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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 532/2019

STATE

..... Petitioner
Through: Mr Amit Gupta, APP for State.
SI Vineet Kumar, PS Narela.

versus

SANDEEP

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

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O R D E R
25.09.2019

VIBHU BAKHRU, J

CRL.M.A. 36804/2019

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. The State has filed the present petition seeking leave to appeal against a judgment dated 15.07.2019, passed by the learned Additional Sessions Judge. The said proceedings had commenced pursuant to the FIR bearing no. 679/2016, under Section 376 of the Indian Penal Code, 1860 (IPC), registered with P.S. Narela, on 13.09.2016.

4. The said FIR was lodged pursuant to the complaint made by Ms P (name withheld to avoid any ignominy). She has stated that she had developed a friendship with the accused (respondent herein) in the

year 2013. And, over a span of two years the same transformed into a love affair. She stated that she had been meeting the accused regularly and he had promised to marry her.

5. She stated that on one occasion, three months prior to 08.09.2016, he had invited her to his house to meet his mother. On visiting his house, she had found that his mother was not present and had gone to the house of respondent's maternal uncle. She alleged that respondent had bolted the door and raped her despite her resistance. However, he had also promised to marry her and had asked her not to disclose the said incident to any other person.

6. She further alleged that the respondent had taken her to a hotel on 08.09.2016 and had thereafter, raped her. Although he had promised to marry her, he had resiled from his promise and had declined to do so.

7. She had approached the police station on 13.09.2016, where her statement was recorded. She was, thereafter, medically examined in SRHC Hospital. However, she had declined any internal medical examination.

8. Ms P had deposed as PW2. Her parents (Raj Kumari and Brahm Dev) deposed as PW3 and PW4 respectively. One Sh. Sohan Pal, a friend of the respondent, had deposed as a defence witness (DW-1). He had testified that he knew the accused, as well as Ms P, and both of them had a love affair. He claimed that the accused had introduced Ms P to him in 2015. At the material time, she was

undergoing a beautician's course in Narela. He had testified that the accused wanted to marry Ms P, but Ms P's father was opposed to the said liaison and therefore, their marriage could not be solemnised.

9. The fact that the respondent had established a physical relationship with Ms P cannot be disputed. Indisputably, Ms P had checked into a hotel with the respondent at about 10:00 p.m. on 08.09.2016 and had checked out of the said hotel on 09.09.2016 at 08:00 a.m. Clearly, the respondent and Ms P had done so for physical intimacy. The Trial Court had rightly observed that the only question to be considered was whether Ms P had consented for the physical relationship under a false promise of marriage.

10. After evaluating the evidence, the Trial Court had concluded that Ms. P had established the physical relationship with the accused on account of love and affection and not on being induced by a promise of marriage.

11. It is relevant to examine Ms P's (PW-2's) testimony. She had deposed that she was friends with the accused and in the year 2013, she had visited his house to be treated for stomach ache by his mother. She also stated that the accused had proposed to her within two months of meeting her. Thus, admittedly, the accused had evinced his intention to marry her more than two years before the alleged incident of the accused establishing physical relationship with her (which according to Ms P was established three months prior to the accused taking her to the hotel on 08.09.2016). This clearly established that the

inducement of marriage – if the action(s) of the accused could be termed as such – was made more than two years and six months prior to the alleged rape. Ms P's testimony that she had objected to the accused touching her obscenely but had yielded on him promising marriage, is difficult to accept. This is so because Ms P had stated that the accused proposed marriage to her two months after he met her. Considering Ms P's testimony that she had gone to the house of the accused in 2013 to be treated by his mother and had spent about two hours there it is apparent that, according to her, the accused had proposed to her two years and six months prior to the first incident of alleged rape.

12. It is important to note that Ms P had unequivocally accepted in her cross examination that she and the accused were in love with each other and wanted to get married.

13. Ms P's father (PW4) had deposed that in the year 2015, his daughter had told him about the respondent and the proposal for them to get married. He further stated that he was not agreeable to marriage between Ms P and the accused. This is also consistent with the testimony of DW-1. In her cross-examination, Ms P had admitted that her father was opposed to their marriage. Her mother (PW3) had also deposed that she did not want her daughter to get married to the accused.

14. In view of the above, the Trial Court concluded that the *“accused cannot be held guilty for not marrying the prosecutrix”*

because he and his family members were ready for the marriage but the parents of the prosecutrix did not want that their daughter should marry the accused". Given the testimony of the witnesses, the conclusion that the accused and Ms P did not marry on account of the opposition from the family of the prosecutrix is certainly a plausible view. The only reservation that this Court has to the above conclusion of the trial court is the implicit assumption that the accused was alleged to be guilty of not marrying Ms P. The accused was not on trial for not marrying Ms. P; but on an allegation of committing the offence of rape.

15. There is also an inherent inconsistency in the testimony of PW-4. Whilst he deposed that Ms P had informed him about her friendship with the accused in the year 2015; in his cross examination, he stated that he became aware of their friendship at the police station.

16. The Trial Court reasoned that if the accused had established physical relationship on account of the promise of marriage, she would have disclosed the same to her parents. This Court finds no infirmity with the said reasoning as well. If the accused had induced Ms P to have physical relations on the false promise to marry; she or her mother, on becoming aware, would have disclosed the same to her father.

17. It is important to bear in mind that two consenting adults establishing a physical relationship, is not a crime. Jilting a lover, however abhorent that it may seem to some, is also not an offence

punishable under the IPC.

18. In so far as consent to engage in a sexual act is concerned; the campaign ‘no means no’, that was initiated in the 1990’s, embodies a universally accepted rule: a verbal ‘no’ is a definite indication of not giving consent to engage in a sexual act. There is now wide acceptance to move ahead from the rule of ‘no means no’ to ‘yes means yes’. Thus, unless there is an affirmative, conscious and voluntary consent to engage in sex; the same would constitute an offence.

19. In the present case, the prosecutrix claims that her consent was not voluntary but was obtained by inducing her on the pretext of a promise to marry. Plainly, this is not established in this case.

20. The prosecutrix had, three months after the first alleged incident of rape, voluntarily checked into a hotel with the accused. They had checked into the hotel at about 10:00 p.m. on 08.09.2016 and had checked out of the same, the next day at around 08:00 a.m. Clearly, this was a voluntary act. There is no merit in the contention that this act was induced by a promise of marriage.

21. Inducement to have a physical relationship by promising marriage must have a clear nexus with the moment promise of marriage cannot be held out as an inducement for engaging in sex over a protracted and indefinite period of time. In certain cases, a promise to marry may induce a party to agree to establish sexual relations, even though such party does not desire to consent to the same. Such

inducement in a given moment may elicit consent, even though the concerned party may want to say no. Such false inducement given with the intention to exploit the other party would constitute an offence. However, it is difficult to accept that continuing with an intimate relationship, which also involves engaging in sexual activity, over a significant period of time, is induced and involuntary, merely on the assertion that the other party has expressed its intention to get married.

22. In the present case, the prosecutrix appears to have used the allegation of inducement of physical relationship on the promise of marriage, to not only justify her physical relationship with the accused in the past, but also her conduct after the FIR was filed. The prosecutrix had refused an internal medical examination. In her testimony, she had explained that she had done so because the accused had contacted her and again reiterated his promise to get married to her.

23. The Trial Court had evaluated the evidence on record. It had also found serious inconsistencies in the testimony of PW-4. In view of the above, the Trial Court had acquitted the accused.

24. This Court finds no infirmity with the impugned decision. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 25, 2019
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