



2026:DHC:1414



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

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Judgment Reserved on: 16.02.2026

Judgment pronounced on: 19.02.2026

+ **CRL.A. 205/2017**

LOKESH KUMAR CHOUBEY

.....Appellant

Through: Mr. Manan Kumar Mishra Sr. Advocate
with Mr. Anjali Kumar Mishra, Ms.
Anjul Dwivedi and Ms. Hardeep Kaur
Mishra, Advocates

Versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh. APP for State

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374 of the Criminal Procedure Code, 1973 (the Cr.P.C.), the sole accused in Sessions Case No.95/2014 on the file of the Additional Sessions Judge (Special, Fast Track Court-1), West, Tis Hazari Courts, Delhi, challenges the judgement dated 23.01.2017 and order on sentence

CRL.A. 205/2017

Page 1 of 24



2026:DHC:1414



dated 28.01.2017, as per which he has been convicted and sentenced for the offence punishable under Section 376 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 01.08.2012, the accused served a soft drink laced with some intoxicant to PW1 and committed rape upon her and thereafter continued to subject her to sexual intercourse for a period of about one year under the false promise of marriage. Hence, as per the chargesheet/final report dated 27.05.2014, the accused is alleged to have committed the offences punishable under Sections 376 and Section 328 IPC.

3. Based on Exhibit PW1/A FIS of PW1 dated 18.06.2013, Crime no.312/2013, Uttam Nagar, Police Station, i.e., Exhibit PW9/A FIR, was registered by PW9, Head Constable. PW14, Inspector, conducted investigation into the crime and on completion of the same, submitted the chargesheet/final report dated 27.05.2014 before the trial court, alleging the commission of the offences punishable under the aforementioned Sections.



2026:DHC:1414



4. On appearance of the accused before the trial court, copies of all the prosecution records were supplied to him in compliance with Section 207 Cr.P.C. On 29.08.2014, a Charge for the offences punishable under Sections 328 and 376 IPC read with Section 417 IPC was framed, which was read over and explained to the accused, to which he pleaded not guilty.

5. In order to prove its case, the prosecution examined PWs. 1 to 14 and Exhibits PW1/A-B, PW2/A, PW4/A-D, PW6/A, PW8/A, PW9/A-C, PW10/A, PW12/A-C, PW13/A-D and PW14/A-B were marked.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the prosecution evidence. The accused denied all those circumstances and maintained his innocence. He stated that he had been falsely implicated in this case.



2026:DHC:1414



7. After questioning the accused persons under Section 313(1)(b) Cr.P.C, compliance of Section 232 Cr.P.C was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C is seen made by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3)KHC 89:2009 SCC OnLine Ker 2888**). Here, the accused persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

8. The trial court, after hearing both sides and on a consideration of the oral and documentary evidence, *vide* judgment dated 23.01.2017, convicted the accused under Section 235(2) Cr.P.C. for the offence punishable under Section 376 IPC and acquitted him under Section 235(1) Cr.P.C. for the offences punishable under Sections 328 and 417 IPC. *Vide* order on



2026:DHC:1414



sentence dated 28.01.2017, the accused has been sentenced to undergo rigorous imprisonment for eight years along with fine of ₹15,000/-, and in default of payment of fine, to simple imprisonment for a period of six months. Aggrieved, the accused has preferred this appeal.

9. The learned senior counsel for the appellant/accused contended that the impugned judgment suffers from patent inconsistency, inasmuch as the trial court held that the prosecution failed to establish administration of any intoxicant and also failed to prove repeated sexual assault, yet proceeded to convict the appellant for the alleged incident dated 01.08.2012 on the very same evidentiary foundation. It was submitted that once substantial parts of the prosecution case was disbelieved, conviction on a truncated version of the same narrative, without independent corroboration, is legally unsustainable.

9.1. It was further submitted that PW1 admittedly remained in a consensual relationship with the appellant for over one year,



2026:DHC:1414



continued to remain in contact with him till June 2013, and lodged the FIR after an unexplained delay of about ten months. It was urged that her own statements before the doctor and under Section 164 statement indicate that the complaint was made after the marriage proposal, did not fructify and in the backdrop of alleged disputes and threats. Such conduct, coupled with the delay, renders the prosecution version doubtful and indicative of a case arising out of a failed relationship rather than forcible sexual assault.

9.2. It was also contended that the medical evidence does not support the allegation of rape on 01.08.2012, as no external or internal injuries were found and no scientific material corroborates the charge. It was further submitted that PW1 herself stated that the alleged incident occurred in the house of the appellant when his two sisters were present. This itself casts a serious doubt on the veracity of the prosecution story.

9.3. It was lastly submitted that the evidence on record reflects a voluntary and mature relationship between the parties,



2026:DHC:1414



including admitted financial dealings and close association, and that the subsequent refusal or failure of marriage negotiations cannot retrospectively convert consensual intimacy into rape. It was further argued that other named persons were ultimately not found involved, demonstrating exaggeration in the prosecution case. On these grounds, it was submitted that the prosecution has failed to establish the charge beyond reasonable doubt and that the appellant is entitled to acquittal.

10. *Per contra*, the learned Additional Public Prosecutor submitted that the impugned judgment is well-reasoned and based on proper appreciation of evidence, inasmuch as the testimony of PW1 is consistent, cogent and inspires confidence, and was not effectively discredited in cross-examination, where no specific suggestion was put denying the act of rape on 01.08.2012. It was contended that minor discrepancies, including those relating to medical examination or incidental facts, were rightly held to be



2026:DHC:1414



immaterial, and the trial court rightly applied the settled principle that conviction can rest on the sole testimony of the prosecutrix.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in this appeal is whether there is any infirmity in the impugned judgement, calling for an interference by this Court.

13. I shall briefly refer to the evidence mainly relied on by the prosecution in support of the case. The gist of the case of PW1 in Ext. PW1/A FIS dated 18.06.2013, is as follows:- The accused had been cheating her for the past one year in the name of marriage and had been physically exploiting her during the aforesaid period. She further alleged that throughout the said period, his entire family and relatives were fully supporting him and that for about one year, talks regarding their marriage were ongoing between their respective families and that his parents had been showing her dreams of a happy married life. However, after the lapse of one year, they refused to solemnise the marriage. The



2026:DHC:1414



reasons stated by the accused's family was that she was a Punjabi and the accused was a Bengali, and that they did not wish their son to marry into another caste. Despite her repeated attempts to explain and persuade them, his parents continued to refuse the marriage. When she told the mother of the accused that she would complain to the police, the accused's mother threatened her by saying that if she wished to avoid defamation, she should leave her son alone, failing which she would defame her to such an extent that she would not be able to show her face to anyone. The mother of the accused demanded a sum of ₹15 lakhs if she still wished to marry the accused. When PW1 expressed her inability to arrange such an amount, the accused's mother threatened that if she made further calls or continued to trouble them, they would lodge a case against her alleging that she was forcibly stalking their son. PW1 also stated that the son of the accused's paternal aunt (*Bua*) had been calling and threatening her, stating that he would throw acid on her or get her falsely implicated in a case and send her to jail, as



2026:DHC:1414



his father was a lawyer practising in Patna High Court. PW1 extremely distressed by these events approached the police, but no effective assistance was provided. According to PW1, the Haryana Police told her that the matter pertained to Delhi, while the Delhi Police had not recorded her report for about one month, compelling her to run between police stations in Delhi and Haryana without any relief.

14. In Ext. PW1/B, Section 164 statement, recorded on 29.07.2013, PW1 introduced several new facts which were not stated in the FIS. According to her, on 01.08.2012, on the pretext of celebrating her birthday, the accused called her to his house at Rama Park where his two sisters were present, and after consuming a cold drink served by him she lost consciousness. When she regained consciousness by about 2.00 p.m. to 2.30 p.m., she realised that something wrong had been done to her. But she did not lodge a complaint due to fear of defamation. She further stated that the accused falsely claimed to be working in Bank of



2026:DHC:1414



America whereas he was in fact working in a call centre earning about ₹17,000 per month. But she forgave him thinking that he was an MBA. The accused used to ask her about the clothes and jewellery she liked and took her to various property dealers, but he never purchased any property, clothes or jewellery for her, but had given her only one teddy bear and artificial jewellery.

15. PW1, when examined before the trial court, reiterated the broad narrative set out in her statement under Section 164 Cr.P.C. She deposed that she met the accused on 02.04.2012 at Nuga Best Therapy Centre, Janak Puri, where she had been taking treatment for joint pain and the accused was working as a physiotherapist. She deposed that after about 1 or 2 months, he proposed marriage to her, which she initially refused on account of caste difference, she being a Sikh and the accused from Bihar although he had told her that he was a Bengali. PW1 further deposed that her birthday was on 31.07.2012. On 01.08.2012 the accused invited her to his house at Rama Park on the pretext of



2026:DHC:1414



celebrating her birthday, where his sisters Priyanka and Menka were present. After consuming a cold drink served by the accused, she became unconscious and upon regaining consciousness at about 1.30 p.m., she found herself without clothes and felt that physical relations had been established with her. When she confronted the accused, he initially denied the incident by saying “*kuchnaihua*”, but when she threatened to lodge a police complaint, he admitted having established physical relations with her while she was unconscious and assured her that he would marry her. She deposed that relying upon this assurance, she did not lodge any complaint. PW1 further deposed that thereafter the accused made his father speak to PW5, her mother, and that the father of the accused informed them that as and when he comes from Darjeeling, he would purchase a house in Delhi, meet PW1’s parents and discuss her marriage with the accused. The accused thereafter repeatedly established physical relations with her on the promise of marriage till April 2013, during which time,



2026:DHC:1414



discussions regarding marriage took place between the families. PW1 further deposed that on one occasion, she and the accused had travelled to Palwal. On the said day, she met his parents briefly at New Delhi Railway Station. After a lapse of about 8 to 9 months, when she enquired about the status of their marriage, the accused informed her that he had been making her mother speak to persons falsely projected as his parents. According to PW1, she is not certain whether the persons she met at New Delhi Railway Station on 10.04.2013, while on their way to Palwal, were actually the parents of the accused.

15.1. PW1 further deposed that under pressure from PW5, her mother, she warned the accused that she would lodge an FIR if he did not marry her, whereupon he conveyed that his parents were not even aware of their relationship. In January 2013, the accused again reassured her of his intention to marry and conveyed that his parents would come to Delhi to discuss the marriage. No physical relations occurred between November 2012 and January 2013.



2026:DHC:1414



PW1 further deposed that on one occasion when she spoke to the mother of the accused, the latter refused the marriage on the ground that better proposals were coming and that offers of ₹15–20 lakhs as dowry were being received, thereby indirectly demanding dowry. She conveyed her inability to arrange such an amount and, informed the mother of the accused that her family lived in a rented accommodation and belonged to a modest background, and also disclosed that the accused had established physical relations with her on the assurance of marriage. The accused's mother responded that she could do whatever she wished but the marriage would not take place. When she spoke to the accused regarding his mother's refusal, he assured her that he would persuade his mother.

16. PW3, the owner of M-107, Rama Park, deposed that the accused was living with his sisters in the said premises as tenant from December 2010 till March 2012. However, PW3



2026:DHC:1414



further deposed that police had come to her place with PW1, but she does not know PW1.

17. PW5, the mother of PW1, deposed that PW1, her daughter had a problem in her knees, for which she used to visit the physiotherapy centre, during time which she met the accused. The accused came to her house and told her regarding his wish to marry her daughter. She had a talk with his parents. The father of the accused told her that he had no objection to the marriage and that when he would come to Delhi he would take a house in Delhi and solemnize the marriage. PW5 further deposed that the accused met her even after she had a talk with his parents. PW5 deposed that the accused stopped talking to her daughter about 2½ years before her examination before the Court and that there was no demand from the accused. She does not know whether there were physical relations between the accused and her daughter.

18. The offence punishable under Section 376 IPC is attracted only if the act alleged satisfies the ingredients of “rape”



2026:DHC:1414



as defined under Section 375 IPC. In the present case, the prosecution case, is twofold: firstly, that on 01.08.2012 the accused rendered PW1 unconscious by administering an intoxicant and committed sexual intercourse without her consent; and secondly, that thereafter the accused continued to have sexual relations with PW1 for about one year under a false promise of marriage. The accused stands acquitted by the trial court of the offence under Section 328 IPC as the allegation of administration of any intoxicant has been disbelieved. Therefore, the conviction under Section 376 IPC must necessarily stand or fall on whether the prosecution has established beyond reasonable doubt that the sexual intercourse alleged to have occurred on 01.08.2012 was without the consent of PW1 within the meaning of Section 375 IPC, or that any such consent, if given, stood vitiated by misconception of fact within the ambit of Section 90 IPC.

19. It is well settled that “consent” for the purposes of Section 375 IPC denotes an unequivocal voluntary agreement to



2026:DHC:1414



participate in the specific sexual act, and the absence of consent must be affirmatively established by the prosecution. It is equally well settled that conviction can be based on the sole testimony of the prosecutrix, provided that such testimony is of sterling quality, inspires confidence and is free from material contradictions or infirmities. At the same time, where the case rests solely upon the oral testimony of the prosecutrix, the court must subject such evidence to careful scrutiny, and if reasonable doubt arises as to its reliability on material particulars, the benefit thereof must go to the accused. [See **Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21** and **Nirmal Premkumar v. State, 2024 SCC OnLine SC 260**]

20. Insofar as the alleged incident dated 01.08.2012 is concerned, the earliest version of PW1 is found in Exhibit PW1/A, the FIS dated 18.06.2013. On perusal of Exhibit PW1/A, it is apparent that the grievance articulated therein is primarily that the accused had been cheating her in the name of marriage for about



2026:DHC:1414



one year, that talks regarding marriage were ongoing between the families, that ultimately the accused's family refused to solemnise the marriage on grounds of caste difference and alleged dowry demand, and that threats were extended to her. Significantly, the FIS does not contain any specific reference to the incident dated 01.08.2012, nor does it say that she had been rendered unconscious by administration of any intoxicant and subjected to sexual intercourse on that date. The focus of the FIS appears to be on the alleged deception in the name of marriage and the subsequent refusal and threats.

21. The detailed narrative regarding the incident of 01.08.2012, including the allegation that PW1 was invited to the house of the accused at Rama Park, that his sisters were present, that she consumed a cold drink served by him, became unconscious, and upon regaining consciousness realised that sexual intercourse had been committed upon her, finds specific mention for the first time in her Section 164 statement, given on



2026:DHC:1414



29.07.2013, that is more than a month of the recording of the FIS. This aspect assumes significance, as the incident of 01.08.2012 ultimately forms the sole basis for conviction under Section 376 IPC. Though no formal contradiction appears to have been proved in the manner contemplated under Section 145 of the Evidence Act, 1872 during trial, the omission of a material fact in the earliest version, which subsequently becomes the foundation of conviction, is a circumstance that cannot be ignored while assessing the credibility of the witness.

22. PW1 was medically examined on 19.06.2013, nearly ten months after the alleged incident. Therefore, there cannot possibly be any indication to substantiate the allegation of rape. But when the allegation is that the victim was rendered unconscious and subjected to sexual intercourse without consent, and where such allegation is not reflected in the earliest version and stands unsupported by any medical or scientific material, the cumulative effect of these circumstances becomes relevant in



2026:DHC:1414



determining whether the prosecution has discharged its burden beyond reasonable doubt.

23. The prosecution case also rests upon the assertion that after the incident of 01.08.2012, the accused repeatedly established sexual relations with PW1 on the promise of marriage. In order to bring such conduct within the ambit of rape on the ground of misconception of fact, it must be shown that the promise of marriage was false from the inception and that the accused never intended to marry PW1 but induced her to consent solely for the purpose of sexual exploitation. The evidence on record, however, reveals that there were discussions between the families; that PW1's mother (PW5) had spoken to the father of the accused; that meetings took place; and that the relationship continued for several months thereafter. Even PW1 admits in her cross-examination that she initially refused the marriage proposal, that she continued to exchange messages and calls with the accused, and that discussions regarding marriage were ongoing. Such evidence does



2026:DHC:1414



not unerringly establish that the promise of marriage was false from inception. At best, it reflects a relationship which ultimately did not culminate in marriage.

24. The conduct of PW1 subsequent to the alleged incident dated 01.08.2012 is also a circumstance that needs to be taken into account. It has come on record that PW1 continued to remain in contact with the accused till June 2013. She admitted that no physical relations occurred during the period from November 2012 to January 2013, and that she and the accused travelled together on several occasions. The FIR was lodged on 18.06.2013, nearly ten months after the alleged incident. While delay in lodging an FIR in cases of sexual offences is not uncommon and may be explained by social stigma or fear, in the present case the continued voluntary association between the parties during the interregnum and the subsistence of marriage negotiations assume significance in assessing whether the initial act was indeed without consent.



2026:DHC:1414



25. Another aspect which cannot be overlooked is that PW1 deposed that at the time of the alleged incident on 01.08.2012, the sisters of the accused were present in the house. True, the prosecution did not examine the sisters. Being the sister of the accused, it cannot be expected that they would depose against the accused. Therefore, non-examination of the sisters is not fatal to the prosecution case. But, in the presence of the sisters, it appears improbable in the circumstances of the case to believe that the accused laced the soft drink with some intoxicant and raped her.

26. The trial court, while acquitting the accused of the offences under Sections 328 and 417 IPC, found that the prosecution had not established administration of any intoxicant nor the offence of cheating. Once the foundation of intoxication was disbelieved, the prosecution was required to independently establish that the sexual intercourse on 01.08.2012 was without the consent of PW1. The trial court acquitted the accused for the



2026:DHC:1414



offences punishable under Sections 328 and 417 IPC finding the evidence on record unsatisfactory. But on the same unsatisfactory evidence, proceeded to convict the accused for the offence of rape. This Court is conscious of the fact that conviction can be based on the sole testimony of the prosecutrix; however, where material omissions and surrounding circumstances generate reasonable doubt, it would be unsafe to sustain conviction without further assurance.

27. Upon an overall appreciation of the evidence on record, this Court finds that the prosecution has failed to establish the case beyond reasonable doubt. The materials on record raise a reasonable doubt as to whether the sexual intercourse alleged on 01.08.2012 was without consent or whether the case arises out of a relationship that turned sour.

28. In the light of the aforesaid circumstances, the conviction and sentencing of the appellant for the offence



2026:DHC:1414



punishable under Section 376 IPC is found unsustainable and hence liable to be set aside.

29. In the result, the appeal is allowed. The appellant is acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 376 IPC. The appellant is set at liberty and his bail bond shall stand cancelled.

30. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

**FEBRUARY 19, 2026
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