

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6181 of 2023

Appellant :- Kalu Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shiv Prakash

Counsel for Respondent :- G.A.,Manoj Kumar Tripathi

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

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

No one has put in appearance for the opp. party no. 2 though the name of the learned counsel for the opp. party no. 2 appears in the cause list.

The present appeal has been preferred against the order dated 21.12.2022 passed by Special Judge SC/ST Act, Hapur, S.T. No. 2231 of 2022, State Vs.Kalu Yadav and another, case crime no. 231 of 2022, police station Hafijpur District Hapur, whereby appellant Kalu has been summoned to face trial under section 354 Gha, 384, 506 I.P.C. and section 3(2)(va) of SC/ST Act and appellant no. 2 Sunil Yadav has been summoned to face trial under sections 384 and 506 I.P.C. and section 3(2)(va) of SC/ST Act.

It is argued by the learned counsel for the appellants that the victim belongs to Jatav caste but she has married with one Dinesh Yadav. Now she would be supposed to adopt the caste of her husband, who belongs to OBC category. Hence, she cannot be said to be a person belonging to SC/SC community.

It is further argued by the learned counsel for the appellants that opp. party no. 2 is habitual in filing suits against the appellants. Previously also she had filed an FIR against appellant Kalu Yadav as case crime no. 222 of 2021, under sections 376, 452, 506 I.P.C. and 3(2) (va) of SC/ST Act, wherein the parties entered into a compromise. The final report was submitted and after notice issued to the opp. party no. 2 regarding the final report she had admitted the fact that no such offence was committed by Kalu Yadav. The present FIR as case crime no. 231 of 2022 dated 15.9.2022 was also lodged by the opp. party no. 2 against the appellants under section 506 I.P.C. wherein chargesheet has been filed under

sections 354 Gha, 384, 506 I.P.C. and section 3(2)(va) of SC/ST Act and the appellants have been summoned as above. Again on 20.9.2022 she lodged an FIR as case crime No. 235 of 2022, under sections 452, 352, 506 I.P.C. and 3(2)(va) of SC/ST Act against Kalu Yadav and another.

It is further submitted that the role of co accused Sunil is only that he supports his brother. There is no specific allegation against him. Regarding the statement u/s 164 Cr.P.C., it is submitted by the learned counsel for the appellants that no statement under section 164 Cr.P.C. of the victim was recorded and thus, incident is claimed to be false.

Learned A.G.A. opposed the prayer and placed before the court the statement of the victim under section 164 Cr.P.C. wherein she has supported the version of the FIR.

From the perusal of the FIR lodged in case crime no. 231 of 2022, it is clear that in this FIR the opp. party no. 2 has accepted the lodging of the FIR no. 222 of 2021 against Kalu Yadav and it is said that because of the pressure of Kalu Yadav she had entered into the compromise in case crime no. 222 of 2021. And when she showed her inability to return the money, Kalu Yadav gave her threat of life at the point of pistol and it is submitted that if any wrong happens with the victim, Kalu and his brother Sunil Yadav would be responsible for the same. In her statements under sections 161 and 164 Cr.P.C. she has reiterated the version of the FIR and has stated that Sunil Yadav whenever comes to village, he instigate his brother Kalu Yadav. Thus, the version of the FIR has been well supported by the alleged victim in her statements under sections 161 and 164 Cr.P.C. Filing of one more case as case crime no. 235 of 2022, under sections 452, 352, 506 I.P.C. and 3(2)(va) of SC/ST Act does not entitle the appellants to get relief. So far as the involvement of SC/ST Act in the case is concerned, the first informant herself in her statement under section 161 Cr.P.C. has admitted that before marriage she belonged to Jatav caste but she has married with Dinesh Yadav and as per the FIR she herself has mentioned her name as Karuna Yadav. Admittedly, Yadav caste comes within OBS category. The opp. party no. 2 being a person of OBC category cannot claim the benefit of SC/ST Act.

The appeal of the appellants is dismissed with regard to sections 354 Gha, 384, 506 I.P.C. but the appeal is allowed with regard to section 3(2)(va) of SC/ST Act. The cognizance order dated 21.12.2022 is upheld with regard to cognizance under sections 354 Gha, 384, 506 I.P.C. against the appellants Kalu Yadav and Sunil

Yadav. The order of cognizance against the appellants under section 3(2)(va) of SC/ST Act is hereby set aside.

The appeal is partly allowed.

Order Date :- 16.10.2023

Gss