

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.05.2020

+ **CRL. A. 587/2019**

RAHUL @ MAYANK

..... Appellant

Versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Pradeep Teotia and Mr. Jitendra Bakshi, Advocates

For the Respondent : Ms Kusum Dhalla, APP for State

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal against a judgment dated 28.03.2019 passed by the ASJ, Special Fast Track Courts-02, Karkardooma Courts, whereby the appellant was convicted for committing offences punishable under Sections 376(2)(n)/354-C/506 of the Indian Penal Code, 1860 (IPC).

2. The appellant also impugns the order on sentence dated 30.03.2019, whereby the learned ASJ had sentenced the appellant to undergo -

- (i) Rigorous imprisonment for a period of ten years and fine of ₹50,000/- for committing the offence under Section 376 (2)(n) of the IPC. In default of payment of the aforesaid

fine, he would have to undergo simple imprisonment for a period of one year;

- (ii) Simple imprisonment for a period of one year and a fine of ₹50,000/- for the offence punishable under Section 506 (Part 1) of the IPC. In default of the fine, he would have to undergo simple imprisonment for a period of three months; and
- (iii) Simple imprisonment for a period of two years and a fine of ₹5,000/- for committing the offence under Section 354-C of the IPC. In default of the fine, he would have to undergo simple imprisonment for a period of three months.

3. The case of the prosecution is that on 15.04.2013, the appellant had taken the prosecutrix – a girl aged about twenty years – to a hotel room and raped her. He had also videographed the act without her consent and clicked nude photographs of her. He had used the same to blackmail her and had demanded a sum of five lakh rupees to delete the same. FIR No. 299/2013, under Sections 376/384/506/354C/354D of the IPC was registered with PS Shakarpur, on the basis of the statement of the prosecutrix made before the police. Her statement was also recorded under Section 164 of the CrPC.

4. Charges under Sections 376/354D/354C/506 of the IPC were framed against the appellant. The appellant pleaded not guilty and the appellant was tried for the charges framed against him. The prosecution examined twenty-six witnesses to establish its case.

Trial Court Judgment

5. The Trial Court evaluated the evidence on record and noted that it was argued by the defence and also stated by the accused in his statement under Section 313 of the CrPC that the appellant had not made the first contact with the prosecutrix and it was the prosecutrix who had called him first. However, the Trial Court noted that the CDR of the accused (Ex. DW-1/1) proved that the first call had been made by the accused to the prosecutrix.

6. The defence had argued that the prosecutrix had willingly accompanied the accused, as she had herself admitted that she knew that she was going to a guest house with the accused. However, the Trial Court held that even if it was assumed she had willingly gone to the guest house, it could not be presumed that she had consented to sexual intercourse with him as well. The Trial Court held that the digital evidence on record i.e. Ex. PW-24/C, which was a DVD that contained the video clip made by the accused of the sexual act performed by the prosecutrix, supported the case of the prosecution. FSL had retrieved the video clip after retrieving it from the memory card, which was recovered from the house of the accused at his instance. The Trial Court noted that it was the admitted case of the defence that the memory card belonged to the accused and the authenticity of the DVD had not been challenged by the accused.

7. The Trial Court viewed the aforesaid DVD and observed that there was passive submission of her body by the prosecutrix, which

indicated her helplessness. The Trial Court observed that her facial expressions and body language clearly showed that the act on her part was totally involuntary. The Trial Court held that the prosecutrix appeared to be under some fear or pressure and under such circumstances, her submission could not be considered as consent. The Trial Court also took account of the fact that the prosecutrix had also deposed that she was under the threat that others would also come and misbehave with her if she did not submit to the appellant and raised an alarm. Further, she also testified that the appellant had threatened her that he would upload her nude photographs and her video on the internet if she did not keep smiling or appeared unhappy.

8. The Trial Court noted that the prosecutrix was not cross-examined on her deposition that threats were extended by the accused and nor were any suggestions put to her that her deposition in this regard was false. The Trial Court held that that on the basis of settled law, her testimony with reference to the threats extended had to be accepted since the same was not contested by the Defence. The Trial Court also held that her apprehension, that she would be raped by more people if she raised an alarm, was a valid explanation for her not attempting to raise an alarm at the guest house. Further, the fact that she did not raise any alarm when she was in the *hookah* bar was justified since she was under the threat that her photographs and the video would be uploaded by the accused, if she did so.

9. The Trial Court also observed that the delay of two days in filing of the FIR had been reasonably justified by the prosecutrix. She stated

that she was under constant threat that her obscene video and photographs would be uploaded and therefore, she did not make an immediate complaint to either her parents or the police.

10. The Trial Court noted that there were several inconsistencies in the testimony made by the prosecutrix before the Trial Court and her statement before the Learned MM under Section 164 of the CrPC. The Trial Court held that the omissions and contradictions in the statement of the prosecutrix were minor and her evidence, on the material aspects, were consistent. The Trial Court held that the testimony of the prosecutrix was supported by the digital evidence, that is, the DVD (Ex. PW-24/C), which contained the video clipping of the sexual act. Further, there was absence of any intention or motive on part of the prosecutrix to falsely implicate the appellant especially in light of the fact that her own reputation was on the line.

11. On the basis of the abovementioned findings and observations, the Trial Court held, by the impugned judgment dated 28.03.2019, that appellant had committed the offences under Sections 376(2)(n)/354-C/506 of the IPC.

12. Before proceeding further, it is necessary to examine the relevant testimonies of the witnesses, who were examined.

Evidence

13. The prosecutrix was examined as PW1 and she deposed she had a mobile phone with the number 7*****38. On 10.04.2013 at about

01:00 am, she stated that she got a call from the number 9*****65, however she did not receive the said call. Four days later, from 10.04.2013, she started receiving message like “*Good morning, Aayushi*” and calls from that number. She stated that she thought that the person who was sending her the said messages might be acquainted with her. At about 10:00 pm, a call came from the said number and the caller introduced himself as Rahul. He stated that he had seen her near Lovely Public School about six months ago. He disclosed to her that his sister was residing in Bank Enclave and that he had obtained her phone number through his sister. She stated that he also disclosed certain facts about his life and said he had been searching for her since he had seen her six month ago. He also disclosed that one of his friends had taken ₹27,000/- from him.

14. On 15.04.2013, the prosecutrix met him near Nirman Vihar Metro Station. On the previous night, she had a telephonic conversation with him and claims that she had told the appellant that she was not interested in him since she already had a boyfriend. She stated that the appellant told her that her boyfriend was using her. He stated that he had a software on his phone by which he would be able to call her boyfriend and his number would appear that of her father’s and that would enable him to talk to her boyfriend by impersonating him as her father. She stated that when she met him at the metro station, he asked her several questions about her boyfriend. Thereafter, they started walking on the road and he suggested that they go elsewhere to talk since passersby were looking at them. The appellant then took her to

Eastern Guest House near Nirman Vihar Metro Station. They entered room no. 301. After they entered the room, the appellant closed the door from inside. When she questioned him regarding it, he stated that he did not want others to overhear her story. She stated that she narrated her story again and he asked her to hug him. When she declined, he pulled her hair and slapped her. He also disclosed that the guest house was owned by his uncle and that if she would raise an alarm, no one would come and help her. He threatened to tear her clothes, if she herself did not remove them. When she refused to remove her clothes, the appellant pulled her hair and slapped her. She stated that he committed sex with her five times. He also threatened her to not raise an alarm. She stated that the appellant called someone on the phone and stated “*chacha ladki man nahi rahi hai*”. She stated that she feared that someone would walk into the room and also commit rape upon her.

15. The prosecutrix deposed that the appellant called her to Nirman Vihar Metro Station by threatening her and stating that he would commit suicide if she did not come. She stated that the appellant had prepared her film and video while raping her and had also taken her nude photographs. She stated that thereafter, a call came on the landline phone installed in the room and they were told to vacate the room at 02:30 pm. Thereafter, the appellant took her to some other place and asked her to keep smiling, otherwise he would upload her photographs and her video on the internet. She stated that she did not know the place he took her to, but it was a *hookah* bar. She also deposed that the appellant had bitten both of her cheeks. Her mother called her on her

phone but the appellant did not allow her to go. However, subsequently, he relented and allowed her to go on the condition that she would call him every two hours and give all details to him. On reaching her house, she sent a message to the appellant stating that she was sleeping. On the next day, she received a call on her mobile and the caller said that he was the uncle of the appellant and told her to meet him.

16. She deposed that she narrated the entire incident to her boyfriend, Abhishek and he disclosed the incident to her mother. Thereafter, her mother disclosed the said incident to her father. The appellant called her on the phone several times but she did not receive his calls. The appellant started calling her mother and started speaking indecently about her. The father of the prosecutrix took the phone and asked him to return the video and the photographs of the prosecutrix, otherwise he would file a complaint with the police. She stated that they filed a complaint with the police on the next day. She stated that she had been taken to the hospital, but she did not remember the name of the hospital. She identified the MLC (Ex. PW3/A) and stated that she was not wearing the clothes which she had worn at the time of the incident. She stated that she had handed over her clothes to the police vide seizure memo (Ex. PW 1/B) and had had shown the place of the occurrence to the police and the site plan was prepared at her instance.

17. In her further examination, the prosecutrix deposed that on 15.04.2013, at about 5 pm, when she was with the appellant at the *hookah* Bar, opposite V3S Mall, the appellant had demanded five lakh

rupees for deleting the video which he had taken during the commission of the offence.

18. Dr. Neha Mathur, Senior Resident, Department of Obstetrics and Gynecology, LBS Hospital, Delhi had prepared the MLC of the prosecutrix and was examined as PW3. She deposed that she had medically examined the prosecutrix and had found her hymen to be torn. No injury was found on the patient. She proved the contents of the MLC (Ex. PW3/A). In her cross examination, PW3 stated that the tearing of the hymen appears to be an old case which was at least twenty-four hours old. She stated that in case of fresh tearing of the hymen, there is a continuous bleeding for a period of at least one or two hours. She stated that she did not notice any blood stains on the clothes worn by the prosecutrix.

19. Dr. Vinay Kumar Singh, Special Forensic Medicine was examined as PW5 and he had conducted the medical examination of the appellant and had opined that there was nothing to suggest the appellant was not capable of sexual intercourse.

20. W/Ct Babli, a police official who had accompanied the prosecutrix to the hospital, was examined as PW7. She stated that on 17.04.2013, she was posted as a constable at PS Shakarpur. On that day, she along with the IO, prosecutrix and her family members, had gone to LBS Hospital for the medical examination of the prosecutrix. She stated that after her medical examination, the sealed parcels, along with the sample seal, were received from the hospital which were seized

by the IO. Thereafter, they reached the house of the prosecutrix where she produced the clothes that she was wearing at the time of the incident. The said clothes were kept by the IO in a *pullanda*. Thereafter, the prosecutrix had taken them to the spot, that is, the East Inn Guest House, 1st floor hookah bar, Guru Nanak Park, where the prosecutrix had pointed the place of occurrence, Thereafter, they dropped the family members and they came back to the police station. PW7 also identified the clothes that she had worn on the date of the alleged incident and had been handed over by the prosecutrix to the IO.

21. The mother of the prosecutrix was examined as PW9, and she deposed that the prosecutrix was her daughter and had been raped on 15.04.2013 in East Inn Guest House. On 23.04.2013, on being called by the IO, she had accompanied her daughter to Karkardooma Court where one Magistrate had recorded the statement of her daughter. Thereafter, the IO had made enquiries from her and recorded her statement.

22. The father of the prosecutrix was examined as PW-11, and he deposed that on 15.04.2013, his daughter came back home at about 7-8 pm and she did not disclose anything to them. Next morning, that is, on 16.04.2013, his daughter went to college in the morning and came back in the afternoon at about 3-4 pm. At that time, she was weeping and she disclosed to his wife about being raped by the appellant. His wife made a call to him and informed him about the incident when he was at his shop. He stated that he reached home and saw that his daughter was weeping. His daughter disclosed to him that on 15.04.2013, the prosecutrix had met the appellant at Akshardam Metro Station and he

had taken her to a *hookah* bar at Laxmi Nagar and thereafter, had taken her to East Inn Hotel and had raped her. He had also taken obscene photographs of her. He stated that his daughter had disclosed to them that the appellant had been following her for the last two-three days. He stated that he immediately called the appellant after taking his mobile number from his daughter and had asked him about the alleged incident. The appellant threatened that if he would file a police complaint against him, he would upload the photographs of his daughter on Facebook. PW11 deposed that he set up a meeting with the appellant outside Lovely Public School at Bank Enclave so that he could retrieve the photographs from the appellant. He stated that the appellant demanded five lakh rupees in exchange for the photographs. He stated that he waited for the appellant till 12:30-1:00 am in the night but the appellant did not show up at the designated place. On 16.04.2013 at about 11:30 pm, his relative had sent an e-mail to the DCP or Commission of police from his mobile phone. Thereafter on 17.04.2013, at about 10:00-10:30 am, in the morning, PW11, along with his relative, and his daughter, had gone to PS Shakarpur to lodge a complaint. Thereafter, the police officials took his daughter to LBS Hospital to get her medically examined. He stated that his daughter had handed over her clothes, which she was wearing at the time to the police officials and had pointed out the places at which the alleged incident had taken place to the police officials. Thereafter, the IO had recorded his statement.

23. Ct Manoj was examined as PW10. He deposed that on 21.04.2013 at about 8:30 pm, he reached VS3 Mall, Laxmi Nagar, in

order to search for the appellant, where they met the secret informer. The secret informer told them that the appellant would come to the mall after some time. At about 12:15 am, the appellant was coming from Maharaja Banquet Hall opposite V3S Mall. He deposed that he, along with other police officials, overpowered him. Upon his personal search, two mobile phones i.e. Samsung Model GTI 9082 of white colour and Nokia Model C300 of white colour, without memory cards and batteries, and two batteries of the mobile phone were separately found from his pocket. He deposed that the accused made a disclosure that he used to make obscene videos of girls with the abovementioned mobile phones.

24. Ct Narender Singh was examined as PW14 and he deposed that on 03.05.2013, the appellant was in police custody. During police custody, he led him and other police officials to House No. 13/376, 1st floor, Geeta Colony, Delhi. PW14 identified the appellant in Court and stated that the appellant took out one memory card (16 GB C16G Taiwan Kingston Company of black colour) from beneath a single mattress. The said memory card was wrapped in paper and the appellant stated that the said memory card contained photographs of the prosecutrix. The said memory card was seized and sealed by the police officials.

25. The statement of the accused was recorded under Section 313 of the CrPC. In his statement, he stated that the prosecutrix had made the first phone call to him and that was how he had come to know of her name. He stated that it was correct that the prosecutrix had met him at

Nirman Vihar Metro Station and that she had done so willingly. She had disclosed to him that she was not having good relations with her boyfriend and that he was making illegal extortions from her on various grounds and she wanted to meet him personally to discuss the matter. He stated that the prosecutrix herself had insisted on meeting at some lonely place. He stated that since the prosecutrix did not want to go to any crowded place, he asked her whether she wanted to go to East Inn Guest House, which was a nearby place and she agreed to do so. He stated that the prosecutrix cried for 45-60 minutes because of her boyfriend's attitude towards her and stated that he had been using her for the last three years. After crying, she hugged him and stated that she wanted to remain with him. He stated that the prosecutrix had voluntarily entered into physical relations with him as an outcome of her annoyance with her boyfriend and her immediate emotional inclination towards the appellant. He stated that he had prepared video clips of the prosecutrix with her consent. The prosecutrix told him that she trusted him to delete the video and photographs in front of her before leaving the room and he had deleted the same. He stated that the prosecutrix had gone with him to the *hookah* bar namely 'Hack' as she did not want her mother to get suspicious if she came home early. In the *hookah* bar, her mother had called her at least twice or thrice but she had not made any complaint to her. He stated that he had received a good night message from the prosecutrix as everything was normal between them. On the next morning of the incident, he called her various times but she did not receive her phone. When she received the call, she was weeping and he overheard the voice of her boyfriend on

the background saying “*kaun hai, meri baat kara, mujhe pata hai tu esi ke saath thi kal*”. Thereafter, the phone was call disconnected and subsequently, all his calls were being disconnected. In the afternoon, her boyfriend called her and started abusing him. Thereafter, he called up the mother and the father of the prosecutrix on their mobile phone. He also called on their landline and told them that he was extremely attached to their daughter and that her boyfriend, namely, Abhishek was extorting and blackmailing her on various grounds.

26. The appellant led defence evidence. Saurabh Aggarwal, Nodal Officer, was examined as DW1 and he brought and proved on record the call detailed records of the mobile phone number which was allegedly being used by the appellant (Mobile No. 9*****65) for the period from 01.03.2013 to 18.04.2013, which had been issued in the name of one Neeta.

27. Shishir Malhotra, Nodal Officer, was examined as DW2 and he brought on record the call detailed records of mobile phone number of the prosecutrix, 7*****38, for the period from 14.04.2013 to 15.04.2013.

28. The appellant was examined as DW3 and he reiterated the facts as stated by him in his statement under Section 313 of the CrPC. He additionally stated that Abhishek had threatened him of implicating him in a false case.

Reasons and Conclusion

29. At the outset, it is relevant to observe that the testimony of the prosecutrix is not consistent with her statement recorded under Section 161 of the Cr.PC on 17.04.2013. In her statement to the police, she stated that she had received a call at 01:00 am on 10.04.2013 from an unknown mobile number – 9*****65. She stated that she did not accept the said call and ignored the same. Thereafter she received messages and calls from the same unknown number but she did not acknowledge the messages or attend to the calls. She stated that on 14.04.2013 at about 10:00 pm, she received a call from the same unknown number and this time she attended the same. The caller identified himself as Rahul (the accused). He stated that about six months ago, he had seen her at Lovely Public School and he really liked her. She stated that thereafter, he had been endeavoring to acquire information regarding her. She stated that she enquired from him as to how he had acquired her mobile number and he informed her that he had done so from his sister (Rahul's sister). She alleged that the accused asked her to meet her at V3S Mall near Nirman Vihar Metro Station on 15.04.2013, however, she refused. Despite her refusal the accused continued to pressurize her into meeting him. She did not give in and warned him that she would tell her family members and also make a complaint to the police. At this, he threatened her that he would commit suicide and she would be responsible for the same. She stated that at about 8:15 am on the next day (that is, on 15.04.2013), she left her home to go to her college (Institute) and reached Akshardham Metro Station. At that time, she received a call from the accused and he asked her to come to Nirman Vihar Metro Station. He also threatened her that if she

did not, he would commit suicide and that would bring disrepute to her. She stated that she feared the same and reached Nirman Vihar Metro Station and met the accused. He, thereafter, persuaded her (*bahla fuslakar*) and took her to room no. 301, East Inn Guest House, which was near Nirman Vihar Metro Station. There, he expressed his love for her and pressurized her to establish physical relationships with him. She did not accede to his overtures. She alleged that he threatened to commit suicide and thereafter forcibly established physical relationship with her. He took her nude photographs and also prepared a video clip. She stated that around 02:30 pm, they left the said lodge (Guest House) and the accused took her to a room near Wah Ji Wah Restaurant, which bore the name 'RR Properties'. She alleged that he took her inside that room and threatened her that if she related the incident to any person, he would upload her photographs and videos on the net and she would have to suffer ignominy (*tumhari bohut badnami hogi*). She alleged that he told her that whenever he would call her she would have to come. She stated that she was quite scared and she returned home. She alleged that the accused continued to send telephonic messages and call her. However, she did not respond to his messages. She stated that she was mentally disturbed and on the next date, that is on 16.04.2013, she informed her family members regarding the incident and on 17.04.2013, she along with her family members reached the police station to lodge a complaint.

30. Her statement under Section 164 of the Cr.PC was recorded on 23.04.2013. She reiterated that on 14.04.2013 at about 10:00 pm, she

received call from an unknown number (9*****65) and the caller disclosed his name as Rahul. She reiterated that he had expressed his desire to speak to her and had told her that he really liked her and had been searching for her since the past six months after he had seen her at Lovely Public School. On her enquiry, he informed her that he had got her number from his sister who lives in Bank Enclave. She stated that the accused had expressed his desire to meet her but she declined to do so and told him that she already has a boyfriend. She stated that the accused (Rahul) thereafter started making enquiries regarding her friend and she told him everything about her boyfriend (Abhishek). She stated that the accused asked her whether she had established any physical relations with her boyfriend (Abhishek). She stated that she felt that the accused (Rahul) had become a good friend of hers and therefore, she told him the truth. She stated that Rahul then asked her whether she was happy with Abhishek and she told him that they often break up but then everything would become all right. He asked her whether she had lent any money to Abhishek and she informed him that she had. On this, Rahul scolded her and told her that she had failed to understand that her boyfriend was making a fool of her. He stated that he has had software on his phone and on using the same, Abhishek would receive a call indicating the call to be from her father's number even though the call was made from another phone. He stated that he would then impersonate her father and talk to Abhishek and scold him; resultantly, she would get rid of him. She stated that she was agreeable to the same. She stated that she had now begun to trust Rahul.

31. As is apparent, her statement recorded on 17.04.2013, did not mention anything about this conversation. She had not mentioned that she had informed Rahul regarding her boyfriend or they had planned that he would call Abhishek (her boyfriend) impersonating her father. She had also not stated that she had become friendly with Rahul or had begun to trust him.

32. The prosecutrix further stated that Rahul informed her that he was moneyed and he had given loan to several persons; but his current situation was that he did not have even sufficient funds to feed himself. He stated that his father had removed him from the house because he had picked up a fight for one of his friends. It is material to note that this was also not mentioned by the prosecutrix in her earlier statement.

33. She further stated that Rahul had informed her to meet on the next day in a guest house; but, she refused to meet him at the guesthouse. At this, he told her that they could not meet outside because she would not be able to uninhibitedly (*khulkar*) tell her everything. She stated that Rahul also asked her to bring ₹1,500/- for the expenses of the guesthouse. It is material to note that she did not state that she rejected this suggestion.

34. She stated that on the next day, she reached Nirman Vihar Metro Station at about 08:15 am and Rahul had already reached there. Rahul recognized her and she told him that she would not go to any guesthouse. On hearing this, Rahul told her they could talk on the street itself. However, after sometime he retorted whether she was

comfortable talking on the road (*kya tumhe achcha lag raha hai road par is tarah baat karna*). He also told her that other people were staring at them (*sab log hame dekh rahe hain*). At this, she agreed to go somewhere where they could talk. She stated that he took her to East Inn Guesthouse. He did not show any identity card there. He paid ₹1,500/- and took her to room no. 301. Thereafter, he closed the door. She asked why he done so and he retorted whether she wanted everybody else to hear what she had to say. Thereafter, she did not say anything. She stated that after some time, Rahul came near her and asked to hugged her and she declined and told him that she does not love him. She alleged that Rahul caught hold of her hair and slapped her then started screaming. He stated that if she did not listen to him, he would tear all her clothes and would tell her father. He stated that he knew everyone at the guesthouse and if she screamed, nobody would listen to her. Thereafter, he picked up the phone and told someone “*chacha ye ladki maan nahi rahi hai aap aa jaao*”. She stated that she became very scared as Rahul had informed her that the said guesthouse belonged to his uncle (*Chacha*). She stated that she felt that other persons may come inside the room and misbehave with her. She stated that she was very scared and thereafter, Rahul had sex with her five times (*Rahul ne paanch baar mere sath sex kia*). She stated that while doing so, he also recorded a video clip. Thereafter, he told her not to cry and if she did so, he would again do the same with her. She alleged that Rahul also took her photographs. Thereafter, he got a phone call asking him to vacate the room by 02:30 pm. She stated that about at 02:45 pm, they left the guest house. While leaving Rahul told her to keep smiling

(*hasti raho*) and threatened that if she looked unhappy, he would upload her videos and photographs on the net. She stated that he took her to a *Hukka* Bar where he bit her on her cheeks. He further told her that if she mentioned the incident to any person, even mistakenly, he would commit suicide and write a note mentioning her name. She stated that at about 05:00 pm, they had left the *Hukka* Bar and by 05:30 pm, she reached home. She alleged that Rahul had told her to keep in touch every two hours and inform him what she was doing. She stated that she was very scared and therefore, she phoned/messed him every two hours. She stated that on 16.04.2013, she received a call from a person who stated that he was Rahul's *chacha*. She immediately disconnected the phone. She, thereafter, told her friend Abhishek about the entire incident. Abhishek came to her house and informed about the incident to her mother and who in turn informed the same to her father. Thereafter, they lodged a police report. She then stated that Rahul had told her that he would delete her photographs if she would pay him ₹5,00,000/-.

35. It is relevant to note that these allegations were completely absent in her initial statement recorded before the police on 17.04.2013. First of all, she did not say that she went to Nirman Vihar Metro Station at 08:15 am. On the contrary, her initial statement was that she was on her way to her institute and had reached Akshardham Station, when she received a call from Rahul. To this extent, her statement under Section 164 of the Cr.PC is contrary to her statement recorded earlier on 17.04.2013.

36. Her narration of events is materially different as well. In her initial statement, she had alleged that in the East Inn Guest House, Rahul had expressed his love for her and had attempted to establish a physical relationship with her. However, she had declined and Rahul had threatened to commit suicide if she did not agree. Thereafter, he had forcibly established physical relationship with her. She now stated that he had pulled her hair and slapped her and further told her that if she screamed, no one would listen to her. He ordered her to remove her clothes. He also rung up someone (purportedly, to his uncle) and stated that “*chacha ye ladki maan nahi rahi hai, aap aa jaao*”. None of this was mentioned by the prosecutrix in her initial complaint. In her initial statement she stated that about at 02:30 pm, they had left the lodge and Rahul had taken her to a room near Wah Ji Wah Restaurant which had R.R. Properties written on it. There he had threatened her that if she informed the incident to any person, he would upload her photographs and videos on the internet. Contrary to this, she stated that Rahul had taken her to a *Hukka* Bar after they left the lodge (guesthouse). She did not mention about any room bearing the sign board of “R.R. Properties”.

37. The testimony of the prosecutrix, before the Trial Court is more or less consistent with her statement recorded under Section 164 of the Cr.PC. However, certain details have been added. She now stated that Rahul had disclosed to her that he had lent ₹27,000/- to one of his friends. There was no mention of this amount in any of her statements recorded earlier. In her testimony, she stated that after she reached

Nirman Vihar Metro Station, she wanted to tell him all the details about his boyfriend so that he may reply to her queries. Although it was not stated so in any of her earlier statements, this was in the context of her testimony that Rahul had disclosed to her that he had a software on his mobile phone and if he used the same and calls her boyfriend, her boyfriend's phone would reflect the name of her father. And, he would impersonate her father and talk to her boyfriend. She now stated that while they were talking near Nirman Vihar Metro Station, he walked a few steps ahead of her and had asked her if she did not trust him even after he had come there to help her. She stated that he took her to East Inn guest house near Nirman Vihar Metro Station. The prosecutrix added one other fact. She stated that after they had left the guesthouse and gone to a *Hukka* bar, the accused had not allowed her to go to her mother and had told her "*tu abhi nahi jaayegi*".

38. It is the appellant's defence that he and the prosecutrix had engaged in a physical relationship but the same was consensual. According to him, the prosecutrix had called him and told him that she had received a missed call from his number. He stated that he had not made any call. However, thereafter, she continued to enquire from him regarding his work and his studies. He claimed that she informed him that her boyfriend (Abhishek) had taken her scholarship money and was harassing her. He stated that Abhishek did not even allow her to attend to her calls. He stated that she continued to talk to him until her balance in her phone finished. Thereafter, he made a call to the prosecutrix and during their conversation she was weeping and was asking him what to

do. He stated that next morning he met her at her request outside Nirman Vihar Metro Station. He claimed that he suggested that they go to V3S Mall but she declined to do so by stating that she resides at Bank Enclave which is near V3S Mall and she was afraid of meeting any familiar/known person at the said mall. According to him, she suggested that they go to East Inn Guesthouse for a meeting. He stated that he did not object to the same. They took a room on rent and after reaching the room, they started talking with each other. He stated that while she was weeping she hugged him and thereafter, they engaged in consensual sex. He also stated that both of them took photographs/video clips of each other. They also took selfies on their mobiles. But on her suggestion, he deleted all the photographs and videos from his mobile phone in her presence and also requested her to delete them from her mobile phone. He stated that she did so as well. He stated that thereafter they went to a *Hukka* bar to have some food and she left for her home at about 05:00 pm. He stated that during the night they talked to each other. However, when he called her on 16.04.2013, she did not attend to his phone call. He stated that he made repeated calls to her but she attended only one of his calls and told her that her boyfriend had come to know that he had established physical relations. He stated that during that phone call, he also heard the voice of Abhishek, who was asking the prosecutrix about him.

39. One of the most important piece of evidence in this case is the video clip that was retrieved from a memory card that was recovered at the instance of the appellant. The memory card contained a video

recording of the appellant and the prosecutrix in the act of engaging in sex. Twelve photographs from the said clip were also placed on record as Ex.P-1 to Ex.P-12. These are nude photographs of the prosecutrix.

40. In view of the above, it is established beyond any reasonable doubt that the appellant and the prosecutrix had established physical relations. It is also established that the appellant had made a video clip of the same. His testimony that he had deleted the photographs and the video clip from his mobile is, plainly, untrue.

41. The only question to be examined is whether the appellant had established physical relationship with the prosecutrix with her consent or forcibly as alleged. In this regard, the inconsistencies in the statement of the prosecutrix and her testimony pale into insignificance. There is little doubt that the prosecutrix had voluntarily gone to the Nirman Vihar Metro Station to meet the appellant. It is common ground between the Defence and the Prosecution that the appellant had not met the prosecutrix prior to 15.04.2013. They had also not spoken to each other prior to 14.04.2013. There is a controversy whether the appellant had called the prosecutrix or the prosecutrix had called the appellant on 14.04.2013 at about 10:00 pm. However, there is no dispute that the appellant and the prosecutrix had lengthy conversations during that night. According to the call records, there were several phone calls between the appellant and the prosecutrix, which lasted well beyond midnight. Prior to the said conversations, the prosecutrix did not know the appellant and had never spoken to him. According to her statement recorded under Section 164 of the Cr.PC, she felt close to the appellant

and began trusting him during the course of her conversation. The tone of her statement recorded under Section 164 of the Cr.PC is different from the tone of her statement recorded under Section 161 of the Cr.PC. In her statement, she had stated that on the appellant insisting that they meet, she had threatened the appellant that she would tell her family members and also make a complaint to the police. Contrary to this stand, she accepted that she felt close to the appellant (the accused) during the course of the conversations and had truly disclosed facts relating to her relationships with her boyfriend (Abhishek). There is no doubt that she had voluntarily decided to meet the appellant and had gone to Nirman Vihar Metro Station for the said purpose.

42. It is also clear that the prosecutrix knew that the appellant wanted to take her to a guesthouse. In her statement recorded under Section 164 of the CrPC, she had acknowledged that he had informed her that they would go to a guesthouse; in fact, she stated that he had asked her to bring ₹1,500/- to pay for the expenses. It can, thus, be reasonably inferred that the prosecutrix had accompanied the appellant to East Inn guesthouse voluntarily. However, that does not mean that she had agreed to establish physical relations with him.

43. It is difficult to understand why the prosecutrix would have placed herself in a position where she accompanied the appellant to a room in a guest house. The only explanation provided by the prosecutrix is that she wanted to tell everything about her boyfriend to the appellant. It appears that this was in the context of them planning that he would impersonate her father and would speak to her boyfriend. However, the

fact that the prosecutrix had voluntarily accompanied the appellant to the guesthouse does not necessarily mean that she had agreed to have sexual intercourse with him. There is no inconsistency in her statement that the appellant had forcibly established physical relationship with her. This is her allegation in the statement recorded on 17.04.2013, as well as her statement recorded under Section 164 of the CrPC. This is also her testimony before the Trial Court. In her statement, she had stated that the appellant had threatened to commit suicide if she did not agree to his overtures. In her statement recorded under Section 164 of the CrPC, she claimed that the appellant had pulled her hair and slapped her. He had screamed at her and had forcibly established physical relations with her. Her statement under Section 164 of the CrPC also elaborately explains the circumstances, which had terrorised her including that the appellant had picked up the phone and had purportedly called his uncle (*chacha*) and had stated that “*chacha ladki maan nahi rahi hai aap aa jaao*”. There is no reason to disbelieve that the prosecutrix felt vulnerable and feared that certain other persons would come inside the room and misbehave with her.

44. Any doubt that could have been entertained regarding whether the prosecutrix and the appellant had any consensual sex is removed by the fact that the appellant had prepared a video clip of him establishing physical relationship with the prosecutrix. Clearly, no girl would accept that such a video be made especially with a person who is otherwise unknown to her. Less than twelve hours prior to the incident, the prosecutrix and the appellant had not even spoken to one another. The

appellant had testified that he had deleted the video clip and the photographs from his mobile. However, the recovery of the same clearly belies his testimony. In the circumstances, the testimony of the prosecutrix that the appellant had threatened her that he would upload her video and photographs on the net, cannot be disbelieved. Notwithstanding the inconsistencies between her statement recorded earlier and her testimony, there is no doubt in the mind of this Court that her testimony that the appellant had forcibly established physical relationship with her without her consent, must be accepted.

45. Clearly, if the prosecutrix had voluntarily engaged in a consensual sexual encounter with the appellant, there would be no reason for her to lodge a complaint with the police. It is well known that such complaints also cast a social stigma on the victim. She would also have to suffer the ignominy that is attendant of being a victim of such an offence and there is no plausible reason why she would lodge a complaint at the peril of suffering such stigma. The defence that the prosecutrix had lodged a complaint at the instance of her boyfriend is, plainly, unpersuasive.

46. The testimony of the prosecutrix that the appellant had established physical relationship with her five times has also not been rebutted. The Trial Court had noticed that the prosecutrix was not cross-examined on this aspect. The prosecutrix had clearly stated in her statement under Section 164 of the Cr.PC that the appellant (the accused) had engaged in sex with her five times. This was also her testimony before the Court.

47. In view of the above, this Court finds no infirmity with the decision of the Trial Court in convicting the appellant for committing an offence punishable under Section 376(2)(n) of the IPC.

48. Insofar as the appellant's conviction for committing an offence punishable under Section 506 (Part I) of the IPC and Section 354C of the IPC is concerned, the learned counsel for the appellant has not contested the said conviction. Notwithstanding the above, this Court has examined the same and finds no infirmity with the decision of the Trial Court in convicting the appellant for offences punishable under Section 506 (Part I) of the IPC and Section 354C of the IPC, as well. Undeniably, the appellant had prepared an obscene video clip of the prosecutrix and her testimony establishes that he had also threatened her with uploading the same.

49. In view of the above, the appellant's conviction for an offence under Section 506 (Part I) of the IPC and under Section 354C of the IPC, also warrants no interference by this Court.

50. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

MAY 18, 2020
RK/MK