
(2023) 03 MP CK 0070

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 3781 Of 2023

Jagdish Goswami

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(V), 14A(2), 15A
Code Of Criminal Procedure, 1973 — Section 174, 439
Indian Penal Code, 1860 — Section 376(2), 376(2)(H)(J)(I), 450

Citation : (2023) 03 MP CK 0070

Hon'ble Judges : Deepak Kumar Agarwal, J

Bench : Single Bench

Advocate : S.K. Mishra, B.M. Shrivastava

Final Decision : Allowed/Disposed Of

Judgement

Deepak Kumar Agarwal, J

At the outset, learned State counsel apprised this Court that respondent No.2/ complainant has been informed with regard to pendency of this appeal as required under Section 15-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") but despite service of notice none appeared on behalf of the respondent No.2/complainant.

This repeat criminal appeal has been preferred under Section 14-A(2) of the Act against the impugned order dated 06/02/2023 passed by Special Judge (under the Act), Vidisha (M.P.), whereby appellant's application under Section 439 of the Code of Criminal Procedure has been rejected. His first appeal was dismissed on merits, second, third and fourth appeals were dismissed as withdrawn by the coordinate Bench.

The appellant has been arrested on 02/08/2019 in connection with Crime No.217/2019 registered at Police Station- Kurwai, District- Vidisha (M.P.) in

relation to the offence punishable under Section 450 and 376(2)(H)(J)(I) read with section 376 (2) of IPC and Section 3(2)(V) of the Act.

Prosecution story, in short, is that on 30/05/2019, the complainant-Rajkumar lodged the written complaint alleging that on 24/05/2019 at about 3:00 AM, the appellant entered into house of the complainant and committed rape with his sister-in-law (Bhabhi) who is deaf and dumb. The husband of the prosecutrix is also deaf and dumb. At the time of incident, prosecutrix was pregnant, due to which, she delivered a dead child. On the basis of aforesaid, crime has been registered against the appellant. During investigation, buried child was taken out and merged No.0/19 under Section 174 of Cr.P.C. was recorded. Dead body was sent for postmortem. As per postmortem report, no opinion was given. Thereafter, statement of the prosecutrix were recorded in presence of deaf specialist. As per her statement, appellant entered her house and committed rape with her. Her mother-in-law saw that person who committed rape with her and if he comes in front of her, she will recognize him. Thereafter, statement of mother-in-law of the prosecutrix was recorded in which she stated that she had seen the present appellant committing sexual intercourse with the prosecutrix. Applicant was arrested on 02/08/2019 and after investigation, charge sheet has been submitted.

New ground is herein of delayed trial since appellant is in custody since 02/08/2019 and trial is moving at snail's pace.

Learned counsel for the appellant submits that the appellant is aged 38 years and he has been falsely implicated in the case. Appellant is in custody since 02/08/2019 and he is the permanent resident of District- Vidisha (M.P.). There is no likelihood of his absconsion or tampering with the evidence. The appellant is ready to abide by all the terms and conditions as may be imposed by this Court. With the aforesaid submissions, prayer for grant of bail is made.

Learned counsel for the State opposed the appeal and prayed for its rejection by contending that on the basis of the allegations and the material available on record, no case for grant of bail is made out.

Heard the arguments advanced by learned counsel for the parties and perused the case diary.

Looking to the facts and circumstances of the case as well as period of custody of the appellant, but without commenting on the merits of the case, the present appeal is allowed and order dated 06/02/2023 is set-aside and it is directed that if appellant furnishes a cash surety of Rs.25,000/- alongwith a personal bail bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety of the like amount to the satisfaction of the trial Court, he should be released on bail.

He will present during trial before the trial Court on each and every date.

In case of any default, aforesaid cash security of Rs.25,000/- shall be forfeited

without giving any notice.

This criminal appeal stands allowed and disposed of in above terms.

Let a copy of this order be sent to the Court concerned for information.

Certified copy as per rules/directions.