



2025:DHC:6754



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 12.08.2025*+ **CRL.REV.P. 556/2017**

STATE (GOVT OF NCT OF DELHI)Petitioner

Through: Ms. Richa Dhawan, Advocate
alongwith IO, P.S. Bindapur.

versus

GAURANG KADYANRespondent

Through: Mr. Sobhik Tanwar, Advocate.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present petition, the State impugns the order dated 05.12.2016 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge (SFTC), Dwarka Courts, Delhi [hereafter '*Sessions Court*'] in case arising out of FIR bearing no. 297/2016, registered at Police Station Bindapur, Delhi, for the offence punishable under Sections 376/328/506 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

2. The brief facts of the present case are that the prosecutrix had allegedly come in contact with the respondent/accused through Facebook and thereafter, they had met for the first time on 20.08.2013 at Select City Walk, Saket, Delhi. After four meetings, the respondent had allegedly proposed marriage to her. On



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13.10.2013, the respondent had allegedly requested her to come to his house to meet his parents; however, when she had reached there, his parents were not at home. He had informed her that they had gone to the market and would return in two hours. In the meantime, he had allegedly offered her a cold drink and, after consuming the same, she had become unconscious. When she had regained consciousness, she had allegedly realised that the respondent had committed rape upon her. It is further alleged that thereafter, the respondent had started blackmailing her, stating that he had made inappropriate/obscene videos of her, and threatened to post them on social media if she disclosed the incident to anyone. At the same time, he had reassured her that he would marry her. The prosecutrix had given him two years' time to settle down in life. During this period, he had allegedly continued to have physical relations with her on the false pretext of marriage. In November 2015, the respondent had allegedly refused to marry her on the ground that his family was conservative and would not permit marriage outside the caste. On 16.12.2015, when she had gone to his house, she was allegedly rebuked by his brother. However, on 31.12.2015, the accused had met her again, reassured her that he would convince his parents, and allegedly continued physical relations with her. On 17.03.2016, the prosecutrix had called the accused to ask whether he intended to marry her, but he allegedly told her not to bother him and had also threatened her. On 19.03.2016, he had allegedly called her at night and issued threats of dire consequences if she complained against him. Thereafter, the



present FIR was registered on 11.04.2016 and investigation was taken up.

3. During the course of investigation, the prosecutrix had been medically examined; however, no sample was collected as the last alleged sexual contact was more than 72 hours prior. Her statement under Section 164 of Cr.P.C. had been recorded before the learned Magistrate. The accused was thereafter arrested. Chargesheet was filed after completion of investigation.

4. By the impugned order dated 05.12.2016, the learned Sessions Court discharged the accused/respondent, primarily on the grounds that the FIR had been registered after an alleged delay of more than two and a half years, which was not satisfactorily explained; the prosecutrix had neither raised alarm nor lodged an immediate report with the police; there was no medical evidence to support her version; the alleged obscene videos purportedly used for threatening her had not been recovered, etc. The relevant observations of the learned Sessions Court are as under:

“15. After examining the documentary as well as oral evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted, before it is challenged by cross-examination or rebutted by defence evidence, if any, is not showing that accused committed the alleged offences for which he is being prosecuted because of following reasons:

(a) No complaint was lodged by the prosecutrix till 11.4.2016 though she was allegedly raped by the accused for the first time on 13.10.2013. As per prosecutrix, she was raped by the accused for the last time on 17.3.2016. There is no valid justification for delay in lodging the FIR.

(b) The evidentiary value of the medical evidence is zero.



(c) The obscene video allegedly used for threatening the prosecutrix were not recovered by the prosecution.

(d) Prosecutrix has not specified in her complaint the date, time and places where she was repeatedly raped by the accused in her complaint. Once, the accused was not marrying her on one pretext or the other, it is not clear as to why the prosecutrix continued to have physical relations with him.

(e) There are improvements in the statement of the prosecutrix given to the police and the statement u/1 164 Cr.PC before the Ld.MM. Before the Ld.MM the prosecutrix stated, *"I got to know about my pregnancy at the time of my MLC. I have some pregnancy complications and have to go to see a doctor at Max Hospital, Patparganj later in the day."* In the charge-sheet, it is mentioned that the prosecution has stated that the prosecutrix did not co-operate with the police in this regard during the investigation of the case."

5. Assailing the impugned order, the learned APP for the State argues that there are specific allegations of forcible sexual assault on the false pretext of marriage against the accused, and that the record shows he had never intended to marry the prosecutrix, which is apparent from the contents of her statements. It is urged that the learned Sessions Court has conducted a mini-trial at the stage of charge and wrongly discharged the accused despite there being sufficient material to frame charges.

6. The learned counsel for the respondent/accused, on the other hand, contends that the sexual relationship between the parties was consensual and that the present FIR had been lodged only after their relationship had soured. He argues that the impugned order does not suffer from any infirmity, and he relies on the unexplained delay in lodging of the FIR, the absence of medical evidence, and purported



discrepancies in the prosecutrix's statements in this regard. He thus prays that the present petition be dismissed.

7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

8. After hearing the submissions of both sides and perusing the record, this Court is of the considered opinion that there is no material on record to substantiate the claim of the prosecutrix that she had been administered any stupefying or unwholesome substance so as to attract the offence of Section 328 of IPC. Accordingly, there is no infirmity in the conclusion of the learned Sessions Court that an offence under Section 328 of IPC is not made out.

9. However, the consistent case of the prosecutrix, as borne out from her statement recorded under Section 164 of Cr.P.C., her written complaint/FIR, is that the accused had committed rape upon her on the very first occasion when they had met in his house. Thereafter, he allegedly had continued to have physical relations with her on repeated occasions, each time reassuring her that he would marry her shortly. The prosecutrix has further alleged that the accused was in possession of certain inappropriate and obscene videos of her, which he had used to emotionally and psychologically pressurise her into continuing the relationship. On the basis of this continuing assurance and under the apprehension that the said videos might be misused, the prosecutrix states that she submitted to repeated sexual acts with the accused over a period of time.



10. It is further the case of the prosecutrix that after several years of such intimacy and repeated assurances, the accused had ultimately refused to marry her. The reason given by him was that his family was conservative and did not permit inter-caste marriages, and since the prosecutrix belonged to a different caste, marriage was not possible. It is apparent that the accused was aware of the caste of the prosecutrix from the very inception of their relationship. Therefore, when the accused later cited the caste difference as the sole ground for refusal, it *prima facie* supports the inference that he was conscious of this impediment from the very beginning. His professed intention to marry was, therefore, illusory from the start, as he already knew that such a marriage would not be accepted by his family.

11. In view of these specific and allegations, this Court finds that the factual matrix *prima facie* discloses a case where the prosecutrix was induced into sexual relations under a false pretext of marriage, which the accused never intended to fulfil. The accused's conduct of continuing physical relations over an extended period while knowing fully well that marriage was not possible in his family on account of caste considerations, indicates that the promise to marry was made dishonestly, solely to obtain sexual favours. Such a promise, made without intention to perform it from the inception, squarely falls within the ambit of Section 376 of IPC as recognised by way of judicial precedents.

12. Insofar as the impugned order relates to the charge of rape, this



Court finds that the learned Sessions Court had, at the stage of charge, conducted a mini-trial and embarked upon a roving inquiry into the merits of the case. The learned Sessions Court failed to properly appreciate the statements of the prosecutrix recorded under Section 164 Cr.P.C. and her complaint which culminated in the registration of the FIR. At the stage of framing of charge, such an evaluation of the probative value of the evidence is not warranted, and rather a prima facie case is to be seen, and it is to be determined whether strong suspicion exists against the accused. The Hon'ble Supreme Court in ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey***: (2022) 12 SCC 657, after discussing several judicial precedents, has summed up the law of framing of charge in following words:

“...Thus, from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material that is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini-trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice...”

13. Therefore, this Court is of the view that the ingredients of the offence of rape under Section 376 of IPC are made out and the accused is liable to be charged for the said offence.



14. With regard to the offence under Section 506 of IPC (criminal intimidation), the prosecutrix has specifically alleged that on 19.03.2016, the accused had threatened to kill her if she continued to visit or bother him or insisted on marriage. She further alleged that the accused had stated that “we will eliminate and dump you where even God cannot trace your body” and also threatened to kill her family. It is also alleged that on 17.03.2016, the accused had threatened her over the phone. These allegations, taken at their face value, *prima facie* disclose the commission of an offence under Section 506 of IPC.

15. Accordingly, the impugned order is set aside to the extent noted above. The respondent/accused is found liable to be charged for the commission of offences punishable under Sections 376 and 506 of the IPC. The learned Trial Court shall frame the charges accordingly and proceed with the trial in accordance with law.

16. In view of the above, the present petition stands disposed of.

17. It is however clarified that observations made in the judgment are solely for the purpose of deciding present petition and shall not affect the merits of the case during the trial.

18. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 12, 2025/vc

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