
(2011) 07 AHC CK 0033
In the Allahabad High Court
Case No : Criminal Appeal No. 2009 of 2007

Swami Dayal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 504, 506(2)

Citation : (2011) 07 AHC CK 0033

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Judgement

Ashwani Kumar Singh, J.—Heard learned Counsel for the Appellant and learned State counsel on the prayer for bail and perused the record.

2. The Appellant has been convicted in Session Trial No. 545/2006 under Sections 376, 504, 506(2) I.P.C. and sentenced ten years Imprisonment with fine and default stipulation.

3. Learned Counsel for the Appellant submits that the trial court has erred in appreciating the evidence on record and has wrongly convicted the Appellant. It is submitted that according to P.W.-5 Dr. Sailat, the prosecutrix was a married woman aged about 18 years. Learned Counsel submits that false, fabricated and concocted case has been setup against the Appellant due to enmity. The husband of the prosecutrix was contesting for the post of Pradhan and the Appellant was supporting one Shiv Balak. It is further submitted that the prosecutrix was pregnant and carrying a child of 22 weeks. Learned Counsel also submits that it is highly improbable that while committing rape upon a pregnant lady, there would be no resistance on her part, since injury report does not reveal any injury on the body of prosecutrix.

4. The Appellant was on bail in the present case, but was behind bars at the time of judgment since he could not make himself available before the Court on certain dates fixed.

5. The Appellant is in jail since the date of judgment, i.e. 18.05.2007, i.e. about more than four years. This appeal may take a couple of years or even more in its final disposal whereas the speedy justice is a fundamental right.
6. Let the Appellant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Magistrate/Court concerned. The fine imposed is stayed till the final disposal of the appeal.
7. On acceptance of bail bonds and personal bond, the lower court shall transmit photostat copies thereof to this Court, for being kept on the record of this appeal.