

Neutral Citation No. - 2023:AHC:175011

**Reserved on 22.08.2023**

**Delivered on 30.08.2023**

**Court No. - 84**

**Case :-** CRIMINAL APPEAL No. - 7241 of 2019

**Appellant :-** Karan Singh

**Respondent :-** State Of U.P. And 4 Ors.

**Counsel for Appellant :-** Chandan Bhagat

**Counsel for Respondent :-** G.A.

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

This is an appeal filed by the first informant/appellant Karan Singh under Section 14A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with the leave of the Court whereby the judgment and order dated 02.09.2019 passed by the Special Judge (SC/ST Act) in S.T. No.440 of 2011 (State Vs. Bhagwan Sahay and others) arising out of Case Crime No.200 of 2008, under Sections 354, 323/ 34, 504, 506 IPC and Section 3(1) (10) of SC/ST Act, Police Station- Mundali, District Meerut is prayed to be set aside.

Vide impugned judgment and order dated 02.09.2019, the trial court acquitted accused/ respondent nos.2 to 5- Bhagwan Sahay, Bablu, Hariveer and Amarkant of the charges under Sections 354, 506 I.P.C. and accused Amarkant was acquitted of charge under Section 3 (1) (x) of SC/ST Act also. All the four accused persons Bhagwan Sahay, Bablu, Hariveer and Amarkant were convicted under Sections 323/ 34 & 504 I.P.C. and were sentenced with a fine of Rs.1000/- each under Section 323/ 34 I.P.C. and sentenced with a fine of Rs. 3000/- each under Section 504 of I.P.C. In default of payment of fine all the accused persons had to undergo additional simple imprisonment of 01 and 02 month each respectively. Out of total fine of Rs. 16,000/-, Rs. 14,000/- were to be paid to injured Smt. Anita, the wife of the first informant/ appellant.

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

No one has put in appearance for respondent nos.2 to 5, all the four accused persons despite the sufficient service of the notices.

As per facts of the case, an FIR was lodged by appellant Karan Singh on 13.08.2008 with the version that on 12.08.2008 his wife Anita was preparing meals for children in primary school at about 8:30 A.M. Bhagwan Sahay, Bablu, Hariveer (respondent nos.2 to 4) all residents of the same village came and with ill intention catching hold of the hand of his wife Anita dragged, her hurling wild abuses. When Anita forbade them to abuse and drag her she was thrashed at their hands. During this act of the accused persons her clothes were torn. At the same time, accused/ respondent no.5 Amarkant son of Takechand, resident of Bhatipura also came and exhorted other accused persons to commit the crime. Hearing her hue and cry, Indrapal and Gangasaran of the same village and other persons came and saved his wife. While going back all these persons gave threat of life to his wife.

On the basis of this written report dated 13.08.2008, FIR at Case Crime No. 200 of 2008 was lodged against all the four accused persons/ respondent nos.2 to 5 under Sections 354, 323, 504, 506 IPC. After investigation, against all the four accused persons charge-sheet under Sections 354, 323/ 34, 504, 506 IPC and against Amarkant only charge-sheet under Section 3 (1) (x) of SC/ST was also filed. The Special Judge SC/ST Act framed charges on 19.08.2011 against all the four accused persons/respondent nos.2 to 5 under Sections 354, 323/34, 504, 506 IPC. Against Amarkant an additional charge under Section 3(1) (x) of SC/ST Act was also framed on the same day on 19.08.2011. Accused persons denied the charge, pleaded not guilty and claimed to be tried.

In the trial court, the first informant Karan Singh (appellant) appeared as PW-1 and proved the report lodged by him as Exhibit Ka-1, his wife, injured Smt. Anita appeared as PW-2. Both eye witnesses Indrapal and Gangasaran were discharged by the court. Though, Gangasaran was reported to have died till then. Apart from these two

witnesses of fact Dr. Satendra Savayasachi Saxena appeared as PW-3 and proved medical report of the injured as Exhibit Ka-2, S.I. Sompal Singh appeared as PW-4, who proved chik FIR as Exhibit Ka-3, copy of G.D. as Exhibit Ka-4, the weeding report of S.S.P. Office as Exhibit Ka-5. Investigating officer retired S.I. Anand Pal Singh appeared as PW-5 and proved site plan as Exhibit Ka-6 and charge-sheet as Exhibit Ka-7.

After that the statements of accused/ respondent nos.2 to 5 were recorded under Section 313 Cr.P.C., wherein they alleged the charge to be wrong and claimed themselves to be falsely implicated.

No defence evidence was produced on behalf of the accused persons.

On the basis of above evidence, the Special Judge SC/ST Act passed the impugned judgment and order dated 02.09.2019 and acquitted all the four accused persons/ respondent nos.2 to 5 of the charges under Sections 354 & 506 IPC and acquitted accused/ respondent no.5 Amarkant of the charge under Section 3(1) (x) of SC/ST Act also. All the four accused persons were convicted under Sections 323/34 IPC with fine of Rs. 1000/- each and under Section 504 IPC with fine of Rs. 3000/- each with default stipulation of 01 and 02 month additional simple imprisonment respectively.

Against this judgment and order the present appeal has been filed on behalf of the first informant with the version that the trial court did not consider the evidence on record properly. The injuries of the victim were duly proved by the doctor. Once the court found that the accused committed the offence the entire prosecution story should be deemed prove by the evidence on record. Witnesses in the trial court duly proved the charge framed against the accused persons, but the trial court has wrongly disbelieved that evidence. The accused persons tried to outrage the modesty of the victim by disrobbing her but the trial court did not consider this aspect also. The offence under Section 3(1) (x) of SC/ST Act was proved and the motive of the offence was also proved against the

accused persons. As there is ample evidence on record to prove the guilt of the accused persons, so the prayer is made to enhance the sentence in the sections, where the accused persons are convicted and the sentence awarded to them is inadequate, and convict the accused persons in the sections wherein they are acquitted.

It is clear that no independent witness of fact has been produced by the prosecution to prove the charges. PW-1 and PW-2 the only witnesses of fact are the husband and wife, the first informant and the victim, thus, highly interested witnesses. So far as the acquittal of the accused persons under Sections 354, 506 IPC and acquittal of accused Amarkant under Section 3(1) (10) of SC/ST Act is concerned, no independent witness has been produced by the prosecution. Independent witnesses Indrapal and Gangasaran are said to have saved victim Anita and one teacher is said to have given back her saree to the victim as per version of the FIR. Neither Gangasaran nor Indrapal or that teacher have been produced before the trial court. Though witness Gangasaran is said to have died. The presence of the husband of the victim on the spot is highly suspicious as it is not his version that he tried to save his wife. If he was present on the spot why he did not make any attempt to save his wife, why he did not give his wife any cloth to cover herself? These questions are unanswered. In the first information report also, the presence of the first informant is not mentioned at the spot. The victim has also stated in her statement that when her husband came, the accused persons were thrashing her, seeing her husband the accused persons made good their escape. She also stated that she narrated the whole incident including the incident of disrobbing her to her husband. In the opinion of the Court had the first informant witnessed the incident there was no need to narrate the incident by the victim to her husband. Thus, the only witness regarding the incident left is the injured herself.

So far as offence under Section 354 IPC is concerned, in the cross-examination of the victim, it has come that her saree was stretched (taken

off) when the accused persons were leaving the spot. In the FIR also, it has not been mentioned that the victim was disrobbed with the intention to outrage her modesty rather the words used in the FIR are that during the scuffle the clothes of the victim were torn. Thus, it is an improvement on the part of the victim in her statement that her saree was stretched (taken off) by the accused persons that too with the intention to outrage her modesty. Thus, in the absence of any ill intention i.e. the intention to outrage the modesty of the victim at the hands of accused and the contradiction in the version of the FIR and the statement of the victim, in the opinion of the Court, the offence under Section 354 IPC cannot be said to be made out against the accused persons/ respondent nos.2 to 5.

So far as offence under Section 506 IPC is concerned, in the FIR there is allegation that at the time of fleeing, the accused persons gave threat of life to the victim, but neither in the statement of the first informant, who is said to have come at the spot before the accused persons left the spot nor in the statement of the victim it has come that she was given any threat of life, so an offence under Section 506 I.P.C. also cannot be said to be made out against the accused persons.

So far as the charge under Section 3(1) (x) of SC/ST Act against Amarkant is concerned, in the FIR there is not even a single allegation that the victim was hurled caste based abuses, though, in her statement the victim has made an improvement and said that she was given caste based abuses but neither in the FIR nor in the statement of the victim as PW2 it has come that any caste based words or the abuses were hurled by the accused persons with the intention to humiliate the victim of her belonging to the scheduled caste or scheduled tribe community. Otherwise also, this quarrel between the parties is said to have taken regarding preparation of mid day meal. It is said that the accused persons did not want the victim to prepare mid day meal, thus, any abuses or caste based words, regarding which, there is no allegation in the FIR cannot be said to be hurled with the intention to humiliate the victim of her being a

member of a scheduled caste or a scheduled tribe. Hence, an offence under Section 3(1) (x) of SC/ST Act also cannot be said to be made out against accused Amarkant.

So far as the prayer to enhance the sentence under Section 323/ 34 and 504 IPC is concerned, the accused persons are convicted under Sections 323/34 and 504 IPC and are punished with fine of Rs. 1000/- and Rs. 3000/- each respectively. If we go through the punishment mentioned under Section 323 IPC, it may extend to one year imprisonment, or with fine which may extend to one thousand rupees, or with both. Thus the Special Judge SC/ST Act had a discretion either to punish the accused persons by imprisonment or by fine or by both. Here the Special Judge exercised his discretion in sentencing the accused persons only with fine, though with the maximum limit of fine, Rs. 1000/- each.

So far as the punishment under Section 504 IPC is concerned, as per the Act the accused persons could be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Here also, the Special Judge exercised his discretion in punishing the accused persons with fine of Rs. 3000/- each. The offence is dated 12.08.2008 and the judgment has been pronounced after 11 years on 02.09.2019. Both the Sections 323 and 504 IPC are noncognizable and bailable offence triable as summons case. After 11 years of the trial, the court has exercised its discretion in convicting the accused persons under Section 323/ 34 and 504 IPC by awarding maximum fine of Rs. 1000/- each under Section 323/ 34 IPC and awarding fine of Rs. 3000/- each under Section 504 IPC. As per medical report, the victim is said have sustained five injuries. Three contusions, one traumatic swelling and multiple dragged contusions within the area of 6 cmx 4 cm. All the injuries are found to be simple and not on the vital part of the body, caused by hard and blunt object. Regarding these injuries the victim has been awarded compensation of Rs. 14, 000/- out of the amount of fine of

Rs.16,000/- imposed upon the accused persons.

In the opinion of the Court, the sentence of fine awarded to the accused persons after 11 years of committal of offence in a summons trial, and in non-cognizable and bailable offence, is sufficient enough to meet the requirement of the charges levelled. The Court finds no ground to interfere in this discretionary power of the trial court of sentencing the accused persons with the amount of fine Rs. 1000/- and Rs. 3000/- each regarding conviction under Sections 323/34 and 504 of IPC respectively.

So far as the version of the learned counsel for the appellant is concerned that this amount of Rs. 16,000/- has not been deposited by the accused persons in the trial court, if it is so, the trial court is directed to check the records and if the fine is not found to be deposited the trial court may issue the necessary process against the accused persons/ respondent nos.2 to 5 to deposit the fine and in case of non deposition of fine to send them in custody to undergo the awarded imprisonment in lieu of the fine.

The appeal is dismissed accordingly.

**Order Date :-30.08.2023**

Radhika