

Neutral Citation No. - 2023:AHC:182546

Court No. - 85

Case: CRIMINAL APPEAL No. - 7567 of 2023

Appellant: Ashok Rai And Another

Respondent: State Of U.P. And 3 Others

Counsel for Appellant: Vibhu Rai

Counsel for Respondent: G.A., Pradeep Kumar Rai

Hon'ble Mayank Kumar Jain, J.

The learned counsel for the appellants, Vibhu Rai, and for the respondent, Pradeep Kumar Rai, along with the learned counsel for the State, informed the court that the appeal against the judgment of the Additional Sessions Judge has been filed by the appellants.

During the hearing of the appeal, the appellants Ashok Rai and Vipul Rai, as per the FIR dated 2092 of 2016, and under sections 323, 504, 506, 354-B, Protection of Children from Sexual Offences Act, Protection of Children from Sexual Offences Act, 3 (1) (12) POCSO Act, and Protection of Children from Sexual Offences Act (Aggravated Sexual Assault), were convicted by the Hon'ble Additional Sessions Judge/Special Sessions Court, Galajapipur, and were sentenced to pay a fine of Rs. 1085/2023 (State vs. Vipul Rai and Others), special reference No. 19 of 2017, and the order dated 01.05.2023 was challenged. The appellants, through their counsel, requested for the reduction of the imposed fine, which is pending consideration, and upon this, the counsel for the appellants was directed to file an application for reduction of the fine.

On my preliminary inquiry, the facts are as follows: On 13.11.2016 at around 08:45 hours, the victim Pankaj Rai, residing at the house of his maternal uncle Pampam Rai, was confronted by his neighbor, accused of molesting his sister. When Pankaj Rai refused to indulge in such activities and tried to leave, he was forcefully restrained by the accused and his associates, who were under the influence of alcohol, and taken to his house. When his elder sister tried to stop them, they started abusing her and creating a ruckus. The accused, upon hearing the commotion, came to the scene and started threatening and abusing the accused's wife. When the accused's elder brother arrived, the situation became even more tense, and many people gathered around. During this chaos, the accused and his associates assaulted Pankaj Rai and his family members, causing injuries to them. The noise attracted the attention of other people in the neighborhood, and when the police arrived, the accused and his associates fled the scene. The victim Pampam Rai, along with his family members, was taken to the hospital for treatment. In the medical examination, injuries were found on the body of Pankaj Rai, and his sister was also examined, but no injuries were found. The accused and his associates were identified during the investigation, and their identification was confirmed when they were arrested.

The learned counsel for the appellants argued that the appellants were not involved in the incident as alleged. Pankaj Rai's identification of the appellants is not reliable as he did not mention their names in the FIR dated 161. Moreover, the appellants were not present at the scene of the incident as claimed by the prosecution witnesses. The learned counsel for the appellants further argued that under section 164 Cr.P.C., the appellants did not confess to their involvement in the incident. Therefore, it was prayed that the case against the appellants be dismissed.

Considering the arguments and evidence presented, it is clear that the appellants were not properly identified by the prosecution witnesses. The identification of the appellants by Pankaj Rai, who is the main witness, lacks credibility as he did not mention their names in the FIR and his identification of the appellants during the trial appears to be an afterthought. Furthermore, under section 164 Cr.P.C., the appellants did not confess to their involvement in the incident. In view of the foregoing, the appeal of the appellants is allowed, and the judgment of the trial court convicting the appellants is set aside.

The appellant candidates have presented their grievances against the judgment passed by the divisional party, which is deemed not to have been made properly according to Section 3(1)(12) of the Unlawful Activities (Prevention) Act, 2004, as it has been considered that the right to be heard has not been fully respected. Until the appellant candidates are given the opportunity to present their arguments fully, the adjudication process cannot be considered fair and just.

The appellant candidates have presented their grievances against the judgment passed by the divisional party, which is deemed not to have been made properly. In this case, the dispute between the plaintiff and the defendant can be resolved through arbitration, mediation, or conciliation. There are several cases against the appellant number 4, and one in particular, dated 07.12.2006, where the appellant number 4's wife's plea was dismissed, and subsequently, the appellant's plea, registered as case number 114 of 2007, was also rejected.

The appellant candidates have presented their grievances against the judgment passed by the divisional party, which is deemed not to have been made properly. The appellant number 4's allegations of excessive punishment were considered, and based on my examination, I found a previous case, registered as case number 1487 of 2015, where upon further investigation, the defendant's appeal was upheld, based on the decision of the divisional party on 04.08.2015, to reduce the punishment.

The appellant candidates have presented their grievances against the judgment passed by the divisional party, which is deemed not to have been made properly. The appellant's plea was dismissed, and the defendant's plea, involving a large sum of money and various assets, was upheld. It has been noted that the defendant's appeal, concerning the dispute over 82 of 2022, in the form of an interim application for the present judgment, has not been properly considered.

In light of the foregoing, the appellant candidates have presented their grievances against the judgment passed by the divisional party. The appellant's plea for a reduction in the excessive punishment has been rejected, and the appellant's appeal against the judgment is deemed to have been properly considered. Therefore, it is concluded that there is no need for further consideration of the excessive punishment aspect of the judgment. Additionally, it has been noted that the appellant's arguments were not adequately presented by their legal representation, and their request for a fair trial is therefore considered invalid.

The appellant number 4's plea for proper representation through legal aid has been considered, and it has been noted that the appellant's legal representation failed to adequately address the factual inaccuracies and provide a suitable defense. Therefore, the appellant's appeal against the judgment passed by the divisional party has been dismissed, and their request for a fair trial has been rejected.

The appellant candidates have presented their grievances against the judgment passed by the divisional party, and in light of the substantial evidence provided, the court finds merit in their appeal. It is noted that the appellant's plea for a reduction in the excessive punishment has been upheld, as evidenced by the decision of the Hon'ble Supreme Court in the case of Laxmi v. State (2012) 8 SCC 730.

The appellant candidates have failed to provide substantial evidence to support their appeal. The plea for legal aid, as well as the appellant's wife's plea for representation, has not been adequately addressed. However, it has been noted that the appellant's legal representation failed to properly present their case, and their request for legal aid has therefore been rejected.

The Hon'ble Supreme Court has upheld the decision of the divisional party, and in light of the substantial evidence and legal precedents provided, the appellant's plea for a reduction in the excessive punishment has been deemed appropriate.

In conclusion, the appellant candidates have presented their grievances against the judgment passed by the divisional party, and in light of the evidence provided, their plea for a reduction in the excessive punishment has been upheld. The court finds merit in their appeal and deems it appropriate to grant relief accordingly.

16- "The appeal of the appellant has been rejected by the lower court. The appealant's plea has been dismissed."

17- "At the upper level, the appellant appealed to the higher court. The appellant's plea was considered by the higher court, and after considering all the facts, the court decided to increase the fine to Rs. 50,000/- along with a personal bond and ordered immediate enforcement."

(i) "The appellant is advised to abide by the court's decision and comply with the specified time limit."

(ii) "If the appellant has any objections to the facts presented by the court, they can submit their objections in writing to the court, ensuring that they do not hinder the proceedings or create any disturbance. Failure to present facts to the court may result in penalties for the appellant."

(iii) "The appellant is encouraged to seek legal counsel and assistance for further proceedings and to fulfill the obligations of the imposed fine."

(iv) "The appellant is not allowed to leave the jurisdiction of the court until all their obligations, including the fine and any associated costs, are fulfilled, as per the court's orders."

18- "In case of violation of the above orders, the appellant may be subjected to further legal action, and the enforcement of the imposed fine shall be the responsibility of the appellant."

Order Date: 20.9.2023