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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. 107/2017 & CRL.M.A. 3306/2017**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State with
SI Yogendra Kumar, P.S. I.P. Estate.

versus

RAKESH KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.01.2020

1. The State has filed the present petition seeking leave to appeal against the judgment dated 14.07.2016 passed by the ASJ/SFTC-02, Central, Tis Hazari Courts (hereafter the 'impugned judgment') whereby the respondent was acquitted of committing offences punishable under Sections 328/376/506/34 of the Indian Penal Code.

2. The proceedings against the respondent were commenced on an FIR (FIR bearing no. 365/2013 under Sections 328/376/34 of the IPC registered with PS IP Estate) being registered against the respondent. The said FIR was registered on 24.09.2013 at the instance of the prosecutrix (named withheld to avoid any ignominy).

3. The prosecutrix was employed as a constable in PCR of Delhi Police (in C-Shift of Delhi Police). She stated that she knew the respondent prior to her marriage, which was solemnised on 15.02.2010. And, after her marriage, she had no relations with the respondent. On 16.07.2012. she joined her

duties after availing maternity leave. She stated that about eight or nine months prior to that date, she was on duty with W/Ct. Sarita who was assigned Shift-B. W/Ct. Sarita is the wife of the respondent. Prosecution alleged that on 16.07.2012, W/Ct. Sarita had called her to the reception area. At that time, the respondent (her husband) was also present with her. She alleged that the respondent had showed her certain photographs and a video, which was taken prior to her marriage. She alleged that he threatened her that he would place the said photographs and the video on the internet, if she did not maintain contact (*sampark*) with him. She stated that W/CT. Sarita was also present and on being informed about the threat made by the respondent, W/Ct. Sarita allegedly told her that it is alright and she had no objection to the same. She alleged that the respondent gave her his telephone number and left. She further alleged that whenever W/Ct. Sarita met her on duty, she would force the prosecutrix to call the respondent under the threat that she would upload her photographs on the internet. She stated that under fear of the threats, she acceded and phoned the respondent.

4. Next, she alleged that she had gone to give evidence in Tis Hazari Courts on 19.11.2012 and the respondent was present there with one boy who was referring to him as *mama*. The respondent threatened her that he would upload her video and photographs and forcibly took her to the room of his nephew (Himanshu) at Laxmi Nagar and while on the way, he dropped off the boy accompanying him, at ISBT.

5. The prosecutrix alleged that the respondent's nephew (Himanshu) was present in the room and offered her sweet lime juice, which she initially refused but, on his insistence, consumed it. She alleged that there was

something mixed with the juice and on consuming the same, she felt slightly intoxicated (*halka halka nasha hone laga*). She stated that subsequently, Himanshu left the room and closed the door from outside. Thereafter, the respondent forcibly did a wrong act with her. Thereafter, at the instance of the respondent, his nephew opened the door and he insisted upon taking the photographs of the prosecutrix and the respondent. She alleged that although she refused to be photographed but she was again threatened and she did whatever was told to her and her photographs were taken. She alleged that she was threatened that if she revealed the incident to any person, her video would be uploaded on the net. She stated that W/Ct. Sarita repeatedly blackmailed her and forced her to meet the respondent. And, when she refused to do so, W/Ct. Sarita showed her photographs and the video to other persons. She alleged that W/Ct. Sarita also spoke ill of her.

6. Based on the aforesaid, an FIR was registered and thereafter, on 19.08.2014, the respondent was charged for committing offences punishable under Sections 320A/376/506/34 of the IPC.

7. The case of the prosecution rests entirely on the testimony of the prosecutrix, who deposed as PW-1.

8. The husband of the prosecutrix is also employed with Delhi Police and he deposed as PW-5. He stated that he had married the prosecutrix on 15.02.2010 and after their wedding, the prosecutrix disclosed to him about her past relations with the respondent (Rakesh) and had assured him that she would not have any further relationships with the respondent. He further stated that on 03.08.2013, he received a call from W/Ct. Sarita and she asked

him to meet her as she wanted to talk to him on an important matter. He stated that he met W/Ct. Sarita and she informed him that the prosecutrix was in a relationship with her husband (the respondent herein) and that she had photographs of the prosecutrix with the respondent in her mobile phone as well as in the laptop of her nephew (Himanshu). W/Ct. Sarita did not show him the photographs but stated that she would upload them on the internet and he could see them on the net. He requested her not to upload the photographs. He stated that he had recorded the conversation and had handed over the mobile phone to the police. The police had prepared a transcript of the conversation and thereafter, sealed the phone in a *pullanda*.

9. The transcript of the conversation between the husband of the prosecutrix and W/Ct. Sarita does not include any threat of uploading the photographs on the internet. On the contrary, the reading of the transcript indicates that W/Ct. Sarita was not happy with the relationship between the prosecutrix and the respondent.

10. As observed earlier, the case of the prosecution rests almost entirely on the testimony of PW-1. In her testimony, she alleged that she knew the respondent as both of them had undertaken training at PTC, Jharoda Kalan in 2007. She had testified that they gradually became friends with each-other and started talking on phone. She alleged that respondent had told her that he was of the same caste as her, but she later became aware that it was not so. She alleged that the respondent had assured her that he would marry her and in January/February, 2008 he had taken her to Ballabgarh to meet his sister. She alleged that upon reaching the house of his sister, no one was there and the respondent had forcibly established physical relationship with

her.

11. It is relevant to note that no such allegations were made by the prosecutrix in her complaint on the basis of which the aforesaid FIR was lodged. Clearly, the said incident would have been reported by her in her complaint and the fact that it was not raised, casts a doubt as to the truthfulness of her testimony.

12. The prosecutrix also stated that she had completed her training in May, 2008 and started living as a tenant in the house of respondent's sister. At that time, she was posted at PS Badarpur and PS Jaitpur. She stated that the respondent frequently used to visit the house of her sister and whenever her sister was not present, he used to establish physical relationship with her but had asked not to disclose the same to anybody. She testified that she had asked the respondent to marry her but he had declined to do so, as he belonged to a different caste. She testified that on 19.11.2012, she had come to Tis Hazari Courts to give evidence and had found that the respondent was present outside the courtroom. She alleged that he had shown her photographs and had asked her to go with him. She stated that she had declined, but the respondent had threatened her that he would show the photographs and videos to other persons present in the Court complex and defame her. She stated that after giving evidence, she came out of the Court Complex and the respondent took her to a car (Red Coloured Swift Car) which was parked near to Old Police Lines. She stated that he made her sit in the car and another boy was already sitting in the car.

13. It is relevant to note that the above testimony is also inconsistent with

her complaint where she had stated that the respondent was present in Court along with another boy who was addressing him as *mama* (*uske sath ek ladka tha jo use mama kah raha tha. Wahi Court me the*). Contrary to her statement made in the complaint, the prosecutrix now stated that the boy accompanied the accused who was sitting in the said car and not in the Court.

14. The testimony of the prosecutrix regarding the incident in the room of the nephew of the respondent is also not consistent with her complaint. In her complaint, she had stated that she was offered sweet lime juice and on consuming the same, she felt slightly intoxicated (*halka halka nasha hone laga*). In her testimony, she had stated that she was feeling intoxicated and due to her intoxicated condition, she was unable to resist the accused. In her cross-examination, she stated that she was feeling unconscious after about 10 minutes of consuming the juice. She volunteered “*Mere haath pair kaam nahi kar rahe the*”.

15. Clearly, in view of the above, the testimony of the prosecutrix could not be relied upon without any further corroboration. Concededly, there is no evidence to corroborate any of the material allegations made by the prosecutrix.

16. The Trial Court had evaluated the evidence obtaining in this case and had also taken note of the testimonies of various witness. The Trial Court had also noted that the husband of the prosecutrix had threatened the respondent to implicate him in a rape case.

17. The Trial Court observed that the allegations of the complainant that

the wife of the respondent had been forcing her to maintain relationship with her husband was also highly improbable. It is difficult to accept that any woman would blackmail another woman to maintain an intimate relationship with her spouse. In the present case, the transcript of the conversation between the husband of the prosecutrix and the wife of the respondent also indicates that the wife of the respondent was not happy about the relationship between the prosecutrix and the respondent.

18. Apart from the above, there is a considerable delay in filing the FIR. This Court also cannot be oblivious of the fact that the prosecutrix is a police official and is not only fully aware of the necessity of filing complaint within time, but also has full access to the police machinery.

19. In the aforesaid facts, this Court is unable to accept that the impugned judgment is manifestly erroneous or that the view taken by the Trial Court is not a plausible view.

20. In the circumstances, this Court finds no reason to interfere with the impugned judgment.

21. The petition is, accordingly, dismissed. The pending application is also dismissed.

JANUARY 16, 2020
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VIBHU BAKHRU, J