

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

% Decided on: 19th March, 2018

+ **CRL.L.P. 272/2017 and Crl. M.A. No. 7630/2017 (Delay)**

STATE (GNCT OF DELHI)

..... Petitioner

Represented by: Ms. Meenakshi Chauhan, APP
for State with SI Sachin
Kumar, PS Amar Colony.

versus

WASEEM AKRAM BUTT

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. State seeks leave to appeal against the judgment dated 26th April, 2016 acquitting the respondent for offence punishable under Sections 417/376 IPC giving benefit of doubt to the respondent.
2. Case of the prosecutrix in the complaint was that she met the respondent at a common friend's place on 31st December, 2009. Respondent took her mobile number from the common friend and started sending her messages. Within a week's time he insisted her to meet him but she avoided. After sometime he again met her and proposed to marry. She immediately rejected his proposal as she hardly knew him. However, the respondent insisted that they should be friends and should keep in touch with each other, so she accepted the proposal. In January, 2010 when she and her friend were passing near his residence, he called her to meet him for five minutes for the last time as he was going to his home town. She sat in his car, after a while he again proposed to marry her, to which she replied in the

negative however, the respondent cut his hand and thus started bleeding profusely. She got scared and accepted the proposal. Thereafter they started meeting frequently. Respondent invited her to his cousin's marriage at Srinagar which she attended with her friends where also the respondent insisted on marrying her but she asked him to wait for two-three months. In March/April they became very close and started living together when she discovered that the respondent was into drugs. In July/August she came to know about his girlfriends and past affairs through Facebook that he was in habit of flirting with girls. She was shocked and confronted the respondent with the facts, to which the respondent apologized and assured that he will not do it again. Thereafter, the respondent started fighting with her without any rhyme or reason and stayed away from her which created suspicion in her mind. He started making frequent trips to his hometown. In the month of November, the prosecutrix got to know that she was pregnant. When she broke this news to the respondent he did not react. When she asked him to introduce her to his family members and marry her, he ignored and stated that this was not the right time however, he assured of marrying her. Feeling helpless, the prosecutrix contacted his father on which the respondent got angry and beat her. Thereafter the respondent refrained relationship with her and started avoiding her. Respondent asked her to abort the child which was a big shock to her.

3. In her deposition before the Court prosecutrix stuck to her version. Prosecution also examined the doctor where she got conducted her pelvic ultrasound as PW-8 and the doctor who conducted the MTP as PW-10. Respondent in his statement under Section 313 Cr.P.C. denied the incriminating evidence and stated that he had been falsely implicated. He

never promised to marry the prosecutrix who used to contact him through all modes. He further stated that even after the registration of the case she was in continuous touch with him and has threatened him on many occasions for which he had made complaints to the police. He stated that he had married the prosecutrix after she converted her religion from Hindu to Muslim and executed affidavits by putting her signatures and thumb impression. He also produced the transcripts along with the CD of the prosecutrix calling him from her mobile phone number. In order to prove his defence the respondent examined DW-1 proprietor of hotel at Srinagar, DW-2 who knew prosecutrix since 2010, DW-3 caretaker of the business of the father of respondent, DW-4 the Maulvi who performed the nikah, DW-5 clerk Record Room of the Court who proved the order of the Court dated 19th September, 2011 Ex. DW-5/A whereby the application of the complainant Ex. DW-5/B for cancellation of bail was dismissed, ASI Ravinder Kumar, (DW-6), who brought the complaints filed by the respondent at PS Hauz Khas, HC Hari Singh as DW-7, who brought the complaint lodged by the respondent at PS Amar Colony, his cousin as DW-8 and a friend of the prosecutrix DW-9, the Manager of International Recreational Parks Pvt. Ltd. Noida as DW-10, Women Constable Kiran Lal as DW-11 who attended the call of the prosecutrix, HC Om Prakash as DW-12 regarding complaint of threat to the respondent, Nodal Officer Vodafone as DW-13 to prove the call records and Mohd. Riazuddin as DW-15 son of DW-4 who was present at the time of Nikah.

4. Learned Trial Court on the basis of facts admitted by the prosecutrix in her cross-examination that she was not invited to the marriage of the cousin of the respondent, but gave a changed version that in fact a friend of

respondent invited her, came to the conclusion that it was strange that the prosecutrix agreed to go to Kashmir to attend the marriage of the sister of friend of respondent and stayed there for many days, though she hardly had any acquaintance with the friend of the respondent. Further the material witness i.e. the friend of the prosecutrix through whom she met the respondent was not examined. In cross-examination as the prosecutrix admitted that she had told the respondent that their marriage cannot materialize due to the difference in religion and that their parents would not agree, the learned Trial Court noted that the prosecutrix was educated, a freelancer flight attendant working on chartered domestic flights, whereas the respondent was 10th standard pass hailing from a conservative family and it has been proved beyond reasonable doubt that both of them lived in a live in relationship for long and moved to many place. When the prosecutrix became pregnant, the respondent went with her and informed her mother. Further the prosecutrix also informed his father. It was not the case of the prosecutrix that the respondent severed the relationship after the prosecutrix became pregnant. Prosecutrix was conscious of the fact that father of the respondent would not agree to the marriage between the respondent and prosecutrix. As per the evidence led even after the registration of the FIR, the prosecutrix moved to many places with the respondent, stayed with him and was in constant touch with him. On the basis of the evidence, the learned Trial Court came to the conclusion that there was no evidence to infer that the respondent refused to marry the prosecutrix when she became pregnant, rather the photographs and nikahnama showed that both the respondent and the prosecutrix were married after the prosecutrix converted her religion. Even in the documents relating to her pregnancy the

prosecutrix gave her name as wife of respondent though the case of the prosecutrix was that she was not married to the respondent.

5. Considering the inconsistent statements of the prosecutrix and the material contradictions in her testimony which go to the root of the matter and the fact that the prosecutrix had even performed nikah with respondent the conclusion of the learned Trial Court that the relationship between the prosecutrix and the respondent was consensual in nature cannot be said to be a perverse finding warranting interference.

6. Leave to appeal is declined.

7. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 19, 2018

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