

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8044 of 2023

Appellant :- Aman Singh And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashok Kumar Singh

Counsel for Respondent :- G.A., Maneesh Kumar, Naveen Kumar Srivastava

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

Heard learned counsel for the appellants, Sri Shakti Singh, learned A.G.A. for the State, learned counsel for the opposite party no.2 and perused the record.

Learned counsel for the opposite party no.2 filed counter affidavit today, same be kept on record.

The learned counsel for the appellants refused to file any rejoinder affidavit.

Present appeal has been filed against the order dated 24.07.2023 passed by the Additional Session Judge /Special Judge (SC/ST) Act, Jalaun at Orai, in Session Trial No. 11 of 2023, State of U.P. Versus Aman Singh and another) rising out of Case Crime No. 13 of 2023, under Sections 308, 323, 352, 504, 506, 324 I.P.C. and Section 3(1) r, s SC/ST Act, Police Station Kadaura, District Jalaun. By impugned order the learned Session Court dismissed the discharge application of the appellants.

As per facts of the case, a first information report dated 23.01.2023 was lodged by Ramhet at 18.36 hours regarding the incident of the same date at 15.30 hours against the appellants and one Santosh Singh that on 23.01.2023 at about 3.30 P.M. when the opposite party no.2, who is Gram Pradhan and belongs to SC/ST community was sitting at Jan Seva Kendra near Bus stand, Aman Singh, Pradeep Singh and their father Santosh Singh came and hurled abuses and caste based words to the first informant and his wife and became ready to attack him. All the three accused persons thrashed Ramhet and Prem Kumar, causing them injuries. Pramod Kumar Singh got unconscious on the spot, they were taken to the C.H.C., Kadaura. All the three accused persons made good their escape from the spot. Pramod Kumar Singh saved the injured persons.

After the investigation, the Investigating Officer submitted charge sheet against both the appellants and one another person under Sections 308, 323, 352, 504, 506, 324 I.P.C. and Section 3(1) (Da), 3(1)(Dha) of SC/ST Act. The two appellants moved two separate discharge applications being Paper Nos. 21-Kha and 22-Kha before the trial court to discharge them from the offences taken cognizance by the trial court. Both these discharge applications were rejected by the trial court vide impugned order.

Learned counsel for the appellants pressed this appeal only on the ground that offence under Section 308 I.P.C. cannot be said to be made out against the appellants, as in the X-ray or NCCT Head of injured Ramhet and Pramod, no bony injuries are found on the person of any of the injured persons. The injuries of the injured are found simple in nature. It is further argued that in the first information report or in the statements of the injured persons or the witnesses, the motive behind this incident was not disclosed. The weapons used in the incident have also not been disclosed by the witnesses. No witness has been named in the first information report, hence prayer is made accordingly.

Learned counsel for the opposite party no.2 however, opposed the prayer and submitted that he has filed injury reports of both the injured persons along with the counter affidavit and for the offence under Section 308 I.P.C., no bony injury is needed. As the wife of the first informant was elected as Gram Pradhan, this fact could not be borne by the appellants, hence this incident took place. Again the attention is drawn towards the fact that witness Ramhet who is named in the charge sheet as a witness, has also supported the prosecution version in his statement apart from the injured persons.

As the impugned order dated 24.07.2023 is only being challenged on the ground that no offence under Section 308 I.P.C. can be said to be made out against the appellants as per the injury report, injured Ramhet has sustained five injuries including the simple complaint of pain in left ear and loss of hearing. As per this report, injury nos. 2,3,4 and 5 of injured were found simple, caused by some hard blunt object. Injury no. 1 was found caused by sharp cutting object. Duration of the injuries was found fresh. In the injury report of Pramod, five injuries including two complaints of pain on chest and head were found on the person of the injured. His injury nos. 2,3 and 4 were found simple in nature while injury no.1 contusion measuring 2 X 1 cm at Rt eye red in colour and injury no.5 complaint of pain at whole head, both found caused by hard blunt object, were kept under observation.

Admittedly, no bony injury is found to any of the injured. Injuries of both the injured persons were found fresh. Dr. Vinod Kumar in his statement under Section 161 Cr. P.C. has found injury no.1 of injured Ramhet caused by some sharp cutting weapon and injury of injured Pramod to be caused by hard blunt object. In the statement of Dr. Ashok, he has stated that injury in the eye of Ramhet was simple. It is noteworthy that any opinion regarding nature of injury no.1 caused to injured Ramhet Singh is not placed before the Court. What was the nature of this injury would certainly come before the Court after the evidence in this regard. The only argument of the appellants counsel is that the injuries caused to the injured persons cannot be covered under Section 308 I.P.C. It is apposite to mention section 308 of I.P.C. which runs as under:-

308. Attempt to commit culpable homicide:- *Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*

Thus in the opinion of the court, the offence under this section depends upon the intention, knowledge and the circumstances under which the injuries were caused. The intention knowledge and the circumstances regarding the offence shall only come before the court after the evidence of the witnesses. Mere the ground that no bony injury was found on the person of the injured is not enough to discharge the accused person from the offence under Section 308 I.P.C.

In the opinion of the Court, no good ground is shown to discharge the appellants from charge under Section 308 of I.P.C.. The impugned order needs no interference.

The appeal is, *thus dismissed.*

Order Date :- 20.11.2023

T.S.