

Court No. - 67

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Case :- CRIMINAL APPEAL No. - 1855 of 2021

Appellant :- Vashu

Respondent :- State Of Up And 2 Others

Counsel for Appellant :- Anand Ji Mishra, Kaushal Kumar Pandey

Counsel for Respondent :- G.A., Sudhir Kumar

Hon'ble Rahul Chaturvedi, J.

Heard Sri Anand Ji Mishra and Kaushal Kumar Pandey, learned counsel for the appellant, learned A.G.A. and perused the record.

Since Sri Sudhir Kumar, learned counsel for the opposite party no. 2 appeared and inform to the court that he has got no instructions in the matter and thus he may be permitted to withdraw his power on behalf of the opposite party no. 2. The permission is accorded and his name may be scored of as counsel for the opposite party no. 2.

Learned A.G.A. has filed counter affidavit and counsel for the appellant does not want to file any rejoinder affidavit to the counter affidavit and wants to argue the case on merit.

This is a criminal appeal targeted against the judgment and order dated passed by Special Judge SC/ST Act, Meerut while rejecting the bail application no. 4486 of 2020 on 16.12.2020. The applicant Vasu is facing the prosecution in case crime no. 686 of 2020 u/s 376-D, 377, 323, 504, 506 IPC and section 3(2) (v) of SC/ST Act, P.S. Medical, District Meerut and the appellant is behind the bar since 15.09.2020 in connection with the aforesaid case.

Contention raised by the counsel that one Smt. Sunita has lodged the FIR on 15.09.2020 for the incident said to have been taken place on 14.09.2020 against Raghav Tyagi and two other unknown persons with the allegation that the informant's daughter was working in Dayawati Hospital as a house keeper, she was married girl but unfortunately, her marital life could last for long and there was discord with her husband. While working, she used to getup call from Raghav Tyagi from his mobile number. On the fateful day around 8:30, Raghav Tyagi has given lift to her in his car and taken her to some secluded place where Raghav Tyagi along with two other persons brutally assaulted upon the dignity of the lady and left her after committing rape upon her. After lodging of the FIR, the police

has recorded the statement of the victim u/s 161 Cr.P.C. in which she has broadly reiterated the prosecution story mentioned in the FIR. She has clearly mentioned that she was often subject matter of harassment on mobile phone by the named accused persons on 14.09.2020. when she was going back to home as she was feeling down and sick, a car was parked right in front of the hospital where Raghav Tyagi requested to talk to her. Soon after sitting in the car she finds that two other persons were sitting in the car. The driver of the car has suddenly started the vehicle then he told that he is going to in the forest of Sarai Kazi and thereafter, all the persons have mercilessly committed the heinous and a derogatory offence of rape as well as sodomy with her in a most abhorring way resultantly, there was a profuse bleeding from her private organ. She has identified the present applicant Vasu among all the three assailants. In the question answer, she has also reiterated that she can identified Vasu who has spoiled her life.

When she was brought to the doctor, she has almost reiterated the allegations of rape upon her by all the persons including the appellant. The medical report dated 22.09.2020 annexed in the supplementary affidavit clearly indicates that that there is pain in lower abdomen, swelling in uvlval region and generalized weakness. In her statement recorded u/s 164 Cr.P.C. too she has tried to add some more persons but fact remains that allegation against Rajat Tyagi @ Raghav Tyagi, Vasu are consistent.

Learned A.G.A. has filed a counter affidavit annexing the F.S.L. report Ghaziabad and there was in article 7 and 11 the undergarments of Rajat Tyagi and Vasu it contained the human semen and the article 4 which is the leggings of the victim too contains the blood of the victim, clearly indicates that the poor girl was subject matter of brutal attempt of ravishing.

It is contended by the counsel for the appellant that she has got no reason or occasion to identified the assailants. The appellant is not named in the FIR and the name of the appellant has purposely dragged with ulterior motive.

I have keenly perused the FIR, 161 and 164 Statements of the victim in which in no uncertain terms she has indicted the appellant in commission of the offence. The way and the manner of her psychic and soul and in addition to her body was mercilessly butchered and mashed by the named three pre-mative homoceepians is not acceptable in a civilized society. The lady folk are not a commodity to be used in such a fashion and thus, deserves no sympathy in a civilized society. The prosecution story her statement recorded u/s 161 Cr.P.C. before the doctor, the medical report and lastly her statement recorded

u/s 164 Cr.P.C. is put in a linear way clearly indicates the involvement of the appellant in this case unfathomable sin. I have perused the order impugned and find no perversity and illegality in it and consequently the appeal lacks merit and is accordingly **REJECTED**.

Order Date :- 1.10.2021

Nisha