

Court No. - 84

Case :- CRIMINAL APPEAL No. - 2496 of 2023

Appellant :- Shubham Dubey And 4 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- B.K. Shukla

Counsel for Respondent :- G.A.

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

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

No one has put in appearance for the opposite party no. 2 at the time of arguments.

By filing this appeal the summoning order dated 01.03.2021 passed by the Special Judge, SC/ST Act, Kaushambi in Criminal Case No. 22 of 2021 (State Vs. Deshraj Dubey and others), Case Crime No. 277 of 2019 under Sections 147, 323, 504 IPC and 3(1)Dha and 3(2)5A of SC/ST Act has been challenged.

By the impugned order the cognizance has been taken by the trial court against the appellants under Sections 147, 323, 504 IPC and 3(1)Dha and 3(2)5A of SC/ST Act.

It is argued by the learned counsel for the appellants that the incident is shown to be dated 18.08.2019 while prior to this incident the appellant no. 4, Genda Lal Dubey had moved an application before the S.D.M., Tehsil Sadar, Prayagraj that the case regarding his house and 'sahan' is pending before the Civil Judge, Court No. 11, Allahabad being Original Suit No. 176 of 1987 (Ram Khelawan Vs. Omkar Nath) and one more suit is pending before the Additional District Judge, Court No. 7, Allahabad being Case No. 501 of 1987 (Kalawati Vs. Ram Khelawan). The Civil Judge (Junior Division), Court No. 11 had passed an order of status-quo on 15.04.1987 in his favour, which is still in progress. In connivance with Village Pradhanpati Santosh Kumar Sharma, Triyugi Narayan Mishra and Prakash Narayan Mishra want to construct drain and 'kharanja' on this land by cutting the trees on this land. When they were resisted, they hurled abuses and gave threat of life. The present opposite party no. 2 as per version of the FIR, is the man of Village Pradhan and it is claimed that the FIR is

false and names of the appellants are manipulated one. There is no injury caused by the chain as alleged in the FIR. Despite of stay of the land, Pradhanpati wants to construct '*kharanja*' on the land of the appellants. Hence, prayer is made accordingly.

Learned A.G.A. opposed the prayer and submitted that in fact, the incident took place. In the injury report 11 injuries are shown to the opposite party no. 2. All the witnesses in their statements under Section 161 Cr.P.C. have supported the prosecution version.

From perusal of the record, it is found that an FIR was lodged by the opposite party no. 2 on 18.08.2019 against all the appellants and one unknown person with the version that he is the Munshi of Village Pradhan. He was collecting bricks for '*kharanja*'. All the appellants came and forbade him to construct '*kharanja*' on the spot and assaulted him with lathi, danda and chain. Raju Mishra, Narendra Tripathi and Surendra Kumar are said to be the eye witnesses of the incident. The injury report of the opposite party no. 2 of the same date of incident is on record showing four contusions and seven complaints of pain in different parts of the body. These injuries are found to be caused by some hard and blunt object. The nature of the injuries is not mentioned in the report. X-ray regarding chest was advised but no x-ray report or the report of Radiologist has been placed before the court. Whether there was any stay on the land in the suit has also not been placed before the court. Otherwise also, in the application dated 16.08.2019 addressed to the S.D.M. concerned, mere order of status-quo on 15.04.1987 on the land in dispute is said to be there. Whether it is continuing till date is not clear, as no document is placed in this regard before this court. There is no dispute regarding caste of both the parties.

The facts mentioned in the FIR are still to be proved by the evidence to be produced in the court. From the nomenclature of the civil case shown to be pending with regard to the disputed property it relates to the opposite party no. 2 or Gram Pradhan or Pradhanpati is also not clear, as no document in this regard has been placed before the court. The alleged eye witnesses in the FIR, Raju Mishra, Narendra Tripathi and Surendra Kumar have supported the prosecution version in their statements. On the basis of these statements and other evidence on record, the Investigating Officer has filed the charge sheet against the appellants, though, it is argued that one of the appellants Shubham, who is student, was present at his examination centre on the date fixed but no such document has been placed in this regard before the court. Otherwise also, this fact can be argued before the trial court at the

time of framing charge by placing appropriate documents before the court.

In the opinion of the court, there is no merit in the appeal. The order of the trial court has been passed on the basis of evidence on record.

The appeal is, therefore, **dismissed**.

Order Date :- 12.10.2023

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