

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

% Judgment delivered on: 19th March, 2020

+ CRL.REV. P. 778/2016

SAROJ KUMARI

..... Petitioner

versus

THE STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr.Chetan Sharma, Senior Advocate with Mr.I.J.S.Mehra,
Ms.Tabbassum Firdause, Advocates.

For the Respondent: Mr.Hirein Sharma, APP for the State
with SI Rajeshwar, P.S.Palam Village.

Mr.Amit Nag and Mr.P.S.Rana, Advocates for R-2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 20.09.2016, whereby, the Trial Court has discharged respondent No.2 of the offences under Section 376/506 IPC.

2. Subject FIR was registered under Section 376 IPC, on the complaint of the petitioner made on 13.10.2015 wherein she had alleged that her husband had died in the year 2006, she has a small child and was very upset in connection with her husband's case when she came in contact with respondent No.2.

3. It is alleged that respondent No.2 taking advantage of her started increasing his closeness with her and against her wishes made physical relationship and when she protested he is alleged to have stated that he was all alone, so would marry her and take care of her and her son. He also promised to purchase a plot in her name.

4. Thereafter, it is alleged that, in the year 2007 a 50 sq.yard plot was purchased and she provided Rs.2 lakhs which she had taken from her father for purchase of the plot. For constructing a house on the said plot, she gave 10 tolas gold and 750 grams of silver. When the house was built they shifted into the house and started living in the house since the year 2008.

5. It is alleged that for several years respondent No.2 continued to make physical relations with her and whenever she would ask for marriage, he would evade the answer. Subsequently, it is alleged that she came to know that he was having relations with several women and when she asked him about it he got angry and started beating her son and threatened to commit suicide.

6. It is alleged that later on respondent No.2 took advance from a third party for sale of the property and the purchaser asked her to vacate the house and when she protested, the advance was returned. Subsequently she came to know that he had purchased the house in his own name. Thereafter he stopped coming to the house and she then came to know that he was already married and was living with his

family and one day she went to his house when her family members started fighting with her and called police control room on 100. Thereafter when she went to his office he got angry and started fighting with her on which she made a call to police control room on 28.06.2015. It is alleged that he thereafter threatened to throw her out of the house. It is on these alleged facts that she contended that he had exploited her for several years and cheated her by taking money and gold and purchasing the property in his own name.

7. Trial Court has in the impugned order noticed that there was a delay of 9 years in lodging of the FIR. Trial Court has noticed that as per her complaint in the year 2006 respondent No.2 is alleged to have established physical relations with her on the pretext of marriage and the relations continued till the year 2015 and at no point she raised any alarm or hue or cry or lodged any report with the police against the alleged sex on the pretext of marriage. It is only when she came to know that the house was in the name of the respondent No.2 and a notice was served upon her to vacate the house she approached the police and lodged a complaint.

8. Trial Court has noticed that the petitioner prosecutrix and the respondent No. 2 were acquainted with each other before the alleged incident and on friendly relationships. Trial Court has noticed that if the prosecutrix was not a consenting party then there was no occasion or reason not to report the incident to the police for the alleged heinous crime/rape committed in the year 2006. Trial Court has

opined that the consent to physical relations, if any, was an act of conscious reason as she was a mature lady.

9. In the facts of the case, Trial Court has opined that it was an act of promiscuity on the part of the prosecutrix and not an act induced by misconception of facts. There was also no medical evidence to support the version of the prosecutrix that she was raped.

10. Trial Court has noticed that in her complaint itself the prosecutrix had alleged that a quarrel had taken place with the respondent on 28.06.2015 which was later on compromised.

11. In the complaint made on 28.06.2015 there is no allegation of rape on the pretext of marriage by respondent No.2. Further, the local enquiries made at the time of investigation revealed that petitioner and respondent were residing as husband and wife for the last nine years and neighbours had stated that they were under an impression that both of them were married.

12. It may be seen that the complaint lodged by the prosecutrix, based on which the FIR was registered, alleges that it was in the year 2006 that respondent made physical relations with the petitioner for the first time without her consent. Admittedly, no complaint has been made by the petitioner since the year 2006 till 13.10.2015, when the complaint is lodged for the first time.

13. The allegation is not that physical relation was established on any promise to marry but the allegation is that in the year 2006 respondent made physical relations against her wish and then stated that he would take care of her and her child and thereafter parties started living together and continued to live together for nearly nine years.

14. Apart from the fact that there is substantial unexplained delay in making a complaint there are also no details provided by the prosecutrix as to when, where and how any physical relation was established by the respondent against her wishes.

15. In her statement recorded under Section 164 Cr.P.C. the allegation of the prosecutrix is that she was introduced to respondent No.2 by a common friend in respect of her husband's Motor Accident case and thereafter they became friends. He is alleged to have stated that he had nobody and wanted to marry her and even take care of her child. Thereafter, it is alleged that, in the year 2007 they jointly purchased a house and he had taken Rs.2 lakhs from her to invest in the house, however, he got the house registered in his name.

16. It is alleged that he used to come to the house off and on and in the year 2008, despite her refusing, he made physical relations with her and when she asked him to marry her he evaded. It is alleged that he did not marry her but kept on making physical relations with her.

17. Reading of the statement under Section 164 Cr.P.C as also the complaint based on which the FIR was registered show that there are material contradictions in the version of the prosecutrix herself which raises doubt on the reliability of the allegations made by the prosecutrix.

18. In her statement given to the police she had stated that respondent had made physical relations with her in the year 2006 against her wishes and thereafter they jointly purchased the house in the year 2007 whereas in her statement under Section 164 Cr.P.C the allegation is that they first jointly purchased the house in the year 2007 and in the year 2008 he made physical relations with her against her wishes.

19. Even in the complaint dated 28.06.2015 there are no allegations of any forcible relationship having been established by the respondent No.2 with the petitioner.

20. The conflicting version of the prosecutrix raises serious doubt on the credibility of the allegations made by her. There are contradictions as to whether there was any promise made by the respondent to the prosecutrix for marriage before any physical relation was established or whether the promise was made after a forcible relationship.

21. For the purposes of framing of a charge not only suspicion but grave suspicion that the accused has committed the offence is required.

22. The finding of the Trial Court, that on consideration of the facts and circumstances of the case and after sifting and weighing the evidence for a limited purpose of finding out whether or not a prima facie case is made out against the accused, the material placed does not disclose grave suspicion against the accused for framing a charge for having committed the offence punishable under Section 376 and 506 IPC, does not suffer from any infirmity.

23. I am also of the view that on consideration of the material placed before the Court, grave suspicion does not arise in the present case of the respondent No.2 having been committed the offence under Section 376/506 IPC.

24. I find no ground to interfere with the impugned order whereby the Trial Court has discharged the respondent No.2 for the offence under Sections 376/506 IPC.

25. I find no merit in the petition. The petition is accordingly dismissed.

26. Order *Dasti* under signatures of Court Master.

MARCH 19, 2020/rk

SANJEEV SACHDEVA, J