

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6980 of 2023

Appellant :- Leela @ Leela Goojar And 5 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Sushil Kumar Pandey

Counsel for Respondent :- G.A.,Dinesh Kumar Singh

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

Heard the learned counsel for the appellants, Kirti Singh, the learned A.G.A. for the State and perused the record. No one has put in appearance for the opp. party no. 2, today, at the time of the argument.

This appeal has been preferred against the summoning order dated 20.5.2023 passed by Special Judge,SC/ST Act,Mathura in S.S.T.No. 2776 of 2018, State Vs. Rohtash and others, case crime no. 124 of 2018, under sections 147, 148, 149, 323, 325, 504, 506 I.P.C. and sections 3(1) Da, Dha of SC/ST Act, police station Shergarh District Mathura, whereby the application u/s 319 Cr.P.C. moved by the opp. party no. 2 was allowed by the trial court.

The FIR was lodged by opp. party no. 2 on 11.3.2018 regarding the incident dated 6.3.2018. It is the version of the prosecution that the opp. party no. 2 had made a complaint against the fair price shop dealer/ appellant Leela that he was going to sell wheat and rice of the fair price shop in the open market. On this complaint of the opp. party no. 2, the Sub Divisional Magistrate concerned directed the Supply Inspector to inquire the matter. After this complaint, Leela brought back the wheat and rice taken by him for sale and when the Supply Inspector came on the spot, the stock was found correct. On the call of the Supply Inspector concerned, the opp. party no. 2 along with his companions reached at the spot. The ten named persons in the FIR including the present appellants are said to have assaulted them there with kicks, sticks and iron rods. It is alleged that the first informant sustained injuries on his left eye and head and two teeth of Bane Singh were also broken in the quarrel. There is allegation that wild abuses and caste based words were also hurled by them. It is also alleged that the Supply Inspector made his escape good from the spot.

After the investigation, the charge sheet was filed against four

persons namely Rohtash, Kallu, Pappu and Hari Singh and after the statements of P.W.1- the first informant/ the opp. party no. 2, injured Bane Singh-P.W.-2 and independent witness P.W.-3 Laxman, the present appellants are said to have been summoned by the trial court vide impugned order dated 20.5.2023 passed on the application u/s 319 Cr.P.C. moved by the opp. party no. 2.

It is argued by the learned counsel for the appellants that P.W.-2 Bane Singh has not supported the prosecution version in the court. It is also submitted that P.W.-3 Laxman has not alleged the presence of the present appellants on the spot at the time of the incident and he has made improvements in his statement in the court and has named the present appellants to be involved in the quarrel that took place on 6.3.2018. Injured Bane Singh has not alleged that the injuries sustained by him were inflicted by the appellants, so offence under section 325 I.P.C. cannot be said to be made out against the appellants, so the prayer is made accordingly.

Learned A.G.A. opposed the prayer.

From the perusal of the record, it is found that the FIR was lodged against ten named persons including the present six appellants who were exonerated by the Investigating Officer at the time of filing the chargesheet against four persons. After the statements of P.W.-1-the first informant, P.W.-2 injured Bane Singh and independent witness Laxman P.W.-3, the opp. party no. 2 moved an application u/s 319 Cr.P.C. which was allowed by the trial court vide the impugned order. The trial court while passing the impugned order discussed the statements of all the three witnesses and found that on the basis of hostile statement of P.W.-2 injured Bane Singh at the stage of passing the order on the application u/s 319 Cr.P.C. it cannot be said that the appellants were not involved in the incident. On the basis of the on oath statement of the first informant, injured Bane Singh-P.W.-2 and independent witness P.W.-3 Laxman, the trial court summoned the appellants to face trial under the aforesaid sections.

From the perusal of the record, it is found that in his statement before the Investigating Officer witness Babli had supported the prosecution version that all the appellants were also involved in the incident and in the court both the first informant and the independent witness Laxman have supported the prosecution version. It is true that P.W.-3 Laxman in his statement under section 161 Cr.P.C. has not named the present appellants in committing the offence mentioned above, but in the court he has named all the appellants as persons involved in the quarrel. In the

cross examination he has said that he had not stated before the Investigating Officer that the appellants were not involved in the quarrel. He does not know how this statement was recorded by Investigating Officer. Though emphasis has been given on the statement of P.W.-2 that there was crowd on the fair price shop on the date of the incident and during stampede and commotion he fell down on the ground and sustained injuries breaking his two teeth.

It is argued by the learned counsel for the appellants that injured Bane Singh who himself sustained injuries breaking his two teeth has not named the appellants. But if we go through the record, it is admitted fact that regarding the incident, the cross FIR was lodged against the opp. party no. 2 and his companions in the matter, wherein the opp. party no. 2 along with his companions has been chargesheeted. It is admitted fact that on the date of the incident, a quarrel took place between the parties. It was not only the matter of pushing P.W.-2 as a result of which he got injuries uprooting his two teeth. The first informant as P.W.-1 and independent witness Laxman in their on oath statements have claimed that the present appellants were involved in the quarrel dated 6.3.2018. There is a general allegation in the FIR against all the ten named accused persons including the present six appellants. Admittedly, in the same incident, P.W.-2 got his two teeth uprooted and P.W.-1 got injuries on his left eye and chest. There was complaint of pain in the head also. Regarding the injury of the chest x-ray was advised though in the x ray no bony injury was found. All the injuries of the first informant have been found simple. The quarrel between the parties is admitted which took place on 6.3.2018 regarding which the cross FIR has been lodged against the opp. party no. 2 also.

In the opinion of the court, as found in the impugned order passed by the trial court on the basis of on oath statements of P.WS. 1, 2 and 3, prima facie case can be said to be made out against the appellants also. The impugned order does not suffer from any infirmity. The appeal has no merit and is liable to be dismissed.

It is accordingly dismissed.

Order Date :- 28.10.2023

Gss