

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

% Decided on: 12th July, 2019

+ **CRL.L.P. 573/2017**

STATE

..... Petitioner

Represented by: Rajni Gupta, APP for the State
along with SI Badlu Ram, PS
Janakpuri

versus

KUNDAN KUMAR

..... Respondent

Represented by: Mr. Rahul Rohtagi and Syed
Ajmal Hasan, Advocates

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 22nd March 2017 whereby the learned Additional Sessions Judge acquitted the respondent for the offences punishable under Sections 376/506 IPC, the State has preferred the present leave petition.

2. Process of law was set into motion on the complaint of the prosecutrix wherein she stated that she came to Delhi in February 2014 and was working as a nurse at a Nursing home in Janakpuri, New Delhi from past one year. One boy namely Kundan used to work as a receptionist in the same nursing home who proposed to marry her multiple times but she refused by stating that she had a boyfriend. On 17th May 2016 at about 2 A.M., while she was on night duty along with the respondent, he asked her to talk to him but she refused on which he caught hold of her hand, forcibly took her to the changing room and forcibly made physical relations with her. When she shouted, he silenced her and forced himself upon her. When she got angry

and threatened him that she will make a complaint, he started crying and asked for forgiveness. She did not inform about the incident to anyone as she was scared. She later found out that she was pregnant and informed the respondent about it. He told her that since she was pregnant no one except him would marry her. On 25th May 2016, while she was on her way to work the respondent asked her to marry him to which she refused. On the respondent threatening her that if she did not marry him the society would not accept her, she was frightened and went along with the respondent to his friend's house in Ghaziabad. He took her to Arya Samaj Mandir where they got married. On 26th May 2016, they got married at Ghaziabad Court. Thereafter, he brought her back to Delhi and forcibly committed rape upon her. On the basis of the above statement, FIR No. 447/2016 (Ex.PW-5/B) was registered at PS Janakpuri for offences punishable under Sections 376/366/506 IPC. Statement of prosecutrix was recorded under Section 164 Cr.P.C. and the respondent was arrested. After completion of investigation, charge sheet was filed. Charge was framed for the offences punishable under Sections 376/506 IPC.

3. Prosecution examined thirteen witnesses to prove its case.
4. The prosecutrix was examined as PW-1 in court wherein she deposed in sync with her complaint made to the police. In her cross-examination she stated that on 26th May 2016, she had informed her boyfriend that the respondent was taking her for registration of their marriage and now that she was married to the respondent, he should forget her.
5. Dr. Abhay Arora (PW-2), proved the CCTV footage of the Nursing home for the night intervening 17th/18th May 2016 and stated that he did not notice any untoward incident as alleged by the prosecutrix.

6. Lala Ram (PW-6), landlord, stated that the prosecutrix and respondent were staying as tenants at his house after their marriage and the prosecutrix did not complain against the respondent.

7. Kundan in his statement under Section 313 Cr.P.C. stated that the prosecutrix voluntarily accepted his proposal of marriage and they got married with the consent of the parents of the prosecutrix. The marriage was also registered in Ghaziabad at the instance of the prosecutrix. Thereafter, under the influence of an NGO and people at her native place, she made the false complaint against him because of racial difference.

8. After having gone carefully through the evidence, this Court is of the view that there were several inconsistencies in the statement of the prosecutrix recorded under Section 164 Cr.P.C. and her testimony before the Court. There is nothing in her complaint before the police with respect to the incident dated 7th May 2016 although she has discussed the same in her statement under Section 164 Cr.P.C. In her testimony before the Court she has further stated that she was molested by the respondent on 4th May 2016 but no complaint has been made by her in this regard. Furthermore, the fact that the prosecutrix was being threatened by the respondent has not been proved. It is prima facie evident from the testimony of the prosecutrix that she willingly stayed with the respondent after their marriage. The factum of marriage and its registration has also been proved by the certificate of marriage which was admitted by the prosecutrix. Furthermore, the factum of pregnancy of the prosecutrix has also not been proved by the MLC. The prosecutrix placed on record documents pertaining to her abortion but it neither bears her name nor the process of conducting MTP or the name of the doctor who performed the said abortion. The photographs of marriage

placed on record indicate that the marriage was performed with the consent of the prosecutrix. Furthermore, no such incident of rape or forcibly taking her away to the changing room is seen in the CCTV footage of the nursing home which has been proved by Dr. Abhay Arora. The delay in lodging the FIR has also not been explained by the prosecutrix.

9. Considering the facts noted above this Court concurs with the view expressed by the learned Additional Sessions Judge. The impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 12, 2019
‘sk/ga’

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