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

+ **CRL.L.P. 716/2018**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
SI Chandani, PS Karol Bagh

versus

DANISH WAHID

.....Respondent

Through: Mr. Avinash, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.01.2025

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1. This is an application leave to appeal to challenge the judgment dated 18.08.2018 passed by the learned Additional Sessions Judge, Special FTC-2 (Central), Tis Hazari Courts, Delhi in SC No. 09/2016 arising out of FIR No. 1136/2015 registered at PS Karol Bagh, Delhi under Sections 366/376 IPC.
2. *Vide* the impugned judgement, the respondent was acquitted for the offences under Sections 366 and 376 of IPC by giving benefit of doubt.
3. The brief facts of the present case are that the prosecutrix had been living with her family on rent at B-3/18C, Fourth Floor, DDA Flats, Inderlok, Delhi and the respondent is the son of flat owner and she knew the respondent as they both use to talk normally on telephone.
4. On 14.12.2015, the prosecutrix had gone to Okhla for her work where the respondent met her and told her that he wanted to talk to her and he liked her and he wanted to marry her. On this, she told him that she



wanted to go home and did not want to talk to him.

5. Thereafter, the respondent insisted her to go with him and he took her in an auto to Karol Bagh in Hotel Krishna Palace, she did not know if it was a hotel as the respondent told him that he used to supply mobile phones there and persons there were known to him.
6. She further alleged that the respondent took her in a room in the said hotel and after closing the door, the respondent established physical relationship with her forcibly against her wish. She started bleeding and the respondent ran away from there.
7. Thereafter, she came to her house by Metro and did not tell anything to her family members being under fear that her family members would scold her and she wanted to talk to the respondent as to why he had done such an act with her.
8. She further alleged that later on when she asked the respondent to marry her, he clearly refused to marry her. Hence, she lodged a complaint on 17.12.2015.
9. The statement of the prosecutrix under section 164 of CrPC was recorded and the respondent was arrested on the identification of the prosecutrix.
10. On the basis of material available on record, the learned Trial Court framed charges against the respondent for the offence punishable under Sections 366 and 376 of IPC to which the respondent did not plead guilty and claimed trial.
11. The prosecution examined total 15 witnesses and the defense examined 3 witnesses.
12. After recording the evidence, *vide* impugned judgment, learned Trial



Court acquitted the respondent for the offences under Sections 366 and 376 of IPC.

13. Aggrieved by the impugned order of acquittal, the present leave to appeal is filed by the State.
14. Mr. Singh, learned APP appearing on behalf of the petitioner challenges the impugned judgment and submits that the testimony of the prosecutrix is of sterling quality and corroborated with the testimony of the Hotel Manager.
15. He further submits that it is clear that the act as stated by the prosecutrix happened on 14.12.2015.
16. Mr. Avinash, learned counsel appearing on behalf of the respondent supports the decision of the learned Trial Court.
17. I have heard learned counsels for the parties and gone through the material on record.
18. The operative portion of the impugned judgement is extracted below:

“85. When prosecutrix submitted that accused was standing outside her office. Now question arise as how accused come to know that prosecutrix was going there. Further, when she stated that it was weekly off of the market where accused was running his mobile shop why she accompany him or if accused has pressurized her to accompany him to his shop in Karol Bagh she must have informed lo her parents but she did not do so. Moreover, when she states that accused took her to Karol Bagh in a TSR she must have informed to the TSR driver that accused had taking her. As per prosecutrix, accused took her to hold by Auto. She must not



have entered into room of the hotel and must have informed to the hotel staff that accused was taken forcibly in the room. Further, prosecutrix has also deposed that after reaching inside the room of hotel accused bolted the door from inside and committed sexual intercourse with her forcibly against her will and without her consent. It is also very surprising that if accused committed sexual intercourse with her forcibly then she must have informed either to hotel staff or manager on coming out from room that accused had committed sexual intercourse with her.

86. It is strange that if prosecutrix was forcibly raped by accused without her consent why she had not made any hue and cry in the hotel or informed the hotel staff about the incident. Further, neither immediate PCR call was made nor any written complaint was made just after the alleged incident. It shows that she was consenting party with the accused.”

19. As per the story of the prosecution, the respondent was standing outside her office whereas there is no satisfactory explanation to how the respondent was there. Further, the respondent took the prosecutrix to hotel by an auto. If the story of the prosecution is to be believed then why the prosecutrix did not inform the auto driver that she was being forcibly taken and also did not made any hue and cry. In addition, if the prosecutrix was forcibly taken to hotel then why an attempt was not made to inform the staff of that hotel.
20. The conclusion arrived by the learned Trial Court that the respondent



could not have taken the prosecutrix to hotel room forcibly, bolted the door of the room from inside and committed sexual intercourse without her making any hue and cry, is justified as per the common prudence of a reasonable person.

21. Additionally, the prosecutrix did not inform the hotel staff or the manager regarding the acts of sexual intercourse after coming out of the room. The testimony of PW-11 i.e. Manager of the hotel shows that even though both the prosecutrix and the respondent had come to the hotel, however, she had not told anything to him regarding the incident having taken place in the hotel room. The relevant part of his testimony is extracted below:-

“On 14.12.2015 at about 05.00 pm - 06.00 pm accused alongwith the prosecutrix came to my said hotel for a room stating that "thodi der baithna hai". Accused had told me about the prosecutrix to be his girlfriend. I had given him room no. 207 on the first floor of the hotel. They had stayed there till about 07.30 pm - 08.00 pm.

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Prosecutrix had not disclosed anything either to me or to other hotel staff. It is correct that nothing had happened therefore, prosecutrix had not told anything either to me or to other hotel staff. Police had recorded my statement at police station.”

22. Learned Trial Court has also held that the prosecutrix failed to give any satisfactorily explanation with regard to 4 days delay in lodging the FIR.



23. Another important aspect which weighs with me is that the MLC Ex. PW-1/8 of the prosecutrix shows no injury mark, external mark of injury, hymen was found intact and it is nowhere opined that alleged sexual assault was committed forcibly.
24. Considering the totality of facts and circumstances, the ingredients of section 366 and 376 of IPC are not made out.
25. In this view of the matter, the prosecution has failed to prove its case beyond reasonable doubt and learned Trial Court after appreciating the evidence placed on record, has rightly granted the benefit of doubt to the respondent.
26. For the reasons as recorded above, I find no infirmity in the impugned judgment passed by the learned Trial Court, hence, the application seeking leave to appeal is rejected.
27. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

JANUARY 28, 2025/sp

Click here to check corrigendum, if any