

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

% *Decided on: 6th September, 2018*

+ **CRL.L.P. 582/2018**

STATE Petitioner

Represented by: Ms. Rajni Gupta, APP for the State

versus

SHAILENDER Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 31441/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 582/2018

1. Aggrieved by the judgment dated 5th May, 2018 whereby the learned Additional Sessions Judge acquitted the respondent Shailender for the offence punishable under Section 376/506 IPC, the State has preferred the present leave petition.

2. The brief facts of the case are that on 6th June 2012, the prosecutrix went to PS Haus Qazi along with her mother, whereafter SI Sangeeta along with W/Ct. Promila took the prosecutrix to Lok Nayak Hospital for her medical examination. On return to the police station statement of the prosecutrix was recorded vide Ex.PW-2/B.

3. The prosecutrix stated that she was aged about 17 years and had left school four months ago. The respondent used to work as a teacher in her school and taught her in classes III and IV. The respondent started harassing her when she was in class IV. He used to call her to the Principal's room or computer room alone and used to touch her at her cheeks and on her waist.

He used to send her to the Principal's room on one pretext or the other and used to reach there and kiss her. He had also written his mobile number in her copy and asked her to make calls to him and also to meet him. He roamed around with her for 6 months. One day he took her to Hotel Blue, Connaught Place on the pretext of taking her to a restaurant. Upon reaching there, he booked a room where he forcibly committed rape upon her and also made a video with the help of mobile phone. Thereafter, he started blackmailing her and used to threaten her that if she did not come to meet him, he would upload her pictures on the internet. On the basis of the said threats, he used to take her to different hotels including Suraj Hotel, Pahar Ganj and Hotel Blue, Connaught Place and sexually exploit her. She further stated that 15-20 days ago, he took her to a hotel at Pahar Ganj, again committed rape upon her and again threatened to upload her pictures on the internet. One day, he made a call on her phone which was picked up by her elder sister, as a consequence whereof, her family members came to know about the respondent.

4. On the basis of the above statement, FIR No. 79/2012 (Ex.PW-5/A) was registered at PS Haus Qazi for offences punishable under Sections 376/506/201/384 IPC. On 7th June 2012, the statement of the prosecutrix was recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate vide Ex. PW-2/A.

5. On 8th June 2012, the mother of the prosecutrix handed over the clothes of the prosecutrix stating that the prosecutrix was wearing the said clothes at the time of the incident. The clothes were seized vide seizure memo Ex.PW-28/A. On the next day, the prosecutrix led the police to Hotel Blue Star at Connaught Place and Hotel Leo, Paharganj and at her instance,

pointing out memos of both the hotels were prepared vide Ex.PW-9/A and Ex.PW-13/A respectively. The receptionist of both the hotels were also examined and their statements were recorded under Section 161 Cr.P.C.

6. On 7th July 2012, the respondent surrendered before the court and was arrested vide arrest memo Ex.PW-23/A whereafter medical examination of the respondent was conducted vide MLC Ex.PW-15/A and samples were taken which were seized vide seizure memo Ex.PW-28/B. The disclosure statement of the respondent was recorded vide Ex.PW-28/C.

7. On 11th July 2012, the respondent led the police to the Hotel Corner Point at Paharganj, Hotel Leo at Paharganj and Hotel Blue Star at Connaught Place and at his instance pointing out memos were prepared vide Ex.PW-20/C, Ex.PW-20/B and Ex.PW-20/A respectively. The respondent then led the police to his house at House No.4802, Deputy Ganj, Sadar Bazar, Delhi from where one mobile phone of make Micromax was recovered on which he had allegedly made the video clip. The mobile phone was seized vide seizure memo Ex.PW-20/E. One motorcycle bearing number DL-1SM-7830 was also recovered and was seized vide seizure memo Ex.PW-20/D.

8. On 12th September, SI Sangeeta collected documents relating to the age of the prosecutrix from MCD Primary School which were exhibited as Ex.PW-3/A to Ex.PW-3/C. After completion of investigation, chargesheet was filed. Charge was framed against the respondent for the offences punishable under Sections 376/506 IPC.

9. Ms. Shail Gupta, Primary Teacher, MC Primary Co-ed School (PW-3) deposed that the prosecutrix was admitted in the aforementioned school on 19th September 2002. At the time of her admission, her parents disclosed

her age as 22nd February 1996. She brought the original admission register, photocopy of which was proved vide Ex.PW-3/A.

10. Dr. Shalini (PW-26) deposed that she had examined the prosecutrix with alleged history of sexual assault since five and a half months and that the last sexual assault was 20-25 days prior to the date of examination. The hymen of the prosecutrix was found torn (old tear).

11. Dr. Dhruv Sharma, Assistant Director (Biology), FSL, Rohini (PW-29) deposed that on DNA examination, female DNA profile was generated from oral swab of prosecutrix. The male DNA profiles generated from jeans pant of prosecutrix was matching with the profile generated with the blood gauze of respondent. The report was proved vide Ex.PW-29/A.

12. The prosecutrix was examined as PW-2 on 16th April 2013 and 3rd June 2013 wherein she turned hostile and deposed that the respondent never committed the alleged offences and she had lodged the false complaint at the instance of her mother. She also produced her birth certificate issued by MCD which showed her date of birth as 27th February 1994.

13. Thereafter, an application was filed by the prosecutrix for re-examination. The ground taken for recall was that she earlier deposed falsely that she was not raped by the respondent as he promised to marry her if she withdrew the complaint. However, after coming out of the jail on bail, the respondent refused to marry her. Accordingly, the prosecutrix was re-examined on 20th September 2014, wherein she alleged that she had deposed falsely in the Court earlier with respect to the fact that the respondent had not committed the alleged offences. She further stated that after the registration of FIR the respondent used to ask her to withdraw her complaint stating that he would marry her. The relatives of the respondent requested

her for a settlement and told her that they would get her married to the respondent when he will come out of jail. She added that on 2nd June 2012, her elder sister answered the phone call from the respondent and informed the mother of the prosecutrix about the respondent who gave beating to the prosecutrix.

14. During her cross-examination on 20th September 2014 she admitted to having met the respondent several times in jail including on 4th June 2013 that is the day after her examination was concluded in court. She signed the anticipatory bail application vide Ex.PW-1/D-1 which was accompanied by her affidavit vide Ex.PW-2/D2. She stated that she appeared before the court when the respondent made an application for anticipatory bail and submitted to the court to admit the respondent on bail as she wanted to live with him. She also added that she was residing with the family of the respondent between 3rd July 2012 to 7th July 2012 and had accompanied the respondent on 7th July 2012 when he surrendered in court. In her complaint dated 13th July 2012 she stated that physical relations were established between her and the respondent for the last 2 months with her consent. After lodging the FIR against the respondent, she intended to marry the respondent but when he came out from jail on bail, she decided not to marry him.

15. In her further cross-examination recorded on 7th November 2014, an audio recording of a call between her and the respondent dated 3rd June 2012 was played to her. On hearing the recording she admitted that she had made the call to the respondent wherein she told the respondent that as and when she sent him a message or called him he had to immediately call her back otherwise he would face dire consequences.

16. It is pertinent to note that on 3rd June 2012, prior to the registration of

the FIR, the prosecutrix had herself called the respondent and informed him that her mother and sister had knowledge about her relations with him. Admittedly, at that time she was not under any kind of pressure from the family members of respondent to settle the matter in as much as no FIR had even been registered till that date. It is not the case of the prosecution that the respondent had established physical relations with her on the pretext of marriage. On the contrary, it is the case of the prosecution that the respondent continued to sexually exploit her by black-mailing her on the basis of video recordings recorded by him. That being the case, it is difficult to understand as to why she would call the respondent herself on 3rd June 2012 and meet him along with her sister on the said date too, considering the fact that the prosecutrix alleged that he had been committing rape upon her for the past 6 months. It is also not clear as to why the prosecutrix visited the house of the respondent prior to the registration of the FIR. Furthermore, the birth certificate issued by the MCD which was produced by the prosecutrix showed her date of birth as 27th February, 1994 indicating that she was more than 18 years at the time of her complaint dated 13th July, 2012 wherein she leveled allegations of sexual assault against the respondent for the last two months. It is also apparent that the relationship between the prosecutrix and respondent was consensual and she was a major at the time of alleged incidents. Further the FIR was got registered by the prosecutrix after her family came to know of their relationships. The testimony of the prosecutrix cannot be relied upon as there are material contradictions in her testimony and she was frequently changing her versions with respect to the incidents.

17. Considering the facts noted above, the impugned judgment acquitting

the respondent cannot be said to be perverse warranting interference of this Court.

18. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 06, 2018

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