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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 21.02.2025

+ **CRL.L.P. 535/2022**

THE STATE (GNCT OF DELHI)

.....Petitioner

Through: Mr. Hitesh Vali, APP
 WSI Sanoj Yadav, PS IGI Airport

versus

SANDEEP MEHTA ALIAS MICKEY MEHTA

.....Respondent

Through: Mr Amit Khanna, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking leave to appeal against the judgment dated 25.03.2022 passed by the learned ASJ/ Spl. FTC/ PHC/NDin Sessions Case No. 42/2021 arising out of the FIR No. 267/2020 PS IGI Airport wherein the learned Trial Court acquitted the respondent under section 376, 354A, 328, 34 of IPC.
2. The brief facts are that the prosecutrix had befriended the respondent through Facebook. The respondent represented her to be owning several clubs and promised to arrange a job for her in Delhi. The prosecutrix came to Delhi on 18.11.2020 and stayed at Hotel Roseate



House in AeroCity, Delhi. On 19.11.2020, the respondent took her to Connaught Place and Greater Kailash and on the way, she was persuaded to consume Ginger Ale and thereafter, she lost her control. The respondent accompanied the prosecutrix to the hotel room where the respondent established forcible sexual relationship. Hence the FIR.

3. After completion of investigation, chargesheet was filed against the respondent and charges were framed under Sections 376, 354A, 328, 34 of IPC.
4. The prosecution examined total 2 witnesses whereas the respondent did not lead any evidence.
5. Learned Trial Court, after recording the evidence, acquitted the respondent for the offences punishable under section 376, 354A, 328, 34 of IPC. Relevant paragraphs are extracted below:-

“15.....

16. In her testimony she has stated that in the year 2020, she was working as free lancer for Event Management. On 18.11.2020 she came to Delhi and stayed in Roseate House Hotel. Accused Mickey Mehta already knew her and he called her as his new club was launched/inaugurated. Accused called her on the pretext of providing her some work. On 19.11.2020 at 7.00 pm she had come along with her friend Naveen, who had met him for the first time. They had met at the hotel Lobby of Roseate House Hotel. She further deposed that both the accused took her to cafe of accused Mickey Mehta. They took her in a car. Thereafter, accused Naveen was dropped at his house. Thereafter, accused Mickey Mehta took her to her hotel where they had sex in the hotel room. She further stated that it was consensual sexual relationship.



She further deposed that accused told him that he was not going to fulfill his promise of to be with her and providing a suitable job, then they had a verbal altercation. The accused further told that he will try to find a way out of helping her and not going to abandon her and find a way out. She further deposed that thereafter they went out of the hotel and accused left her at Vivekanand school and went away saying that he would be coming back after 5 minutes but when he did not come, she lodged the complaint against the accused.

She also denied the suggestion of Ld. Addl. PP that accused had committed any sexual intercourse with her forcibly. She identified her complaint Ex.PW1/A, MLC Ex.PW1/B, MLER of sexual violence Ex.PW1/C (7 pages), her OPD card Ex.PW1/D, her statement u/s 164 Cr.PC as Ex.PW1/E, site plan Ex.PW1/F and pointing out memo as Ex.PW1/G.”

6. It is stated by Mr. Wali, learned APP that in the present case, even though the witnesses have resiled from their version, in case the testimony of the prosecutrix, her statement under Section 164 of Cr.PC, evidence of medical expert is taken into consideration, the same may be sufficient for conviction. Reliance is placed on ***Selvamani v. The State rep. By the Inspector of police, 2024 INSC 393.***
7. It is true that in the cases of sexual offences, the sole testimony of the prosecutrix can form the basis of the conviction of the accused. However, the Courts have to be extremely careful while examining the sole testimony of the prosecutrix as cautioned in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92.*** In this case, the Hon'ble Supreme Court has observed that the accused can be convicted solely on the testimony of the prosecutrix,



if the same is inspiring confidence of the Court. Since both the prosecutrix as well as the accused have a right for a fair trial, thus, if the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence, such as, medical evidence or the surrounding circumstances. The relevant para is extracted below:-

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

8. Relevant part of the testimony of the prosecutrix is extracted below:-

“..... The accused persons had taken me to Cafe of accused Mickey Mehta, one restaurant namely, Uber and third was club lounge, the name of which I do not recollect. I was taken in a car which was driven by accused Naveen. We had food and also consumed liquor. The last place which was visited was Uber and from there I was to go back to my hotel room. We all were in the same car. Accused Naveen was dropped at his house. I do not know the locality. Thereafter, accused



Mickey Mehta took me to my hotel. We had sex in the hotel room. It was consensual sexual relationship.”

9. Once the prosecutrix has categorically stated that the relationship between the prosecutrix and the respondent was consensual and without any force, undue influence, coercion, the ingredients of Section 375 of IPC punishable under section 376 of IPC are not made out. The entire premise of section 375 of IPC is based on ‘consent’. For the sake of perusal, consent is explained in Explanation 2 of section 375 of IPC which is extracted below:-

“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.”

10. On bare reading of the text, when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act, it means that the consent is given.
11. The Hon’ble Supreme Court in ***Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191*** has observed as under:-

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also



a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

12. In the present case, the prosecutrix, at the time of alleged offence was of 27 years of age. The testimony of IO makes it clear that there was no test of alcohol consumption on the prosecutrix at the time of medical examination. IO further states that the CCTV footage of the Roseate House hotel shows that the prosecutrix was ‘conscious’ and oriented and entered the hotel alone and accused Sandeep Mehta entered the hotel thereafter. Further, the prosecutrix was ‘conscious’ and oriented, when she came out from said hotel after the alleged incident and the respondent was behind her as per CCTV footage.



13. Taking the best case of the prosecution, if the prosecutrix had not given her consent at the time of incident, then why the prosecutrix walked out without making any hue and cry and most importantly, why the hotel staff was not informed about the same at the first instance.
14. In view of the facts and circumstances not above, the ingredients of Section 328 and 375 of IPC are not made out. Further, the judgment passed by the learned Trial Court is well-reasoned and hence, does not require any interference.
15. The judgment relied upon by the learned APP i.e. *Selvamani (supra)* is not applicable as the accused therein was convicted on the basis of the evidence of the victim as well as her mother and aunt corroborating with the statement recorded under Section 164 CrPC and the evidence of the Medical Expert whereas in the present case, the prosecutrix in her chief examination has itself stated that it was consensual sexual relationship and there is no corroboration of the fact that the same was without the consent of the prosecutrix.
16. For the said reasons, the present petition is devoid of merits and hence, dismissed.
17. Consequently, the appeal becomes infructuous and the same is disposed of.

JASMEET SINGH, J

FEBRUARY 21, 2025 / (MS)
(Corrected and released on 05.03.2025)



Click here to check corrigendum, if any