

Court No. - 85

Case :- CRIMINAL APPEAL No. - 10513 of 2023

Appellant :- Nitin Saini

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gaurav Kakkar

Counsel for Respondent :- G.A.,Neha Rajput,Parmeshwar Kr. Chaudhary

Hon'ble Mayank Kumar Jain,J.

1. Heard learned counsel for the appellant, learned counsel for the informant, learned AGA for opposite party no.1 and perused the material placed on record.
2. The present criminal appeal under Section 14-A(2) Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been filed by the appellant to enlarge the appellant on bail in Case Crime No.302 of 2023, under Sections 452, 307,376, 511 of IPC, Section 4/25 of Arms Act and Section 3(2) (V) of SC/ST Act, Police Station Sikandarabad, District Bulandshahar.
3. The case of prosecution as per First Information Report is that on 25.05.2023 at about 1.30 p.m. the daughter-in-law of the informant was alone inside her house. Accused named in the FIR, namely, Rocky along with the present appellant, who is also named, entered in the house of the informant under the pretext to see chandelier (*Jhumar*). The appellant along with other person dragged his daughter-in-law to the kitchen. Appellant caught hold the daughter-in- law of the informant and other named person Rocky assaulted with knife on her neck with the intention to kill her. She tried to stop Rocky, both the fingers of her were cut off and her throat was also cut off with a knife. She raised alarm and when neighbours came there, the appellant and Rocky fled away from there holding knives in their hands.
4. It is submitted that the appellant has been implicated as he is the employee of main accused Rocky. The main role of assault with knife has been assigned to co-accused Rocky. The complainant during her statement u/s 161 Cr.P.C. attributed the role of catching hold to the appellant. The victim during her statement recorded under Section 161 Cr.P.C., attributed the role of catching hold to the appellant. The victim during her statement u/s 161 Cr.P.C. increased the gravity of the incident

and on being tutored made allegation for attempting rape against the present appellant also and stated that appellant assaulted on her with a knife. During her statement recorded under Section 164 Cr.P.C. she stated that appellant attempted to assault her with a knife but she stopped her with her hands as a result of which she sustained injuries on her fingers. Rocky then took the knife from the present appellant and assaulted her on her neck. Her daughter, who is 7 years old, also witnessed this incident.

Referring these statements, it is argued that there are major contradiction in the statements of the complainant and the victim against the version of the FIR. However, Durgesh, the daughter of the injured, did not disclose the name of the appellant assaulting to her mother.

5. The other witness Smt. Soni, who is tenant of the informant, has also stated that she had seen that Rocky was having knife in his hand and assaulting the victim.

6. It is submitted that there is no internal damage to the victim and no X-ray was done to measure depth of the injury, therefore, injuries would be considered to be superficial in nature and at the most they will travel up to Section 324 I.P.C. only. The daughter of the victim did not make any allegation of rape against the appellant. The FIR of the incident is lodged after a delay of six days by the informant, who is father-in-law of the victim, without giving any plausible explanation. The victim was discharged on the next day of the incident which indicates that the injuries were not fatal to life. Even in the opinion of the doctor, the injuries were not opined to be fatal to the life.

7. It is also submitted that in the FIR no averment was made about attempt of rape by the appellant. Initially, the FIR was lodged under Sections 452 and 307 IPC and later on Sections 376, 511 of IPC, Section 4/25 of Arms Act and Section 3(2)(V) of SC/ST Act were added. The appellant has no criminal history to his credit.

8. It is also submitted that co-accused Rocky was having good relation with the family of the informant and he was a frequent visitor to them. The husband of the victim having suspicion over Rocky and victim as he suspected love affair between them. On the date of incident, the husband of the victim had seen Rocky coming out from his house.

9. It is also submitted that so far as the recovery of knife from the possession of the appellant is concerned, no blood stain was found on the knife and there is no public witness of the alleged recovery. The recovery of the knife from the possession of the

appellant is planted. The appellant is languishing in jail since 25.05.2023.

10. Per contra, learned counsel for the informant and learned AGA vehemently opposed the bail of the appellant and submitted that appellant is named in the FIR. Specific role has been assigned to the appellant by the victim during her statements recorded under Sections 161 and 164 Cr.P.C. The injured sustained injury on her vital part. The victim sustained as much as 7 injuries on her person. Injury nos.2 to 5 are noted to be sutured wound. Injury no.1 is on the neck of the victim, which is on the vital part of the body.

11. It is also submitted that the daughter and tenant of the victim are eye witnesses of the incident. The victim has assigned specific role to the present applicant that he caught hold her, during incident prevented her to close the door, assaulted with knife to her and committing indecent activities with her. The presence of the appellant at the place of occurrence is certified by injured and the eye witness.

12. It is also submitted that the knife used in the incident was recovered from the appellant at the time of his arrest. The appellant was actually involved in the incident along with co-accused Rocky so he is entitled for bail. However, it is made clear that the case of co-accused Rocky is distinguishable with the appellant.

13. On the cost of repetition, learned counsel for the appellant submitted that role of catching hold is assigned to the appellant. No allegation of committing any indecent activity or threat is levelled against him. There are material contradiction in the statement of the prosecutrix about the role of the appellant. The knife is planted since no blood stain was found. The main role of assaulting with the knife on the person of the victim are attributed to co-accused Rocky.

14. Having considered the submissions of the parties noted above, since no allegation has been made against the appellant that he committed rape or indecent activity in the FIR and role of catching hold was assigned to him in the FIR as well the daughter of the informant and the tenant and the main role of causing injury and rape are levelled against co-accused Rocky, finding force in the submissions made by the learned counsel for the appellant; appellant being under-trial having fundamental right to speedy; larger mandate of the Article 21 of the Constitution of India, considering 5-6 times overcrowding in jails over and above their capacity by under trials and without expressing any opinion on the merits of the case, Court

is of the opinion that the appellant is entitled to be enlarged on bail.

15. Let appellant, **Nitin Saini** be released on bail in the aforesaid case crime number on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:

(i) The appellant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(ii) The appellant shall not pressurize/intimidate the prosecution witnesses.

(iii) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 of Cr.P.C.

(iv) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel.

(vi) The appellant shall not indulge in any criminal activity or commission of any crime after being released on bail.

16. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail. If in the opinion of the trial court that absence of the appellant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed in accordance with law.

17. The trial court may make all possible efforts/endeavour and try to conclude the trial expeditiously in accordance with law after the release of the appellant, if there is no other legal impediment.

18. It is made clear that the observations made in this order are limited to the purpose 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 led unaffected by anything said in this order.

19. The criminal appeal is **allowed**.

Order Date :- 20.11.2023

m.a.