



2026:AHC:59852

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 11267 of 2024

Rajnish Shukla

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Shivam Shukla, Sushil Kumar Shukla
Counsel for Respondent(s)	:	G.A., Rajendra Kumar Sonker

Court No. - 53

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the appellant, learned counsel appearing for opposite party no. 2 and the learned A.G.A. for the State. Perused the record.

2. The instant criminal appeal has been preferred against the entire proceedings, including the cognizance order dated 26.09.2023 as well as the charge sheet, passed by the learned court of the Special Judge, SC/ST Act, Kanpur Nagar, in Sessions Case No. 1386 of 2023, State vs. Rajnish Shukla and others, arising out of Case Crime No. 123 of 2023, under Sections 452, 504, 323 read with Section 34 I.P.C., and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 354 read with Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 354-B read with Section 3(2)(va) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 376 read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Section 506 read with Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Sections 3(1)(r), 3(1)(s), and 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Hanumant Vihar, South Commissionerate, District Kanpur Nagar, by which the learned trial court summoned the appellant to face trial and fixed the next date as 18.10.2023.

3. Learned counsel for the appellant has submitted that there is a considerable delay in the registration of the FIR. The alleged incident took place on 27.04.2023, whereas the FIR was lodged on 03.05.2023. It is submitted that the FIR appears to have been lodged after due deliberation and thought. The FIR has been lodged by Pankaj Kumar against Golu Mishra, Sandeep Shukla, Rajnish Shukla (revisionist), and Sonu Pandit.

4. As per the allegations made in the FIR, the complainant belongs to the Scheduled Caste and is working as a driver in the Transport Department. On 27.04.2023, at about 9:40 PM, after having dinner, the complainant was

sitting outside his house. At that time, the accused persons, namely Golu Mishra, Sandeep Shukla, Rajneesh Shukla/revisionist, and Sonu Pandit, were passing through the road and allegedly started abusing the complainant with filthy abuses relating to his mother and sister and also used caste-indicative insulting words, asking him to remain inside the house. When the complainant protested, the accused persons allegedly rushed towards him to assault him. The complainant then ran inside his house, and the accused persons entered the house and started beating him.

5. It is further alleged that when the complainant's wife, Archana, and his sister-in-law, Radha, intervened to save him, the accused persons caught Radha by her hair and threw her on the ground. It is also alleged that Sandeep beaten her hand and Rajneesh tore her blouse and committed obscene acts. The complainant is said to have sustained injuries on his hands, while Radha sustained injuries on her left hand. The accused persons also allegedly threatened the complainant and his family with dire consequences, using caste-related abuses and asking them to leave the house if they did not stay within their limits. According to the complainant, the acts of the accused persons created terror in the neighbourhood, and people were not willing to come forward to support him. The complainant and his family members were allegedly threatened with death.

6. It is also stated that the complainant dialed number 112, upon which the police arrived at the spot, and the accused persons fled to their houses. After the police left, the accused persons allegedly called 10–12 persons by phone and again threatened the complainant and his family members. The complainant claims that he apprehends danger to his life. The complainant further states that he got medical treatment for himself and Radha at Arjun Kashiram Hospital. According to him, although the police had visited the area, the report was not registered at that time, and the accused persons continued to pressurize the complainant and his family members to compromise, failing which they allegedly extended threats to kill them.

7. Learned counsel for the appellant has argued that the alleged incident did not occur in a public place and, therefore, the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not attracted. It is contended that the incident took place inside the house and not at a public place. It has further been submitted that enmity between the parties is admitted. Learned counsel has also pointed out serious contradictions in the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., and submitted that the charge-sheet has been filed without any substantive evidence. He has placed reliance on the judgment of **Hitesh Verma vs. State of Uttarakhand and Another**, passed by the Hon'ble Apex Court in Criminal Appeal No. 707 of 2020, and has specifically referred to paragraph 14, which reads as follows:

Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as *Swaran Singh & Ors. v. State through Standing Counsel & Ors.* The Court

had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

8. It has also been argued that the injuries sustained by the injured persons are simple in nature. Archana is reported to have suffered only two abrasions on the left wrist joint and on the lower part of the body, while Radha has been found to have only pain in the abdomen. The complainant, Pankaj Kumar, is reported to have sustained two contusions on the left side of the neck and on the wrist joint.

9. Learned counsel for the appellant has further argued that the complainant never alleged in the FIR that rape was committed upon his bhabhi, who is the alleged victim. Similarly, Archana, wife of the complainant, has also not alleged that the appellant committed rape upon her jethani. Even the victim, in her statement recorded under Section 161 Cr.P.C., did not initially support any allegation of rape against the appellant.

10. It is submitted that the victim, aged about 25 years and a married woman, for the first time stated in her statement under Section 164 Cr.P.C. that the appellant had inserted his finger into her private part. When she was specifically asked as to why she had not disclosed this fact earlier to the police, she stated that it was her mistake. She further stated that at the time

of the incident her devar and devarani were present at the spot. Her devar is the complainant and her devarani is Archana, both of whom had sustained injuries and were present there. When she was asked why the complainant had not mentioned this fact in the FIR, she replied that he might not have known about it, as he was lying beside her after sustaining injuries.

11. Lastly, learned counsel for the appellant has submitted that there has been a significant improvement in the version of the victim. Neither the complainant nor any of the injured persons mentioned the allegation of rape in their statements recorded under Section 161 Cr.P.C. It is further submitted that the FIR was lodged with a delay of about seven days and the allegation of rape was introduced subsequently.

12. Per contra, learned counsel appearing for opposite party no. 2 has opposed the present criminal appeal and submitted that the learned trial court has passed the impugned order after due consideration of the material available on record, and the same does not suffer from any illegality, infirmity, or perversity. It has further been submitted that the cognizance order and the consequential proceedings have rightly been initiated by the trial court. Therefore, no interference is warranted by this Court in the present appeal. He further submitted that there are two FIRs against the appellant vide Case Crime No. 443 of 2022, under Sections 323, 354, 504, 294 IPC and Case Crime No. 811 of 2017, under Sections 354, 323, 504, 506 IPC and Section 7/8 of POCSO Act. It is clarified that each criminal case has to be decided on its own facts and circumstances.

13. I have considered the submissions of learned counsel for the parties and perused the material available on record. It is admitted that there exists enmity between the parties. There is also an allegation of rape under Section 376 IPC, which is a serious and heinous offence, and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also been invoked.

14. It is held by the Hon'ble Supreme Court in **Sujoy Ghosh vs. State of Jharkhand and Another, reported in 2026 INSC 267**, in paragraphs 13 and 14 as follows:

"13. The principles governing the summoning of an accused in a criminal case, as well as the parameters for quashing criminal proceedings, are well settled. Summoning of an accused in a criminal case is a serious matter, and criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect application of mind to the facts of the case and the law applicable thereto. The Magistrate must carefully scrutinise the evidence brought on record and determine whether any offence is prima facie made out. The Magistrate may even himself put questions to the complainant and his witnesses to elicit answers to find out the

truthfulness of the allegations or otherwise, and then examine if any offence is prima facie committed by all or any of the accused. (See: Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors., (1998) 5 SCC 749; Vikas Chandra v. State of Uttar Pradesh & Another, 2024 SCC OnLine SC 1534.)

14. When an accused seeks quashing of either the FIR or criminal proceedings on the ground that such proceedings are manifestly frivolous, vexatious, or malicious, the Court is duty-bound to examine the matter with greater care. It will not be just enough for the Court to look into the averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averments, and, if need be, with due care and circumspection, and try to read between the lines. The Court while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure or Article 226 of the Constitution of India, need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the the course of investigation. (See: Mohd. Wajid & Anr. v. State of Uttar Pradesh & Ors., (2023) 20 SCC 219)."

15. In the present case, the genesis of the occurrence is that the complainant was sitting outside his house after having dinner when the accused persons passed through the road and allegedly abused him. Upon protest, the accused persons allegedly attempted to assault him, whereupon the complainant ran inside his house and the accused persons followed him inside and started beating him. Thus, the alleged incident of assault and the subsequent events took place within the premises of the house.

16. In view of the aforesaid facts, prima facie, the ingredients of Section 376 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not appear to be made out against the appellant. Furthermore, there appear to be serious contradictions in the contents of the FIR and in the statements recorded under Section 161 Cr.P.C. of the complainant, the victim, and the injured persons. The victim appears to have made substantial improvements in her version under Section 164 Cr.P.C., which are in contradiction to her earlier statement, the contents of the FIR lodged by the complainant, and the statements of the injured persons. Moreover, the FIR has been lodged with a delay of about seven days.

17. Considering the overall facts and circumstances of the case, this Court is of the view that no offence under Section 376 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out against the appellant.

18. Accordingly, the summoning of the appellant under Section 376 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside. The criminal appeal is partly allowed.

19. However, it shall be open to the learned trial court to proceed against the appellant with respect to the remaining offences, in accordance with law.

March 23, 2026

M. Tarik

(Abdul Shahid,J.)