

Court No. - 84

Case :- CRIMINAL APPEAL No. - 5589 of 2023

Appellant :- Nand Kishore @ Pappu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ravindra Sharma

Counsel for Respondent :- G.A., Neha Tripathi, Vinay Kumar Tripathi

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

Heard learned counsel for the appellant, Sri Vibhav Anand Singh, learned A.G.A. for the State, learned counsel for the opp. party no. 2 and perused the record.

This appeal has been preferred against the order dated 21.4.2023 passed by Special Judge SC/ST Act, Mathura, in Special Sessions Trial No. 1770 of 2021, under sections 323, 326, 307, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, police station Refinery, District Mathura. By the impugned order the trial court rejected the discharge application moved by the appellant.

As per the facts of the case, an FIR was lodged on 15.9.2021 as case crime no. 347 of 2021 regarding the incident dated 13.9.2021 by Smt. Meera wife of Ramesh Chandra that on 13.9.2021 at 9.30 P.M. the present appellant along with one co accused Jawahar took Ramesh, the husband of the first informant, with them on the pretext of compromise between Ramesh and his real brother Nahar Singh. Out side the village the accused persons assaulted on the head of Ramesh with farsa with the intention of causing his death. They cut his hand and leg also and threw him on the railway track. Nahar Singh, the real brother of Ramesh with his son Ranvir Singh was also said to be involved in the incident.

It is argued by the learned counsel for the appellant that the facts of the FIR are wrong. In fact, Ramesh was a drunkard person who was habitual of having liquor. He himself laid down in front of the train in inebriated condition. There are statements of both train drivers Gyan Singh and Rajesh Kumar Meena as well as the statement of chawki Incharge Arvind Kumar that Ramesh was lying down on the railway track and he was hit by the train. The injured himself has not stated that he was thrown before the train by the appellant or co-accused persons. The mother of Ramesh had

lodged an FIR as case crime no. 28 of 2022 against Smt.Meera, the first informant in the present case and her two sons Satish and Lokesh under sections 120-B, 309 and 504 I.P.C. with the allegation that her son Ramesh was habitual of taking liquor. On the date of the incident also, he in an inebriated condition was wandering in the village. His sons took him to the house where his sons and wife rebuked him for taking liquor. The oral altercation took place between them and all the three asked him that if he did not leave having liquor, he should go to railway track and commit suicide. Getting instigated by these words, Ramesh went and himself laid down before the train and the incident took place. It is said that the wife of the injured, the first informant in the present case and both her sons instigated Ramesh to commit suicide, hence, it is claimed that it was a clear case of suicide. The trial court has wrongly dismissed the discharge application, hence, the prayer is made accordingly.

Learned counsel for the opp. party no. 2 opposed the prayer and submitted that in the case filed by the mother of Ramesh, final report has been submitted. In fact, the appellant along with one co accused had taken away Ramesh along with them as is the version of the FIR. In the statement of the first informant and the injured both the same version has come that the present appellant along with co-accused Jawahar had taken Ramesh along with them on the pretext of compromise with his brother. It is also the version of the injured that all the four accused persons assaulted him with some unknown weapon. He lost his conscious and he did not know how he reached at the hospital. Thus, it is claimed that it is not a case of suicide. The version of the FIR that Ramesh was taken away by the appellant and other co accused persons along with them on the pretext of compromise and after inflicting injuries, he was thrown on the railway track is supported by the oral evidence also so the prayer is made accordingly.

If we go through the record, as per FIR, there is allegation that Ramesh was taken away by the appellant and one co-accused person. His brother and his nephew also met him later. He was assaulted by all of them with farsa. His hand and leg were cut and afterward, he was thrown on the railway track. The first informant and injured Ramesh both in their statements u/s 161 Cr.P.C. have supported this allegation that the present appellant and co-accused Jawahar took him along with them on the pretext of compromise with his brother Nahar Singh. Nahar Singh and his son Ranvir Singh met them, as per the version of the injured all the four persons assaulted him with some weapon on his head. He got

fainted and he did not know who took him to the hospital. On the other hand, there are statements of the train drivers that they saw one person lying on the railway track. The train being on high speed could hardly be stopped but the person lying on the track got injured. He was taken to the hospital. Chawki Incharge Arvind Kumar also stated that he received the information that one person got injured on the railway track and he was admitted in the hospital. Thus, in reply to the allegation of the prosecution of attempt to murder against the present appellant and co accused persons, the evidence on record is only the statements of train drivers that they saw a person lying on the railway track. The train could be stopped only after causing him injuries. It is yet to be decided on merits whether it was a case of suicide or the alleged injured was thrown by someone on the railway track with the intention of causing his death. The trial court has opined in the order that after the statements of the first informant, injured, doctor concerned, train drivers and other witnesses, the charge sheet has been filed against the appellant under sections 323, 326, 307, 506 I.P.C. and Section 3(2)(v) of SC/ST Act and the cognizance has been taken by the court on 22.12.2021 and consequently, the court found prima facie evidence for framing charge against the appellant.

As there is sufficient prima facie evidence on record on the basis of the statements of the first informant and the injured himself to frame charge, just on the basis of the statements of the train drivers under section 161 Cr.P.C. that one person was lying on the railway track, the inference could be drawn that the person was lying on the track on his own volition with intention to commit suicide. He was thrown by someone there after causing injuries to him or he himself laid down on the track is yet to be decided on the merits.

Thus, in the opinion of the court, at this stage, there is ample evidence against the appellant for framing charge under the aforesaid sections. The appeal has no merits and is liable to be dismissed.

The appeal is hereby dismissed.

Order Date :- 18.10.2023

Gss