

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

Reserved on: 29th April, 2019

% *Decided on: 13th May, 2019*

+ **CRL.A. 659/2017**

NIRMAL MANDAL

..... Appellant

Represented by: Mr. Hemant Singh, Advocate

versus

STATE

..... Respondent

Represented by: Mr. Ashok K. Garg, APP for
the State with SI Devender
Singh, PS Govind Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Nirmal challenges the impugned judgment dated 18th March, 2017 convicting him for the offences punishable under Sections 417/376 IPC and the order on sentence dated 24th March 2017 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.30,000/- in default whereof to undergo simple imprisonment for a period of six months.

2. Learned counsel for the appellant submits that the prosecutrix in her cross-examination has admitted that the sexual intercourse was consensual. The prosecutrix further stated that when she called on the mobile phone of the appellant on 7th May 2013 the call was attended by a lady but she has failed to place on record any Call Detail Record to prove the same. She has also failed to place on record the call detail record with respect to the call on 100 number. He further submits that there is a delay of four days in filing

the complaint. Statement of the prosecutrix under Section 164 Cr.P.C. has also not been recorded. He further submits that the prosecutrix in her statement stated that when her sister called the police on 100 number they came to their house and took everyone to the police station whereas Pinki deposed that police apprehended the appellant from his office. The prosecutrix has alleged that the appellant had beaten her but there is no external injury on the body of the prosecutrix as per the MLC.

3. Per contra, Learned APP for the State submits that that the impugned judgment and the order on sentence suffers from no illegality.

4. Police machinery was set into motion on 13th May 2013 when the prosecutrix came to the police station informing that she had been raped. Case was assigned to SI Kusum Dangi who recorded the statement of the prosecutrix wherein she stated that she was working in the Company as an Office Assistant. In the first week of February 2013 she had gone to Rudrapur for some office work where she met the appellant. In a few days they became close friends and started meeting each other. The appellant asked her to marry him and she agreed. After staying in Rudrapur for a week she returned to Delhi and they continued talking on the phone. In the last week of February 2013, the appellant came to Delhi for some personal work and stayed with her in her rented accommodation. During that time, he forced her to make physical relations with her against her will on the pretext that they were going to get married soon. Later on, the appellant came to Delhi multiple times in a span of a month and a half, stayed in her flat and made physical relations with her multiple times on the assurance that he would marry her soon. On 8th May 2013, the appellant came to her house as they had decided to go to his native place in Assam to discuss their marriage

with his family but he refused to go there and told her that they could not get married and he was going back to Rudrapur. On that day itself when she was going to Govindpuri Police Station to make a complaint against the appellant he also reached there, apologized to her and told her that he would get married to her so she returned home. The appellant left the next morning without informing her and his mobile phone was also switched off. She tried contacting him multiple times but he was deliberately running away from her. He had physical relations with her on the false pretext of marrying her. Aforesaid statement was recorded vide Ex.PW-5/A. On the basis of the aforesaid statement, FIR No. 322/2013 (Ex.PW-2/A) was registered at PS Govind Puri for the offence punishable under Section 376 IPC.

5. SI Kusum Dangi sent the prosecutrix to AIIMS for medical examination with Lady Ct. Suman who got the prosecutrix medically examined.

6. On 26th May 2013, SI Shrikrishna alongwith Ct. Mahender arrested the appellant from his house at S-86, Sanjay Nagar Khera, Udham Singh Nagar, Uttarakhand vide arrest memo Ex.PW-1/A. His personal search was done vide personal search memo Ex.PW-1/E. He was brought to Delhi and sent for medical examination. His disclosure statement was recorded vide Ex.PW-9/A.

7. On completion of investigation, charge sheet was filed. Charge was framed against the appellant for the offences punishable under Sections 417/376 IPC vide order dated 27th September 2013.

8. Prosecutrix (PW-5) deposed in sync with her statement made to the police. She further added that when she had called the appellant on 7th May 2013 the call was attended by a lady who introduced herself as the wife of

the appellant. She further stated that when the appellant had come to her house on 8th May 2013 he was drunk and gave her beatings. During this incident her cousin sister Pinki called the police on 100 number. The police came to the spot and all of them along with the appellant went to the Police Station. She further stated that after running away the appellant gave her mobile number to his friends who used to call and abuse in filthy language. During the course of investigation, the brother-in-law of the appellant also met her and informed her that the appellant was married twice and had children. She had met the wife and children of the appellant at Saket court during court proceedings and was feeling stressed to attend the court proceedings due to which she gave her affidavit qua settlement. In her cross-examination she stated that her entire dispute with the appellant was over and she did not want to take any action against him on the condition that he would not threaten her in the future and would not try to contact her and her sister. She further admitted to the fact that they made physical relations with each other with their consent and due to her quarrel with the appellant she told him that she did not want to marry him.

9. Pinki (PW-8), corroborated the testimony of the prosecutrix. She further added that whenever the prosecutrix would ask the appellant about marriage he would beat her up and if she intervened the appellant would beat her too. On the day she called the police, who apprehended the appellant from his office. Later, he apologized to them and promised to marry the prosecutrix. She further stated that they found out about Nirmal Mandal's marital status during court visit when his wife and father came to court.

10. Dr. Manisha (PW-4), SR AIIMS deposed that on 14th May 2013 at

about 12:15 A.M., the prosecutrix aged 23 years was brought by her cousin sister and was alleging history of sexual intercourse with the appellant after falsely promising to marry her. She conducted the medical examination of the prosecutrix vide MLC Ex.PW-4/A. On examination, no external injury marks found on her person and her hymen was found torn.

11. Dr. Manjul Bijarnia (PW-10), Sr. Resident, Forensic Medicine, AIIMS stated that MLC of the appellant was prepared by Dr.Hans Raj vide Ex.AW-1/1. He identified the signatures of Dr.Hans Raj Singh on the MLC.

12. Appellant in his statement recorded under Section 313 Cr.P.C. stated that he met the prosecutrix along with one Amit at Rudrapur who did his insurance of Rs.1,00,000/-. When he went for verification of documents, he found out that it was done by a fake company. When he asked the prosecutrix to refund his money, she promised to do so within one month. After a month when he asked for the money, they quarreled with him and made a complaint to the police who arrested him. They got him released from jail and again made a complaint to the police after 13-15 days. The prosecutrix and her sister used to live with Amit who was a friend of his elder brother-in-law and already knew that he was married. He went to Tughlakabad Extension to meet Amit but never proposed to marry the prosecutrix.

13. Though compromise could not be a ground to acquit the appellant of the serious offence, however considering the facts that there are discrepancies in the case of the prosecution and the prosecution in her testimony admits that the relationship was consensual, the appellant is entitled to be acquitted.

14. Consequently the appeal is disposed of by setting aside the impugned

judgment of conviction and order on sentence. Appellant is directed to be released forthwith if not required in any other case.

15. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record and intimation to the appellant.

16. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 13, 2019

vj

