

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8024 of 2023

Appellant :- Ratna Kar Tiwari And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vipin Kumar Singh

Counsel for Respondent :- G.A.

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

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

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

No one has put in appearance for opposite party no.2 despite of sufficient service.

This appeal has been preferred against order dated 23.03.2023 passed by the Special Judge (S.C./S.T. Act), Mirzapur in Complaint Case No.102 of 2022 (State Vs. Ratnakar Tiwari & others), under Sections 323, 504, 506 I.P.C. and Sections 3(1) (r), 3(1) (s) of SC/ST Act, Police Station- Kotwali Dehat, District Mirzapur.

By impugned order, the trial court summoned both the appellants to face trial under Sections 323, 504, 506 I.P.C. and Sections 3(1) (r), 3(1) (s) 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 against the appellants before the trial court on 06.07.2022 alleging that regarding disputed property a civil suit between the opposite party no.2 and Uma Shankar and others is pending before the court. On 29.05.2022 at 2:00 PM opposite parties/ appellants were unloading a cemented pillar from their tractor on the land. When Jitendra, the son of opposite party no.2 resisted, the opposite parties/appellants abused and hurled caste based words to Jitendra. When being scared of the opposite parties/ appellants, opposite party no.2 Kaushilya Devi went inside her room, the appellants allegedly entered the room, dragged her out catching her hair and thrashed her with kicks and blows. She was also abused and hurled caste

based words. Her son Jitendra, daughter-in-law Rekha and villagers came and saved her. The appellants left the spot giving threat of life and warning to vacate the land within four days. The report of opposite party no.2 was not written though she was medically examined in District Hospital on 30.05.2022, hence by moving this application under Section 156(3) Cr.P.C. prayer was made to issue a direction to lodge an FIR at police station concerned.

This application under Section 156(3) of Cr.P.C. was registered as a complaint by the trial court and after the statement of the complainant under Section 200 Cr.P.C., the statement of witness Jitendra as PW1 and the statement of Rekha, the daughter-in-law of the complainant under Section 202 Cr.P.C on the basis of the evidence on record the trial court passed the impugned order summoning the appellants to face trial accordingly.

It is argued by the learned counsel for the appellants that a civil suit regarding the property in dispute is pending between the opposite party no.2/ complainant and her brothers-in-law Uma Shankar and Rama Shanker etc. Appellant Ratna Kar Tiwari is the driver of the tractor. By this tractor he had only transported the cemented pillar on the disputed land at the request of Uma Shankar and Rama Shanker etc. They have nothing to do with the disputed land or the dispute of opposite party no.2 or her brothers-in-law. As on the direction of the brothers-in-law of the complainant the appellants were unloading the pillar on the land, hence they have been falsely implicated, while no such incident of hurling abuses or caste based words, giving threat of life or thrashing took place on the spot.

The attention of the Court is drawn towards the information received by the appellants through RTI that on the complaint of the opposite party no.2/ complainant when an inquiry was made by the police regarding the incident, a report was given that appellant Ratna Kar Tiwari was unloading cemented pillar from his tractor in the land of Dhanpatti, the wife of Radheyshyam which is adjoining the land of the opposite party no.2/complainant Kaushilya Devi. The family members of the complainant resisted appellant Ratna Kar Tiwari from unloading pillar on the land. The dispute was found to be of measurement of the land. Rest allegations were found to be wrong and both the parties were challaned under Section 107/116 of Cr.P.C. Thus, it is argued by the learned counsel for the appellants that the appellants have nothing to do with the dispute between the complainant and her brothers-in-law. They mere transported cemented pillar at the

request of Dhanpatti, the owner of the adjoining land, hence, the prayer is made accordingly.

Learned A.G.A., however, opposed the prayer and submitted that the complainant in her statement under Section 200 Cr.P.C. and her witnesses in their statements under Section 202 Cr.P.C. have supported the prosecution version. The dispute regarding property is between the complainant and her brothers-in-law. The appellants have nothing to do with the dispute.

From the perusal of the documents, it is found that the trial court summoned the appellants to face trial on the basis of the statements of the complainant and her witnesses, her caste certificate, copy of the letter sent to the S.P., registry receipts and the injury report of the complainant placed before the trial court. There is nothing on record that the dispute between the complainant and her brothers-in-law had any nexus with the appellants. As per the inquiry report submitted by the S.I. Jitendra Saroj, it was the dispute regarding measurement of the land between the complainant and the Dhanpatti, the owner of the adjoining land and the dispute with the appellants arose only when they tried to unload the cemented pillar on the property in dispute.

Thus, the dispute is said to have sparked regarding the ownership of the land as the cemented pillar was said to have unloaded on the land. The appellants are neither the owners of the adjoining land nor they have any property dispute with the complainant is the admitted case. The incident of thrashing, abusing and giving threat of life being a factual dispute shall be decided by the trial court after the evidence of the parties.

So far as the allegations under Section 3(1) (r) and 3(1) (s) of the SC/ST Act are concerned, admittedly the caste based words are said to have hurled because of the dispute of the ownership/ measurement of the land in question. Thus, the hurling of abuses by the appellants cannot be said to be taken place because the opposite party no.2 belongs to the SC/ST community rather these caste based words are said to have hurled because of the dispute of the land.

As per judgement of the Apex Court in **Hitesh Verma Versus The State of Uttarakhand and Another, Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020**, dated **05.11.2020** mere the victim belonging to SC/ST community is not enough for implicating the accused persons under the sections of SC/ST Act, what is necessary is that the offended words must have

been used by the accused person against the victim with intent to humiliate her/ him because of her/ his belonging to SC/ST community.

No case can be said to be made out against the appellants under Section 3(1) (r) and 3(1) (s) of SC/ST Act as per judgment of the Apex Court in Hitesh Verma (supra).

The appeal is **allowed** partly. The order dated 23.03.2023 is confirmed with regard to summoning of the appellants under Sections 323, 504, 506 IPC. The order dated 23.03.2023 is set aside with regard to summoning of the appellants under Sections 3(1) (r) & 3(1) (s) of SC/ST Act.

Order Date :- 20.11.2023

Radhika