

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

% *Date of Judgment :08.09.2015*

+ CRL.A. 880/2014 & Crl. M.A. No.11508/2014

KAVITA

..... Appellant

Through Mr. Rajan Lal, Adv.

versus

SANDEEP @ SONU & ANR

..... Respondents

Through R-1 with his counsel Mr. Prashant Jain, Adv.

Ms. Kusum Dhalla, APP for the State along with SI Somil Sharma.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This appeal is directed against the impugned judgment dated 16.05.2014 wherein respondent No.1 Sandeep @ Sonu stood acquitted of the offence under Sections 376/506/420 of the IPC. The complainant is aggrieved by this order.

2. Record shows that a case under Sections 376/420/506 of the IPC

was registered against the accused. This was on the statement of the prosecutrix. She had been examined a PW-4. Her mother has been examined as PW-1. The victim was admittedly a major and 23 years of age at the relevant date. She was doing a small business. She was a fairly matured girl. The accused was also almost the same age as the victim. Both of them had an unmarried status.

3. PW-4 in her version on oath has stated that she knew the accused since the year 2007. They had developed friendship. After about 4-5 months, they started having physical relations; at that point of time, the parents of the accused were not in their house. In 2008, PW-4 had shifted to Tilak Nagar. They used to talk on mobile regularly. The accused used to pick her from Jhilmil Metro Station for going to Ghaziabad. He continued to have physical relations on the promise of marriage. However, in 2010, he refused to marry her. Her last physical relation with the accused was on 21.11.2009. He threatened her not to disclose this fact that he was not willing to marry her. She lodged a criminal complaint in April, 2011.

4. In her cross-examination, she denied the suggestion that a dispute had arisen between the father of the accused and her father and as a

result of which this false complaint has been filed against the accused. She admitted that the accused refused to marry her in the month of November, 2010 but she did not make any complaint till the FIR was finally registered in April, 2011. Her complaint under Section 156 (3) of the Cr.PC was drafted by her counsel on her instructions. She denied the suggestion that she has implicated the accused falsely.

5. Apart from the victim, the prosecution had examined 12 witnesses. No evidence was led in defence.

6. On the basis of the aforementioned evidence, both oral and documentary, the Trial Judge was of the view that this is a case of acquittal as the testimony of the victim neither disclosed the offence of cheating; it disclosed that PW-4 had physical relations with the accused voluntarily and of her own accord.

7. Learned counsel for the appellant has placed reliance upon a judgment of the Supreme Court in Criminal Appeal No.1949/2013 State of U.P. Vs. Naushad to support his submission that where on the promise of marriage, a physical relationship had been established, it constitutes 'rape'.

8. This submission of the learned counsel for the appellant is noted

but applying the factual matrix of the instant case, it is clear that the ratio of that judgment would be wholly inapplicable.

9. At the cost of repetition, PW-4 had stated that she got to know the accused in the year 2007 and developed physical relations with him about 4-5 months thereafter. It is not her case that she had entered into a physical relationship with the accused on the promise of marriage. This is not her version. Her further version is that after she continued the physical relations with the accused, he had refused to marry her in November, 2010 and finally thereafter she filed a complaint under Section 156 (3) of the Cr.PC which had led to the registration of the FIR in April, 2011.

10. The argument of the learned counsel for the appellant that her relationship with the accused was based on a false promise of marriage is wholly negated. Testimony of PW-4 is clear and cogent. She has categorically stated that she had entered into this relationship with the accused in November, 2007; at that point of time, there was no promise of marriage. The ratio of the judgment thus would be wholly inapplicable.

11. The Trial Court has discussed this issue in detail and extract of

the aforementioned proposition as argued and findings returned by him reads herein as under:-

“37 As per the case of the prosecution, parties developed relationship for the first time in the year 2007 at the residence of the accused when his parents were not at home. Relationship was continued for three years. In the year 2008, the prosecutrix with her family shifted to Tilak Nagar. Even after that the prosecutrix continued to visit the accused. As per her own evidence, she used to reach Jhilmil metro station from Tilak Nagar where the accused was picking her and after that they were going to some hotel at Ghaziabad, UP.

38. In view of these facts, the present situation cannot be considered a case of passive submission on account of psychological pressure or allurements made by the accused. The present is not a case of an isolated instance of sexual union between the accused and the prosecutrix but that of continued relationship. The prosecutrix in this case was not a mere tacit consenting party to the act but she of her own was creating situations which led to continued physical relationship between the parties. During this period of two to three years, the prosecutrix did not disclose about the relationship to her family members which indicates that the prosecutrix was aware of the moral aspects of the relationship and the inherent risk involved in this kind of relationship. During this period the accused and prosecutrix remained together for long durations and the prosecutrix would have been able to judge the possibility of their relationship maturing into the matrimonial bond, even if the accused was representing to the contrary.

39. Even if it is presumed that the prosecutrix submitted herself to the accused and permitted him to make physical relationship with her and continued the said relationship solely on account of the promise of marriage on the part of accused, I am of the opinion that prosecution has failed to establish that accused made that promise at the very inception with no intention to fulfill the promise. The intention of the accused is to be gathered from the attending circumstances and his conduct. The

prosecutrix and the accused were unmarried persons and of same age. Both were acquainted with the family of each other. The accused was running a mobile phone shop and the prosecutrix was trying to establish the business of selling products of Oriflame. The prosecutrix had assisted the accused to be the part of a chit fund committee with one Raj Kuar who was a neighbour of prosecutrix and running a chit fund committee. The evidence discussed above would also show that chit fund committee ultimately led to strained relationship between the families of the prosecutrix and the accused. The family of the accused may have otherwise some reservations for the relationship for any reason and they may have put pressure on the accused to break the relationship.

40. In these circumstances, the prosecution has failed to establish that the accused intentionally made false promise of marrying the prosecutrix and he did not intend to fulfil this promise since the very inception.

41. Thus, accused is liable to be acquitted for the offence punishable u/s 376 IPC.

42. The accused is also facing trial for the offence punishable u/s 420 IPC to cheat the prosecutrix with the false representation to marry her and later on he refused for the same. I have already held above that the prosecution has failed to establish that at the time of making the alleged promise of marriage, the accused had no intention to marry the prosecutrix. Thus, offence punishable u/s 420 IPC must fail.

43. The accused is also facing trial for the offence punishable u/s 506 IPC for criminal intimidation to the prosecutrix and her family members to kill and throw acid on the face of the prosecutrix. The prosecution has relied on the oral testimonies of PW1 and PW4 on this aspect. As per PW1 she alongwith the prosecutrix and her elder daughter went to the house of the accused in November-2010 to discuss about the marriage of the accused and the prosecutrix where the accused threatened the prosecutrix of throwing acid on her (prosecutrix) face. PW4 also deposed the same thing. The elder sister of the prosecutrix who had also visited the house of the accused to discuss the marriage of the prosecutrix and the accused has not been examined by the prosecution. In these circumstances, I am inclined to

give benefit of doubt to the accused as far as offence punishable u/s 506 IPC is concerned.

44. In view of above discussion, it is held that the prosecution has failed to prove its case against the accused for the offences punishable u/s 376/420/506 IPC. Thus, accused is acquitted for the said offences.”

12. This Court notes no fault in this reasoning arrived at by the learned Trial Court. This Court is also conscious of the fact that while reversing a judgment of acquittal, unless and until there is grave illegality or patent perversity on the face of the record, this Court may not exercise such a discretion.

13. The Apex Court in Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 has held as under:-

The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.”

14. The impugned judgment does not call for any interference.

Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 08, 2015

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