

Court No. - 15

Case :- CRIMINAL APPEAL No. - 773 of 2023

Appellant :- Shivam Upadhyay

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Appellant :- Anil Kumar Akela, Ajai Kumar, Shobhit Kumar Pandey

Counsel for Respondent :- G.A., Akhilesha Nand Pandey

Hon'ble Shamim Ahmed, J.

1. Heard Sri Vivek Kumar Rai, Advocate, holding brief of Sri Ajai Kumar, learned counsel for the appellant; Sri Akhilesha Nand Pandey, learned counsel for the opposite party No. 2 and Ms. Kamlesh Kumari, learned A.G.A. for the State and perused the entire record.

2. This Criminal Appeal under Section 14-A (2) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 10.2.2023 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 153 of 2023, Case Crime No. 695 of 2022, under Sections 376, 323, 504, 506 I.P.C. and Section 3(1)Da, 3(1)Dha, 3(2)(v) of S.C./S.T. Act, Police Station Akbarpur, District Ambedkar Nagar, whereby the bail application of the appellant has been rejected.

3. Learned A.G.A. has already filed counter-affidavit and in reply thereto learned counsel for the appellant has filed rejoinder-affidavit, which are available on record.

4. Sri Akhilesha Nand Pandey, learned counsel for the opposite party No. 2 submits that his client is not interested to file any counter-affidavit in this case. He has informed that he will argue the in absence of the counter-affidavit.

5. Learned counsel for the appellant submits that the appellant is innocent and he has falsely been implicated in the present case. The appellant is a young boy, aged about 20 years and the prosecutrix is aged about 26 years. The appellant worked in Hero Honda Agency, where the prosecutrix also worked. There was some friendship between the appellant and the prosecutrix. Taking advantage of that friendship the prosecutrix tried to motivate the appellant for marriage, as she was in love-affair with him. In the first information report the prosecutrix has stated that the appellant on the false promise of marriage made physical relations with her and when the prosecutrix pressurized the appellant to marriage, then the appellant refused and he also made physical relations in the month of September, 2022

without her consent .

6. In her statement recorded under Section 161, Cr.P.C. the prosecutrix has almost repeated the same version of the F.I.R., with slight modification, whereas in her statement recorded under Section 164, Cr.P.C. she has admitted her age to be 26 years and she also stated that she was in love-affair with the appellant for the last eight months and she was living with him as wife and husband and the appellant made physical relations several times with her sweet will and also made promise of marriage, but in the month of September, 2022 the prosecutrix pressurized the appellant for marriage, he refused for it and threatened her with dire consequences and also abused her with caste-language.

7. Learned counsel for the appellant submits that whatever statement has been given by the prosecutrix under Section 164, Cr.P.C. it appears that the parties are consenting parties and the prosecutrix and the appellant were in relation and were living together for 8 months, but on refusal of marriage the present first information report was lodged by moving an application under Section 156(3), Cr.P.C. after long delay and no proper explanation regarding delay was given. He further submits that if it is a case of false promise of marriage, then also no case is made out against the appellant, as the prosecutrix is a major girl, aged about 26 years, and she knew the consequences very well, that at any point of time either the appellant or the family members can turn up from their promise of marriage and there was also an apprehension that as the prosecutrix belongs to S.C./S.T. category and the appellant belongs to higher caste, then there is a very blinking chances that the marriage may be solemnized in future. Knowing this fact fully the prosecutrix made physical relation with the appellant and lived with him for 8 months with a hope that the marriage will be solemnized with the appellant. Learned counsel in support of his averments has placed reliance at paragraph Nos. 18 and 21 of the judgment of Hon'ble the Supreme Court in the case of Pramod Suryabhan Pawar v. State of Maharashtra, thus, he submits that the ratio of law as applicable by the Supreme Court in the aforesaid judgment is also applicable in the case of the present appellant, as the appellant has not made any fraud or misrepresented the fact nor cheated the prosecutrix, as there were chances that the family members would never be ready for marriage, as the prosecutrix is aged 26 years and the appellant is of 20 years, thus, the allegations as levelled by the prosecutrix are false and fabricated, and they have been levelled only with the intention to falsely implicate the appellant in the present case and to defame the image of the appellant and his entire family in the society, even though it was argued by the learned counsel that

any physical relation which are said to have been made by the appellant, that is not by playing fraud by misrepresenting the fact the lady knew this fact that the appellant may turn up at any time, as he is younger than the prosecutrix.

8. Several other submissions have also been brought forth regarding the illegality and infirmity of the prosecution case and it has also been highlighted before this Court that due to heavy pendency of the criminal cases before the trial court there are blinking chances that in near future trial of the present case would be concluded expeditiously. It has also been highlighted that the appellant is in detention since 12.12.2022 and has already undergone substantial period of detention, thus, it was argued that present appeal be allowed and the judgment and order passed by the Court below be reversed and set aside and the appellant be released on bail.

9. Apart from the arguments as advanced by the learned counsel for the appellant, learned counsel for the opposite party No. 2 Sri Akhilesha Nand Pandey submits that prima facie offence is made out against the appellant, as on the false promise of marriage he has made physical relations with the prosecutrix, but he has not disputed this fact that in the statement recorded under Section 164, Cr.P.C. the prosecutrix herself has admitted this fact that she was living with the appellant for 8 months and had made several times physical relations, but only in the month of September, 2022 the appellant refused for marriage on the pressure created by the family members, thus, he submits that the case is made out against the appellant. He is not entitled to get any relief from this Court and this appeal deserves to be rejected.

The learned A.G.A. also made an agreement with the arguments, as advanced by the learned counsel for the opposite party No.2 and she also submits that the appeal may be rejected.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and considering the fact that the appellant is aged about 20 years and the prosecutrix is aged about 26 years; there was some friendship between them; in her statement recorded under Section 164, Cr.P.C. the prosecutrix herself has admitted her age to be 26 years and she also stated that she was in love-affair with the appellant for the last eight months and she was living with him as wife and husband and the appellant made

physical relations several times with her sweet will; on refusal of marriage the present first information report has been lodged by moving an application under Section 156(3), Cr.P.C. after long delay and no proper explanation regarding delay; the prosecutrix is a major girl, aged about 26 years, and she knew the consequences very well, that at any point of time either the appellant or the family members can turn up from their promise of marriage and there is also an apprehension that as the prosecutrix belongs to S.C./S.T. category and the appellant belongs to higher caste, then there is a very blinking chances that the marriage may be solemnized in future. Knowing this fact fully the prosecutrix made physical relation with the appellant and lived with him for 8 months and made physical relations with him, and further considering the larger mandate of the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of Dataram Singh vs. State of UP and another, reported in (2018) 3 SCC 22, this Court is of the view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

10. Accordingly, the appeal is allowed. Consequently, the impugned judgment and order dated 10.2.2023 passed by learned Special Judge, S.C./S.T. Act, Ambedkar Nagar, in Bail Application No. 153 of 2023, Case Crime No. 695 of 2022, under Sections 376, 323, 504, 506 I.P.C. and Section 3(1)Da, 3(1)Dha, 3(2)(v) of S.C./S.T. Act, Police Station Akbarpur, District Ambedkar Nagar, is hereby set aside and reversed.

11. Let the appellant, Shivam Upadhyay be released on bail in the Case Crime No.695 of 2022, under Sections 376, 323, 504, 506 I.P.C. and Section 3(1)Da, 3(1)Dha, 3(2)(v) of S.C./S.T. Act, Police Station Akbarpur, District Ambedkar Nagar, with the following conditions:-

(i) The appellant shall furnish a personal bond with two sureties each of like amount to the satisfaction of the court concerned.

(ii) The appellant shall appear and strictly comply following terms of bond executed under section 437 sub section 3 of Chapter- 33 of Cr.P.C.:-

(a) The appellant shall attend in accordance with the conditions of the bond executed under this Chapter.

(b) The appellant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) 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.

(iii) The appellant shall cooperate with investigation /trial.

(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 court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(v) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(vi) In case, the appellant misuses the liberty of bail during trial, in order to secure his presence, proclamation under section 82 Cr.P.C. is issued and the appellant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(vii) The appellant shall remain present, 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 Cr.P.C. If in the opinion of the trial court 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 against him in accordance with law.

12. The trial court is also directed to expedite the trial of the aforesaid case by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

13. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the prayer for bail and must not be construed to have any reflection on the ultimate merit of the case.

(Shamim Ahmed, J.)

Order Date :- 30.11.2023/A.Nigam