

314 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-356-2023
Date of decision: 28th February, 2024

Anil

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Baljeet Beniwal, Advocate for the appellant.
Mr. Neeraj Poswal, A.A.G., Haryana.

MANISHA BATRA, J (ORAL):-

The instant appeal has been filed under Section 14-A (2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short ‘SC/ST Act’) against the order dated 09.11.2021 as passed by learned Additional Sessions Judge, Special Court, Panipat in case having arisen out of FIR No. 212 dated 20.06.2021 registered under Sections 323, 328, 376(2) (n), 376-D and 506 of Indian Penal Code, 1860 (lateron Section 376D was deleted and Section 3 of SC/ST Act was added) at Police Station Israna, District Panipat, on the basis of complaint filed by the prosecutrix (name withheld) on 20.06.2021, alleging therein that she belonged to scheduled caste community. She had come into contact with the present appellant in the month of September, 2017 through her classmate Pankaj.

The appellant had procured her phone number and thereafter started calling her. She had told him not to call her but he did not listen. She alleged that in the month of March, 2018, the appellant insisted her to meet him once by promising her after that he would not call her again. By believing him, she agreed to meet him and went at the appointed place but the appellant on the pretext of taking her to some restaurant for having some tea, took her to some hotel wherein she was offered tea by him on consuming, which she became unconscious. She alleged that appellant had ravished her. On gaining consciousness, she had come to know about this fact. The appellant had disclosed to her that he had prepared a video of her in that condition and had also taken her nude photographs and threatened to make the same viral, if she disclosed about the incident to anyone else.

2. As per the further allegations, the appellant started maintaining physical relations with the prosecutrix by making promise to marry her. She was called by him at different places on different occasions. She was subjected to sexual intercourse by him during those times. She further alleged that in the second week of August, 2018, the appellant called her at Gohana crossing and when she reached there, she found him present in a car alongwith some friend and she was forced to sit in the said car and was even slapped by him when she refused to do so and the appellant committed rape upon her in the car itself. Thereafter, he started forcing her to have physical relations with his friend. She raised hue and cry and only then she was allowed to go. She further alleged that being fed up, she disclosed about the

incident to the family members who along with the village Sarpanch contacted the appellant and his family members and he was asked to delete her nude photographs and video clips but the appellant did not pay any heed and rather threatened the prosecutrix with dire consequences. On the basis of these allegations, initially a case under Sections 323, 328, 376(2) (n) and 506 of IPC was registered. During the course of investigation, offence under Section 3 of SC/ST Act was added. The investigation was initiated. The prosecutrix refused to get her medico legal examination conducted. The appellant was arrested on 20.06.2021. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court. Appellant is presently facing trial for the aforementioned offences. He had moved an application for grant of bail before the learned Special Court which was dismissed vide order dated 09.11.2021 as mentioned above and feeling aggrieved from the same, the present appeal has been filed.

3. Learned counsel for the appellant has vehemently argued that the order dismissing his plea for grant on bail by the Special Court is not at all sustainable in the eyes of law, as it was ignored that the case of the prosecution suffered from several material infirmities. The prosecutrix who was an adult, well educated person and whose claim was that she was subjected to rape by the appellant for the first time in March, 2018, did not report the matter to the police for over a period of three years. She refused to get her medical examination conducted. The statement of PW-1 Pardeep

proves that the appellant as well as the prosecutrix used to go there frequently and willingly. She herself had admitted that the appellant had maintained physical relations with her by calling her at different places. The appellant had never made any promise to marry her. There was also no material on record to show that the parties were even in contact with each other from August, 2018 to 20.06.2021. The provisions of Section 3 of SC/ST Act was not attracted as per the version of the prosecutrix herself. She was insulted by the appellant in the name of her caste through phone and not within public view. Trial is likely to take time. Rather, the prosecutrix is playing delaying tactics by moving frivolous applications under Sections 216 and 319 of Cr.P.C. before the trial Court. No useful purpose would be served by keeping him in custody. Therefore, it is argued that the appeal deserves to be allowed.

4. Per contra, learned State counsel has argued that there are serious allegations against the appellant. Trial is going on. There is nothing on record to show that there is any undue delay in conclusion of the same. The appellant himself admitted the fact that he was having sexual relationship with the prosecutrix. The statement of the prosecutrix is yet to be recorded. There are chances of his intimidating the prosecutrix, if extended benefit of bail. Therefore, it is argued that the appeal does not deserve to be allowed.

5. I have heard learned counsel for the appellant as well as learned State counsel at considerable length and have gone through the record

carefully.

6. The case of the prosecution is that the appellant had come into contact with the prosecutrix in the year 2017, he had been pressurizing her to meet him in the month of March, 2018 and by promising that he would stop calling her if she met him once, he had taken her to some hotel wherein she was ravished by him after some stupefying substance mixed with tea had been administered to her by the appellant. She also alleged that the appellant had disclosed to her that he had prepared her nude videos and was having her photographs and had been blackmailing ever since then on the plea of making the same viral and had also told her that if she remained silent then he would marry her. No doubt, there is delay of about three years in reporting of the matter by the prosecutrix to the police. However, a copy of statement of the prosecutrix as recorded by way of examination-in-chief is placed on record by the appellant himself as Annexure P-3 and a perusal of the same reveals that the prosecutrix in her examination-in-chief has supported the version as given in the complaint. Her cross-examination is yet to take place as admitted by the appellant himself. The question as to whether the physical relationship between the prosecutrix and the appellant was without her consent or was under some misconception or she was a consenting party to the same will be determined by learned trial Court after appraising the evidence produced on record. Keeping in view the fact that the allegations against the appellant are serious and grave in nature, the fact that the cross-examination of the prosecutrix is yet to be conducted, the

quantum of sentence which the conviction may entail and the attendant facts and circumstances, I am of the considered opinion that the appeal does not deserve to be allowed at this stage. Hence, the appeal is dismissed.

[MANISHA BATRA]
JUDGE

28th February, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No