

\$~79

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 171/2020 & CRL.M.A. 4131/2020 & CRL.M.A. 4130/2020**

STATE

..... Petitioner

Through: Ms Meenakshi Chauhan, APP
for State.

versus

SUMIT PHOGAT

..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
25.02.2020

%

VIBHU BAKHRU, J

1. The State has filed the present petition seeking leave to appeal against a judgment dated 18.09.2019, whereby the Additional Sessions Judge, FTC, Patiala House Courts had acquitted the respondent of the offences under Sections 376/506 of the IPC. The State contends that the Trial Court had erred in not appreciating that the testimony of the victim had been consistent with reference to the fact that the respondent had tried to establish physical relationship with the victim on the threat of disseminating an obscene video and distressed by such threats, the victim had jumped from the terrace/fourth floor of a building and fractured her legs.

2. The case of the prosecution is that the victim was friends with the respondent since 2012. On 11.05.2014, the respondent had taken her to Gurgaon on the pretext that he had to return some articles to his cousin brother – Amit. The victim alleged that on the said date, the respondent had established physical relations with her by promising her that he would marry her. On 21.05.2014, the respondent told her that a video had been made of them in a compromising position and that the said video was in the custody of his brother Amit. The said revelation shocked her and she tried to commit suicide. However, the respondent persuaded her not to do so by promising to marry her. The victim also alleged that on 23.05.2014 at about 4:30 am, the respondent called her to the terrace and allegedly harassed her by trying to touch her in an inappropriate manner. To avoid such harassment, the victim jumped from the terrace.

3. Thereafter, the victim made a complaint and consequently, FIR No. 1038/2014 under Sections 376/506 of the IPC was registered with PS Vasant Vihar. Subsequently, charges under Sections 376/506 of the IPC were framed and the respondent pleaded not guilty to the said charges and the matter was set down for trial.

4. In order to prove the guilt of the respondent, the prosecution examined fourteen witnesses.

5. The Trial Court noted that the first incident, as alleged, had taken place on 11.05.2014, whereas, the last incident had taken place on 23.05.2014. However, the complaint was made on 19.09.2014, which

was after a delay of four months. No explanation was provided in the complaint regarding the delay in lodging the said FIR.

6. In her deposition, the victim had stated that she had come to know from certain persons that the father of the respondent had been threatening her and her family that they would be harmed, if she was to make a complaint against the respondent. However, she did not state the name of the persons from whom she had heard the said threats. The Trial Court held that there was an inordinate delay in filing of the said FIR and the explanation regarding the delay in filing the same did not inspire any confidence. And, in the given circumstances, it was necessary to scrutinize the prosecution's case.

7. To ascertain the veracity of the prosecution case, the police had obtained CDRs of both the respondent and the victim. The Trial Court examined the CDRs from the period between 01.05.2014 and 23.05.2014. On perusing the same, the Trial Court noted that the respondent and the victim used to talk to each other frequently for long hours and such calls would extend from late at night till wee hours in the morning. The Trial Court also noted that the victim had admitted that the respondent and the victim were in a relationship since March, 2014. On the basis of her statement and the CDR records, the Trial Court concluded that the respondent and the victim were involved in a consensual relationship with each other.

8. The Trial Court, thereafter, proceeded to examine the evidence with reference to the incident dated 11.05.2014. The victim had alleged

that on the said date, the respondent had called her and asked her to accompany him to his brother's house to deliver some articles. She was waiting downstairs and thereafter, the respondent had called her and asked her to come upstairs. In the house, the respondent, on the pretext of false promises of marriage, had established physical relations with her.

9. The Trial Court noted that there was an inconsistency in the testimony of the victim with reference to the alleged incident. In her statement under Section 164 of the Cr.P.C., she had stated that when they had reached the flat of Amit (respondent's brother), she was waiting downstairs and the respondent had called her on her phone and asked her to come upstairs to have a glass of water. Whereas, before the Trial Court, she had deposed that the respondent had orally called her from the corridor and had asked her to come upstairs. Further, the Trial Court noted that the version of victim under Section 164 of the Cr.P.C. was not supported since the CDR records established that no calls were made by the respondent to the victim on the said date. However, the victim had made calls to the respondent.

10. The Trial Court also noted that the victim had taken the plea that she had gone with the respondent since he wanted to deliver articles to his brother's house. However, the Trial Court noted that the victim had not clarified or stated the nature of the articles, which the respondent sought to deliver in any of her statements. The Court noted that as per the CDR records, they had been conversing with each other for a long time during the previous night, and in light of the same, it was

improbable that the victim did not enquire from the respondent regarding the articles that he desired to deliver. The Trial Court held that the above indicated that the purpose of their visit was not to deliver articles to Amit, as testified by the victim. Further, the testimony of the victim that she had gone to Amit's house to deliver the articles, did not inspire confidence.

11. The Trial Court also considered the question whether any obscene video had been made by Amit at his house on the said date. The Court noted that the victim has herself testified to the fact that Amit was not present at his home when she had gone there. Amit was examined as DW3 and he had categorically testified that he was not in Delhi on 11.05.2014 and had gone to his native village in Uttar Pradesh. The IO had also concluded that no evidence had been found against him, which suggested that he had made the obscene video. The Trial Court noted that no such video was recovered from the victim's phone. In light of the same, the Trial Court held that Amit had not created any video and the testimony of the victim with reference to the fact that the respondent's brother had made a clipping of the incident on 11.05.2014 and the respondent was using the same to threaten her, did not inspire any confidence.

12. The Trial Court, thereafter, dealt with the issue as to whether the respondent had made any promise to marry the victim and proceeded to ascertain if the said promises were false. The Trial Court noted that the victim had admitted that on 22.05.2014, the respondent and the victim had gone to Munirka for the purpose of marriage. However, the victim

refused to marry him since she did not want to do so without the permission of her parents. The Trial Court held that the abovementioned fact clearly established that the respondent always had the intention to marry the victim and that he had not made any false promises to her in this regard. The Court held that the attempt to solemnize the marriage also ruled out the alleged theory of the obscene video clipping. This is because it is improbable that the victim would have agreed to marry the respondent, if such an obscene video existed and had been used by the respondent to threaten her.

13. The Trial Court, thereafter, examined the question whether there was any evidence on record to prove the charge of criminal intimidation. The victim had alleged that on 22.05.2014, the victim and the respondent had attempted to marry one another. However, she was unable to go through with the same since she did not want to go against the wishes of her parents. The respondent and the victim had a fight with reference to the same. The victim alleged that on 23.05.2014, the respondent had called the victim. When she reached the terrace, the respondent tried to make physical relations with her and she jumped from the terrace. The respondent threatened her that if she told her parents, he would show the obscene video to everyone and he would get her parents killed by hiring *goondas* from Uttar Pradesh, as he belonged to a family having a criminal background.

14. The Trial Court noted that there was no video clipping with the respondent or Amit. Further, the father of the respondent was in the Indian Army at the relevant time and no evidence was adduced to

indicate that the respondent belonged to a family having a criminal background. The Trial Court held that the testimony of the victim, that she was threatened by the respondent that he would get her parents killed as he belonged to a family with a criminal background and that he would share the obscene video, did not inspire confidence.

15. The Trial Court noted that it was the prosecution's case that after jumping from the terrace, the victim was taken to Army Hospital, Delhi Cantt. The victim had suffered injuries but she deposed that she was fully conscious. However, her statement was not recorded in the Army Hospital by the IO and the Court noted that there had been a lapse on part of the police in not doing so and the police official had deposed falsely by stating that the same had not been recorded since the victim was unconscious. The victim had clearly stated that she was fully conscious after the incident.

16. The Trial Court noted that Subedar M. Dubey, who had been posted at the Military Hospital, had recorded the statement of the victim (Ex. DW1/A). The prosecution had contended that the said statement was not admissible since DW1 was not authorised to record the victim's statement. However, the Court took the same into account and noted that the said statement disclosed a completely different set of facts. As per the said statement, the victim had not alleged anything against the respondent. She stated that she had stood on the boundary wall of the terrace twice. First time, the respondent got her to come down. However, the second time, she had slipped and fallen down. She also stated that when they had reached Munirka, it was closed and would

open after two hours. The Trial Court noted that neither the said statement of the victim had been collected by the police nor was the victim confronted with reference to her statement. The Trial Court held that omission on part of the police indicated that the investigation had not been conducted fairly.

17. The Trial Court perused the jail visiting records and noted that the victim had visited the respondent five times in jail. In her cross examination, she had admitted to visiting the respondent in jail with the mother of the respondent. However, the jail visiting records indicated that she had visited the respondent alone. The Trial Court held this was an indication of a consensual relationship between the respondent and the victim.

18. The Trial Court also noted that the victim had admitted to attempting to commit suicide on several occasions in her cross examination. The Trial Court held that it was not the case of the prosecution that the victim had attempted to commit suicide on those occasions at the instance of the respondent. The victim had further deposed that the reason for her attempting to commit suicide was frustration. However, no investigation was conducted with reference to the alleged cause as stated by the victim and it was difficult to ascertain the cause of making such attempt. However, it was an admitted case of the prosecution that neither the respondent was the cause nor was he charged for abetment to commit suicide.

19. For the aforesaid reasons, the Trial Court acquitted the

respondent of the offences under Sections 376/506 of the IPC.

20. The call records (CDRs) for the relevant period (May 1st 2014 to May 23rd, 2014) was carefully analysed by the Trial Court. An examination of the said details is quite revealing. The said call records indicate that most of the calls were made by the complainant to the respondent and not vice versa. For example, on 05.05.2014, the complainant had made thirty calls to the respondent and the respondent had called her only once. On 11.05.2014, the complainant had made fifteen calls to the respondent and the respondent had made a single call to the complainant. On 12.05.2014, the complainant had made sixteen calls to the respondent and the respondent had not made any call to her. This pattern was repeated on all days.

21. It is evident from the call records that it was the complainant who was making frequent calls to respondent. Undeniably, both the respondents and the complainant had developed an intimate friendship, as is evident from the fact that they would talk to each other for several hours each day and their conversations would carry on from very late at night till early morning. The call records from 09.05.2014 to 11.05.2014 were carefully examined and it indicated that the complainant and the respondent had talked to each other for several hours and some of the calls lasted for over an hour and a half. The call records also established that the complainant was at Aya Nagar at 2.15 p.m., as she had received a call on her mobile phone at that time. The complainant had alleged that the respondent had established physical relationship with her on 11.05.2014 at the house of his brother and there is no dispute that this

was with the consent of the complainant. However, according to her, her consent is vitiated as it was secured by a false promise of marriage. In this regard, it is relevant to note that on the intervening night of 10th and 11th May, 2014, both the complainant and the respondent had lengthy conversations with each other. The complainant had called the respondent at about 11.58 p.m. and the said call had lasted for one hour, thirty-three minutes and fifteen seconds. Thereafter, she had again called the respondent at 1.37 a.m. and this call had also lasted for over twenty-one minutes. Given their strong friendship, it is highly doubtful that the complainant would have been induced to establish physical relationship only on the pretext of marriage and not on account mutual attraction and affection. It is evident that the complainant and the respondent had developed a strong and intimate friendship and it is more likely that their entering into a physical relationship was founded on their attraction and affection for each other rather than on any inducement.

22. The prosecution's case that the complainant had been blackmailed by the respondent on the threat of disseminating her video, is also not substantiated by any evidence on record. First of all, the complainant had not seen any video. Second, the respondent has denied the same. Third, it is also conceded by the complainant that the brother of the respondent (Amit) was not present at his house and therefore, it is difficult to understand as to how he would have made any video of the complainant. Fourth, no such obscene video was recovered from the phone of the victim. Fifth, the complainant has also not indicated

as to how such video could have been made.

23. The respondent's brother (Amit) has testified that he was not even present in Delhi on that occasion and there is no evidence to establish otherwise.

24. Even assuming – though this Court finds little reason to do so – that the respondent had established physical relations with her on the promise of marriage; the allegation of committing an offence under Section 376 of the IPC cannot be substantiated as according to the complainant, the respondent was ready and willing to marry her and had taken her to the temple in Munirka. However, she had declined to get married and he had left her there. Thus, he cannot be accused of making a false promise. Therefore, the allegation that her consent to engage in sex with the respondent was vitiated as it was secured on a false promise of marriage, is plainly unsustainable.

25. This Court finds no infirmity with the decision of the Trial Court in acquitting the respondent. The present petition is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

FEBRUARY 25, 2020

MK/pkv