

Prashant
v.
State of NCT of Delhi
(Criminal Appeal No. 4721 of 2024)
20 November 2024
**[B.V. Nagarathna* and
Nongmeikapam Kotiswar Singh, JJ.]**

Issue for Consideration

Whether FIR u/ss.376(2)(n) and s.506 IPC lodged against the appellant should be quashed; whether allegations in the FIR are correct; whether relationship between the parties was consensual in nature.

Headnotes[†]

Penal Code, 1860 – s.376(2)(n) and s.506 – The appellant and complainant came in contact with each other in the year 2017 and after some time they got to know each other – Complainant alleged that in the year 2019 appellant had a forceful sexual relationship her – Further, it was alleged that appellant used to threaten the complainant to have forceful sexual relationship with her – Later, appellant refused to marry the complainant – FIR u/s.s.376(2)(n) and s.506 was registered – The High Court in concluding that there was no consent on the part of the complainant and therefore she was a victim of sexual assault – Correctness:

Held: Taking the allegations in the FIR and the chargesheet as they stand, the crucial ingredients of the offence u/s.376(2)(n) IPC are absent – A review of the FIR and the complainant's statement u/s.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

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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 – Further, both parties are now married to someone else and have moved on in their respective lives – Thus, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law – The High Court erred in concluding that there was no consent on the part of the complainant and she was a victim of sexual assault – Thus, the FIR registered u/ss.376(2)(n) and 506 of the IPC and the charge-sheet filed are accordingly quashed. [Paras 19, 21]

Case Law Cited

State of Haryana v. Bhajan Lal [[1992 Supp. 3 SCR 735 : \(1992 Supp 1 SCC 335\)](#); *XXXX v. State of Madhya Pradesh* [[\[2024\] 3 SCR 309 : \(2024\) 3 SCC 496](#); *Pramod Suryabhan Pawar v. State of Maharashtra* [[\[2019\] 11 SCR 423 : \(2019\) 9 SCC 608](#) – relied on.

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Section 376(2)(n) of Penal Code, 1860; Section 506 of Penal Code, 1860; Forceful sexual relationship; Sexual assault; Sexual relationship; Assurance of marriage; Consensual relationship.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4721 of 2024

From the Judgment and Order dated 16.10.2023 of the High Court of Delhi at New Delhi in CRLMC No. 6066 of 2019

Appearances for Parties

Dr. Sunil Kumar Agarwal, Nikhil Tyagi, Atul Agarwal, Rakesh Kumar Khare, Ms. Kirti Sharma, Mrs. Amita Agarwal, Advs. for the Appellant.

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Vikramjit Banerjee, A.S.G., Mukesh Kumar Maroria, Ajay Kumar Prajapati, Ayush Anand, Annirudh Sharma li, Veer Vikrant Singh, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Nagarathna, J.

Leave granted.

2. Being aggrieved by the order passed by the High Court of Delhi dated 16.10.2023 in CRL.M.C 6066 of 2019 filed under Section 482 of the Code of Criminal Procedure, 1973 (“CrPC” for short) whereby the High Court refused to quash FIR No. 272 of 2019 dated 29.09.2019 registered with Police Station South Rohini, Delhi under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860 (“IPC” for short), the appellant is before this Court.
3. Briefly stated the facts of the case are that the complainant lodged FIR No. 272 of 2019 dated 29.09.2019 registered at Police Station South Rohini, Delhi under Sections 376(2)(n) and 506 of the IPC. As per the said FIR, the complainant alleged that she was living with her brother and working at the Vodafone Call Centre. The appellant herein came in contact with the complainant in the year 2017 and they had a conversation on call and got to know each other. They first met in November 2017 and again in April 2018 at a park. The complainant further stated that in January 2019, the appellant found her address and had a forceful sexual relationship with her. It was further stated that the appellant used to threaten the complainant to have forceful sexual relationship with her. However, the appellant later denied to marry the complainant by giving excuses. Further, the appellant also refused that the complainant should meet his parents.
4. The complainant has also given her statement under Section 164 CrPC. In the said statement, apart from reiterating the said allegations, she further stated that the appellant used to take the complainant to his room in Chhatarpur and have physical relationship with her. After the conclusion of the investigation, charge-sheet dated 22.11.2019 was filed.

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5. Being aggrieved by the said criminal proceedings, the appellant approached the High Court of Delhi by filing CRL.M.C. No.6066 of 2019 under Section 482 CrPC seeking quashing of the FIR No. 272 of 2019 dated 29.09.2019. By the impugned order dated 16.10.2023, the High Court dismissed the said petition filed by the appellant. The High Court noted that the alleged relationship between the parties was not the outcome of consent on the part of the complainant and that allegations made in the FIR and in the statement made under Section 164 CrPC were sufficient to constitute alleged offences against the appellant. Hence the instant appeal.
6. We have heard learned counsel for the appellant and the learned ASG for the respondent State.
7. Learned counsel for the appellant submitted that the contents of the FIR and MLC report do not disclose any cognizable offence. The parties were in a consensual relationship. The institution of the FIR was with the ulterior motive of retribution due to a personal vengeance. There are umpteen contradictions in the FIR, MLC report and the statement made by the complainant under Section 164 CrPC. It was submitted that in the FIR dated 29.09.2019, the complainant stated that the appellant committed alleged forceful sexual acts on her in January 2019. However, in the MLC report dated 28.09.2019, she alleged that the incident of rape happened one week before the MLC. Further in the statement under Section 164 CrPC, she stated that the appellant used to take her to his room in Chhatarpur and forcibly committed rape on her. Hence, there is inconsistency in her statements. Therefore, it was prayed that this Court may set aside the impugned order dated 16.10.2023 and quash the criminal proceedings pending against the appellant herein arising out of FIR No. 272 of 2019 dated 29.09.2019.
8. *Per contra*, the learned ASG for the respondent-State contended that a prima facie case has been made out and that the statements made under Section 164 CrPC are sufficient to constitute offences levelled against the appellant. Both FIR and MLC reports state that the appellant had a physical relationship with the complainant on false promise of marriage. The appellant had also threatened the complainant to kill her brother if she refused to have physical relationship with him. Only because of the said threat, the complainant

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reported the incident nine months later. Hence, the learned ASG argued that the High Court, vide impugned order, was justified in dismissing the quashing petition filed by the appellant and prayed for the dismissal of the present appeal as well.

9. During the course of the arguments, it was also brought to the notice of this Court that the appellant got married in 2019 and the complainant was also married in the year 2020.
10. Having heard the learned counsel appearing for the parties and having perused the material on record, the only question that falls for our consideration is, whether, FIR No. 272 of 2019 dated 29.09.2019 lodged against the appellant herein should be quashed.
11. In ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335***, this Court formulated the parameters in terms of which the powers under Section 482 of CrPC could be exercised. While it is not necessary to revisit all these parameters, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

“102. ...

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2).

x x x

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”
12. In the instant case the allegations in the FIR are under Sections 376(2)(n) and 506 IPC.

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13. An offence of rape if established in terms of Section 375 is punishable under Section 376 of the IPC. In the present case, the second description of Section 376 is relevant which is set out below:

“376. Punishment for rape. –

1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

2. Whoever, -

x x x

- n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

14. Further, Section 506 IPC speaks of criminal intimidation which is defined in Section 503 IPC. The said provisions read as under:-

“503. Criminal intimidation.— Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.— A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

x x x

506. Punishment for criminal intimidation.— Whoever commits, the offence of criminal intimidation shall be

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punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—

And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

15. Sub-section 2 of Section 376 is an exception to sub-section 1 of the said provision. Sub-section 2, *inter alia*, states that whosoever commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
16. Therefore, the question whether in the instant case the aforesaid offences were committed by the appellant within the meaning of the aforesaid provisions.
17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. 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

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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. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

19. In our view, taking the allegations in the FIR and the charge-sheet 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. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.
20. The ingredients of criminal intimidation are threat to another person, *inter alia*, with any injury to his person, reputation with intent to cause alarm to that person or to cause that person to any act which he is not legally bound to do. In the instant case, as already noted, the relationship between the appellant and the complainant was consensual in nature. In fact, they wanted to fructify the relationship into marriage. It is in that context that they indulged in sexual activity. Therefore, there cannot be a case of criminal intimidation involved as against the complainant. We do not find that there was any threat caused to the complainant by the appellant when all

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along there was cordiality between them and it was only when the appellant got married in the year 2019 that the complainant filed a complaint. In the circumstances, we do not think that the offence under Section 503 read with Section 506 of the IPC has been made out in the instant case.

21. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, indicate that the ingredients of the offence under Sections 376 (2)(n) or 506 IPC are not established in the instant case. The High Court erred in concluding that there was no consent on the part of the complainant and therefore she was a victim of sexual assault over a period of time and therefore, proceeded to dismiss the application under Section 482 CrPC on a completely misconceived basis. The facts of the present case are appropriate for the High Court to have exercised the power available under Section 482 CrPC to prevent abuse of the court's process by continuing the prosecution.
22. Recently this Court in ***XXXX vs. State of Madhya Pradesh, (2024) 3 SCC 496*** held that when the relationship between the parties was purely consensual and when the complainant was aware of the consequences of her actions, the ingredients of the offence of rape were not made out. Similarly, in ***Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608*** arising out of identical facts, this Court has enumerated the following:
 - “18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”
23. We, accordingly allow the appeal and set-aside the impugned judgment and order of the High Court dated 16.10.2023 in application under Section 482 CrPC. The application under Section 482 of

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CrPC shall accordingly stand allowed. The FIR No.272 of 2019 dated 29.09.2019 registered with Police Station South Rohini, Delhi under Sections 376(2)(n) and 506 of the IPC, charge-sheet dated 22.11.2019 filed in the Court of Metropolitan Magistrate, Rohini, Delhi and the trial pending in the Court of ASJ, Rohini, Delhi shall accordingly stand quashed.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan