

Court No. - 84

Case :- CRIMINAL APPEAL No. - 1577 of 2020

Appellant :- Mohd. Ahmad@ Kallan And 2 Ors.

Respondent :- State Of U.P. And Anr.

Counsel for Appellant :- B.N.Singh, Manish Kumar Singh

Counsel for Respondent :- G.A.

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

Learned counsel for the appellant nos.1, 2 and 3 is present. According to him, appellant no.2 Ismile @ Kuddan has expired but he has no death certificate of Ismile @ Kuddan, so he wants to withdraw this appeal on his behalf.

Learned counsel for the appellants is permitted to withdraw this appeal on behalf of appellant no.2- Ismile @ Kuddan.

Heard learned counsel for the appellant nos.1 & 3, learned A.G.A. and perused the record.

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

This appeal has been filed against the order dated 13.02.2020 passed by the Special Judge (SC/ST Act), Kanpur Nagar in S.T. No. 452/ 2017, State of U.P. Vs. Salman and others, in Case Crime No.642/ 2014, under Sections 147, 148, 323, 336, 504, 506 IPC and Section 3(1) (10) of SC/ST Act, Police Station Naubasta, District Kanpur Nagar, whereby the application of the appellants and co-accused persons under Sections 227 & 288 of Cr.P.C. was rejected.

It is argued by the learned counsel for the appellants that in the FIR there is no whisper of uttering caste based words by the appellants. Moreover, it is argued that when the charge-sheet has been filed against four persons Sections 147 and 148 IPC would not apply. Regarding rest sections no argument is placed before the Court.

Learned A.G.A. opposed the prayer and submitted that the caste based words were used by the accused persons has been stated by witness Raju Yadav in his statement.

From the perusal of the record, it is found that FIR was lodged on 12.08.2014 against five accused persons with the allegations that all the accused persons abused and thrashed the first informant with baton, stick, stones and iron rod. He was assaulted on his head. The accused persons were exhorting each other to thrash the victim till he dies. Suddenly, the son of the first informant is said to have come there and when he tried to save his father he was also thrashed at the hands of all the accused persons by iron rod on his head. When the crowd gathered at the spot the accused persons fled away extending threat of life. It is also said that later on, the gold chain and the mobile of the first informant were also found lost during this incident.

Admittedly, the charge-sheet has been filed against four persons and as per Sections 147 and 148 of IPC, an unlawful assembly must be there and an unlawful assembly is constituted only when five or more persons are gathered. Admittedly, the charge-sheet has been filed against four accused persons only, so the argument of the learned counsel for the appellants has substance that offence under Sections 147 and 148 IPC would not be constituted as per the charge-sheet filed by the investigating officer.

So far as Section 3(1) (x) of SC/ST Act of the SC/ST Act is concerned, if we go through the FIR, though the first informant has claimed himself to be a member of SC/ST community but he has nowhere mentioned in the FIR that any caste based words were used against him. Though, the first informant in his statement under Section 161 Cr.P.C. has stated that the caste based words were used against him. He has mentioned the specific caste based words therein. While the son of the first informant, who was also injured in the incident, has not supported the version of his father that the caste based words were used by the accused persons. Though, one of the witness Raju Yadav has stated in his statement that caste based words were used by the accused persons, but he has not specifically stated that what caste based words were used against the victims. No other witness has supported the version of the first informant in his statement under Section 161 Cr.P.C. that any caste based words were used by the appellants. Otherwise also, mere using caste based words is not sufficient for constituting an offence under Section 3(1) (x) of SC/ST Act. There must be intentional insult or intimidation with the intent to humiliate a member of SC/ST community in place within public view because of the reason that, that person belongs to the SC/ST community. There is nothing on record to show that the caste based words, if any, were used against the victim because of the reason of his belonging to

the SC/ST community only. No arguments have been placed regarding rest Sections 323, 336, 504, 506 of IPC.

The appeal is **allowed** partly. The order dated 13.02.2020 is confirmed with regard to Sections 323, 336, 504, 506 IPC. The order regarding rejection of discharge application is set aside with regard to Sections 147, 148 IPC and Section 3(1) (x) of SC/ST Act against the appellants only. Now the appellants Mohd. Ahamd @ Kallan and Salman may be charged under Sections 323, 336, 504, 506 of IPC.

Order Date :- 18.10.2023

Radhika