

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6998 of 2023

Appellant :- Jitendra Pandey @ Badda Pandey

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Krishna Dubey

Counsel for Respondent :- G.A.,Dhananjay Rai,Dileep Kumar Gautam,Kumar Parikshit,Nitesh Vishwakarma

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

Rejoinder affidavit filed on behalf of the appellant is taken on record.

Heard the learned counsel for the appellant, learned counsel for the opp. party no. 2 and perused the record.

This appeal has been preferred against the order dated 20.6.2023 passed by Additional Judge/ Special Judge, SC/ST Act, Bhadohi, Gyanpur passed in complaint no. 06 of 2022, Asha Devi Vs.Jitendra Pandey @ Badda Pandey, under section 354 -kha, 323, 504, 506 I.P.C. and section 3(1) da and 3 (1) dha of SC/ST Act, police station Bhadohi District Bhadohi, whereby the discharge application of the appellant was rejected.

As per the facts of the case, a complaint was filed by the opp. party no. 2 Asha Devi on 14.1.2022 against the appellant with the version that on 6.1.2022 at 10.30 A.M. when the complainant was sitting in her Sehan, at the door of her house, the present appellant -Jitendra Pandey @ Badda Pandey came equipped with a baton regarding the possession of the land and hurled caste based filthy abuses, thrashed her, dragged her by holding her hair and tore her blouse by making her half nude. On her hue and cry, Lalmani her sister-in-law came and she was also thrashed by the appellant using caste based words and abuses. The witnesses saw the incident and saved the complainant. While going back the appellant gave them threat of life also. Their medical was done at District Hospital Bhadohi which was retained by the police with them but her FIR was not lodged. Then she sent a registered letter to Superintendent of Police Bhadohi but no action was taken.

On the basis of this complaint dated 14.1.2022 after statements of the complainant and her witnesses the appellant was summoned to

face trial under section 354 -kha, 323, 504, 506 I.P.C. and section 3(1) da and 3 (1) dha of SC/ST Act.

It is submitted by the learned counsel for the appellant that no such incident took place. In the injury report, the injuries are shown 'simple' in nature. As per the statements of the injured ladies, no x-ray was done regarding their injuries. It is further argued that in fact the altercation took place between one Subhash and the present first informant on 6.1.2022 and regarding that incident at 22.35 hours, an FIR was lodged as case crime no. 8 of 2022 by Vinod Kumar the brother-in-law of the first informant. Subhash also lodged a cross FIR as case crime no. 12 of 2022 in the matter. FIR case crime no. 8 of 2022 is appended at page 51 of the paper book but in that FIR there is no whisper of the present incident. In the statement u/s 161 Cr.P.C. with regard to case crime no. 8 of 2022 the present complainant Asha Devi and injured Lalmani have stated that as they had a dispute with their pattidar Subhash regarding the land, so they had gone along with their family members to the present appellant at Shiv temple for compromise. But during discussion Subhash Started hurling abuses. He also started assaulting them with baton and gave threat of life and because of his assault the first informant Asha Devi and her sister-in-law Lalmani Devi were severely injured and her brother-in-law Vinod got the FIR registered against Subhash. The present complainant and her sister-in-law both were medically examined at government hospital but no x-ray was done as advised by the doctor. On the basis of the FIR case crime no. 8 of 2022 and the statement of the complainant in the present case and the statement of other injured Lalmani Devi it is argued that the incident took place with Subhash only. The appellant has been falsely implicated after 8 days of the incident, hence, the prayer is made accordingly.

Learned counsel for the opp. party no. 2 opposed the prayer with regard to discharge u/s 354 kha I.P.C. and section 3(1) da and 3 (1) dha of SC/ST Act. However, he did not oppose the appeal regarding discharge of the appellant u/s 323, 504, 506 I.P.C.

If we go through the above mentioned facts regarding the incident dated 6.1.2022, an FIR was lodged by the brother-in-law of Asha Devi as case crime no. 8 of 2022 that with regard to property dispute with Subhash when their family members had gone for compromise, Subhash started abusing and thrashing with baton and stones. He also extended threat of life. After lodging this FIR in the case crime no. 8 of 2022, both the injured Asha Devi and her sister-in-law Lalmani were medically examined, their medical

examination reports are appended at page 10 and 8 of the supplementary affidavit. Both the injured Asha Devi and Lalmani Devi are said to have shown to be medically examined at District hospital on 6.1.2022 at 1.10 P.M. and 1.25 P.M. respectively. As per the medical report, simple injuries were found on the persons of both injured Asha Devi and Lalmani Devi, their injuries were found fresh. Though the FIR was lodged at 22.35 hours on 06.01.2022 but in this FIR the allegation is only against Subhash that he thrashed Asha Devi and Lalmani Devi. It is mentioned in the FIR that Asha Devi and Lalmani Devi had gone for compromise where Subhash abused them, thrashed them and gave threat of life. After about 8 days of the incident, the present complaint was filed by the opp. party no. 2 with the version that on 6.1.2022 at 10.30 a.m. when she was sitting at her door steps in Sehan, with regard to the dispute over the possession of the land, the present appellant came hurling caste based words he also used filthy language, thrashed her, dragged her holding her hair, banged her head against the wall and tore her blouse making her half nude. When her sister-in-law Lalmani Devi came to rescue her, she was also thrashed and abused using caste based words by the present appellant. In this complaint, there is not even a single word that on the same day both injured Asha Devi and Lalmani Devi were thrashed at the hand of Subhash and they had sustained injuries regarding which they were medically examined.

From the comparative study of the above FIR and the complaint, it appears that the incident took place between Subhash and Asha Devi and in this altercation Asha Devi and Lalmani Devi were injured. They were medically examined on 1.10 p.m. and 1.25 p.m. respectively in the district hospital and when the FIR on behalf of the first informant was lodged by her brother-in-law Vinod, the husband of Lalmani Devi above, then there was no reason that the report of the present complainant Asha Devi regarding the incident committed by the appellant would not have been written by the police of the same police station. In the complaint itself it has been mentioned that the injury report regarding their medical examination done in the district hospital was kept by the police. While the medical reports of the same day, of the same injured persons, from the same hospital with regard to case crime no. 8 of 2022 have been placed before the court. It has also been mentioned in the complaint that by the registered post, the S.P. concerned was informed about the incident but no such registry receipt has been placed before the court by the learned counsel for the opp. party no. 2, which clearly shows that in fact the incident took place between Subhash and the opp. party no. 2. when the opp. party no.

2 had contacted the appellant, who was a Gram Pradhan, for compromise and there only physical altercation took place causing injury to Asha Devi and Lalmani Devi, but as the appellant could not help the opp. party no. 2, during this physical altercation, between opp. party no. 2 and Subhash, being Gram Pradhan, he has been falsely implicated by filing present complaint by the opp. party no. 2 after 8 days of the incident. The complainant and her sister-in-law Lalmani Devi are said to have injured in the incident but no medical as shown to have done in the matter is placed before the Court.

It is clearly mentioned in the complaint that this dispute took place because of enmity regarding possession over the land, so hurling caste based abuses, if they are found uttered by the present appellant, those caste based words cannot be said to be hurled because of opp. party no. 2 belonging to SC/ST community. From the above discussions, it is clear that it is a malicious proceeding wherein the appellant has been falsely implicated in the offence under Section 323 IPC also.

In the impugned order dated 20.06.2023 there is clear mention of lodging FIR at case no.8/2022 by Vinod Kumar and the medical examination of Asha Devi and Lalmani Devi in that case but the trial court without making a comparative study of FIR and complaint filed with regard to the same incident has considered the medical examination done in case crime no.8/2022 as medical examination of the complainant and the injured in the present case. While regarding injuries in medical examinations placed before the Court regarding FIR case crime no.8/2022 those injuries on the person of the complainant Asha Devi and Lalmani Devi are said to have inflicted them by Subhash as per FIR case crime no.8/2022. The trial court has misread the evidence produced by the complainant and has completely failed to judge the comparative facts of the complaint and FIR registered as case crime no. 8 of 2022 placed before the court. The impugned order is found against the documents and facts placed before the trial court at the time of disposal of the discharge application. Proceedings are found to be malicious proceedings.

Hence, the impugned order dated 20.6.2023 above is set aside and the whole proceedings of complaint case no. 6 of 2022 mentioned above are quashed.

Order Date :- 9.11.2023

Gss