds are canceled and sureties are discharged, if any.
25. Let record of trial Court be sent back to Court concerned along with copy of judgment and order for information.

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