

Court No. - 29

Case :- CRIMINAL REVISION No. - 187 of 2023

Revisionist :- Mr. Xyz Thru. His Mother

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. Lko.
And Others

Counsel for Revisionist :- Pratul Gupta, Jasveer Kaur

Counsel for Opposite Party :- G.A., Ramesh Chandra Gupta

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

1. Counter affidavit has been filed by learned A.G.A. today in Court, which is taken on record.

2. Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

3. This Criminal revision has been filed on behalf of the juvenile against the order dated 14.12.2022 passed by Juvenile Justice Board and the order dated 02.02.2023 passed by learned Additional Sessions Judge, Court No. 11, Lakhimpur Kheri in Criminal Appeal No. 61 of 2022 whereby the bail of the revisionist was rejected and its appeal was also dismissed.

4. Brief facts of the case are that an FIR was lodged by Mahesh Prasad on 28.06.2022 against unknown persons that on the same day, i.e., on 28.06.2022 at about 11:00 a.m., his 12 years old daughter had gone for defecation. When after a long time, she did not come back, on search, her dead body was found in the sugarcane field of Kamleshwar. Some unknown persons had committed her murder. During investigation, the name of present revisionist came into light that the present revisionist was having illicit relations with 'B' elder sister of the deceased and the deceased disclosed this fact to her mother and the deceased and her mother started checking 'B' from interacting

or having relations with the revisionist. Hence, it is said that 'B' the elder sister of the deceased along with the revisionist and some other co-accused persons committed murder of 'A'. It is also alleged that before murder, the revisionist committed rape also on the deceased.

5. It is argued by learned counsel for revisionist that the FIR was lodged against the unknown persons. As per the statement of Ashok Kumar alias Annu, he and Adesh were ploughing the field at about 12:00 in the noon, they saw Deepu, Amar Singh, Ranjit, who paid them regard by saying 'Namaste' and rest three persons, the present revisionist, ankit and Sandeep were standing at a distance. There was a rumour in the village that 'B', the elder sister of deceased 'A' was having illicit relations with Ranjit, Amar Singh, Sandeep, Ankit. The deceased 'A' was having knowledge about the same and she along with her mother used to resist, thus 'A' was murdered by the present revisionist and rest co-accused persons. There is no eyewitness of the incident. The revisionist has been implicated in this case on the basis of confessional statement of accused and co-accused persons. In the postmortem report also, the death is shown by strangulation. No ingredients of rape were found in the postmortem report. Hence the prayer for bail is made.

6. Learned A.G.A. opposed the prayer and submitted that as per postmortem report, the death of the deceased was caused by strangulation. Two contusions are also found on the chin and inner part of her thigh respectively at the time of postmortem. Apart from the confessional statement of accused and co-accused persons, the first informant had also stated in his statement that it was the revisionist, who along with other co-accused persons, was involved in the rape and murder of his daughter. The DPO report is on record wherein it has been

mentioned that after release of the revisionist on bail, the possibility of exposure to moral physical or psychological danger cannot be denied. hence the prayer is opposed.

7. From the perusal of record, it is found that FIR has been lodged against unknown persons. Later on, on the basis of statement of Adesh that he saw the revisionist in the field at the time of incident, the revisionist along with other co-accused persons was arrested. There was a rumour that 'B' the sister of deceased was having illicit relations with the four accused persons. There is no allegation that the applicant was involved in rape with the deceased. On the confessional statements of the revisionist and other co-accused persons, the revisionist is implicated in the present case. Admittedly, there is no eyewitness of the incident. In the postmortem report, there is no mention of any rape with the deceased. The revisionist is languishing in jail since 29.06.2022. As per DPO report also the apprehension is not expressed that the release of the revisionist would bring him into association with any known criminal or that his release would defeat the ends of justice.

8. In the opinion of the Court, the revision deserves to be allowed. The revision is allowed. The order dated 02.02.2023 passed by the trial appellate court is hereby set aside. The order dated 14.12.2022 passed by the Juvenile Justice Board is also set aside.

9. Let the revisionist, Juvenile Delinquent 'X' son of 'Y' through his father resident of Village- Dhobaha Bhojpur, Police Station Kotwali Sadar, District Lakhimpur Kheri be released on bail in Case Crime No. 719 of 2022, under Sections 376 DA/34, 302 & 201 IPC and Section 5G/6 of the Protection of Children from Sexual Offences Act, 2012, P.S. Kotwali Sadar, District Lakhimpur Kheri, upon his guardian furnishing a personal bond

with two solvent sureties of his relatives, each in the like amount to the satisfaction of the Juvenile Justice Board, Lakhimpur Kheri subject to the following conditions:-

(i) the natural guardian will furnish an undertaking that upon release on bail the juvenile will not be permitted to come into contact or association with any known criminal or allowed to be exposed to any moral, physical or psychological danger and further that the guardian will ensure that the juvenile will not indulge in any criminal activity;

(ii) natural guardian will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do.

(iii) juvenile accompanied by his natural guardian, will report to the Probation Officer on the first working day of every calendar month commencing with the month of January, 2024. The D.P.O. shall maintain a diary recording their attendance.

(iv) The District Probation Officer will keep strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board, Lakhimpur Kheri.

10. 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/J.J.Board shall be absolutely free to arrive at its independent conclusions on the basis of evidence led, uninfluenced by any finding or observation whatsoever in this order.

Order Date :- 11.12.2023

Virendra