

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1852 of 2008

Appellant :- Anil Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Prem Kumar Srivastava, Pradeep Srivastava

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. In pursuance of bailable warrants issued against the appellants, the appellants are present personally before this Court along with their counsel Shri Prem Kumar Srivastava.

2. Heard learned counsel for the appellants as well as learned A.G.A. for the State and perused the record.

3. The instant criminal appeal under Section 374(2) Cr.P.C. has been preferred by the appellants- **Anil Singh and Rajjan Singh** against the judgment and order of the trial court dated 21.07.2008 passed by Special Judge, S.C./S.T. Act, Unnao, in Sessions Trial No. 310 of 1998, arising out of Case Crime No. 57 of 1998, under Section 323, 504, 506 I.P.C. & 3(1)(X) of S.C./S.T. Act, Police Station Auras, District Unnao, whereby the appellants have been convicted for committing offences under Sections 323, 504 I.P.C. & 3(1)(X) of S.C./S.T. Act, and have been sentenced for a maximum imprisonment of six months pertaining to offence under Section 3(1) (X) of SC/ST Act with fine of Rs. 1,000/- along with default clause.

4. Learned counsel for the appellants submits that the trial court has committed manifest illegality in appreciating the evidence available on record and has convicted the appellants for the offence which have never been committed by them.

5. It is further submitted that it was evident on the face of the record that a small dispute pertaining to verbal altercation has been given the colour of hurling castiest remarks and in this regard the evidence which was produced before the trial court was not at all nature and thus the prosecution has failed to prove its case before the trial court and material ingredients of offence under Section 3(1) (X) of SC/ ST Act were also not attracted due to the fact that the offence according to the own story of prosecution has not been committed in public view and in absence of such proof the appellants could not be convicted

for committing offence under Section 3(1) (X) of SC/ST Act.

7. It is also submitted that there were material contradictions, embellishments and inherent weaknesses in the statements of the prosecution witnesses and the trial court has committed material error in holding the appellants guilty while even the injuries allegedly sustained by the injured persons were not proved as the doctor was not produced as a witness before the trial court. Thus, the judgement and order passed by the trial court may kindly be set aside and the appellants be acquitted from all the charges framed against them.

8. Learned AGA on the other hand submits that there is no illegality or to say any irregularity in the judgment and order passed by the trial court and thus, no interference therein is required.

9. Having heard learned counsel for the parties and having perused the record, it is reflected that FIR of this case has been lodged by the informant alleging that on 19.05.1998 at about 7.00 P.M. the appellants came to him and asked him to help in placing thatched (Chhappar) on which he replied that he would come after 10 minutes and thereafter the appellants again came to his house and started giving filthy abuses and also assaulted him with 'lathi', on an alarm raised by him, his mother came to his rescue, however, she was also assaulted. The Investigating Officer after investigation submitted charge sheet against appellants and special court framed charges against the appellants under Sections 323, 504 IPC and 3(1) (X) of SC/ST Act to which the appellants denied and claimed trial.

10. The prosecution in order to prove its case as relied on the oral evidence P.W.1. Kishan Lal, P.W.2- Maharani, P.W.3- Dulam and P.W.4- Circle Officer- B.N. Singh (Investigating Officer) and also relied on various documentary evidence e.g. **Tehrir, F.I.R., Chik F.I.R., G.D. Qayami, site plan and charge sheet.**

11. After conclusion of the evidence of the prosecution, the statement of the appellants/accused were recorded under Section 313 Cr.P.C., wherein they denied all the evidence produced by the prosecution and claimed to have been falsely implicated on the basis of partibandi and enmity and in their defence have produced D.W.1 Yogendra Kumar Bajpai.

12. The trial court having regard to the evidence available on record found the case of the prosecution proved with regard to Sections 323, 504 IPC and 3(1) (X) of SC/ST Act and convicted the appellants in the aforesaid sections and sentenced them in

the manner as stated in paragraph 3 of this judgment.

13. Perusal of the record would also reflect that three witnesses of the fact has been produced by the prosecution, namely, P.W.1- Kishan Lal, P.W.2- mother of Kishan Lal, Maharani and P.W.3- father of the informant, namely, Dulam. Thus all these witnesses were related by blood, however the evidence of a witness may not be doubted only on account of his relationship with the injured or informant but whenever the trial court is dealing with the evidence of the witnesses who are related to each other and it is shown that there were some other independent prosecution witnesses present and have not been produced then the evidence of these witnesses is to be appreciated with certain amount of caution. It does not mean that the evidence of these related witnesses is to be discarded solely on the ground of their relationship with the informant or injured persons, but has to be appreciated by keeping in mind that the court is dealing with the evidence of these witnesses who are related to each other and are interested witnesses.

14. Perusal of the record would also reveal that the FIR of this case has been lodged by Kishan Lal by moving a written application before the S.H.O., Police Station Auras, District Unnao and apart from stating of being assaulted and abused, it is also alleged that he was intimidated. The trial court in its judgment has not stated anywhere the injuries sustained by the injured persons while in the FIR as well as in the statements of prosecution witnesses it was claimed that it was the informant P.W.1- Kishan Lal and her mother P.W.2- Maharani who has sustained injuries. It has been admitted by the trial court at page no.4 of its judgment that injuries sustained by these two injured persons were not proved and no doctor has been testified in this regard. This Court has perused the record of the trial court and did not find any evidence or medical injury reports pertaining to any injury sustained by the informant and her mother.

15. Thus, it is evident that no injury report pertaining to any injury sustained by the P.W.1- Kishan Lal, P.W.2- Maharani have been proved. In absence of any such proof how the trial court has perceived that these two witnesses has sustained injuries is not clear and it appears that the trial court has acted upon only oral evidence of P.W.1- Kishan Lal and P.W.2- Maharani without there being any corroboration with the medical evidence, which in the considered opinion of this Court was not sufficient to prove offence under Section 323 IPC.

16. Coming to the point of invocation of Section 3(1) (X) of the SC/ST Act the requirement of this penal section is that

alleged insult or intimidation or humiliation must be committed with an intention to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view only on account of him being a member of Scheduled Caste. Thus, it is not only intimidation or humiliation alone which has been made punishable in 3(1) (X) of SC/ST Act as the same is already punishable in the Indian Penal Code. To the contrary the requirement of Section 3(1) (X) of SC/ST Act is that such insult and intimidation must be based on the factor of caste or in simple words the victim must be intimidated and humiliated only on the ground that he belongs to the Scheduled Caste while the First Information Report of this case itself reveals that the appellants had arrived at the house of victim because he refused to participate in placing their thatched (chhappar) and therefore prima faice there was no angle of humiliation or intimidation given to the informant or his mother on the basis of P.W.1 and P.W.2 belonging to Scheduled Caste, moreover it has not been proved before the trial court that this offence has been committed within the public view as no independent witness has been produced before the trial court who could claim that the offence has been committed in his view. Therefore what is reflected from the record of the trial court is that even if any offence has been committed with regard to insulting or intimidating the informant and his mother the same was at first not committed on the basis of caste of the informant and secondly it was not within public view. Therefore, in the considered opinion of this Court the trial court has committed material illegality in convicting the appellants for committing the offences under Section 3(1) (X) of the SC/ST Act.

17. Thus, it is evident that the trial court has not considered the material embellishment, contradictions which were emerging from the record in the testimony of three prosecution witnesses of fact and therefore their evidence may not be termed as reliable, moreover the ingredients for invoking Section 3(1) (X) of SC/ST Act and intimidation and also abusing was also not reliable and Section 323 IPC was also not attracted as the prosecution failed to prove any injury sustained by the P.W.1- Kishan Lal and P.W.2- Maharani.

18. Thus, for the reasons mentioned herein before the appeal preferred by the appellants- **Anil Singh and Rajjan Singh** is, hereby, ***allowed*** and the impugned judgment and order dated 21.07.2008 passed by Special Judge, S.C./S.T. Act, Unnao is, hereby, quashed/set-aside.

19. The appellants appear to be on bail, their sureties are discharged. They need not to surrender in this case unless their detention are required with regard to any other criminal case.

20. Having regard to the provisions contained under Section 437-A of the Cr.P.C., the appellants shall file their personal bonds with two sureties each of Rs. 10,000/- before the trial court for the purpose of securing their presence before the Hon'ble Supreme Court if any S.L.P. or to say any criminal appeal is filed against this judgment.

21. A copy of this order be immediately sent to the trial court through the Sessions Judge concerned for information.

Order Date :- 4.10.2024

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