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(2025) 01 KL CK 0102

High Court Of Kerala

Case No: Criminal Appeal No.1679 Of 2024

Vishnu S	APPELLANT
Vs	
Kerala State Of Kerala	RESPONDENT

Date of Decision: Jan. 20, 2025

Acts Referred:

- Indian Penal Code, 1860 - Section 354, 354A, 354B, 354C, 376, 376(2)(n), 506
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(r), 3(2)(v), 14A, 18, 18A

Hon'ble Judges: K.Babu, J

Bench: Single Bench

Advocate: P.Mohandas, K.Sudhinkumar, Sabu Pullan, Gokul D. Sudhakaran,R.Bhaskara Krishnan, Bharath Mohan, K.P.Satheesan, G.Sheeba

Final Decision: Dismissed

Judgement

K.Babu, J

1. This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The challenge in

this appeal is to the order dated 21.08.2024 in Crl.M.P No.483/2024 passed by the Court of the Special Judge for the trial of the offences under the

Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, Nedumangad.

2. The appellant is the sole accused in Crime No.907/2024 of Peroorkkada Police Station. He is alleged to have committed the offences punishable

under Sections 376, 376(2)(n), 354, 354A, 354B, 354C and 506 IPC, Section 66E of the Information Technology Act, 2006 and Section 3(2)(v) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act').

The prosecution case

3. The appellant is not a member of a scheduled caste or scheduled tribe. The victim is a member of a scheduled caste community. She is a B.Tech

Graduate. She is living with her husband and daughter. The appellant is an Ayurvedic Physician. The victim got acquainted with the appellant through

Facebook. They maintained contact with each other through social media. The victim is suffering from back pain. The appellant invited her to have a

consultation at his clinic in Paripally. The victim was not in a position to travel. She showed her posterior to the appellant through a video call, following

which the appellant suggested some Ayurvedic medicines. On 07.07.2023 at 1.00 p.m, the appellant arrived at the residence of the victim. She was

alone there. The appellant threatened her that her video visuals in his possession would be shown to her husband and others. He entered the house

and locked the front door even when the victim resisted. He had forceful sexual intercourse with her. In the incident, the victim sustained injuries on

her breast. The appellant had recorded the incident on his mobile phone. The victim tried to delete the recordings from his mobile phone. But the

appellant resisted it and threatened her. The appellant continued to maintain a sexual relationship with the victim by way of threat. On 05.01.2024 also,

the appellant raped her. Later, she revealed this incident to her husband and preferred a complaint before the Police.

4. I have heard the learned Senior Counsel appearing for the appellant, the learned counsel for the victim and the learned Public Prosecutor.

5. The learned Senior Counsel for the appellant raised the following contentions in support of the bail plea:

(a) The prosecution failed to establish the ingredients of the offence under Section 3(2)(v) of the Act, and therefore, the bar under Section 18 of the

Act is not applicable.

(b) The delay in the registration of the FIR makes the prosecution case doubtful.

(c) The sexual relationship between the appellant and the victim is consensual in nature.

6. The learned counsel for the victim submitted the following:

(a) The prosecution could establish the offence under Section 3(2)(v) of the Act.

(b) The bail plea of the appellant is barred under Section 18 of the Act.

(c) The custodial interrogation of the appellant is required, especially to recover the mobile phone by which the alleged incidents were recorded.

7. The learned Public Prosecutor submitted the following:

(a) The offences alleged are grave.

(b) The custodial interrogation of the appellant is highly required.

(c) The investigation is only in the preliminary stage.

8. The learned Senior Counsel for the appellant has taken me to the FIS given by the victim and the belated complaint filed by her before the State

Commission for the Scheduled Castes and the Scheduled Tribes. The learned Senior Counsel submitted that in the FIS, the victim did not mention

anything to attract the offence under Section 3(2)(v) of the Act. The learned Senior Counsel also submitted that the victim revealed that she belonged

to a scheduled caste only in the belated petition filed before the State Commission for the Scheduled Castes and Scheduled Tribes with intent to harass

the appellant. The learned Senior Counsel further submitted that to attract the offence under Section 3(2)(v) of the Act, the commission of the offence

under the IPC against the person shall be on the ground that such person is a member of a scheduled caste or scheduled tribe. The learned Senior

Counsel submitted that the FIS does not contain any such averments.

9. The learned Senior Counsel relied on Shajan Skaria v. State of Kerala (2024 SCC OnLine SC 2249) and Aneesh v. State of Kerala (2024 KHC

726) in support of his contentions. The learned Senior Counsel submitted that there is a clear distinction between rape and consensual sex. It is

submitted that the ingredients of the offence under Section 376 are conspicuously absent in the allegations levelled against the appellant. The learned

Senior Counsel relying on Sivarajan K.S v. State of Kerala (2024 KHC OnLine 725) submitted that the Court owes a duty to look into the attending

circumstances, over and above the averments in the FIS, to see whether there are materials to indicate that the offence of rape and the offence under

the Act were committed. The learned Senior Counsel, heavily relying on the FIS, submitted that the averments therein point to a clear case of

consensual sexual relationship in which the victim invited the appellant to maintain a relationship with her.

10. The learned counsel for the victim submitted that after the amendment of Section 3(2)(v) of the Act, the knowledge of the offender regarding the

caste or the tribal identity of the victim is sufficient to attract the offence. The learned counsel relied on Section 8 of the Act to contend that there is a

presumption that the appellant knew the fact that the victim belonged to a scheduled caste. The learned counsel relied on Rajachandrasekharan @

Babu v. State of Kerala [2024 (2) KHC 568] in support of his contentions.

11. The essential question is whether the prosecution materials prima facie revealed the ingredients of the offence under Section 3(2)(v) of the Act. It

is trite that the bar created under Sections 18 and 18-A of the Act shall not apply if the complaint or FIS does not make out a prima facie case for the

applicability of the provisions of the Act {See Prathvi Raj Chauhan v. Union of India [(2020) 4 SCC 727] and Subhash Kashinath Mahajan (Dr.) v.

State of Maharashtra and Another [2018 (2) KHC 207]}.

12. To get over the rider contained in Section 18 of the Act, the learned Senior Counsel relied on the ground that the FIS does not contain an allegation

that the offence of rape was committed knowing that the victim is a member of a scheduled caste.

13. The learned Senior Counsel heavily relied on Shajan Skaria and Aneesh to substantiate his contentions. In Shajan Skaria, the Supreme Court

considered the question of whether mere knowledge of the caste identity of the complainant was sufficient to attract the offence under Section 3(1)(r)

of the Act. The Supreme Court held that mere knowledge of the fact that the victim is a member of a scheduled caste or scheduled tribe is not

sufficient to attract Section 3(1)(r) of the Act. It was held that the offence must have been committed against the person on the ground or for the

reason that such person is a member of a scheduled caste or scheduled tribe.

14. It is relevant to refer to the observation of the Supreme Court in paragraphs 79 and 80 of the judgment in Shajan Skaria (supra):

â€œ79.Â WeÂ findÂ noÂ meritÂ inÂ theÂ aforesaidÂ submission.

Wherever the legislature intended that mere knowledge of the fact that the victim is a member of Scheduled Caste or Scheduled Tribe would be sufficient to

constitute an offence under the Act, 1989, it has said so in so many words. We may reproduce some of the relevant provisions where knowledge that the complainant

belongs to the Scheduled Castes or Scheduled Tribes is sufficient in itself to constitute the offence:

â€œ3. Punishments for offences atrocities.-(1)

xxx xxx xxx

(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe,

when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled

Caste or a Scheduled Tribe.â€

xxx xxxÂ Â xxx

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,â€

xxx xxxÂ Â xxx

(v) commits any offence under the Penal Code, 1860 (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing

that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life

and with fine;

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or

such property belongs to such member, shall be punishable with such punishment as specified under the Penal Code, 1860 (45 of 1860) for such offences and shall

also be liable to fine;]

(Emphasis supplied)

80. At the cost of repetition, the words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the

Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. As discussed earlier, the offence must have been committed against

the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe. When we are considering whether prima facie

materials exist, warranting arrest of the appellant, there is nothing to indicate that the allegations/statements alleged to have been made by the appellant were for the

reason that the complainant is a member of a Scheduled Caste.â€

15. In Shajan Skaria referring to the element of mens rea contained in the word â€œknowingâ€ in the various provisions including Section 3(2)(v) of

the Act, the Supreme Court came to the conclusion that mere knowledge of the fact that the victim is a member of a scheduled caste or scheduled

tribe is not sufficient to attract the offence. In Hitesh Verma the Supreme Court held that the offence under Section 3(2)(v) is not established merely

on the fact that the informant is a member of a scheduled caste unless there is an intention to commit the offence for the reason that the victim

belongs to such caste. In Khuman Singh v. State of Madhya Pradesh [(2020) 18 SCC 763] while considering the amended Section 3(2)(v) of the Act

the Supreme Court held that to attract the offence the acts alleged must have been committed against the person on the ground that such person is a

member of a scheduled caste or scheduled tribe. The reliance placed by the learned counsel for the victim on the presumptive provision under Section

8 of the Act has no relevance at this stage as it is a matter of evidence.

16. In the present case, the FIS does not state that the appellant/accused committed the offence of rape for the reason that the victim belonged to a

scheduled caste. Section 3(2)(v) of the Act was added based on the improved statement given by her before the State Commission for the Scheduled

Castes and the Scheduled Tribes.

17. Therefore, this Court comes to the conclusion that the prosecution failed to prima facie establish the offence under Section 3(2)(v) of the Act.

Therefore, the bar under Section 18 of the Act is not applicable to the facts of the case and hence, the application seeking anticipatory bail is

maintainable.

18. The learned Senior Counsel submitted that since the sexual connection was consensual in nature, the offence under Section 376 of IPC is not

made out.

19. The allegations in the FIS go to show that the sexual connection was against the will of the victim. She has specifically stated that the appellant

threatened her that he would share the video of her posterior part of the body recorded for medical purpose to her husband and he succeeded in

having sexual connection. She further stated that without her consent the appellant had recorded the first incident of rape and continued to maintain

sexual connection with her using the said video. Therefore, the contention of the learned Senior Counsel that the ingredients of the offence under

Section 376 have not been made out falls to ground. The offences alleged are grave in nature. The prosecution has a consistent case that the custodial

interrogation of the appellant is required, especially to effect the recovery of the mobile phone stated to have been used to record the video of the

various instances of the offence.

20. Having regard to the entire circumstances, this Court is of the view that the appellant is not entitled to anticipatory bail.

21. It is legally permissible for this Court to direct the accused to surrender before the Jurisdictional Court while rejecting a prayer for anticipatory bail

{See: Nathu Singh v. State of Uttar Pradesh (MANU/SC/0360/2021) : [2021 (3) KLT Online 1113 (SC)] and Rahul v. State of Kerala [ILR 2021 (4)

Kerala 64]}.

22. The appellant is directed to surrender before the jurisdictional Court within a period of two weeks from this date. On his surrender before the

jurisdictional Court, if the appellant prefers an application seeking regular bail, the Court shall dispose of the application on the same day itself in the

light of the principles declared by the Supreme Court in Satender Kumar Antil v. Central Bureau of Investigation [(2022) 10 SCC 51].

23. The appellant is at liberty to serve a copy of the application seeking bail in advance to the Public Prosecutor and the counsel who appeared for the

defacto complainant. On receipt of the advance copy of the bail application, the Public Prosecutor shall see that notice is served on the victim before

the bail application is heard.

The Criminal Appeal stands dismissed.