[2024] 11 S.C.R. 786 : 2024 INSC 864

Sonu Choudary
v.
State of NCT Delhi

(Criminal Appeal No. 3111 of 2024)

06 November 2024

[Bela M. Trivedi and Satish Chandra Sharma, JJ.]

Issue for Consideration

Issue arose as to whether the conviction of the appellant u/ss.324 and 452 IPC is sustainable; and whether a restaurant can be said to be a place used for dwelling or for worship or for the custody of property for convicting a person u/s.452 IPC for committing offence of house tresspass.

Headnotes†

Penal Code, 1860 – ss.324 and 452 – Voluntarily causing hurt – House trespass after preparation for hurt, assault or wrongful restraint – Prosecution case that the appellant inflicted injuries with the blade on the thigh, shoulder and back of the owner of the restaurant, when the owner refused to give the appellant water to consume alcohol – Victim's friend tried to intervene, however, he was also inflicted injury – Conviction and sentence u/ss. 324 and 452 by the courts below – Correctness:

Held: Prosecution proved the guilt of the appellant so far as the offence u/s.324, "voluntarily causing hurt" to the injured and was rightly convicted and sentenced for the offence u/s.324 – As regards s.452, the incident took place in a restaurant run by the injured which cannot be said to be either a place used for human dwelling or for worship or for the custody of the property – Thus, the very ingredients of the offence u/s.452, namely, the criminal trespass as contemplated in s.441 and house trespass as contemplated in s.442 having not been made out by the prosecution, the appellant could not have been convicted for the offence u/s.452 – Thus, conviction and sentence awarded for offence u/s.452 by the trial court and confirmed by the High Court set aside – Appellant acquitted for the offence u/s.452. [Paras 6, 7, 9-12]

Sonu Choudary v. State of NCT Delhi

List of Acts

Penal Code, 1860.

List of Keywords

Place used for dwelling or for worship or for custody of property for convicting a person u/s.452 IPC; Offence of house tresspass; Voluntarily causing hurt; House trespass after preparation for hurt, assault or wrongful restraint; Infliction of injuries with blade.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 3111 of 2024

From the Judgment and Order dated 21.02.2024 of the High Court of Delhi at New Delhi in CRLA No. 243 of 2023

Appearances for Parties

Suvendu Suvasis Dash, Ms. Swati Vaibhav, M/s. Vaibhav & Dash Law Associates, Advs. for the Appellant.

Mrs. Archana Pathak Dave, A.S.G., Mukesh Kumar Maroria, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

1. The instant appeal arises out of the impugned order dated 21.02.2024 passed by the High Court of Delhi at New Delhi in Criminal Appeal No.243 of 2023, whereby the High Court had dismissed the appeal preferred by the appellant and confirmed the judgment of conviction dated 30.11.2022 and order on sentence dated 04.02.2023 passed by the Addl. Sessions Judge-FTC-02 (South East), Saket Courts, Delhi ("Trial Court"). Vide the said judgment, the appellant was convicted for the offences under Sections 324 and 452 of the IPC, and was directed to undergo simple imprisonment for a period of two years and to pay fine of Rs.1,00,000/- for the offence under Section 324 IPC and in default thereof, to undergo further simple imprisonment for a period of six months, and was further sentenced to undergo simple imprisonment for a period of four years and to pay fine of

Rs.5,000/- for the offence under Section 452 IPC, in default thereof, to undergo further simple imprisonment for a period of three months.

2. The case of the prosecution in short was that on 06.10.2014, the appellant-accused had gone to the restaurant namely, Baithak Restaurant, run by the injured Rajat Dhyani (PW-1). He asked for a jug of water to consume alcohol. When the said Rajat refused to give water, the appellant – accused took out a blade and inflicted injuries on the thigh, shoulder and back of the said Rajat. When the said Rajat called his friend Imran Khan (PW-3), he tried to intervene, however, the appellant caused injury on stomach with the blade to Imran also. On receiving the information about the incident (DD No.3A), the Investigating Officer found the two injured persons, and the appellant was apprehended on the spot.

3. It is sought to be submitted by the learned counsel, Mr. Suvendu Suvasis Dash for the appellant that the entire conviction of the appellant is based on the solitary evidence of PW1- Rajat Dhyani, as the PW3 – Imran Khan, though was allegedly injured, had not supported the case of the prosecution. According to him, no case for house trespass was made out and the injuries allegedly caused by the appellant were also simple in nature. He further submitted that the appellant has already undergone two years of imprisonment.

4. However, the learned senior counsel, Ms. Archana Pathak Dave appearing for the respondent – State has supported the impugned order passed by the High Court and submitted that the two Courts having concurrently held the appellant guilty for the offences under Sections 324 and 452 IPC, this Court may not interfere with the same, more particularly, when there is no major irregularity or infirmity in the impugned order passed by the High Court.

5. At the outset, it may be stated that though the PW-1, i.e., injured Rajat had supported the case of the prosecution, the PW-3, Imran Khan, who was also allegedly injured by the appellant had not supported the case of the prosecution and was declared hostile. The PW-1 had inter alia stated that the appellant- accused had come to his restaurant, and had asked for a jug of water for consuming alcohol. When he refused to give him the water, he started quarreling with him and ultimately inflicted injuries to him with a blade. He stated that the injuries were caused on his thigh, back and shoulder. The MLC No.454231 (Ex. PW6/B) also corroborated the version of PW-1.

However, as per the opinion of PW7 – Dr. Biswajit Singh, the said injuries were found to be simple in nature.

6. Having regard to the afore discussed evidence, we are of the opinion that the prosecution had proved the guilt of the appellant so far as the offence under Section 324, i.e., "voluntarily causing hurt" to the injured was concerned and was rightly convicted and sentenced for the offence under Section 324 IPC.

7. However, so far as the offence under Section 452 is concerned, both the Courts below have failed to consider the ingredients of the said provision. Section 452 reads as under:-

> *"452. House-trespass after preparation for hurt, assault or wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

8. The definitions of criminal trespass and house trespass as contained in Sections 441 and 442 read as under:-

> *"441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".*
>
> *442. House-trespass.—Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass"."*

9. Having regard to the said provisions contained in Sections 441, 442 read with 452, it appears that in order to convict a person for the offence under Section 452, it has to be proved beyond reasonable

doubt that the accused had committed a house trespass within the meaning of Section 442, on he having made preparation for causing hurt to any person, or putting him under fear etc. The "house trespass" being an essential ingredient for convicting a person under Section 452, it has to be proved by the prosecution that the accused committed the house trespass and criminal trespass by entering into or unlawfully remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, as contemplated in Section 442 IPC.

10. So far as the facts of the present case are concerned, admittedly, the incident had taken place in a restaurant run by the injured PW-1, Rajat, which cannot be said to be either a place used for human dwelling or for worship or for the custody of the property. Hence, the very ingredients of the offence under Section 452, namely, the criminal trespass as contemplated in Section 441 and house trespass as contemplated in Section 442 having not been made out by the prosecution, the appellant could not have been convicted for the offence under Section 452 IPC.

11. In our opinion, both the Courts having miserably failed to appreciate the said provisions in the light of the facts of the case, the conviction of the appellant for the offence under Section 452 IPC is liable to be set aside.

12. In that view of the matter, the conviction made and sentence awarded by the Trial Court and confirmed by the High Court is further confirmed so far as the offence under Section 324 IPC is concerned, however, the conviction made and sentence awarded for the offence under Section 452 IPC by the Trial Court and confirmed by the High Court is hereby set aside. The appellant is acquitted for the offence under Section 452 IPC.

13. Since the appellant has already undergone two years of sentence, so far as the conviction under Section 324 is concerned, the appellant is set free, if not required in any other case. However, it is clarified that the appellant shall be liable to pay the fine as directed by the Trial Court, if not paid so far, or in default thereof, shall undergo the sentence as directed by the Trial Court. The Trial Court shall verify the status of sentence undergone by the appellant and payment of fine, if any, made by him, and if not paid, shall proceed against

the appellant – accused in accordance with law and also issue the non-bailable warrant as may be required, for undergoing remaining part of sentence, if any,.

14. The Appeal stands partly allowed accordingly.

15. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal partly allowed.

†*Headnotes prepared by:* Nidhi Jain