

(2023) 12 UK CK 0018
In the Uttarakhand High Court
Case No : Criminal Appeal No. 239 Of 2023

Ishrar & Others

APPELLANT

Vs

State Of Uttarakhand And Another

RESPONDENT

Date of Decision : 05-12-2023

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w)(i), 14A
Indian Penal Code, 1860 — Section 188, 323, 354
Code Of Criminal Procedure, 1973 — Section 144, 161, 164

Citation : (2023) 12 UK CK 0018

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Arvind Vashistha, Ketan Joshi, Deepak Pandey, Mamta Joshi

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Despite personal service, none turns up on behalf of respondent no.2-victim.
2. This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the rejection of third bail application of the appellants by the learned Special Judge, Haridwar, whereby the application for bail filed by the appellants-accused has been rejected.
3. Heard learned counsel for the parties.
4. The first information report was lodged by Smt. Muskan, w/o late Rafakat Ali, the Pradhan of Village Nagla Imarti against the appellants-Ishrar, Naved, Intezar & one Bhura. On the basis of the said first information report, a chick FIR No.0240 of 2020 was registered in Police Station Kotwali Roorkee on 29.03.2020 at 09:32 hours. The offence under which the first information report was registered are under Sections 188, 323, 354 of IPC and Section 3(1)(w)(i) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (as amended in the year 2015). The allegations in the first information report are that the informant was the Gram Pradhan of Village Nagla Imarti. On the relevant date on 28.03.2020 at about 1:30 p.m. when the Corona Virus Sanitization programme was in progress in the village, she came out of her house to see the sanitization; when she reached near ration shop of Isfaqua, she found five persons sitting there. According to the first information report, she was called by gesture and suddenly the appellant-accused Ishrar chased her with a danda in his hand and called her with her caste indicating words (Chamari, Githli) and started committing marpeet with her and torned her cloths and touched her breasts and dragged her to his house. Appellant-Javed, S/o Salim along with Intezar and Bhura both S/o Mukhtiyar also supported Ishrar in his misdeeds. It is further alleged that the mobile of the informant was also broken and she somehow saved her life by running from there towards road and met A.S.D.M. (Gopal Singh Chauhan). The A.S.D.M. was doing patrolling. The A.S.D.M. took the informant with him and asked the informant to get herself medically examined. It is further stated in the first information report that she medically examined herself and requested the A.S.D.M. that these miscreants have interfered in the public work and violated the provisions of Section 144 of Cr.P.C.

5. Learned Senior Advocate appearing for the appellants-accused submits that the charge-sheet has been filed by the investigating agency in the matter on 28.05.2020 and appellants-accused are languishing in jail since 25.07.2022. He further submits that since the charge-sheet has already been filed, there is no chance of tampering with the evidence and moreover, it is also pointed out that the punishment which is prescribed for the offence alleged against the appellants-accused is maximum five years with the aid of provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the appellants have already been under incarceration for the last one year five months. He also submits that the first information report has been lodged out of political rivalry. It is also strenuously argued that the informant is the wife of late Rafakat Ali and Muslim by caste and she is getting the benefit of OBC category being a married Muslim OBC and is no longer member of scheduled caste and scheduled tribe.

6. Per contra, learned Deputy Advocate General submits that the victim has throughout supported the version of the prosecution under Section 161 Cr.P.C. as well as in the statement before the Magistrate under Section 164 Cr.P.C.

7. On a pointed query made to the learned Deputy Advocate General by this Court regarding the medical, the attention of this Court is drawn to the medical examination report of the victim in which five injuries were there, but none of the injuries in the medical examination report is on the chest or the torso of the victim.

8. From perusal of the statement recorded under Section 164 of Cr.P.C., it is also

demonstrated that the story of touching the breasts of the victim has been ousted by the victim herself in the statement and the medical examination report also supports the fact that no such incident might have been happened with the victim.

9. Having heard the learned counsel for the parties and without expressing any opinion on the merits of the case, this Court is inclined to enlarge the appellants-accused on bail mainly on the reason that the appellants-accused are under incarceration for the last one year and five months and further the medical report does not support the ocular evidence made available by the prosecution, which made the prosecution story doubtful.

10. The upshot of the aforesaid discussion made by this Court is that the criminal appeal filed by the appellants-accused is hereby allowed. The impugned order dated 05.04.2023 is hereby set-aside. The appellants are directed to be released on bail during the pendency of the Special Sessions Trial before the Special Sessions Judge, Haridwar on their executing a personal bond and two sureties each of the like amount to the satisfaction of the court concerned.