

Court No. - 84

Case :- CRIMINAL APPEAL No. - 4449 of 2023

Appellant :- Amit Kumar Singh And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ramesh Kumar Shukla

Counsel for Respondent :- G.A., Savan Kumar

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

Learned counsel for the opposite party no. 2 submits that he had filed counter affidavit on 26.10.2023 in the registry. Learned A.G.A. also submits that he had filed his counter affidavit on 08.11.2023 in the registry. Both the counter affidavits are not on record.

Registry is directed to trace out the same and placed them on the record.

Learned counsel for the appellants has filed rejoinder affidavit today. Let the same be kept on record.

Heard learned counsel for the appellants, learned counsel for the opposite party no. 2 and perused the record.

This is an appeal filed against the order dated 17.08.2021 passed by the Special Judge, SC/ST Act, Ghazipur in Complaint Case No. 205 of 2020 (Ajay Ram Vs. Amit Kumar Singh and others) whereby the appellants have been summoned to face trial under Sections 354Ka, 323, 504, 506 IPC and 3(1)(Da), 3(1)(Dha) of SC/ST Act.

As per facts of the case an application under Section 156(3) Cr.P.C. was moved by the opposite party no. 2 - Ajay Singh on 29.09.2020 against the present appellants with the version that on 16th September, 2020 at about 6.30 - 7.00 a.m. he was going to Jakhaniya for treatment of his wife Usha. When Usha and he himself were in the way, near tree of '*peepal*' all the four appellants stopped them, hurled caste based and wild abuses. When they were resisted, they started thrashing opposite party no. 2 - Ajay Ram with kicks and blows. When the wife of the first informant came to save him, she was made semi nude by pulling her '*sari*'. Manoj Kumar Singh, Rakesh Yadav and many other persons came on the

spot and saved them. Accused persons went away by extending threat of life. He informed of the incident in the police station concerned and got himself medically examined in CHC, Jakhaniya, Ghazipur. He sent a registered letter to Superintendent of Police concerned on 17.09.2020 but no action was taken.

The application under Section 156(3) Cr.P.C. was registered as complaint and after the statement of the complainant under Section 200 Cr.P.C. and the statements of witnesses under Section 202 Cr.P.C. the impugned order dated 17.08.2021 was passed and the appellants were summoned to face the trial accordingly.

It is argued that there are contradictions in the statements of witnesses. PW 1, says that 'sari' of Usha was pulled by Anil Kumar Singh only, while the victim and Manoj claimed that all the accused persons pulled 'sari' of the victim. It is argued that on 16.09.2020 appellant no. 1 - Amit Kumar Singh had filed an FIR against Manoj Kumar Singh, who is the witness of the opposite party no. 2 in the complaint. Hence, on the behest of Manoj Kumar Singh, the opposite party no. 2 has filed this false complaint. It is also argued that admittedly the opposite party no. 2 is the pairokar in the case of his neighbour against the appellants. Therefore, due to enmity the appellants have been falsely implicated. Hence, prayer is made accordingly.

Learned counsel for the opposite party no. 2 submitted that the incident is true. The allegations mentioned in the complaint have been supported both by the first informant and his wife, who are said to be present on the spot, as per complaint itself. As per the medical examination of the injured of the same date, three injuries are found on the person of the injured opposite party no. 2. These injuries are shown to be caused by hard blunt object and the duration is shown to be less than one day. The injuries were referred to radiological department. It is also submitted that the criminal history of the first informant does not effect the merit of the case as it cannot be said that a person, who is having criminal history cannot be assaulted by the appellants.

From the perusal of the record, it is found that regarding incident dated 16.09.2020 an application under Section 156(3) Cr.P.C. was moved by the opposite party no. 2 on 29.09.2020, which was registered as a complaint. The medical examination of the first informant was done on the same day. Though, it is argued that it was not done on '*majroobi letter*' issued by the police station rather the opposite party no. 2 was medically examined on his own. No radiological report has been filed. In the opinion of the court, the

summoning of the appellants is under Sections 323 IPC, so if the radiological report is not placed before the court or the victim has been medically examined or not, does not make any difference. The incident mentioned in the complaint has been supported by the first informant and his wife both, who were present on the spot, as per version of the complaint itself.

So far as the FIR lodged against Manoj Kumar Singh is concerned, maximum the statement of Manoj Kumar Singh under Section 202 Cr.P.C. can be said to be suspicious but at this stage it cannot be said that because of FIR lodged by the appellant - Anil Kumar Singh against Manoj Kumar Singh, the witness of the complainant under Section 202 Cr.P.C. the opposite party no. 2 would file a false complaint against the appellants. Otherwise also, if the first informant is doing pairvi in case of a neighbour against the appellants, it would be the appellants only who would have grievance against the complainant and not the complainant, who would be said to have filed a complaint on the ground of enmity of doing pairvi by him in a case against the appellants. More over, the case in which the opposite party no. 2 is said to have doing pairvi against the appellants is of the year 2012. The trial court on the basis of statements of the first informant, PW 1 and PW2 has come to the conclusion of summoning the appellants.

In the opinion of the court, the version of the complaint is supported by the opposite party no. 2 and his wife. Further, his version is supported by the medical report placed before the court. The evidence on record is sufficient enough to prove a prima-facie case against the appellants. No sufficient ground is found to interfere with the impugned order.

Thus, the appeal is **dismissed**.

Order Date :- 23.11.2023

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