

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6928 of 2023

Appellant :- Afzal And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Haroon Ahmad, Anzar Haroon

Counsel for Respondent :- G.A., Jagadish Prasad Yadav

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

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

This appeal has been preferred against the order dated 10.04.2023 passed by the Special Judge, SC/ST Act, Jaunpur in Case No.103 of 2021, Smt. Shanti Devi Vs. Afzal & others, under Sections 452, 504, 506 IPC & Section 3(2) 5a of SC/ST Act, Police Station Shahganj, District Jaunpur.

By impugned order, the appellants have been summoned by the trial court to face trial under Sections 452, 504, 506 IPC and Section 3(2) (va) of SC/ST Act.

As per facts of the case, an application under Section 156(3) of Cr.P.C. was moved by the opposite party no.2 before the court concerned with the version that the opposite party no.2 is the owner of 5-4/5 decimal land in Arazi No.229/0.235 hectare situated in Mauja- Sabarhad. Jakiya, the wife of appellant no.3 Javed had purchased the land of rest abadi of this Arazi No.229/0.235 hectare and since then the appellants are trying to encroach upon the land purchased by the opposite party no.2. The appellants gave opposite party no.2 a threat to sell the land to them or convert her religion because they want to develop a muslim colony there. In continuation of this intention, on 05.01.2021 at 8:00 p.m. all the appellants entered the house of the opposite party no.2 equipped with baton, stick and sharpened edged weapons, started thrashing the opposite party no.2, hurled caste based words and gave threat of life. They also gave threat that if opposite party no.2 does not sell her property to the appellants, then the opposite party no.2 had to convert her religion and only then she would be permitted to live in the colony. The report of the opposite party no.2 was not written so she could not get her medically examined also. She moved applications to different authorities but no action was taken.

On the basis of this application under Section 156 (3) of Cr.P.C. the complaint was registered and after the statements of the opposite party no.2 under Section 200 Cr.P.C. and her witnesses under Section 202 of Cr.P.C. the impugned order dated 10.04.2023 was passed by the trial court summoning the appellants to face trial under the abovementioned sections.

It is argued by the learned counsel for the appellants that the whole incident admittedly took place inside the house and the witnesses are said to come on the spot after hearing the hue and cry of the opposite party no.2, thus, they cannot be said to have witnessed the incident. The incident is false. It is also argued that the appellant no.2 Sakib Qureshi and appellant no.3 Javed Qureshi both live in Bombay as is clear from their addresses mentioned in the memo of appeal. They cannot be supposed to come on the spot and commit the incident on 05.01.2021.

Learned counsel for the opposite party no.2 opposed the prayer and submitted that the incident has been supported by the complainant and her witnesses in their statements under Sections 200 and 202 Cr.P.C. respectively and the appellants have rightly been summoned to face trial.

The police report is also appended at page-66 of the paper book, wherein it has been reported that regarding the dispute of the land between the parties a civil suit is pending and because of the issuance of notice against the opposite party no.2 in that case, being annoyed, this complaint has been filed, the facts of which could not be verified by the police.

So far as the plea of alibi is concerned, neither this plea can be decided by the Court at this stage nor any document has been placed before the Court that the appellant nos.2 and 3 were not on the spot on the date of incident rather they were present in Bombay on that day. It is admitted fact that there is civil dispute pending between the parties before the trial court but so far as the incident dated 05.01.2021 is concerned this incident as mentioned in the complaint is supported by the complainant in her statement under Section 200 of Cr.P.C. and her witnesses under Section 202 Cr.P.C. and on the basis of these statements only the trial court has summoned the appellants to face trial under sections mentioned in the order. As no medical report regarding injury is said to have filed by the opposite party no.2, the trial court has admittedly not summoned the appellants under Section 323 IPC or other sections regarding causing injury to the opposite party no.2 so not filing any injury report would not affect the case adversely.

Admittedly, the incident took place inside the house as is also clear from the summoning of the appellants under Section 452 of IPC by the trial court. So far as the plea of alibi is concerned, as this plea was not raised before the trial court at the time of passing order, so the appellants are free to raise this plea at the time of framing of charges before the trial court. So far as the allegations under Sections 452, 504 and 506 IPC are concerned regarding offence under these sections there is clear allegation of the complainant and her witnesses in their statements under Sections 200 and 202 of Cr.P.C. respectively, so a prima facie case can be said to be made out against the appellants under these sections.

So far as the summoning of the appellants under Section 3(2) (va) of SC/ST Act is concerned, for this section it is not necessary that the offence must be committed outside the house. Any offence under this section can be said to be made out if the offence is committed knowing that such person, the victim is a member of scheduled caste or scheduled tribe community and admittedly both the parties being known to each other they know the caste of each other. Otherwise also, in the complaint the main allegation is that the appellants want to develop a muslim colony in the area where the opposite party no.2 resides and because the opposite party no.2 belongs to the SC/ST community and not to the caste of the appellants so the offence is said to have committed with the opposite party no.2.

In the opinion of the Court, a prima facie case under Sections 452, 504, 506 IPC and Section 3(2) (va) of SC/ST Act can be said to be made out against the appellants on the basis of the facts and evidence placed before the trial court. There is no infirmity in the order of the trial court. The order of the trial court need not to be interfered with.

The appeal lacks merits and is **dismissed**, accordingly.

Order Date :- 17.11.2023

Radhika