



2025:DHC:9282



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

% Reserved on : 23.09.2025
Pronounced on : 17.10.2025

+ **CRL.A. 1108/2017**

KUNDAN SINGH NEGIAppellant
Through: Ms. Manika Tripathy, Advocate
(DHCLSC) with Mr. Gautam Yadav
and Mr. Aakash Mohar, Advocates.

versus

STATERespondent
Through: Ms. Shubhi Gupta, APP for State with
SI Deepak Sharma P.S. Dabri
Ms. Kartika Sharma, Advocate
(*Amicus Curiae*) for the victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) Cr.P.C. against the judgment of conviction dated 23.09.2017, whereby the appellant was convicted for the offence punishable under Sections 376/323/342/506 IPC. Vide order on sentence dated 26.09.2017, the appellant was sentenced as under:-

- i. 7 years RI with fine of Rs.5,000/-, and in default of payment of fine to undergo 30 days SI, for the offence punishable under Section 376 IPC;



- ii. 3 months RI with fine of Rs.1,000/-, and in default of payment of fine to undergo 15 days SI, for the offence punishable under Section 323 IPC;
- iii. 3 months RI with fine of Rs.1,000/-, and in default of payment of fine to undergo 15 days SI, for the offence punishable under Section 342 IPC; and
- iv. 6 months RI with fine of Rs.1,000/-, and in default of payment of fine to undergo 30 days SI, for the offence punishable under Section 506 IPC.

All sentences were directed to run concurrently and the benefit of Section 428 Cr.P.C. was extended to the appellant.

The sentence of the appellant was suspended by this Court on 29.07.2022.

2. The appellant faced trial in the context of a complaint dated 14.11.2016, wherein the prosecutrix alleged that she had known the appellant for the past two months; that he had recorded a nude video of her and, under the threat of making the said video viral, had called her to his house on 10.11.2016, where he beat her, broke her mobile phone, and committed a forcible act of rape upon her at about 11:00 P.M. Again, on 12.11.2016, under the threat of making the aforesaid video viral and attempting to contact her family members, the appellant called the prosecutrix at about 3 A.M. Under the said threat, on 13.11.2016, the prosecutrix went to the house of the appellant with the intention of breaking up with him; however, the appellant hit her on the eye and tore her clothes off in the presence of two of his friends. The appellant also confined the



prosecutrix and snatched her mobile phone. The prosecutrix's family members informed the police about the said incident, consequent to which the appellant received a call from the police station asking him to allow the prosecutrix to go home. Once the prosecutrix had boarded the auto-rickshaw, the appellant also got in and again threatened her to accompany him, otherwise he would tear her clothes on the road itself. He also broke her mobile phone. She took the help of 3-4 boys present nearby and managed to flee. After reaching home, the prosecutrix lodged a complaint, and the FIR came to be registered. In this backdrop, the investigation commenced, the prosecutrix was medically examined, and her statement under Section 164 Cr.P.C. was recorded. The charge-sheet was filed, and charges were subsequently framed under Sections 323/427/376/506/342/201 IPC.

3. The appellant denied the prosecution case and claimed trial. During the trial, a total of 15 prosecution witnesses were examined. The primary witnesses included the prosecutrix herself, who was examined as PW-1; her brother, 'CK', examined as PW-7; and her friend, 'S', examined as PW-11. *Ranveer*, the owner of the premises where 'S', the friend of the prosecutrix, was residing, was examined as PW-5. *Vijay Kumar*, who had arranged the rented accommodation at Mahavir Enclave for the appellant, was examined as PW-6, and *Jagroop Rathi*, son of the owner of another property at Mahavir Enclave, was examined as PW-10. The MLC of the prosecutrix was proved through Dr. *G. Adhikari*, who was examined as PW-8. Dr. *Sanjay Rai*, who proved the MLC of the accused, deposed that there was nothing to suggest that the appellant was incapable of performing sexual intercourse, and was examined as PW-9. The remaining witnesses were nodal officers



who proved the call details collected during the investigation, and police officials.

4. Learned counsel for the appellant contended that the testimony of the prosecutrix, aged about 29 years, does not inspire confidence, as though she alleged commission of rape, the relations between them were consensual. He further submitted that the conduct of the prosecutrix in continuing to remain engaged with the appellant even after the registration of the FIR in the present case, and in fact staying with him for an extended period of time, belies her allegations. Insofar as the video is concerned, it was stated that the prosecutrix herself admitted that it was shot with her consent, and it is not the case of the prosecution that the said video was transmitted to anyone else, except to the prosecutrix herself, and that too on her asking. Lastly, it was submitted that even the MLC does not support the prosecution's case regarding the commission of rape, as only bruises were noted.

5. On the other hand, learned APP for the State, who is duly assisted by Ms. *Kartika Sharma*, learned *Amicus Curiae (pro bono)*, has contended that the prosecutrix in her deposition has stated about her ordeal and how the appellant has tortured and harassed her. The offence was committed under the threat of making the video viral and was not consensual. There was no delay in reporting the incident, as the prosecutrix has explained that the first incident was committed on 10.11.2016 and the complaint was initially given by the brother of the prosecutrix at P.S. Trilok Puri, who then relegated the prosecutrix to P.S. Dabri as the offence had taken place in that jurisdiction. The FIR in the present case was lodged on 14.11.2016.

6. The prosecutrix was examined as PW-1. In her deposition, she stated that she became friendly with the appellant, who was a friend of her



colleague, through Facebook in August 2016. Two days after Deepawali, he shot a video of her on his mobile phone at his house in which she was naked. Appellant saved the video in his mobile phone with her knowledge. On 10.11.2016, she received a call from the appellant asking her to come to his house, as he wanted further clarification regarding her relationship with one *Gaurav*. When she went to his house, he abused the prosecutrix and threatened to make the video viral. Under that threat, he committed rape upon her and also broke her mobile phone. Around 1:30 A.M., the appellant asked her to leave his house and dragged her downstairs. He made her sit in an auto-rickshaw; however, when the prosecutrix asked him to drop her home, the appellant took her back to his house. She further deposed that the appellant thereafter again established physical relations with her that night. She managed to leave his house the next day. On 13.11.2016, prosecutrix went to his house intending to break off the relationship. On that day, the appellant again slapped and abused her and removed her T-shirt and bra in the presence of his two friends, namely *Aman* and *Pandit*. She received a call from her sister, which was answered by the appellant. The prosecutrix screamed during the call, stating that the appellant was not allowing her to leave. Thereafter, her brother went to P.S. Trilok Puri, from where the appellant received a call instructing him to let the prosecutrix go home. The appellant brought her downstairs and got her an auto-rickshaw, whereafter he again began threatening her and refused to let her go. Nearby, 3-4 boys were present, whom she asked for help, upon which the appellant ran away. Thereafter, the prosecutrix managed to go home and complained to the police on 14.11.2016. During her testimony, a DVD of the video was played,



and she identified herself and the appellant in the said video. The DVD was exhibited as Ex. P-1.

7. In her cross-examination, the prosecutrix stated that she had visited the appellant's house out of her own will many times alone knowing well that he was residing alone with his cousin. She admitted that the nude video was shot by the appellant with her consent. She further admitted that whenever she visited his house, physical relations were established with her consent. She admitted that her relations with the appellant remained cordial until she disclosed her prior friendship with *Gaurav*, after which the appellant started suspecting, abusing, and threatening her. She also admitted that she had not met any of the appellant's family members besides the cousin residing with him. She admitted that there was a criminal case pending against the appellant in Lucknow and that she was waiting for its conclusion. She admitted that on 10.11.2016, the appellant had a conversation with her sister over the mobile phone in her presence and identified the recording of the conversation played vide a DVD. She further admitted that in February 2017, she went to meet the appellant in jail and deposited Rs.1,000/- in his account in jail. In the meantime, on 25.12.2016, she started residing with her friend 'S' in Noida, as her family had asked her to leave the house. Curious about the appellant's behaviour on 10.11.2016 and wanting to know the reason behind it, she called the appellant and asked to meet him at Rajiv Chowk. Thereafter, they went to stay at a hotel in Dwarka, where they stayed from 13.01.2017 till 16.01.2017. They were planning to marry and, in the meantime, also contacted a lawyer. Both of them thereafter went to the house of her friend 'S' at Noida, where the appellant again beat the prosecutrix, and the police were called, following



which he was arrested. The prosecutrix stated that during this time she had paid Rs.25,000/- to the appellant's landlord and also bore the expenses of the hotel stay. She denied the suggestion that she had stayed with the appellant even after registration of the present case as she had always wanted to marry him. She also denied the suggestion that the appellant never forcibly committed rape upon her.

8. 'CK' (PW-7), brother of the prosecutrix, deposed that on 13.11.2016, he called the prosecutrix at about 1:30 P.M. to know her whereabouts. She told him that the appellant was not allowing her to leave and had forcibly confined her. He then went to P.S. Mayur Vihar, where one police official, *Dheer Singh*, called the appellant. The appellant provided his address to the said official and agreed to come to P.S. Trilok Puri along with the prosecutrix. Upon returning home, the prosecutrix informed him that the appellant had snatched her money and also sexually assaulted her.

In cross-examination, he admitted that he was aware that his sister was having an affair with the appellant. Even after registration of the FIR, she continued meeting him. He further admitted that his sister had stayed with the appellant after the registration of the FIR. He also admitted that his sister used to visit the appellant at his house; however, he volunteered that it was sort of blackmailing.

9. The testimony of 'S' (PW-11), friend of the prosecutrix, stated that she received a call from the prosecutrix on 25.12.2016. At that time, the prosecutrix was disturbed, after which she stayed with her till 13.01.2017. She further deposed that one day, when the prosecutrix did not return home, she called her, and the prosecutrix told her that she was with the appellant.



On another occasion, when she returned home from her sister's house, she found police officials at her residence, who informed her about the incident.

In cross-examination, she admitted that she had never met the appellant personally, nor did she know with whom the prosecutrix was in a relationship or what the terms of their relation were.

10. *Ranveer* (PW-5), in his deposition, stated that he had rented out a room to one 'V', with whom another girl, 'S', had started residing thereafter. He further deposed that one day he noticed that the prosecutrix was also residing in the said room. In cross-examination, he stated that he could identify only the girl 'V' among all the girls who had resided in the room.

11. *Jagroop Rathi* (PW-10), in his deposition, stated that he had rented out a room to the appellant for one and a half months. In cross-examination, he stated that a girl was also staying with the appellant in said premises; however, he did not know who she was.

12. The MLC of the prosecutrix was proved by Dr. G. Adhikari (PW-8), who deposed that a bruise mark was noted on the left wrist, which could be due to a fall.

13. In his statement recorded under Section 313 Cr.P.C., the appellant admitted that two days after Deepawali, the prosecutrix had asked him to make a video of her, and the said video was sent to her on her insistence through WhatsApp. He also admitted that the prosecutrix had told him about her friendship with *Gaurav*. He denied almost the rest of the prosecution case and, while answering question no. 91, reiterated that the physical relations with the prosecutrix and the video were made with her consent. He further stated that one day, while the prosecutrix was receiving Facebook video calls from another man, he snatched her phone and saw that the person



visible in the video was sitting nude on his bed, whereafter he had an altercation with her. The prosecutrix and her sister thereafter demanded money, and for that reason, he has been falsely implicated in the present case.

14. On a strict appreciation of the evidence that has come on record in the form of the deposition of the prosecutrix, it appears that the relations between the appellant and the prosecutrix were friendly, and both parties also wanted to marry each other. The prosecutrix admitted that she used to visit the appellant's house on her own and also established consensual physical relations. The video shot during one such instance was recorded by the appellant at her asking and with her consent. Concededly, the said video was not transmitted to any third person. The victim has stated that the appellant's behaviour towards her turned hostile over her friendship with one *Gaurav*.

15. The victim had stated that on 10.11.2016, when rape was first committed, appellant's friend *Ankit* had come to whom the appellant had stated that he had called the victim for Rs. 5000/- but since she had met *Ankit* earlier, he did not believe it. *Ankit* was never examined in Court to corroborate her account. After the appellant had allegedly committed rape upon her, victim texted her family through appellant's phone that she was well and would come back in the morning. When the appellant tried to send her away, even calling her an auto, the victim insisted that he drop her to her house. On his refusal to do so, instead of leaving on her own or otherwise calling for help, the prosecutrix sat on the road and waited there till he came back and took her back to his house where he again allegedly established sexual relations without consent. They went together to the pharmacy to get



an emergency contraceptive pill the next day. She did not state anything to her family after getting back home.

16. Thereafter, the victim talked with the appellant on call, including through her sister 's phone, and again went to his house on 13.11.2016. She has deposed that there were two friends of the appellant, namely *Aman* and *Pandit* who were present there and the appellant forced her to remove her clothes and showed her to his friends in that state. For reasons best known to it, the prosecution chose not to examine *Aman* and *pandit*. The prosecutrix deposed that her brother had went to P.S. Trilok Puri from where the appellant received a call instructing him to let the prosecutrix go home. However, no details about this visit to the police station and call to the appellant have been placed on record. Neither any police official from PS Mayur Vihar was summoned.

17. The prosecutrix continued to interact with the appellant post registration of the FIR as well. She had met the appellant on 13.01.2017 and they had stayed together in a hotel till 16.01.2017 and were planning to marry as well. Then they went to live at the house of her friend in Noida from where the appellant was arrested. Even after arrest, the prosecutrix visited him in jail in February 2017 and also deposited money in his account.

18. A holistic assessment of these facts reveal that the prosecutrix was in a consensual relationship with the appellant, and her family was also aware about it. The relationship was not based, at the outset, on the pretext of marriage. She stayed at his home on a couple of occasions, and her family knew about it. The prosecutrix had the opportunity to escape and leave his company after the first incident, in fact he was forcing her to leave, but she persisted in staying back. They again established sexual relations, as per her,



without consent. However, they went together to get an emergency contraceptive the next day. Yet again, she chose to not leave his company, even in day time when there was enough help around. She did not reveal anything at home either. Even after the complaint being made, the prosecutrix chose to live with him and contemplated marriage. After his arrest, she visited him in jail and gave money. The prior and post-incident conduct of the prosecutrix points to the present matter being one where a consensual relationship turned sour. The Supreme Court in Prashant v. State of NCT of Delhi¹ was dealing with a case where though the prosecutrix had alleged that the accused had a forceful sexual relationship with her, she continued to meet him. They also had a plan to marry each other at some point which did not pan out. The Court, while quashing the FIR registered under Sections 376(2)(n) IPC, held as follows:-

“17. ...A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults.

19. In our view, taking the allegations in the FIR and the chargesheet as they stand, the crucial ingredients of the offence under Section 376 (2)(n) IPC are absent. A review of the FIR and the complainant's statement

¹ 2024 INSC 879



under Section 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship..”

19. In the present case, due to the prosecutrix's deposition hinting at a long and continued association with the appellant, which extended even past the forceful acts alleged and the appellant's arrest, creates doubts about the veracity of the incidents alleged and is not confidence inspiring. This Court hesitates to uphold the conviction solely on the basis of her testimony. The prosecution has not examined other persons who were witness to the acts of the appellant and could have deposed as to the authenticity of the allegations. MLC does not indicate anything which could substantiate the accusation of rape either. In view of the particular facts and circumstances of the case, the prosecution has failed to establish its case beyond reasonable doubt and the benefit of the doubt must be given to the appellant.

20. Consequently, appeal is allowed and impugned judgment as well as sentence are set aside and appellant is acquitted. Since his sentence already stands suspended, his bail bonds are cancelled and sureties discharged.

21. A copy of this judgment be communicated to the concerned Trial Court.

22. Copy of this judgment be also uploaded on the website forthwith.

23. Before parting, this Court records its appreciation for the valuable assistance rendered by Ms. Kartika Sharma, Advocate, learned *Amicus*



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Curiae (pro bono).

24. A copy of this judgment be communicated to the Trial Court as well as to the concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

OCTOBER 17, 2025
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