

Court No. - 84

Case :- CRIMINAL APPEAL No. - 2334 of 2023

Appellant :- Ramkaran Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Akhilesh Singh, Deeksha Singh, Shivam Yadav

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard learned counsel for the appellants, Sri Shakti Singh, learned A.G.A. and perused the record.

No one has put in appearance for opposite party no.2 despite of sufficient service.

By filing this appeal order dated 23.12.2022 passed by the Special Judge SC/ST Act, Jaunpur in S.S.T. No. 260 of 2022 (State Vs. Ramkaran & others) arising out of Case Crime No.30 of 2022, under Sections 147, 323, 504, 506, 354-Kha I.P.C. and Section 3(2) (va) of SC/ST Act, Police Station Zafrabad, District- Jaunpur has been challenged.

By impugned order, the trial court took cognizance under Sections 147, 323, 504, 506, 354-Kha I.P.C. and Section 3(2) (va) of SC/ ST Act against six persons including both the appellants.

As per version of the FIR there was enmity regarding the land between the parties so the accused persons used to give threat of life to the first informant and her family members. On 31.10.2021 at 9:00 A.M. when the first informant was in his garden all the six accused persons equipped with sickle, axe etc. came and started cutting trees belonging to the first informant. When they were forbidden, in anguish they started hurling caste based words and when they were resisted all of them started thrashing the first informant with kicks and blows. When Kanhaiya and his wife Nisha, both son and daughter-in-law of the first informant came to the rescue of the first informant they were also beaten at the hands of accused persons with fists, blows baton and sticks. Nisha Devi, the daughter-in-law of the first informant was thrashed against the floor by catching her hair. She was made half nude. After hearing her hue and cry, the neighbours came, witnessed the incident and

saved the opposite party no.2 and her family members. While going back these persons again hurled caste based words, gave threat of life and snatched the gold chain of Nisha Devi. No action was taken by the police of the concerned police station. On the instructions of the District Magistrate concerned the medical examination of the first informant, her son and daughter-in-law was done.

When the report of the first informant was not written in the police station then on 01.12.2021, she moved an application under Section 156(3) of Cr.P.C. On this application, the order of registering FIR against the opposite parties mentioned in the application was made and after investigation the charge-sheet was filed against the appellants alongwith other co-accused persons under Sections 147, 323, 504, 506, 354- Kha IPC and Section 3(2) (va) of SC/ST Act.

It is argued by the learned counsel for the appellants that civil litigation regarding the disputed land is pending between the parties. The appellants had filed an injunction suit being Original Suit No. 1624 of 2021 to seek injunction against the first informant and six other persons. On 24.09.2021 the proceedings under Sections 151/107/116 of Cr.P.C. were drawn against both the parties. Injury reports of the first informant, her son and daughter-in-law are appended with the paper book, wherein only simple injuries are found on their person. FIR has been lodged on completely false allegations. It is a malicious prosecution. Regarding incident dated 31.10.2021 the application under Section 156(3) Cr.P.C. was moved on 01.12.2021 and this delay has not been explained, hence, prayer is made accordingly.

Learned A.G.A., however, opposed the prayer and submitted that the victim Nisha Devi in her statement under Section 164 Cr.P.C. and other witnesses in their statements under Section 161 Cr.P.C. have supported the prosecution version. The medical certificates of all the injured persons including the first informant are appended with the paper book. No supplementary report regarding the injury no.3 of injured Nisha Devi has been summoned, hence, the prayer is made accordingly.

From the perusal of the record, it is clear that as per the FIR itself it is the case of the parties that there is enmity of civil litigation among the parties. Regarding incident dated 31.10.2021 with the order of the District Magistrate concerned the medical of the first informant, her son and daughter-in-law have been done on 02.11.2021 in District Hospital. On the person of Kalawati, three

abrasions and four complaints of pain have been recorded. In the medical examination of Nisha Devi, one abrasion and four complaints of pain and bleeding from nose alongwith swelling have been recorded. Out of these five injuries of Nisha Devi injury no.3 was kept under observation, but no supplementary report has been placed before the Court. In the medical examination report of Kanhaiya, the son of the first informant, four complaints of pain in different parts of the body have been recorded. Though, all the injuries are found to be simple. Injured Nisha Devi in her statement under Section 164 Cr.P.C. and the first informant alongwith eye witnesses Awadesh Kumar Yadav, Amarnath Yadav and Ramchander Yadav in their statements under Section 161 Cr.P.C. have supported the prosecution version that fight took place between the parties on 31.10.2021 at 9:00 a.m., wherein both the parties hurled abuses to each other and use of force was made. Though, it is claimed that one month delay in filing the application under Section 156(3) Cr.P.C. has not been explained. It is true that the application under Section 156(3) Cr.P.C. was moved by the opposite party no.2 after one month of the incident, but in the opinion of the Court, mere delay in filing application under Section 156(3) Cr.P.C. or the FIR cannot be a ground for quashing charge-sheet or setting aside the summoning order. The investigating officer has recorded and collected ample evidence against the appellants.

In the opinion of the Court, the trial court has rightly taken cognizance against the appellants on the basis of the charge-sheet filed by the investigating officer on the basis of the evidence collected by him.

This Court finds no infirmity in the impugned cognizance order.

The appeal lacks merits and the same is **dismissed** accordingly.

Order Date :- 17.10.2023

Radhika