

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.L.P. No.141/2013 & CrI.M.A.No.3457/2013**

Date of Decision 13.08.2013

IN THE MATTER OF :
STATE

..... Petitioner

Through : Mr. Naveen Sharma, APP for State
with ASI Surender Pal Hudda, PS Krishna
Nagar.

versus

SAURABH VASHISHT

..... Respondent

Through : None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

1. The present petition has been filed by the petitioner/State under Section 378 Cr.P.C. praying *inter alia* for grant of leave to assail the judgment dated 27.9.2010 passed by the learned ASJ in SC No.181/2012, whereunder the respondent has been acquitted in case FIR No.528/2008 registered under Section 376/506 IPC at PS Krishna Nagar, Delhi.

2. The brief facts of the case as culled out from the impugned judgment are that in October, 2007, the prosecutrix had come in contact with the respondent through internet chatting, whereafter both the parties had started meeting each other and the respondent had expressed to her that he was in love with her and had insisted that he

wanted to marry her. One day on 17.02.2008, the respondent took the prosecutrix to his house and when his family members were not present there, the respondent had forcibly established a physical relationship with her and thereafter continued to exploit her while holding out a promise of marriage to her. The prosecutrix alleged that in the month of September, 2008, she had tried to commit suicide out of desperation and the respondent had got her admitted in a hospital for treatment. Thereafter, when the prosecutrix had informed her parents about her relationship with the respondent, the parents of both the parties had met with each other but they did not agree to their marriage. The prosecutrix then filed a complaint with the SHO, PS Krishna Nagar, Delhi on 18.11.2008 and subsequently, the aforesaid FIR was registered on 9.12.2008 under Section 376 IPC.

3. After the investigation was concluded, the case was committed to the Sessions Court and charges were framed against the respondent. The prosecution had examined 12 witnesses in support of its case, including the prosecutrix (PW-2), the Manager of a hotel in Mussoorie (PW-3), and IO Sarabjit Singh Minhas (PW-12). After recording the testimony of the prosecution witnesses, the statement of the respondent was recorded, wherein he had stated that he had established a physical relation with the prosecutrix with her implicit

consent and there had never been any force, pressure or false assurance from his side. However, no defence evidence was led in the case.

4. After examining the ocular and the documentary evidence on record and considering the arguments addressed by the counsels for the parties, the trial court had arrived at the conclusion that the prosecution had miserably failed to prove the charge against the accused/ respondent beyond reasonable doubt and resultantly, he was acquitted for the offence under Section 376 IPC. Aggrieved by the aforesaid acquittal order, the State has filed the present petition seeking leave to file an appeal against the said judgment.

5. Learned APP for the State submits that the trial court had erred in overly emphasising the events that had occurred after the incident of rape in the month of February, 2008 instead of taking note of the events prior to the incident, i.e., the act of the respondent taking the prosecutrix to his residence knowing fully well that there was nobody at home and using a ploy to persuade her to visit his residence to meet his parents. He further submits that the trial court had failed to appreciate the fact that till the stage when the respondent had established a physical relationship with the prosecutrix, there was no talk of any promise to marry her and therefore it could not be

concluded that the prosecutrix was a consenting party to the physical relationship with the respondent. It is lastly argued that the delay in lodging the aforesaid FIR against the respondent cannot be treated as fatal to the case.

6. The Court has heard learned APP for the State, perused the impugned judgment and examined the trial court record. A perusal of the records reveals that at the time of the incident, the prosecutrix (PW2) was 24 years of age. She had stated in her cross-examination that when the respondent had requested her to meet his parents, she had decided to change their relationship to something more than that of friendship. She had also admitted that she used to meet the respondent normally even after the incident of February, 2008, and used to talk with him for hours together and used to exchange SMSs and e-mails with him.

7. As regards exchange of e-mails between the prosecutrix and the respondent, the trial court had particularly noted in para 12 of the impugned judgment that the prosecutrix had admitted that on 24.7.2008, she had sent an attachment (Ex.PW-2D-1) along with an e-mail message to the respondent and the content of the said attachment was a vulgar article. Considering the aforesaid admission, it was observed that the prosecutrix and the respondent had an

intimate love affair and therefore credence could not be placed on her version that she was subjected to sexual intercourse against her will either on the first occasion in the month of February, 2008 or thereafter.

8. Another significant testimony that was taken note of by the learned ASJ was that of Mr. Mahadev Bhatt, the Manager of a Hotel in Mussoorie (PW-3), who had deposed that the prosecutrix and the respondent had visited the hotel on 6.6.2008 and they had left therefrom on 7.6.2008. Pertinently, while in Mussoorie with the respondent, the prosecutrix did not complain to the hotel staff that she had been assaulted by the respondent or that she was not his wife. The hotel records produced by PW-3 had also established the fact that the prosecutrix and the respondent were not described as husband and wife therein.

9. Furthermore, the prosecutrix had admitted in her cross-examination that she had given her photograph to the respondent to affix the same on an admit card issued by the Indian Railway Recruitment Board so as to convince her parents to permit her to go to Dehradun for sitting for the said examination. She had also admitted that she had herself booked the tickets for Dehradun and was well aware of the fact that the admit card that she had showed to her

parents was a fake one. Under the garb of sitting for the examination to be held by the Indian Railway Recruitment Board at Dehradun, the prosecutrix had accompanied the respondent to Dehradun and Mussoorie and had stayed there for three nights. While in Mussoorie, they had stayed overnight at the hotel in question. This only fortifies the observations made by the trial court that the prosecutrix had voluntarily accompanied the respondent to Dehradun and Mussoorie and she had consented to establishing a physical relationship with him.

10. While discussing the aspect of "consent", the provision of Section 90 IPC, which deals with the consent known to be given under fear or misconception was discussed at length by the trial court in the light of the judicial dictum laid down by the Supreme Court as also the High Courts and it was observed that where the prosecutrix is a grown up lady and has voluntarily entered into a relationship with the accused and then alleged that the accused has established physical relationship with her a number of times over a period spread over one and a half year on the promise of marriage, then there has to be evidence placed on record to establish that she was incapable of understanding the nature and implication of the act to which she had consented.

11. In the present case, the evidence placed on record reveals that

the prosecutrix had taken a conscious decision to establish a physical relationship with the respondent knowing fully well that her marriage may or may not take place with the respondent since both the parties belonged to different castes. Despite the said fact if the prosecutrix had decided to voluntarily enter into a physical relationship with the respondent and not only that, she had decided to keep her parents in dark about the same, then the consequences thereof cannot be held against the respondent.

12. In such circumstances, this Court is inclined to concur with the findings of the trial court that the prosecutrix had consented to having sexual intercourse with the respondent of her own free will and assuming that she had believed the respondent when he had extended a promise that he would marry her, the prosecution has failed to establish that he did not have any intention to marry the prosecutrix and had made a false promise to her.

13. As noted above, it is an admitted case that the parents of the prosecutrix had visited the house of the respondent to meet his parents and try and settle the marriage alliance of the parties, but the same did not fructify due to caste considerations that were found to be insurmountable. Under such circumstances, it cannot be held that the respondent had any fraudulent intention to induce the prosecutrix to

establish a physical relationship with him by extending any false promise to marry her.

14. Lastly, the facts of the case reveal that the first incident of rape had taken place in February, 2008 and the complaint was lodged by the prosecutrix with the police after over eight months, on 18.11.2008 and the FIR came to be registered after 22 days, i.e., on 9.12.2008. The prosecutrix has herself admitted that before lodging the complaint, a couple of meetings had taken place with the father of the respondent in the police station and only when a settlement could not be arrived at, that the aforesaid FIR came to be lodged.

15. The trial court has rightly observed that mere delay in registration of the FIR may not be sufficient to throw out the case of the prosecution, but having regard to the other discrepancies/infirmities pointed out while scrutinizing the evidence brought on record, the said factor gains significance.

16. Having carefully perused the impugned judgment in the light of the evidence brought on record, this Court is of the opinion that there is no legal infirmity, mis-appreciation/non-appreciation of evidence, or perversity in the impugned judgment that entitles the petitioner/State to grant of leave to assail the same. Rather, the trial court has taken into consideration all the relevant facts and duly considered the

evidence, both ocular and documentary, to arrive at the conclusion that the prosecution has failed to make out a satisfactory case against the respondent and therefore rightly acquitted him.

17. Leave is therefore declined and the petition is dismissed, along with the pending application.

18. Trial court record be released forthwith.

AUGUST 13, 2013

sk/rkb

HIMA KOHLI, J