



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

% Reserved on : 03.12.2025
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+ **CRL.A. 958/2017**

SANDEEP JHA @ SANDYAppellant

Through: Mr. Chetan Lokur, Advocate

versus

STATE OF NCT OF DELHIRespondent

Through: Ms. Shubhi Gupta, APP for State with SI
Rajesh Kumar, P.S. Vijay Vihar.
Mr. Shantanu Agarwal, Advocate
(Amicus Curiae Pro Bono) with
Mr.Parth Sarathi, Advocate for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the appellant seeking setting aside of the judgment of conviction dated 08.08.2017, whereby the appellant was convicted for the offence punishable under Section 376 IPC; and the order on sentence dated 21.08.2017 vide which he was sentenced to undergo RI for a period of 7 years alongwith payment of fine of Rs.1,00,000/-, in default whereof he would undergo SI for 9 months. It was further directed that out of the said Rs.1,00,000/-, Rs.90,000/- be released to the prosecutrix as



compensation under Section 357(1)(b) Cr.P.C. The benefit of Section 428 Cr.P.C. was extended to the appellant.

2. The Trial Court noted the facts of the present case as under:

“Prosecutrix/complainant 'S' (name withheld to protect privacy), resident of Hubli, West Bengal, studying in B.A. first year, lodged the first information report against accused Sandeep Jha @ Sandy s/o. Ameshwar Jha stating therein that she met and came to know accused during family function and thereafter their communication started on phone and also through SMS messages. Accused used to express his inclination to marry the complainant and on 24.12.2013, he came to Kolkata to meet her. On 25.12.2013, they went for outing. On 26.12.2013, under the influence and assurance of accused for marriage, complainant came to Delhi through Kalka Mali train. The tickets were already arranged by accused. In the train itself, physical relations were established between them. Accused thereafter brought the prosecutrix to A-186, Mange Ram Park, Rohini, Delhi, and also established physical relations on 28.12.2013. Thereafter, accused left from there and did not return. On 29.12.2013, accused came and informed the prosecutrix that he was already married and asked her to go back to Kolkatta. Prosecutrix called her father from Old Delhi, Railway Station and then her uncle and aunt came to Old Delhi Railway Station and took her to their home at xxxx. Thereafter, the matter was reported to the police and prosecutrix went to police Station alongwith her uncle and aunt”.

3. The prosecution, in support of its case, examined 16 witnesses. The material witnesses are the prosecutrix herself (PW-9), her aunt/Megha (PW-11), and her uncle/Manoj (PW-12). The medical examination of the prosecutrix was proved through Dr. Deepti Bhalla, examined as PW-8.

4. Learned counsel for the appellant contends that though the prosecutrix has alleged that physical relations were established on a false promise of



marriage, the appellant has denied the prosecution case of establishing physical relations with the prosecutrix altogether. He submits that the fact of the appellant's prior marriage was already known to the prosecutrix, which falsifies her allegations. Learned counsel has further drawn the attention of this Court to the prosecutrix's statement under Section 164 Cr.P.C., wherein she has stated that she still wants the appellant to marry her.

5. On the other hand, learned APP for State as well as the learned *Amicus Curiae* representing the victim have opposed the said contentions. Learned *Amicus Curiae* contends that the prosecutrix has cogently and consistently stated about the promise of marriage extended by the appellant. It was only under this promise that the prosecutrix travelled with the appellant to Delhi; and he, without disclosing his previous marriage, established physical relations with the prosecutrix during the train journey to Delhi, as well as after reaching Delhi.

6. The prosecutrix was examined as PW-9. She deposed that in the month of June 2013, she alongwith her parents had gone to District Darbanga in Bihar to attend the *mundan* ceremony of her cousin, and there she met the appellant who was a relative of her uncle 'S'. At the function, they got to know each other. The appellant took her mobile number from one of her cousins and on returning home she received a missed call from the appellant, whereafter they started talking to each other and exchanging messages. The appellant informed her that he was living in Delhi at that time. On 24.12.2013, the appellant came to Kolkata. On the next day, she and the appellant went for an outing in Niko Park and he told her that he wanted to marry her. She stated that even on earlier



occasions while talking on phone the appellant had proposed to marry her. Under this assurance, she left her house, boarded a train with the appellant, and came to Delhi. The appellant's friend arranged a room on rent, where the appellant and the prosecutrix established consensual physical relations. Thereafter, the appellant left her in the room and did not return. He rather informed that he would not perform marriage with her. She made a call to her *bhabhi* (wife of real brother) at Kolkata, who was already knowing about her relationship with the appellant. Her *bhabhi* informed her that the appellant was already married. Upon coming to know about the appellant's prior marriage, the prosecutrix lodged a police complaint against him (Ex. PW-9/A).

Notably, the prosecutrix had not stated about physical relations being established between her and the appellant in the train from Kolkata to Delhi before a leading question about the same was put to her by the learned APP for the State, whereupon she admitted the same to be correct.

In cross-examination, she stated that her uncle 'S' is her father's cousin brother, and whenever any function or ceremony took place in either family, invitations were extended to each other. She, however, denied the suggestions that whenever such family functions took place in the family of the appellant, her family used to receive an invitation card or that they ever attended. She stated that she had come across the appellant for the first time at the house of her uncle 'S' during the *mundan* ceremony. She denied that her uncle 'S' and one *Sonu* (another cousin of her father) had attended the marriage ceremony of the appellant in the year 2010. She however admitted that the family of 'S' and the appellant were on visiting terms for family functions. A suggestion was



given that in the *mundan* ceremony at the place of ‘S’, the entire family of the appellant, including his mother, father, and wife, were also present. She stated that she met only the appellant and nobody else from his family. She further denied the suggestion that at the said *mundan* ceremony not only her but even her family members were aware about the appellant’s marital status. She stated that her *bhabhi* (wife of real brother) knew about her relationship with the appellant since the time the prosecutrix received the very first call from the appellant. She, however, denied that her *bhabhi* was aware about the fact that the appellant was already married, or that her *bhabhi* had warned her not to enter into a relationship with the appellant as the same would have no future. Upon being asked from which train she had come to Delhi along with the appellant, she could not recollect the name and number of the train, however, she stated that it was three-tier AC.

7. The prosecutrix’s aunt, during her examination as PW-11, stated that on 29/30.12.2013, she received a call from the prosecutrix’s mother, whereupon she and her husband went to Old Delhi Railway Station and brought the prosecutrix to their house, where she disclosed about the incident in question.

In cross-examination, she stated that the prosecutrix’s uncle ‘S’ had stayed at her place when he had attended the marriage ceremony of the appellant. She also admitted that she was in telephonic contact with the family members of the prosecutrix, speaking to them once or twice in one or two months, and that they were also on visiting terms on the occasions of family functions and marriage.

8. The prosecutrix’s uncle, examined as PW-12, also deposed that he and



his wife (PW-11) had brought the prosecutrix to their home and that she had disclosed the entire incident to them. He stated that the prosecutrix is the daughter of his elder cousin brother, and that the appellant is also his distant cousin brother. He further deposed that he was aware of the appellant's marriage as 'S' had come and stayed at their place to attend the appellant's marriage.

9. The appellant, in his statement recorded under Section 313 Cr.P.C., has taken the defence that on the occasion of the *mundan* ceremony of the son of 'S' at Darbanga, he attended the same along with his family, including his wife. He stated that at that time only a limited interaction had taken place between him and the prosecutrix. He denied making any phone call to the prosecutrix, going to Kolkata, or coming back to Delhi with the prosecutrix in a train and then taking a room on rent in Delhi.

10. I have heard the learned counsels and carefully gone through the record.

11. It is apposite to note that though the prosecutrix has claimed exchange of messages and phone calls, no evidence in this regard was collected or placed on record. Though the purported mobile phone numbers of the appellant and the prosecutrix are on record, neither the phone of the prosecutrix nor that of appellant was ever seized. No CDR was collected for any of the phones, even though the same could have conclusively proved various aspects of the prosecution case.

12. Further, the prosecutrix has alleged that the appellant came to Kolkata and thereafter both of them travelled by train to Delhi. No documentary evidence in this regard has been placed on record either.



13. It has come on record that after coming to Delhi, the prosecutrix was allegedly taken to A-186, Mange Ram Park, Rohini, by the appellant. The prosecutrix has claimed that the appellant, after establishing physical relations with her, left her there alone; and the next day she called the appellant by taking the mobile phone of a lady residing in the neighbourhood. No investigation in this regard has been shown to have been carried out, and no relevant evidence has been placed on record.

14. A careful analysis of the testimonies of the witnesses shows that the prosecutrix and the appellant have common relatives, who were aware of the appellant's marital status and/or had attended the appellant's wedding, which took place prior in time to the relevant *mundan* ceremony. The prosecutrix herself has admitted that her family was close with said common relatives and was on visiting terms with them.

15. On an overall conspectus of the evidence that has come on record, the possibility that the factum of the appellant's marriage was known to the prosecutrix cannot be ruled out, and the prosecution case does not include any allegations as to the appellant promising the prosecutrix that he would end his pre-existing marriage and marry her instead. There is no allegation of any forcible sexual intercourse; in fact, the prosecutrix has admitted that the physical relations established between her and the appellant were consensual in nature.

16. It is also deemed apposite to note at this stage that the medical examination of the prosecutrix was conducted soon after physical relations were allegedly established between her and the appellant, however, she refused



to undergo internal examination during the same (MLC is Ex. PW-2/A). The FSL report on record (Ex. PW-4/A) has not yielded any positive results and does not support the prosecution case.

17. Considering all of the aforesaid, this Court, on an overall analysis of the record, is of the considered view that the benefit of doubt in the present case enures to the appellant. The impugned judgment and order on sentence are therefore set aside, the present appeal is allowed, and the appellant is acquitted.

18. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

19. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Shantanu Agarwal, Advocate, the learned *Amicus Curiae* appointed to represent the victim,

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 10, 2025
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