

AFR

Court No. - 88

Case :- CRIMINAL APPEAL No. - 4573 of 2021

Appellant :- Ayyub Khan @ Guddu

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rajesh Kumar Pandey, Ambreesh Kumar

Counsel for Respondent :- G.A., Arvind Singh

Hon'ble Sanjay Kumar Singh, J.

Heard Shri Rajesh Kumar Pandey, learned counsel for the appellant, Shri Rabindra Kumar Singh, learned Additional Government Advocate assisted by Sri Prashant Kumar Singh, learned Brief Holder representing the State and Shri Ravi Prakash, learned counsel, holding brief of Shri Arvind Singh, learned counsel appearing for opposite party No. 2.

This criminal appeal has been filed against the order dated 01.10.2021 passed by the Special Judge, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Auraiya whereby the learned Judge rejected the bail application moved on behalf of the appellant in Bail Application No. 1146 of 2021, arising out of Case Crime No. 80 of 2021, under Sections 504, 506, 376, 328 IPC, Section 67(A) of Information and Technology Act and Section 3(2)(v), 3(1)Da and 3(1) Dha of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, police station Ayana, district Auraiya.

The facts that formed the bedrock of this appeal are that a first information report was lodged by the victim herself on 09.7.2021 for the alleged incident which took place on 23.6.2021 inter alia with the allegations that on 23.6.2021 at about 11.30 AM when she was waiting for the conveyance at the road, at that time appellant, who lives in the same village, was passing through by truck, who stopped the truck and enquired from the victim as to where is she going and offered her to sit on his truck. When the victim boarded the truck, the appellant offered her cold drink and after consuming the same she became unconscious. Thereafter, the appellant took her to

a lonely place and committed rape on her and also made her nude video. On 09.7.2021, the appellant along with co-accused also abused the victim's husband by caste derogatory words and threatened him of dire consequences.

It is contended by the learned counsel for the appellant that there was inordinate delay in lodging the first information report for which no plausible explanation has been rendered by the prosecution. It is further submitted by the learned counsel for the appellant that in the medical examination report no spermatozoa was found, which belied the case of the prosecution. Learned counsel for the appellant also submits that the appellant has falsely been implicated in this case and that he has no concern with the alleged incident. It is also contended that the victim is engaged in extracting money from the innocent persons, failing which she has falsely implicated the appellant in the present case with false and concocted story.

Lastly, it is submitted by the learned counsel for the appellant that there is no chance of the appellant fleeing away from the judicial process or tampering with the prosecution evidence. The appellant does not have any criminal history and is languishing in jail since 02.9.2021 and in case, he is released on bail, he will not misuse the liberty of bail and cooperate with the trial.

Per contra, learned Additional Government Advocate and learned counsel appearing on behalf of opposite party No. 2/ first informant have opposed the prayer for bail by contending that the victim in her statement under Section 164 Cr.P.C. has fully supported the prosecution version by specifically stating that the appellant after getting her intoxicated, committed rape on her and made video thereof. They further contend that along with the case diary, CD of viral video of the victim is also annexed.

Hon'ble Supreme Court in a catena of judgement has held that mere delay in lodging the FIR is no ground to doubt the prosecution case when it is properly explained.

In **Tara Singh and others Vs. State of Punjab**, AIR 1991 SC 63, Hon'ble Supreme Court held that mere delay in lodging the FIR by itself cannot give scope for an adverse inference leading to rejection of the prosecution case outright. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence.

Hon'ble Supreme Court in **State of Punjab Vs. Gurmit Singh and others**, 1996 SCC (2) 384 held as under:

In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.

So far as the contention of the learned counsel for the appellant that no spermatozoa was found in the sample of the vaginal swab, it is noted that the incident took place on 23.6.2021 whereas the medical examination of the victim was done on 10.7.2021, i.e. after 17 days of the incident. The lifespan of sperm in a woman's body while fertile cervical fluid is present is generally three days. However, most sperm die within minutes after ejaculation inside the vagina or outside the woman's genital tract. Once sperm enter the woman's genital tract, the cervix and uterus, most die within 1-2 days, but some can survive up to 5 days and thus the longest that the sperm can survive in fertile cervical fluid or the uterus is five days.

Hon'ble Supreme Court in **Narayanamma vs**

State Of Karnataka, 1994 SCC (5) 728, JT 1994 (5) 436 has held as under:

"With regard to the vaginal smear examination conducted at a different hospital, Dr Reeta, PW 3 has reported that no spermatozoa was seen on it, and the absence of sperms has been viewed against the version of the prosecutrix. It was never elicited from the prosecutrix as to whether the two persons who committed rape on her had reached orgasm emitting semen in her private parts. No presumption can be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix."

Having heard learned counsel for the parties and examined the matter in its entirety, I find that the appellant not only committed rape upon a helpless victim, but also made video of the same and got it viral. The Court noticed that crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.

Considering the overall facts and circumstances of the case as well as keeping in view the submissions advanced on behalf of parties, gravity of offence, role assigned to appellant, severity of punishment, I do not find any good ground to

release the appellant on bail.

In view of the above, the order dated 01.10.2021 passed by the Special Judge (SC/ST Act), Auraiya is upheld. Accordingly, the bail application is rejected at this stage.

It is clarified that anything observed in this order is limited to the extent of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence to be adduced uninfluenced by anything mentioned in the order.

Order Date :- 25.7.2022

Ishrat