

State vs Manish Yadav on 8 April, 2025

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

\$~
* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment delivered on
+ CRL.REV.P. 184/2017
STATE
Through: Mr. Naresh Kumar
APP for the State
SI Aarti Yadav, P
versus
MANISH YADAV
Through: Respondent with h
Mr. H.S Yadav and
Yadav, Advs.
+ CRL.REV.P. 836/2017
SMT KIRAN MISHRA
Through: Counsel (appe
given).
versus
STATE & ANR
Through: Mr. Naresh Kumar
APP for the State
SI Aarti Yadav, P
Respondent No. 2
counsel Mr. H.S Y
Pradeep Yadav, Ad
CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA
JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present petitions, the State as well as the prosecutrix, seeks setting aside of the order dated 02.12.2016 [hereafter „impugned order] passed by the learned Additional Sessions Judge-SFTC, Dwarka Courts, New Delhi, [hereafter „learned ASJ'], whereby the accused Manish Yadav had been discharged of the offences punishable under Section 376/506/323 of the Indian Penal Code, 1860 [hereafter „IPC'].

2. Briefly stated, the facts of the present case are that the prosecutrix, who is marriage and is aged about 30 years, mother of two minor children, was residing with her husband, Sheel Kumar Mishra, in a rented accommodation at Kapashera, Delhi. The accused, four years younger to her, had been visiting the coaching institute where the prosecutrix was working and was responsible for administrative work as well as for imparting basic computer classes. Thereafter, the prosecutrix had

left her job due to her pregnancy and had gone to her parental home for care and support. She had given birth to a son on 05.04.2010 and had returned to Delhi on 15.06.2010, where she had started living in Bijwasan, Delhi. On 16.06.2010, while she was at her rented accommodation, the accused had allegedly offered her water laced with a sedative, after consuming which she had fallen unconscious. Taking advantage of the situation, the accused had forcefully established physical relations with her. Thereafter, he had threatened her that he had made an obscene video and had also clicked her inappropriate photographs, and on the strength of those threats, had repeatedly subjected her to sexual assault. It is further alleged that on 21.05.2016, the accused had again committed rape upon the prosecutrix and had physically assaulted her at the residence of her friend at Kapashera, Delhi. On the aforesaid complaint of the prosecutrix, the present FIR was registered for the commission of offences punishable under Section 376/506/323 of IPC on 27.5.2016. After completion of investigation, chargesheet was filed against the accused.

3. Thereafter, the learned ASJ was pleased to discharge the accused in the present case. The relevant portion of the impugned order is set out below:

"...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 27.5.2016 though she was allegedly raped by the accused for the first time on 16.6.2010. As per prosecutrix, she was raped by the accused for the last time on 21.5.2016. There is no valid justification for delay in lodging the FIR.

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

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

(d) In her statement u/s 161 Cr.PC as well as in her statement u/s 164 Cr.PC, the prosecutrix has not alleged of having been raped by the accused on 21.5.2016.

15. Considering the facts and circumstances of this case, after sifting and weighing the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused, I am of the opinion that the materials placed before the Court do not disclose the grave suspicion against the accused for framing a charge against him for committing offences punishable under Sections 376/506/323 IPC. Accordingly, accused in the present case is discharged...."

4. The learned APP for the State and the learned counsel for the prosecutrix argue that the impugned order is contrary to law and the material on record. It is submitted that the learned ASJ erred in discharging the accused on the ground that there was no convincing or credible evidence,

and that the order is based on conjectures and surmises. It is contended that the learned ASJ failed to appreciate the correct legal position and at the stage of charge, assessed the veracity of the allegations and overlooked the prosecutrix's statements under Sections 161 and 164 of Cr.P.C., wherein she had categorically alleged repeated sexual assault upon her, under threat. Additionally, the learned ASJ also failed to consider the statement of the prosecutrix's husband under Section 161 of Cr.P.C., where he had clearly stated that the accused had committed rape upon his wife. The learned counsel further submit that the learned ASJ misapplied the law by undertaking a detailed evaluation of the evidence, whereas at the stage of framing of charge, only a prima facie case needs to be established. Lastly, it is submitted that the delay in reporting sexual assault, given the trauma and social stigma involved, cannot be treated at par with delay in other offences. Accordingly, it is prayed that the impugned order dated 02.12.2016 be set aside.

5. The learned counsel for the accused, on the other hand, submits that the impugned order is well-reasoned and does not suffer from any legal infirmity. It is argued that the learned ASJ has duly applied judicial mind to the facts and evidence collected during investigation and has rightly concluded that no prima facie case is made out against the accused. It is contended that the FIR was lodged nearly six years after the first alleged incident, with no plausible explanation for the inordinate delay. There are material discrepancies in the victim's statements recorded under Sections 161 and 164 of Cr.P.C., and the medical evidence does not corroborate the prosecution's version. In view of the above, it is submitted that even on a prima facie assessment, the material on record fails to disclose any offence against the accused and the discharge order thus calls for no interference. Accordingly, it is prayed that the present petitions be dismissed.

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

7. The allegations against the accused/respondent, in a nutshell, are that he had sexually assaulted the prosecutrix for the first time on 16.06.2010, after administering a sedative in her drink, and had thereafter continued to exploit her by threatening to circulate her obscene videos and photographs. It is alleged that he had repeatedly committed sexual assault on the strength of these threats. Additionally, on 21.05.2016, he is stated to have again raped and physically assaulted the prosecutrix at her friend's residence in Kapashera, Delhi. On 27.5.2016, the present FIR was registered against the accused.

8. Before appreciating the rival contentions raised before this Court, it shall be apposite to note that the Hon'ble Supreme Court in case of Sajjan Kumar v. CBI: (2010) 9 SCC 368 had explained the powers of Courts in respect of the framing of charge and discharge and the fact that a prima facie case would depend on the facts and circumstances of each case. The relevant principles as enunciated in the said decision read as under:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie cases would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal..."

(Emphasis supplied)

9. The Hon ble Supreme Court in Ghulam Hassan Beigh v. Mohd. Maqbool Magrey: (2022) 12 SCC 657, after discussing several judicial precedents, summed up the law regarding framing of charge as under:

"27. 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 which 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..."

10. Thus, the fundamental basis for forming an opinion regarding the framing of charges revolves around determining whether there is adequate evidence on record to establish, prima facie, the commission of an offence. A 'prima facie' case would imply that there must be enough material or evidence that, when viewed at its face value, gives rise to a reasonable suspicion that the accused may have committed the alleged offence. Another important factor to be considered is the sufficiency of material on record. The Courts have to see as to whether the material placed on record is sufficient enough to establish a prima facie case against an accused and justify initiation of trial against an accused.

11. Thus, it is crucial to determine whether, in the given set of facts and circumstances, there exists a prima facie case against the accused.

12. From the material placed on record, it is evident that there has been an inordinate delay of more than six years in lodging the FIR, without any satisfactory or plausible explanation forthcoming from the prosecutrix. While delay alone may not be fatal to the prosecution, in the present case, the explanation for such delay is unconvincing, particularly as the allegations pertain to repeated sexual assault, including a recent incident allegedly committed on 21.05.2016. The prosecutrix had neither raised any immediate alarm nor made any prompt complaint to the authorities after the alleged incidents.

13. It is also material to note that despite the claim of prosecutrix that the accused had threatened her with the circulation of obscene videos and nude photographs, which is the entire premise for non-reporting the incidents of sexual assault for six long years, no such material were recovered from the possession of accused during the course of investigation. The medical evidence is also of no help to the prosecution since the MLC of the prosecutrix dated 27.05.2016 does not corroborate the allegations levelled in other statements of the prosecutrix.

14. In addition to the aforesaid, the learned ASJ has also noted that there are certain material inconsistencies in the statements of the prosecutrix. In particular, the FIR dated 27.05.2016 mentions the alleged last incident of rape on 21.05.2016, but no such incident is mentioned in her statements recorded under Sections 164 and 161 of Cr.P.C. on 27.05.2016 and 28.05.2016 respectively. Furthermore, her friend Muskan, in whose house the incident in question allegedly

occurred, merely states that the prosecutrix had stayed over in the house in her absence, which also offers no support to the case of prosecution.

15. The statement of the prosecutrix's husband is also noteworthy.

While the prosecutrix claims that the accused had revealed everything to her husband on 16.09.2015 and had also showed their photographs, the husband in his statement recorded under Section 161 of Cr.P.C. stated that he had come to know of the alleged physical relations only about two to two-and-a-half months prior to the filing of the complaint.

16. In view of the material on record, this Court finds that no prima facie case is made out against the accused. The allegations and the material on record lack sufficient basis to frame charges against the accused, and in the absence of any strong suspicion against the accused, the learned ASJ has rightly discharged the accused. The impugned order of discharge is therefore upheld.

17. The present petitions are dismissed.

18. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J APRIL 8, 2025/zp