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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 557/2017

'X'

Through: Mr.Banamali Shukla Petitioner
Dr.Shamsher Yadav, Advocates. with

versus

THE STATE (GNCTD) & ANR

..... Respondents

Through: Ms.Radhika Kolluru, APP for State.
SI Manish Rana, PS-Timarpur.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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06.11.2017

1. This is a criminal leave petition filed by the prosecutrix seeking leave to appeal against judgment dated 11th August, 2017 passed by the learned Additional Sessions Judge- Special FTC- 2 (Central), Tis Hazari Courts, Delhi acquitting Respondent No.2 accused of the offence under Sections 376(2)(n)/323/506 IPC. The case arose out of FIR No. 330/2014, registered at Police Station-Timarpur. With a view to maintaining confidentiality, the name of the prosecutrix is substituted as X in the cause title.

2. The prosecutrix gave a handwritten complaint on 17th May, 2014 on the basis of which the FIR was registered. The gist of the complaint was that she was introduced to the accused through 'Facebook' in the month of

September-October, 2012 and they “became friendly”. She stated that since the accused was also preparing for a competitive exam, he started a discussion on studies and preparation for the same. Initially he started addressing her as elder sister but after some months he proposed marriage to her. She is stated to have rebuked him and thereafter avoided him.

3. In her complaint the prosecutrix stated that in the first week of June, 2013 the accused came to Delhi and sought her pardon, subsequent to which she met him in Mukherjee Nagar. She stated that the accused proposed marriage again and emotionally blackmailed her 'in order to fulfil his selfish motives'. She stated that the accused persuaded her emotionally continuously and forced her into a physical relationship without her consent. She stated that after that incident she started weeping, and the accused promised her that he would marry her when he got a stable job.

4. The prosecutrix stated in her complaint that after the above events the accused continuously sent vulgar and offensive SMS's (text messages) to her. She stated that the accused always mercilessly beat her and one day hit her on her head while she was present on the ground floor of her residential building. She has stated that subsequently on 27th August, 2013 she consulted Dr. Satish Makhija who suggested a CT scan of her brain. She has further stated that when she asked the accused about his promise of marriage which he had given her earlier, he got and beat her. She has stated that again at the end of August 2013, the accused sent threatening SMS (text message) to her and he took her to his room and "forcibly made physical relationship with her without her consent again". She has further stated that on 1st

September, 2013 near Drishti Coaching, Nehru Vihar, the accused publically assaulted her and used criminal force on her person and therefore she called the PCR on 100 number-helpline but due to the intervention of a friend she was forced to withdraw the complaint. She has further stated that the accused assured the police in writing that he would never harass, torture or assault her.

5. She has stated that after the above episode, the accused repeatedly called her and again promised to marry her whilst on the other hand the accused publicly started defaming her and assaulting her character by disclosing the fact of his physical relationship to his friend and others. She has stated that after exploiting her physically, sexually and mentally, the accused started avoiding her and switched off his mobile phone. She states that when she called at his residence his mother picked up the phone and informed her that the marriage of the accused with some other girl had been fixed. When she thereafter confronted the accused, he abused her using filthy language.

6. She alleged that between 24th and 31st December 2013, the accused visited her residence at Nehru Vihar and induced her to transfer her land to him. She states that she gave him Rs. 50,000 in cash. She alleges that during this period also he sent her vulgar messages and abused her parents who are no more in order to mentally harass and torture her. According to her on 23rd March, 2014 he visited her room at about 10 pm and molested her and again tried to “make physical relationship”. When she started shouting he ran away. She then states that she subsequently gathered the courage to make a

complaint against the accused. She mentions that she underwent treatment for depression.

7. The statement of the prosecutrix was thereafter recorded by the learned Metropolitan Magistrate under Section 164 Cr PC on 22nd May, 2014. She now stated that in July 2013, the accused committed rape in her room, which is not what she stated in her written complaint. There are several other details in her statement under Section 164 Cr PC which are not in her written complaint made earlier. She states that between 24th and 31st December, 2013 the accused visited her room and stayed with her. However, she does not mention him having had any forcible physical relationship with her during this time.

8. As pointed out by the Trial Court in her deposition in the Court, the prosecutrix added further details and stated for the first time that in August, 2013 she went to the room of the accused at Nehru Vihar and while she was waiting downstairs the accused came there and forcibly took her to his room and established physical relations. It is rightly pointed out that it is inconceivable that this incident would not have found mention in the handwritten complaint.

9. In her testimony in the Court the prosecutrix states that when she visited the house of the accused in Amethi, U.P. on 26th October 2013, the mother of the accused told her that she treats her as her daughter-in-law and also gave her Rs.251/- as 'Shagun' whereas this fact has not been mentioned by her in the complaint. This further finds no mention in her statement under

Section 164 Cr PC. In the context of a case of alleged rape as a result of breach of promise of marriage, the above improvements are significant and impinge on the credibility of the version of the prosecutrix.

10. There are other major improvements made by her in her testimony in Court. There is no mention in her complaint or her statement under Section 164 Cr PC that while staying with her in her room from 24th to 31st December, 2013 the accused had forcible sexual relationship with her. She also did not state in her complaint or in her statement under Section 164 Cr PC about the accused having shown her, at that time, any objectionable video made by him. The trial Court has rightly observed in this context in para 123 of the impugned judgment as under:

“123. Even, complaint Ex.PW1/A did not find mention the very crucial fact that accused has established physical relation with the prosecutrix without her consent during his stay with her at her room from 24.12.2013 to 31.12.2013 and that accused had also showed her objectionable video made by him for the prosecutrix. Such crucial and material fact forming the geneses of the case, if found missing in the handwritten complaint of the prosecutrix, it cannot be easily overlooked particularly in view of the highly exaggerated version of the story put forth by prosecutrix in her testimony in the court. The physical relation allegedly established by accused without consent of prosecutrix for such a period of about seven days cannot said to be without consent. Though, the case of defence is that the accused did not establish physical relation with prosecutrix but if the version of prosecutrix is believed qua the physical relation established by accused during the aforesaid period at her rented room, it can only be presumed to be consensual.”

11. Learned counsel for the Petitioner sought to explain away the above improvements to the fact that the prosecutrix was suffering depression. However, it is not possible to overlook the above and other numerous improvements made by the prosecutrix during her testimony in the Court. The Court concurs with the analysis of the trial Court that the testimony of the prosecutrix “does not inspire confidence, lacks credibility and cannot be the basis for conviction of the accused”.

12. The Court, therefore, declines to grant leave to appeal against the impugned judgment of the trial Court.

13. The petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 06, 2017

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