
(2011) 10 AHC CK 0077

Allahabad High Court

Case No: Criminal Appeal U/S 374 CR.P.C. No. - 5578 of 2011

Mohd. Umar

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision: Oct. 31, 2011

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 428
- Penal Code, 1860 (IPC) - Section 307, 379, 380, 395, 397
- Uttar Pradesh Control of Goondas Act, 1970 - Section 3, 4
- Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 - Section 3(1)

Hon'ble Judges: Kant Tripathi, J

Bench: Single Bench

Judgement

Hon"ble Shri Kant Tripathi, J.

Heard learned counsel for the appellant Mohd. Umar and learned AGA for the State and perused the record.

2. By this appeal, the appellant Mohd. Umar has impugned the judgment and order dated 4.8.2011 rendered by Sri Ram Mohan Sharma, the Special Judge, Gangster Act, (Additional Sessions Judge, Court No.5), Moradabad in Special Sessions Trial No. 81 of 2007, State vs. Mohd. Umar, whereby the appellant Mohd. Umar has been convicted and sentenced u/s 3(1) of the U.P. Gangsters and Ante Social Activities Act (hereinafter referred to as "the Act") to undergo rigorous imprisonment of twenty five months and also to pay a fine of Rs. five thousand and in default of payment of fine to under go additional simple imprisonment of one month.

3. It is alleged that the appellant had formed a gang with his associates Rauf and Bhoora and was involved in ante social activities for economic gain. According to the F.I.R., the appellant had a criminal history of following cases:

- (1) Case crime no. 478/2006 under sections 379, 411 IPC, police station Bhojpur, district Moradabad,
- (2) Case crime no. 479/2006 under sections 398, 401, 307 IPC, police station Bhojpur, district Moradabad,
- (3) Case crime no. 480/2006 u/s 25 Arms Act, police station Bhojpur, district Moradabad,
- (4) Case crime no. 244/2000 under sections 395,397 IPC, police station Tanda Rampur, district Moradabad,
- (5) Case crime no. 671/2006 u/s 380 IPC, police station Thakurdwara, district Moradabad,
- (6) Case crime no. 807/2004 u/s 25 Arms Act, police station Bhagatpur, district Moradabad,
- (7) Case crime no. 91/2005 u/s 3/4 of the
U.P. Control of Goondas Act, police station Bhagatpur, district Moradabad,
- (8) Case crime no. 1082/2005 under sections 379, 411 IPC, police station Bhojpur, district Moradabad.

4. The learned trial court framed the charge u/s 3(1) of the Act against the appellant, who denied the charge and claimed to be tried.

5. During the trial, the appellant Mohd. Umar admitted his guilt u/s 313 of the Code of Criminal Procedure and on the basis of that statement the learned trial court convicted and sentenced the appellant.

6. The learned counsel for the appellant submitted that he would not press the appeal on merits and further contended that the sentence of 25 months rigorous imprisonment, in view of the facts and circumstances of the case, was highly improper. In this way, the learned counsel for the appellant did not press the appeal on merits and only pressed the same on the point of sentence. It was next submitted that the appellant is in jail from 4.10.2009 and has, thus, served out more than 24 months. Learned counsel lastly contended that if the appellant is sentenced for a period of two years instead of 25 months, he would feel satisfied.

7. Keeping in view the facts and circumstances of the case and submissions of the learned counsel for the appellant and the learned AGA, the appeal is partly allowed. The conviction of the appellant Mohd. Umar u/s 3(1) of the Act is maintained. However, the sentence of rigorous imprisonment of 25 months is reduced to only two years rigorous imprisonment. The amount of fine is also reduced to Rs. Three thousand and in default of payment of fine, the appellant will undergo additional simple imprisonment of one month.

The sentence passed by the learned trial court stands modified accordingly.

8. The appellant shall be given due adjustment of the period already undergone as provided by section 428 of the Code of Criminal Procedure, while calculating the period of sentence.

9. Let a copy of this judgment along with the lower court record be transmitted forthwith to the learned trial court for immediate compliance.