

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 518/2017 and CRL.M.A. 14892/2017**
STATE Petitioner

Through: Mr Amit Gupta, APP for State.
SI Kuldeep, PS Maurya
Enclave.

versus

SONAL SAHANI & ORS. Respondents

Through: Mr Vinod Pandey, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **11.02.2020**

VIBHU BAKHRU, J

1. The State has filed the present petition seeking leave to appeal against a judgment dated 13.07.2016 passed by the ASJ (Spl. FTC), Rohini Courts, Delhi (hereafter the 'impugned judgment'), whereby the respondents (five in number) were acquitted of the offences punishable under Sections 376/406 of the Indian Penal Code, 1860 (IPC) and Section 4 of the Dowry Prohibition Act, 1961.

2. It is the petitioner's case that the impugned judgment is bad in law inasmuch as, the Trial Court has held the delay in filing an FIR in the case to be fatal to the case of the prosecution. Further, the petitioner contends that the Trial Court erred by not convicting the respondents based on the sole testimony of the prosecutrix, which is sufficient to prove the prosecution's case.

3. The prosecution's case, in brief, is that respondent no. 1 raped the prosecutrix on 14.02.2010 who, at the material time, was aged fifteen years and had done so on several occasions prior to the said date. Respondent no. 1 was engaged to the prosecutrix on 12.07.2008 and it is alleged that on the said occasion, he was gifted a motorcycle, gold chain, cash etc. but, subsequently, a further demand of ₹5 lakhs was made by the respondents from the family of the prosecutrix for redecorating their house. It is also stated that in case of not acceding to the respondents' demand, the respondents threatened to kill the brother of the prosecutrix. Thereafter, respondent no. 1 started pressuring the prosecutrix to establish physical relationships with him stating that there was no difference between an engagement and a wedding. And, on the pretext of taking the prosecutrix to meet his family members, he took her to his house where he forcibly established a physical relationship with her and thereafter, continued to do so several times.

4. On 14.02.2010, respondent no. 1 called the prosecutrix to meet him on the pretext of it being Valentine's Day and took her to his house where the prosecutrix found no one present. It is the prosecution's case that respondent no. 1 once again forcibly established sexual relationship with her on the said date.

5. Thereafter, FIR No. 112/2010 was registered with PS Maurya Enclave against the accused and his family members (respondents herein). The accused were charged with the commission of the offences punishable under Sections 376/406 of the IPC and Section 4 of the

Dowry Prohibition Act, 1961. The accused pleaded to be not guilty and the matter was set down for trial.

6. During the course of the trial, the prosecution examined fifteen witnesses.

7. By the impugned judgment, the Trial Court acquitted the accused persons of all the charges on the grounds that, *inter alia*, the testimony of the prosecutrix could not be relied upon as there were inconsistencies in her testimony. The allegations were not substantiated by any corroborative evidence. Further, the mother of the prosecutrix (who was examined as PW-12) contradicted the testimony of the prosecutrix. The Trial Court could not find any credible evidence to establish a demand for dowry. And, the FSL report did not indicate the presence of semen after the medical examination of the prosecutrix.

8. The prosecutrix, who deposed as PW3, stated that the accused would come outside her school and would try to woo her. At her father's behest (who admittedly, at the material time, was ailing and would remain admitted to AIIMS), the accused came to her house and told her parents that he wished to get married to PW3. Thereafter, she and the accused were engaged on 12.07.2008. On the said date, PW3 stated that her family gave articles to the accused's family which were beyond their capacity. After their engagement, the accused asked PW3 to accompany him to his house to meet his parents in Paschim Vihar, Delhi. Upon reaching his house, she found that there was no one present and

thereafter, the accused forcibly established sexual relations with her. PW3 stated that this incident occurred two or three days after her engagement with the accused. Even when she would be alone in her own house, the accused would visit her house and forcibly establish sexual relations with her. She further deposed that the accused and his family would forcibly ask her to sleep with the accused on days when she would visit their house. PW3 stated that whenever her parents would visit the house of the accused, his family would demand ₹5 lakhs to renovate their house.

9. PW3 stated that on 04.02.2010, she had given a complaint and had informed her mother that she had physical relations with the accused due to demands made by his family. She also stated that one of the accused, Himanshu Sahani, had demanded ₹25,000 per month for ten years to perform her marriage with the accused. Thereafter, she lodged another complaint with PS Bindapur on 07.02.2010, however, this matter was settled with the intervention of the police.

10. She alleged that on 14.02.2010, the accused asked PW3 to meet him and took him to his house on the pretext of meeting his parents. PW3 stated that he again forcibly established sexual relations with her. In her cross-examination (which was conducted by the Id. APP), she affirmed that on 06.02.2010, when her parents had gone to the residence of the accused to talk with his parents, a quarrel had broken out and her mother had made a call at 100 number and a report was made to PS Bindapur.

11. In her cross-examination, she stated that she and the accused were in love and wanted to marry each other. She could not recollect as to whether in her complaint dated 04.02.2010, she had stated that after two or three days of her engagement, the accused had forcibly established sexual relations with her. She affirmed that she had stated this fact to the police in her complaint recorded on 23.03.2010. She further stated that she even told this fact to the Id. MM in her statement under Section 164 of the CrPC. She stated that the complaint dated 04.02.2010 was written by her mother and was signed by her. She stated that she had mentioned in the said complaint that the accused would forcibly establish sexual relations with her, however, on being confronted with the said complaint (Ex. PW3/B), no such fact was found to be mentioned therein.

12. The mother of the prosecutrix deposed as PW-12. She stated that her daughter was engaged to the accused (Sonal Sahni) on 12.07.2008 and she had spent more than her capacity on the engagement ceremony. She stated that after engagement, the accused used to come to her house. She stated that whenever she used to visit the house of the accused, his parents used to suggest that a floor be constructed over their house where her daughter would reside, they also informed her that the same would require ₹5,00,000/- to construct and further ₹5,00,000/- for interior decoration. She claimed that the parents of the accused had demanded ₹10,00,000/- for the said purpose and had told her that it was her responsibility to do so. She also stated that Himanshu Sahni, brother of the accused Sonal Sahni had demanded ₹25,000/- per month for ten

years as the accused Sonal Sahni was not working. She also claimed that the accused Sonal Sahani's sister demanded a gold set. She further stated that on 04.02.2010, her daughter had told her that she was taken by the accused Sonal Sahni 4-5 days after the engagement on the pretext of getting her to meet his parents but on reaching his house, she found that there was no one present there and he had allured her to establish physical relationships with her without her consent. She stated that her daughter had further told her that she was forced to sleep with the accused Sonal Sahni whenever she used to visit their house. She stated that her daughter had given a complaint to PS Maurya Enclave on 04.02.2010 addressed to the DCP. She stated that she had also given a complaint on 04.02.2010 (Ex.PW3/C) to keep her earlier complaint pending because she wanted to settle the matter with the accused. She testified that on 06.02.2010, she along with her daughter (the prosecutrix), visited the house of the accused and confronted the accused with the facts as disclosed by her daughter including physical relations established by the accused with her. She stated that the parents of the accused Sonal Sahni acknowledged that they were aware of the said facts but found that the same was not unnatural because the prosecutrix was going to be their daughter-in-law after her marriage with their son. She stated that, thereafter, she along with her husband went to PS Bindapur. At that time, her daughter had been concealed by the accused in their house and therefore, she could not accompany her to the police station. She stated that, thereafter, when the SHO asked her about the prosecutrix, she was called by the accused Sonal Sahni and the matter was compromised. PW2 was also cross-examined and in

her cross-examination, she contradicted her earlier statement and said that the prosecutrix had accompanied her to the police station on 06.02.2010.

13. The Trial Court, after examining the evidence obtaining in the case found that the testimony of PW3 (prosecutrix) and PW12 (the mother of the prosecutrix) was not credible as they had contradicted their own testimonies. The Trial Court further found that the allegations of kidnapping made by them were found to be incorrect. The Court also found that the allegations that the accused Sonal Sahni established physical relationships with the accused was vague as no specific incident except an incident on 14.02.2010 had been mentioned. The Court also found that the accused Sonal Sahni had established physical relations with the prosecutrix on 14.02.2010 was also difficult to accept as prior to the said date, several complaints had been filed and there was much acrimony between the parties. In such circumstances, it was not accepted that the prosecutrix would once again go to the house of the accused especially after the parents of the accused were fully aware that she and the accused Sonal Sahni had sexual intercourse on several occasions.

14. The Trial Court reasoned that since the prosecutrix and PW12 were not sterling witnesses, it was essential that the allegations levelled by them be corroborated by other evidence. However, the same was found wanting. Accordingly, the Trial Court had acquitted the accused of the offences for which they were charged.

15. At the outset, it is necessary to note that the present appeal has been filed after an inordinate delay of over 300 days. The petitioner has filed an application seeking condonation of delay. The petitioner has sought to explain the delay by stating that the appeal could not be filed within the stipulated period, since the file pertaining to the case had been sent to various authorities and after passing through various channels, the opinion regarding case being fit for challenge before this Court was sent to the Department of Law and Justice, Legal Affairs. It is stated that on 25.05.2017, the report on discharge was prepared by the Additional Public Prosecutor and the Chief Prosecutor was asked to prepare detailed grounds of appeal against the acquittal of the accused persons. It is, thus, seen that almost more than ten months had elapsed before the Chief Prosecutor had even asked to prepare the grounds of appeal. It is stated that on 30.05.2017, the relevant grounds of appeal were sent to the Director of Prosecution and on 09.08.2017, the Director of Prosecution had directed the file to be sent to the learned Standing Counsel for necessary action. This Court is unable to countenance the aforesaid delay. It is also well settled that the delay has to be explained on a day to day basis. However, in the present case, there is no explanation for the period from pronouncement of the impugned judgment on 13.07.2016 till 24.05.2017, except to state that the said time was taken in bureaucratic processes. Thus, the application for condonation of delay is liable to be rejected.

16. Notwithstanding the above, this Court has also examined the decision of the Trial Court on merits. This Court concurs with the view

of the Trial Court that the prosecutrix (PW3 and PW12) could not be considered as sterling witnesses and it would not be apposite to convict the accused solely on the basis of their testimony. First of all, it is noticed that there were four complaints that were filed. The first complaint was filed by the prosecutrix and/or her mother, on 31.01.2010. There was no allegation in the said complaint regarding the accused had established any physical relationships with the prosecutrix. The second complaint was filed on 04.02.2010 (Ex.PW3/B). There was no such allegation in this complaint as well. The third complaint was filed on 07.02.2010 and it was alleged that the prosecutrix had been kidnapped on the intervening night of 6/7.02.2010. It is stated that the said disputes were also settled with the accused. According to them, the date of their marriage would be fixed after the prosecutrix had sat for her examinations. The fourth complaint was filed on 22.03.2010 and the FIR bearing no. 112 of 2010 was registered. In her complaint, the prosecutrix had alleged that on 14.02.2010, the accused had called her outside and had taken her to his home where she found that there was nobody there and he had established a physical relationship with her by telling her that they are going to be married shortly and their family members were fully aware of their relations. She stated that, thereafter, once again his behaviour turned negative (*fir se iska Behaviour mere sath kharab ho gaya*). She also stated that she had filed a complaint on 04.02.2010, but the same had been kept pending as she wanted to explore the possibility of resolving the issues. In her complaint, she had provided no specific information regarding the accused establishing any relationships with her. It is relevant to note that in her cross-

examination, the prosecutrix admitted that she had not been restrained or kidnapped by the accused or his family members. Thus, it was established that a false complaint had been made in this regard. Although the mother of the prosecutrix, PW12 had testified that on 06.02.2010 the prosecutrix had been concealed by the accused and therefore, was not present at the police station. In her cross-examination, she admitted that the prosecutrix had accompanied her to the police station. In view of the above, the prosecutrix and her mother had been discredited as credible witnesses. Thus, the Trial Court had rightly proceeded to evaluate whether there was any corroborative evidence to support the allegations and found that there was no such evidence.

17. In her testimony, PW12 stated that the prosecutrix had informed her on 04.02.2010, that the accused had established physical relations with her. However, no complaint in this regard was made at the material time. Although a complaint was filed regarding kidnapping, however, the allegation of an offence under Section 376 of the IPC was not levelled.

18. This also raises certain doubts as to the allegations made by the prosecutrix and her family.

19. In the given facts, the Trial Court also held that it was improbable that the incident, as reported, occurred on 14.02.2010 as it was not accepted that the prosecutrix would be permitted to go with the accused

Sonal Sahani to his house or that the prosecutrix would do so without informing her mother. This is considering the backdrop of acrimony between two families. The Trial Court noted that even assuming that the prosecutrix had accompanied Sonal Sahani to his house and he had misbehaved with her in any manner, she had promptly reported the same to her mother. Given that she as well as her mother had already filed complaints with the police.

20. The view taken by the Trial Court is a plausible view and it is well settled that the Appellate Court would not interfere with the decision of acquittal unless it finds manifest error in the said decision. (*See: Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450*)

21. This Court does not find any patent or manifest error in the impugned order and therefore, finds no reason to interfere with the same. The petition is, accordingly, dismissed, both on the grounds of limitation as well as on merits.

22. The pending application is also disposed of.

VIBHU BAKHRU, J

**FEBRUARY 11, 2020
RK**