



2024:DHC:3237



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on 23.01.2024**Pronounced on: 25.04.2024*

+ CRL.A.581/2019, CRL.M.A.21519/2023 & CRL.M.A.21520/2023
DHANPATI @ DHANWANTI Appellant

Through: Mr. S. K. Rai, Mr. Pankaj Sharma and
Mr. R.D. Rana, Advs. with appellant
in person.

versus

STATE & ANR

..... Respondents

Through: Mr. Hemant Mehla, APP for State
with Mr. Dipanshu Meena, Adv. with
SI Satyender Gulia PS Kotla
Mubarakpur
Mr. Manoj Chaudhary, Mr. Sachin
Anand, Mr. Vipul Choudhary and Ms.
Srishti Panwar, Advs. for R-2

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present appeal has been filed by the appellant under Section 372 of the Code of Criminal Procedure, 1973 against the impugned judgment dated 29.01.2019 passed by the Learned Additional Session Judge- Special Fast Track Court, South East District, Saket Court in Session Case No. 2197/2016, arising out of FIR No. 606/2016 under Sections 376/506 IPC registered at P.S. Kotla Mubarakpur whereby the respondent no. 2 herein has been acquitted of the charges framed against him.

2. The facts leading to the filing of the present appeal are as follows:



- (i) On the intervening night of 11.07.2014 and 12.07.2014, information was received telephonically and the officials of the respondent no. 1 met the prosecutrix at Kotla Mubarakpur. The next day i.e. on 12.07.2014, the prosecutrix came to the police station and submitted a written complaint wherein she disclosed that she was employed as a Home Guard in different police station and during the year 1994-1995, she was posted at PS Hauz Khas, wherein she came in contact with the respondent no.2, who at the relevant time was posted as the SHO.
- (ii) It was alleged by the prosecutrix that the respondent no.2 disclosed that he was a divorcee and stated to the prosecutrix that he was willing to marry the prosecutrix and started having sexual relations with her on the said pretext of solemnization of marriage. The prosecutrix further disclosed that she had taken up the issue of marriage to the respondent no.2 various times but the same was not heeded to by the respondent no.2.
- (iii) It was also the case of the prosecution that the respondent no. 2 visited the house of the prosecutrix and made sexual relations with her on the assurance that he will marry her and also gave her threats. He also took the prosecutrix to various hotels and assured to provide a bungalow, vehicle and financial assistance and to accompany her till her dying breath.
- (iv) In the year 2012, the respondent no. 2 stayed away from the prosecutrix for a period of 5-6 months and stated that he will join her company once he recovers from his illness. In this regard, the



prosecutrix submitted that she tried to visit the respondent no. 2 and asked for his address on the telephone but the same was never provided to her. Later on, the prosecutrix reached the house of the respondent no. 2 at Gurgaon and stood outside his house for a period of 304 days but he never came to meet the prosecutrix. She also alleged that one day, she was threatened by two persons. Thereafter, the prosecutrix came in contact with Mr. K.D. Bhardwaj, who is a mutual acquaintance of both the parties and he assured the prosecutrix that she will not be harmed by the respondent no. 2.

(v) It was the case of prosecution that despite the aforementioned incident and after the assurance given by Mr. K.D. Bhardwaj, the relations between the prosecutrix and the respondent no. 2 became normal and the respondent no. 2 asked for 2-3 months time from her. It is alleged that the respondent no. 2 took the prosecutrix to Chandigarh on 25.09.2013, where they stayed in a hotel and sexual assault was committed upon her by the respondent no.2.

(vi) She further alleged that on 05.04.2014, prosecutrix was again taken to Patna by the respondent no. 2, where he established physical relations with her and they returned to Delhi on 09.04.2014 and continued to have sexual relations with her till 23.04.2014. Thereafter, he threatened her that in case she visits Gurgaon, she would be shot and later on, he switched off his phone.

(vii) In view of the above allegations contained in the complaint of the prosecutrix, the subject FIR dated 19.04.2014 under Sections 376/506 IPC came to be registered at P.S. Kotla Mubarakpur.



3. The learned counsel for the appellant submits that the impugned judgment has been passed without appreciating the evidence which has been placed on record by the prosecution which undoubtedly establishes the guilt of the respondent no.2. It is submitted that the impugned judgment is passed on the basis of presumptions and conjectures and the non-appreciating of prosecution's evidence, which has resulted into an acquittal of the respondent no. 2. This according to the learned counsel makes the impugned judgment unsustainable in law. He further submits that the testimonies of the witnesses were not appreciated by the learned Trial Court and any discrepancies noted by the learned Trial Court in the testimony of the prosecutrix/appellant were only minor in nature and do not go to the root of the matter.

4. *Per Contra*, the learned counsel for the respondent no.2 has supported the judgment of acquittal in favour of respondent no. 2 and has submitted that the impugned judgment is well reasoned and has been passed after appreciating the entire attending facts and circumstances of the present case. It is also submitted that impugned judgment has been passed after duly appreciating the evidence led by the prosecution. It is further submitted that in the absence of any apparent illegality, the decision of the learned Trial Court ought not to be disturbed routinely. It is urged that the learned Trial Court has taken into account the inherent contradictions in the testimony of the prosecutrix and only thereafter acquitted the respondent no. 2.

5. I have heard the learned counsel for the petitioner, as well as, the learned APP appearing for the State and the learned counsel for the respondent no. 2 and have perused the material placed on record.



6. Before proceeding to appreciate the rival contention of the parties, it would be relevant to briefly recapitulate the law in respect of the scope of interference in an appeal against the judgment of acquittal. In this regard, relevant would it to be refer to the judgment dated 12.02.2024 of the Hon'ble Supreme Court in ***Mallapa v. State of Karnataka***,¹ wherein the Supreme Court has laid down the principles which are to borne in mind by an appellate Court while deciding an appeal from acquittal, which read as under:-

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive – inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) **If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;***
- (iv) **If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;***
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of*

¹ 2024 INSC 104.



evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

- (vi) ***In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."***

(emphasis supplied)

7. Further, in the case of ***Suman Chandra Vs. Central Bureau of Investigation, 2021 SCC OnLine SC 3425*** wherein the challenge was to the acquittal of the accused, the Hon'ble Supreme Court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the decision reads thus:

"It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts and circumstances of the present case, ought not to have been reversed or interfered with by the High Court."

(emphasis supplied)

8. Similarly in the case of ***Mrinal Das & Others Vs. The State of Tripura, (2011) 9 SCC 479***, the Hon'ble Court held that interference in a judgment of acquittal can only be made if the judgment is "clearly unreasonable" and there are "compelling and substantial reasons" for reversing the acquittal. The relevant paragraph of the decision reads as under:



"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed".

(emphasis supplied)

9. In *Chandrappa v. State of Karnataka*,² the Hon'ble Supreme Court laid down certain principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal. It was observed that presumption of innocence that operates in favour of the accused is further reinforced, reaffirmed and strengthened by the judgment of acquittal passed by the Trial Court. The relevant paragraph of the judgment reads as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
- (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances",*

² (2007) 4 SCC 415.



“distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

- (4) ***An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.***
- (5) ***If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”***
(emphasis supplied)

10. A common thread which runs through various decisions noted above is that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Further, if the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal. The appellate court has to bear in mind that the trial court had the benefit of seeing the witnesses in the



witness box and presumption of innocence gets doubled by the order of acquittal and the accused gets an additional shield of protection.

11. To be noted that while a submission was made by the learned counsel for the petitioner that the impugned judgment is based on surmises and conjectures, but the learned counsel was unable to point out any perversity in the judgment. However, to do complete justice and having regard to the seriousness of the allegations made by the prosecutrix in her complaint, this Court is proceeding to examine the impugned judgment and the findings recorded therein in the light of the evidence on record.

12. The finding of the learned Trial Court that the conduct of the prosecutrix and the respondent no. 2 establishes that their relationship was not limited to their official relationship has not been challenged by either of the parties. In fact, the impugned judgment also records that the learned counsel for the accused has admitted the physical intimacy between the accused/respondent no.2 and the prosecutrix. Therefore, the said finding has attained finality. Thus, the only question left for determination before this Court is to ascertain whether the said physical intimacy between the parties amounted to rape.

13. To find an answer to the aforesaid moot question, it is apposite to advert to the provisions of Section 375 IPC, as well as, Section 90 IPC, which are as under:-

“375. Rape.-- A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or



(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-

First. -Against her will.

Secondly - Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly -With or without her consent, when she is under eighteen years of age.

Seventhly - When she is unable to communicate consent.

Explanation 1. - For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of



verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. - A medical procedure or intervention shall not constitute rape.

Exception 2 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

“90. Consent known to be given under fear or misconception.—
A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.—*if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*

Consent of child.—*unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”*

14. From the reading of above quoted provisions, it is clear that to constitute an offence of rape in the backdrop of the factual matrix of the present case, it has to be established that the prosecutrix gave her consent for sexual relationship with the respondent under the misconception of fact i.e. he would marry her.

15. At this stage, relevant would it be to refer to the findings of the learned Trial Court on which the acquittal of respondent no.2 is premised, which read thus:



“39. As per the statement of the prosecutrix she came in contact with the accused in 1994 while doing her official duties whereafter the accused told her that he is a divorcee and allured her stating that he will marry her despite knowing that prosecutrix was married and whose husband has left her. So far as the first episode of sexual assault is concerned, the prosecutrix has stated that one day the accused committed rape upon her after giving some liquid laced with sedative due to which she felt giddy and thereafter, he gagged her mouth and raped her against her wishes and after the said incident the accused assured her that he will marry her. It is not the case of the prosecution that she ever tried to make complaint against the accused for the said conduct. She has not mentioned all these facts of giving sedative or gagging her mouth or of rape on the first occasion by the accused, in her complaint Ex.PW1/A on which the present FIR is registered. When the prosecutrix was contradicted during her cross examination on the aspects of various omissions regarding gagging of mouth, administration of sedative etc. in the rest room, she stated that she could not state these facts as she was in tension. But her CDRs shows that she has made several calls to the advocates and one D.V. Dutt, Retired ACP before registration of the FIR, which is reflective of the fact that complaint is filed by her after due deliberation. In her statement before the court, she has also levelled allegations that after the first episode the accused used to take her to hotels, used to give her intoxicants and used to commit rape upon her after giving threats to her. All these facts are also missing in her complaint Ex.PW1/A and she was confronted on all these material points in her cross examination but she could not give any justifiable reason as to why she missed to mention these material facts in her complaint Ex.PW1/A. The testimony of prosecutrix as recorded in the court on all these material points show that she has improved upon her testimony and exaggerated the facts which were not in the complaint to police.

40. As per the statement of the prosecutrix, the physical intimacy between the accused and prosecutrix continued for



more than 20 years i.e. from 1994 till 2014. During this entire period, as per the version of the prosecutrix, the accused was beating her, threatening her, raping her but she never tried to make any complaint against the accused during these 20 years period. The prosecutrix is a quite mature lady. She is employed woman and is aged about 44 years. She has studied upto 8th class. She is having the adequate intelligence and maturity to understand if the accused had any inclination to marry her or not. During this long period of 20 years she must have gathered that the accused was having no intention to marry her. Moreover, as per the defence of the accused he was married and this fact was known to the prosecutrix. Though the prosecutrix has not admitted her knowledge on the point of marriage of the accused but the prosecution itself has examined PW12HV Nihal Singh who had deposed that in 1994-1995 he was posted as Constable in Police Station Hauz Khas as Chittha Munshi where the accused was posted as SHO and the prosecutrix was working as Constable Home Guard. This witness had deposed that prosecutrix used to be posted at Uphar Cinema for searching and checking and the wife and children of the accused used to come at Uphar Cinema for watching the movie and she used to take them to Uphar Cinema and used to drop them back to the police station. This testimony of PW12 is sufficient to discredit and disbelieve the statement of the prosecutrix that she was not aware that the accused was already married. In the court the prosecutrix has tried to improve upon her testimony when she stated that she was taken to Chandigarh on 25.09.2013 by the accused on the pretext that he would talk with a Pandit about their marriage. This fact is missing in her complaint made to the police. She also exaggerated on the points of various threats given by the accused to her.

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42. The inconsistencies, improvements, embellishments and contradictions coming in the testimony of the prosecutrix go to the root of the case. Her testimony cannot be said to be of



sterling quality. The things appear to have not happened in the manner they have been projected. It was held in the case of Dev Kumar Juneja Vs. The State (Delhi Administration) 1996 JCC 638 that law on the question of variance between different statements of a witness at different stages is that small variations or omissions will not justify a finding that the witness is a liar and his testimony be discarded. However, vital omissions, merit consideration and if on vital points it appears to the court that witness has tried to improve the case, such a witness will have to be discarded.

*43. The prosecutrix is a 44 years married working woman who was in the same field of profession as that of accused. She is admittedly 8th class pass though, she denied to read and write Hindi but her complaints to different authorities show that she can understand Hindi. In the history given to the doctor in the MLC Ex.PW1/B at the time of her medical examination she has mentioned that she came to know after about 10 years of their relationship that the accused is lying on the point that he is a divorcee but she continued to make physical relations with him for 20 years and after staying in such a relationship for such a long period, she has come to the court alleging each incident of physical intercourse between them to be rape after intoxicating her. Such statement of the prosecutrix is not believable and convincing. She is not a trustworthy witness. **Her testimony leads to the inference that right from the first episode of her physical intimacy with the accused and till the last episode, she made physical relations with the accused out of love and affection and none of the act can be termed as rape.** Her indulging into physical intimacy with the accused for long 20 years is nothing but promiscuity on her part.*

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48. Ld. Counsel for accused has argued the prosecutrix was suffering from a disease called paranoid schizophrenia in which the patient suffering from this ailment suffer from a condition in which they are suspicious that everybody is going to harm



him/her. It is argued by the Defence Counsel that police has placed reliance on the MLC of the prosecutrix which mentions her as suffering from this disease and recommendation is made for her detailed treatment and this is strengthen by filing of various FIRs by the prosecutrix against various persons in the past. There is also a reference to a letter written by the prosecutrix requesting for her transfer on the ground of this mental ailment. So far as this argument of Ld. Counsel is concerned, none of the said medical records are duly proved to lead to the conclusion that the prosecutrix was diagnosed with paranoid schizophrenia. Further, Ld. Counsel for accused has referred to various FIRs allegedly filed by prosecutrix against other persons to claim that the complainant is notorious in lodging false and frivolous FIRs. Neither those FIRs referred by the accused in the arguments were put to the prosecutrix nor they are part of the record nor their outcome is known nor those FIRs can be made the basis of judging the veracity of the statement of the prosecutrix in this case as any previous conduct of the prosecutrix cannot be taken into consideration while considering the facts of this case. Further, at one time the accused is alleging the prosecutrix to be mentally ill whereas on the other hand, he is arguing that she is very shrewd, clever and mechanizing woman who knows to manipulate and fabricate the facts and circumstances and filed various FIRs and adopted the modus operandi to extort money. A patient who is mentally ill could have been so calculative, as is argued by the Defence Counsel, is not conceivable and worth apprehending.

49. In view of above discussion, the irresistible conclusion which can be drawn in the present case is that the relations between the accused and the prosecutrix were consensual and not on misconception of fact. There was no promise of marriage. They were deeply in love with each other. She did not appear to have consented for sexual relationship in consequence of misconception of fact arising from his promise of marriage.”

16. The case of the prosecution in a nutshell is that the respondent no.2 had committed rape on the false pretext of marriage and the first incident



which is reported by the prosecutrix is of the year 1994-1995, however, perusal of the testimony of the prosecutrix reveals that no cogent explanation has been put forth by the prosecutrix as to why a complaint was not lodged by her upto 19.04.2014. The unexplained delay of 20 years in lodging of the FIR assumes greater proportions when it is contrasted with the fact that it is the prosecution's own case that the prosecutrix was posted as a Home Guard in a Police Station. Further, the CDRs of the prosecutrix which have been proved on record as DW1/A show that she was in constant contact with advocates as well as a retired ACP of Delhi Police before lodging of the complaint.

17. It is trite law that the delay in lodging of the FIR, for which no plausible explanation has been offered, is undoubtedly fatal to the case of the prosecution. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in **Rajesh Patel v. State of Jharkhand**³ wherein 11 days delay to register the FIR for which the justification given was not found to be cogent, was held fatal to the prosecution case. The relevant paragraphs of the said decision read as under:

"16. Further, there is an inordinate delay of nearly 11 days in lodging the FIR with the jurisdictional police. The explanation given by the prosecutrix in not lodging the complaint within the reasonable period after the alleged offence committed by the appellant is that she went to her house and narrated the offence committed by the appellant to her mother and on the assurance of Purnendu Babu, PW 3, the mother remained silent for two to four days on the assurance that he will take action in the matter. Further, the explanation given by the prosecutrix regarding the delay is that at the time of commission of offence the appellant

³ (2013) 3 SCC 791



*had threatened her that in case she lodges any complaint against him, she would be killed. The said explanation is once again not a tenable explanation. Further, in the reason assigned by the High Court regarding not lodging the complaint immediately or within a reasonable period, it has observed that in case of rape, the victim girl hardly dares to go to the police station and make the matter open to all out of fear of stigma which will be attached with the girls who are ravished. Also, the reason assigned by the trial court which justifies the explanation offered by the prosecution regarding the delay in lodging the complaint against the appellant has been erroneously accepted by the High Court in the impugned judgment [Criminal Appeal No. 58 of 1999, decided on 14-11-2006 (Jhar)] . In addition to that, further observation made by the High Court regarding the delay is that the prosecutrix as well as her mother tried to get justice by interference of PW 3, who is a common friend of both of them and PW 4, the doctor with whom the prosecutrix was working as a nurse. **When the same did not materialise, after a lapse of 11 days, the FIR was lodged with the jurisdictional police for the offence said to have been committed by the appellant.** Further, the High Court has also proceeded to record the reason that the prosecutrix had every opportunity to give different date of occurrence instead of 14-2-1993 but she did not do it which reason is not tenable in law. Further, the High Court accepted the observation made by the learned trial Judge wherein the explanation given by the prosecutrix in her evidence about being terrorised to be killed by the appellant in case of reporting the matter to the police, is wholly untenable in law. The same is not only unnatural but also improbable. **Therefore, the inordinate delay of 11 days in lodging the FIR against the appellant is fatal to the prosecution case. This vital aspect regarding inordinate delay in lodging the FIR not only makes the prosecution case improbable to accept but the reasons and observations made by the trial court as well as the High Court in the impugned judgments are wholly untenable in law and the same cannot be accepted.** Therefore, the findings and observations made by the courts below in accepting delay in*



lodging the FIR by assigning unsatisfactory reasons cannot be accepted by this Court as the findings and reasons are erroneous in law.”

18. It is in the statement of the prosecutrix that the physical intimacy between the respondent no. 2 and the prosecutrix had spanned over a period of 20 years i.e. from 1994 till 2014. The learned Trial Court noted from the testimony of the prosecutrix that during the said entire period the respondent no.2 was beating her, threatening her, raping her but she never tried to make any complaint against the accused during these 20 years period. Further, considering the fact the prosecutrix is a quite mature lady, she is employed woman and is aged about 44 years, she has studied upto 8th class and was having the adequate intelligence and maturity to understand as to whether the accused had any inclination to marry her or not, the learned Trial Court took the view that during this long period of 20 years the prosecutrix must have gathered that the accused was having no intention to marry her. This Court is of the considered opinion that the aforesaid view taken by the learned Trial Court is a plausible view and no perversity can be attributed to the same.

19. Another importance facet of the present case is that the accused had claimed that it was within the knowledge of the prosecutrix that the accused/respondent no. 2 was married and accordingly, the consent given by the prosecutrix was not given under the pretence of marriage. Though the prosecutrix did not admit the fact that the respondent no. 2 is married, but in this regard, the learned Trial Court referred to the testimony of HC Nihal Singh who was examined as PW-12, who stated that during the year 1994-



95, he was posted as a constable at PS Hauz Khas and was working as 'Chitha Munshi' and that the prosecutrix was posted at Uphar Cinema for searching and checking. He further stated that wife and children of the respondent no.2 used to visit the cinema and it was actually the prosecutrix who used to take them to the cinema and would drop them back at the police station. A perusal of the testimony of PW-12 manifests that the same is clearly not in line with the version of the prosecution that the respondent no.2 represented himself as a divorcee to the prosecutrix. Accordingly, the learned Trial Court returned a finding that the testimony of PW12 is sufficient to discredit and disbelieve the statement of the prosecutrix that she was not aware that the accused was already married. This Court does not find any perversity in the finding so recorded by the learned Trial Court.

20. This Court is conscious of the principle of law that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice in the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.⁴

⁴ State of U.P. v. Pappu : (2005) 3 SCC 594



21. Keeping in mind the aforesaid legal position, this Court has proceeded to examine the testimony of the prosecutrix, who was examined as PW-1 and the following emerges from her testimony:

(i) In her examination-in-chief the prosecutrix stated that the respondent no. 2 would call the prosecutrix in his room on one pretext or the other. As regard the first instance of rape she alleged that on one day he committed rape upon her against her wishes in the rest room of his office by gagging her mouth. The respondent no.2 had also given liquid laced with sedative. However, when confronted with her compliant Ex.PW1/A, she admitted that she did not state in her complaint that the respondent no.2 had gagged her mouth and raped her in the rest room nor did she state that intoxicants and liquid laced with sedative which resulted into giddiness, were given to her.

(ii) Likewise, in her examination-in-chief the prosecutrix had stated she was taken to Chandigarh by the respondent no. 2 on 25.09.2013 on the pretext that he would talk to a *Pandit* about their marriage but in her cross-examination she admits that no such allegation was made by her in her complaint Ex.PW1/A. Similarly, another improvement has been made by the prosecutrix that the respondent no. 2 took the prosecutrix to Patna for treatment of her knees, a fact which she admitted is not stated in the complaint.

(iii) In her testimony the prosecutrix has also stated that after the first episode the respondent no.2 would take her to hotels, used to give her intoxicants and used to commit rape upon her after giving threats. However, when confronted with her complaint Ex.PW1/A, the



prosecutrix admitted that she has not stated the fact of giving intoxicants, giving beatings or torture in hotel, in her said complaint.

(iv) Similarly, it is also borne out from the testimony that the prosecutrix when confronted with her complaint Ex.PW1/A and MLC Ex.PW1/B, she admitted that the threats with regard to which she deposed in her examination-in-chief, there was no reference of the same in the complaint, as well as, in the MLC.

22. The aforesaid contradictions, improvements and inconsistencies in the statement of the prosecutrix goes to the root of the matter and the learned Trial Court noting the same has rightly concluded that the prosecutrix is not a witness of sterling quality. No other corroborative evidence has been pointed, rather none exists, either direct or circumstantial, which could lend assurance to her testimony. Therefore, it will not be safe to convict the respondent no. 2 based on the sole testimony of the prosecutrix.

23. As far as the charge under Section 506 IPC is concerned, the view taken by the learned Trial Court of the evidence on this aspect is that the prosecutrix did not file any complaint regarding the threats which have allegedly been extended by the respondent no. 2 for a period of 20 years prior to the lodging of FIR, therefore, there is no evidence on record to show that the prosecutrix was intimidated in any manner, rather she continued to make physical relations with the respondent no. 2 by accompanying him to various hotels outside Delhi. The relevant part of the judgment of the learned Trial Court reads as under:

“52, So far as the offence under Section 506 IPC is concerned, the prosecutrix has alleged that she was being criminally



intimidated by the accused and was even beaten by him during these years of relationship. However, she did not lodge any complaint against the accused during 20 years of relationship prior to lodging of this FIR and as such, there is no evidence to lead to an inference that any alarm was caused in her mind on account of those threats by the accused as despite receiving the threats she was making physical relations with the accused, visiting different hotels and places outside Delhi with him.”

This finding of the learned Trial Court in light of the evidence on record also appears to be a plausible view and the same does not suffer from any perversity warranting interference.

24. Keeping the aforesaid discussion in perspective, this Court finds no ground to interfere with the impugned judgment dated 29.01.2019 passed by the Learned Additional Session Judge- Special Fast Track Court, South East District, Saket Court in Session Case No. 2197/2016. Consequently, the present appeal filed by the appellant is dismissed and is disposed of accordingly.

25. Pending application(s), if any, also stand disposed of.

26. Bail bonds submitted on behalf of the respondent no. 2 stand discharged.

VIKAS MAHAJAN, J.

APRIL 25, 2024
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