



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

% Date of Decision: 10.11.2025

+ **CRL.A. 281/2016**

TAHIR KHAN

.....Appellant

Through: Mr. Anurag Jain and Mohd. Sajid,
Advocates with appellant in person.

versus

THE STATE (GOVT NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State,
Ms. Nidhi Raman, Amicus Curiae for
the victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. Aggrieved by the judgment of conviction dated 08.02.2016, and the order on sentence dated 11.02.2016, passed by the learned ASJ-SFTC-02 (Central) Tis Hazari Courts, Delhi in Sessions Case No. 12/2015, the appellant has challenged the same by filing the present appeal. The appellant was convicted for the offence under Section 376 (2) (n) IPC and sentence to undergo RI for 10 years along with a fine of Rs. 5000/- in default thereof, he was to undergo. The benefit of Section 428 Cr.P.C was given to the appellant. His sentence was suspended by this Court vide order dated 05.05.2017.

2. The facts as recorded by the Trial Court, are extracted hereunder:

*"It is the case of the Prosecution that on 07.10.2014, Prosecutrix 'R'
[name withheld in order to protect her identity] came to PS Chandni*



Mahal and gave her written complaint against Accused Tahir Khan and his father Sabir Ali. She stated that Accused Tahir Khan is a resident of Bareilly, UP and that is known to her for the last one year. She further stated that as both of them liked each other, they wanted to marry each other. She further stated that Accused Tahir Khan had told her that he had already talked to his parents regarding their marriage, who have consented for the same.

2. Complainant further alleged in her complaint that Accused Tahir Khan gradually gained her confidence and on 19.06.2014 at about 12:30 Noon he took her to a room at H.No.1710, Suiwalan and established physical relations with her on the pretext of marriage. Thereafter, he also established physical relations with the complainant on 01.07.2014 and 21.07.2014. When complainant asked Accused Tahir Khan for marriage, on 21.07.2014 both Accused Tahir Khan and Coniplainant went to Karkardooma Courts, Delhi for marriage, however Accused Tahir Khan fled away from there without informing her. Thereafter, she was unable to contact Accused as his phone was switched off.

3. Complainant further alleged in her complaint that when she told the father of Accused about her relations with the Accused, he demanded Rs. 5-16 lacs stating that the said amount would be required for the marriage. Father of Accused i.e. Sabir Ali also told her to forget about her marriage with Tahir if she is unable to arrange the money. She further added in her complaint that she had also deposited Rs.6000/- in the bank account of Accused and that besides the amount of Rs.6000/-, Accused had also taken Rs. 15000/-from her.”

3. Upon registration of the F.I.R., investigation commenced. The complainant was medically examined, her testimony under Section 164 Cr.P.C recorded and the appellant came to be apprehended. Charges were framed under Sections 376 (2) (n) IPC. The appellant pleaded not guilty and claimed trial.

4. In support of its case, the prosecution cited 10 witnesses, the prosecutrix was examined as PW2. Her mother was examined as PW3. Her MLC was proved by Dr. Nidhi Aggarwal, examined as PW5. The I.O. of the case, W/SI Anita, was examined as PW7, the rest of the witnesses were formal in nature and deposed as to various aspects of the investigation. In



his statement under Section 313 Cr.P.C, the appellant claimed false implication. He did not lead any evidence in his defence.

5. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. It was the case of the prosecutrix herself that the appellant was willing to marry and they had even gone to Karkardooma Court for that purpose and he backed down at the last minute. It is not a case of rape on false pretext of marriage.

6. Learned APP for State, who is duly assisted by Ms. Nidhi Raman, learned Amicus Curiae, (*pro bono*), have supported the impugned judgment and submits that the prosecutrix had been categorical in her testimony that the physical relations were established on the pretext of marriage which the appellant never intend to fulfil.

7. The prosecutrix was examined as PW2. She deposed that she met the appellant through Facebook in 2013. They exchanged information about their family and marital status and the appellant proposed marriage to him. The appellant had informed her that his family liked her photograph and he was ready to talk to her family members for marriage. The appellant came to Delhi on 23.03.2014 and met the prosecutrix for the first time in *Paharganj*. They searched for a rented accommodation and the prosecutrix paid Rs. 500/- as security. The appellant told the landlord that they were already married. On 19.06.2014, both of them reached the aforesaid house. The appellant bolted the door and started removing the clothes of the prosecutrix. When she objected, he promised to marry her as soon as he found a suitable job. Then he forcibly established physical relations with her. He again called her to the said house on 01.07.2014 and informed her that he would be joining a job soon. He again established physical relations with her. She



used to deposit money in his account from time to time. Physical relations were also established on 21.07.2014. That day, they went to Karkardooma Court for marriage. One advocate had prepared the documents. The appellant, on the pretext of making a phone call, ran away without informing her. He called her on her phone 3-4 times and requested to not tell anything to her family members otherwise, he would commit suicide. He then switched off his phone. When the prosecutrix called the father of the appellant, he demanded Rs. 15-16 lacs for marriage. When she expressed her inability to pay the amount, his phone was also switched off. She deposed that she had given the appellant Rs. 6,000/- in bank transactions and Rs. 15,000/- in cash. In order to pressurize her, the appellant got a false case registered against her and her family members in Bareilly. She said that she made a complaint at the Mediation Centre, Rajpur road on 26.07.2014 wherein notice was issued to the appellant however, he failed to appear.

8. In cross examination, she admitted that she did not state the factum of the accused calling her 3-4 times and threatening to commit suicide if she told his family in her statement to the police under Section 161 CrPC and magistrate under Section 164 CrPC because she forgot to mention it. She further said that she did not mention about her family members looking for a match for her in her statement under Section 161 CrPC and stated that she mentioned the same in her Section 164 CrPC statement. She deposited money in the appellant's bank account due to his persistent requests. She admitted as true that she paid Rs. 2300/- to the landlord of the appellant. She said that the appellant had sent her his Aadhar card and discussed marriage on facebook, however she had deleted the chats out of anger and could not produce the same. She produced the marriage documents in Court, exhibited



as Ex. PW2/PX [Colly]. She admitted that the said documents did not bear signatures of the appellant or any witnesses.

9. The mother of the prosecutrix was examined as PW3. She identified appellant as a relative of the in-laws of her elder daughter. The prosecutrix, who was her second daughter, started talking and meeting with the appellant one and a half years ago. Prosecutrix told her that the appellant wanted to marry her and she was also interested. As the appellant belonged to the same caste and community, PW3 had no objection to the marriage. 7-8 months ago, she came to know that the prosecutrix had gone to solemnize marriage with appellant but he fled away and did not marry her. Prosecutrix told her that the appellant and his family members were demanding Rs 15 lacs from her telephonically and that the appellant had established physical relations on assurance of marriage and they lived in Darya Ganj on rent. She stated that she talked to the uncle of the appellant 4 months ago, who informed her that parents of the appellant were demanding 15 lacs for solemnizing the marriage.

10. Advocate I. A. Khan was examined as PW8. He deposed that on 01.07.2014, the appellant came to him for preparation of marriage documents with the prosecutrix. He paid Rs. 2000/- along with photographs and photocopies of I.D. On 21.07.2014, appellant again visited him along with prosecutrix. He got marriage deed and affidavits prepared, and appellant bought stamp papers on his asking. He obtained the prosecutrix's signatures, but the appellant left them while attending a phone call and did not return. Upon calling, his phone was found switched off.

11. Dr. Nidhi Aggarwal, who was examined as PW5, proved the MLC of the prosecutrix, exhibited as Ex.PW-5/A. Her hymen was found torn. The



tear was old and there was no mark of external injury. The patient's history described the incident as consensual sex on three occasions on the pretext of false promises of marriage.

12. It is settled law that merely because physical relations were established pursuant to a promise to marry, that by itself will not amount to rape. It has to be proved beyond reasonable doubt that the promise was made solely with a view to obtain the consent for sexual relations with no intentions of fulfilling it from the very beginning, and that this consent had a direct bearing on the prosecutrix giving her consent for sexual relations. (Ref: Nitin B. Nikhare v State of Maharashtra & Anr¹, Pramod Suryabhan Pawar v. The State of Maharashtra and Ors² and Mahesh Damu Khare v. The State of Maharashtra and Ors³)

13. In her initial complaint, exhibited as Ex. PW2/A, the prosecutrix has stated that both she and the appellant liked each other and wanted to marry. The prosecutrix used to live together with the appellant at *Paharganj*. She herself deposed that the appellant had introduced her as his wife to the landlord. She had not objected to the same. She had also paid the rent to the landlord. Evidently, the appellant's family knew about the prosecutrix, as when he went away, she contacted his father who stated that he was willing to solemnize their marriage, provided that they paid 15-16 lacs. Nothing has been brought on record to show that the appellant was aware of this condition of his father from the very inception when physical relations were first established, and he committed physical relations knowing that his father

¹ SLP(Crl.)No.1889/2024 decided on 21.01.2025

² (2019) 9 SCC 608

³ 2024 SCC OnLine SC 347



would demand a huge sum of money which the prosecutrix's family would not be able to arrange. Thus, prosecution has failed to establish that the appellant had no intention to fulfil his promise to marry from the very beginning and the same was just a guise to establish sexual relations with her. If that was the case, there was no need to go so far as to get marriage documents made and meeting the advocate PW8 in this regard multiple times. Another factor which shows that their relationship was not clouded in secrecy is the fact that prosecutrix's mother also knew about the appellant. As has come out from her testimony, PW3, the appellant was already known to them as he was the relative of the in-laws of her elder daughter. She also had no objection to the marriage otherwise either. She had also talked to the uncle of the appellant who conveyed that his father was demanding Rs. 15 lacs. Even after the appellant left the prosecutrix, there were efforts on her part to reconcile, such as the complaint at the mediation centre on 26.07.2014. The prosecutrix also disclosed the filing of a case in *bareilly* against her and her family members by the appellant's side. The entire factual scenario suggests a case of a consensual relationship turned sour due to family interference.

14. The Supreme Court in Prashant v. State of NCT of Delhi⁴ 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 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..”

15. In view of the above, it is held that the prosecution has not been able to establish its case of rape on the pretext of marriage beyond reasonable doubt. The benefit of the same must be extended to the appellant. As a necessary sequitur, he is acquitted.

16. The appeal is allowed. The appellant's bail bonds are cancelled and

⁴ 2024 INSC 879



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sureties discharged.

17. A copy of this judgment be communicated to the Trial Court and Jail Superintendent.

18. Before parting, this Court records its appreciation for the valuable assistance rendered by Ms. Nidhi Raman, Advocate, learned *Amicus Curiae* (*pro bono*).

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 10, 2025

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