

Delhi District Court

As Suraj Mal vs . The State (Delhi Admn.), Air 1979 on 12 May, 2016

Author: Anuradha Shukla Bhardwaj

1 of 35

IN THE COURT OF Ms. ANURADHA SHUKLA BHARDWAJ
ADDITIONAL SESSIONS JUDGE
(SPECIAL FAST TRACK COURT)-01, WEST
TIS HAZARI COURTS, DELHI

Sessions Case No. : 97/13
Unique Case ID No. : 02401R0178022013

State

Versus

Manjeet Singh
S/o Gurdev Singh Dhillon
R/o L-2/27, New Mahavir Nagar, Delhi

FIR No. : 23/13
Police Station : Vikas Puri
Under sections : 376 & 506 of Indian Penal Code

Date of filing of the charge sheet before : 09.04.2013
the Court of the Metropolitan Magistrate
Date of receipt of this file after committal : 16.04.2013
Arguments concluded on : 12.05.2016
Date of judgment : 12.05.2016

Appearances: Ms. Madhu Arora, Addl. Public Prosecutor for
the State.
Accused Manjeet Singh on bail, with Sh. V.K.
Khurana, Advocate.

SC No. 97/13 FIR No. 23/13 PS Vikas Puri
U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016

2 of 35

JUDGMENT

1. The prosecution case is based upon the complaint of prosecutrix (name and address mentioned in file and withheld to protect the identity of the prosecutrix) who alleged that after having taken divorce from her husband, her parents were looking for perspective match for her. The accused came to her contact through jeevansathi.com website. He told the prosecutrix that he cannot marry her but he wanted her to take care of her mother. The prosecutrix started working in the house of

the accused under a contract and was being paid in lieu of the work. In April 2012 when the prosecutrix was sleeping alongwith her daughter in a room in the house, the accused forcibly made physical relations with her and thereafter also he made physical relations with her several times, threatening her and her daughter with life, because of which she got pregnant. On the basis of this complaint, FIR U/s.376/506 IPC was registered.

2. Charge-sheet was filed under sections 376/506 IPC. The case after compliance of section 207 Cr.P.C. was sent to the sessions court for trial. Charge was framed against the accused U/s.376/506 IPC to which he pleaded not guilty SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 3 of 35 and claimed trial.

3. To prove its case, prosecution examined 14 witnesses.

4. PW-1 Taranjeet Kaur was the landlady of the prosecutrix when she lived away from the accused from 25.09.2012 till 01.05.2013. She has stated that brother of prosecutrix used to visit her while she was staying in the house and no other person visited her. She denied the suggestion given by the Ld. Prosecutor that accused Manjeet Singh used to visit the prosecutrix when she was living in the house of witness. Her testimony does not help either side much, since the fact of the prosecutrix having lived in the house has not been disputed by either side; on the aspect accused having visited the prosecutrix in this house; the parties have admitted the fact, so her turning hostile on this fact is meaningless.

5. PW8 ASI Ravinder Kumar was the duty officer on the relevant date and had recorded the FIR based on the rukka given by ASI Sharda. The computerized copy of FIR is Ex. PW8/A. The endorsement made on rukka regarding SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 4 of 35 registration of FIR is Ex. PW8/B. The certificate U/s.65B Indian Evidence Act is Ex. PW8/C.

6. PW2 HC Lehri Ram was working as MHC(M) on 19.01.2013. He deposed that on that day W/ASI Sharda deposited eight sealed pullandas as well as personal search articles of the accused alongwith two sample seals in the Malkhana. The relevant entry in register no.19 being entry no.1538 in this regard is Ex. PW2/A. He further deposed that on 23.01.2013 W/ASI Sharda deposited three sealed pullandas with one same seal vide sl. no.1546. The entry is Ex. PW2/B. On 28.01.2013 Ct. Surrender had taken all 11 pullandas alongwith sample seals from Malkhana to FSL and deposited the same in FSL, Rohini and after depositing the case property in FSL, he deposited the copy of RC and acknowledgment in malkhana. Copies of relevant record are Ex. PW2/C & Ex.PW2/D. There is no dispute on the samples having been collected and sent to the FSL. The prosecutrix in her evidence said that she got the pregnancy terminated out of her will. In fact she has mentioned of two fetus having been aborted once before and second after the registration of FIR. She has stated in her cross examination SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 5 of 35 that both abortions were carried with her consent.

7. PW4 has proved the call detail record of mobile phone no. 7827605630 in the name of accused and 8595390871 which is in the name of one Ms. Dhillon but as per prosecution was being used by

the prosecutrix. The parties are not denying their relationship during the long time from 2012 till the registration of the FIR and even afterwards till date

8. PW5, 6, 9, 10 are the doctors who had examined prosecutrix and the accused at different stages and have proved the MLCs. PW7 had notarized the Sevadari Anuband Patra Ex. PW7/A and also proved the relevant extract regarding the certification from his register which is Ex. PW7/B. None of these documents have been disputed by the accused.

9. PW13 is the IO. She has deposed about the investigation.

10. PW11 is the prosecutrix. In her evidence, she deposed that she was married to one Amarjeet Singh and SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 6 of 35 had two daughters from the wedlock. One daughter was living with her and one with her estranged husband. Accused had approached her parents on seeing her profile uploaded on "jeevansathi.com" for remarriage. On coming to their house accused told her that he did not want to marry her but he needed an educated woman to look after his 80 years old mother. Her parents after initial opposition agreed to the proposal and she was sent to Delhi alongwith accused. In this regard, an agreement, "Sevadhari Anubandh Patra" dtd. 23.01.2012 was executed which is Ex. PW7/A. She stated thereafter that she had settled her dispute with accused and moved a petition for quashing of FIR before the Hon'ble High Court. The certified copy of MoU entered between her and the accused is Ex. PW11/A. She also tendered her affidavit filed in the petition for quashing of the FIR presented before Hon'ble High Court by her alongwith the accused jointly, as Ex. PW11/C and the copy of said petition as Ex. PW11/D. Since the prosecutrix did not support the prosecution case, she was cross- examined by Ld. Addl. PP.

11. In her cross-examination conducted by Ld Addl PP the prosecutrix has admitted having given a complaint at PS SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 7 of 35 Vikas Puri on 18.01.2013 (Ex. PW11/F). She stated that the contents of her complaint were true and correct. She says that she had gone to DDU Hospital where with her consent her pregnancy was terminated. She admitted the suggestion given by the LD Addl PP as correct that in the month of April 2012 accused had entered in her room and had raped her after threatening to kill her and her daughter. She also admitted as correct her statement that the accused committed rape upon her several times after the said incident in the house after threatening her.

12. The prosecutrix in her cross examination conducted by Ld. counsel for the accused admitted as correct the suggestion of Ld. counsel that her parents, one brother and four sisters were living in Jabalpur. One of her brothers was living in Dubai and her father was a retired Police Inspector from Madhya Pradesh. She stated that she had worked in Mumbai during the time of her first marriage as Sales Executive and also at managerial post.

13. She deposed that accused and his elder brother had come to her residence on 18.01.2012 or 19.01.2012 and a discussion took place regarding the health of mother of SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 8 of 35 accused. The accused has stated that he used to stay out of Delhi and his mother was suffering from depression.

The mother used to get violent and needed someone to take care of her. She also stated that accused had told her that his divorce case was pending and so he could not marry her at that stage. She deposed that initially her parents were opposed to the proposal but after the discussion with Harbhajan Singh, they agreed to the proposal. She stated that in this regard an agreement was executed which has been exhibited as Ex. PW7/A, whereby it was agreed that the accused would pay Rs.5500/- to her as wages in addition to food and shelter to be provided to her and her daughter. She also admitted that an amount of Rs.5 lacs was deposited as security in her account. Admitting that she was provided all the facility while living in the house of accused, she stated that there was no physical relations between her and the accused before April 2012. About the incident of April, she stated that the accused had entered her room and had told her that he wanted to have physical relations with her. He threatened to get her daughter killed and forced himself upon her though she refused. She says that she did not raise alarm since her daughter was sleeping in the same room and the mother of SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 9 of 35 accused was also in the same house. She says that she had informed mother of accused about the incident next morning but did not get any support from her. She stated that she got her daughter admitted in the school and also admitted that the accused used to pay the fees though the expenses of uniform were borne by her. Saying that she used to pay the money to accused in cash, she stated that she did not have any document in support of her contention.

14. In her further cross-examination, she stated that she had married accused on 04.04.2015 in Arya Samaj Temple, near Tis Hazari and her marriage was registered on 06.04.2015. (Copy of marriage certificate is Ex. PW11/DX1). She stated that she was living happily with the accused in her matrimonial home. She further stated that the agreement (of her employment in the house of accused to take care of her mother) Ex. PW7/A was a dummy document and the actual agreement between them was that accused after taking divorce from his wife will marry her and shall also look after her daughter. She admitted that after coming to Delhi, she was living in a house where the accused was providing all comforts to her and her daughter and had also got her daughter admitted in a reputed public SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 10 of 35 school. She stated that when she started living in the house of accused she had physical relations with him with her free consent and that accused never forced upon her and never threatened her. She stated that she and accused had physical relations several times, each time with her free consent. She stated that since the divorce of the accused was getting delayed she got apprehensive about the intention of the accused and in a state of utter confusion she got the complaint Ex. PW11/F registered. She stated that she was also misguided by her well-wishers in making the complaint. She stated that she got pregnant twice due to her relations with the accused and both the times she got the pregnancy terminated with her free consent. She stated that the second fetus was aborted after the lodging of the FIR. She stated that even after her first abortion, she was living continuously with the accused happily without any grievance. She stated that PS Vikas Puri and PS Tilak Nagar were at distance of half a kilometer from her residence. She stated that she had a mobile phone at her disposal ever since she came to Delhi and that she used to roam around in Delhi freely; was operating the bank account; going to slimming centre; beauty parlour; office of the accused; for picking her child SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 11 of 35 from the school and social functions and other engagements. She admitted that the accused had taken her and her daughter to Kashmir and

Panchmani by air and had borne all expenses. She admitted that the accused had also taken an insurance policy in the name of her daughter for a premium of Rs.60,000/- per year. She stated that the accused had got purchased several articles for her including jewellery, electronic articles, and had paid for her other expenses. She stated that the accused was granted divorce by the court on 03.03.2015 and he married her thereafter (on 04.04.2015). Her apprehension about the accused not marrying her was ill-founded and was formed because of misguidance of some well-wishers. She stated categorically that after her marriage she does not have any apprehension as the accused has honoured his promise and she has voluntarily decided not to pursue the case. She stated that accused had filed a quashing petition before the Hon'ble High Court where she gave her affidavit stating that she wanted the case to be closed. About her deposition in the court she stated that she was perplexed when she deposed in her examination and cross-examination. The witness was re-examined by Ld. Addl. PP however, she maintained that physical relations between her and accused were formed SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 12 of 35 with her free consent and the complaint was lodged due to misunderstanding/apprehension and misguidance. She denied the suggestion given by the Ld. Prosecutor.

15. Statement of the accused was recorded U/s.313 Cr.P.C. He denied the entire incriminating evidence. He stated that he had come in contact of the prosecutrix through a website. He needed a help for taking care of his old and ailing mother. He says that he had told the family members of the prosecutrix that there was a dispute between him and his wife, which was pending adjudication in court for the divorce between the parties. He says that he had told the prosecutrix that he could not marry her without seeking divorce. With aforesaid facts in mind, Ex. PW7/A the document of prosecutrix being in service to take care of his mother, was executed, with a hope that after seeking divorce from his first wife he would marry the prosecutrix. He stated that the agreement was a camouflage. He stated that as per the commitment he has married the prosecutrix and he is living with her happily. He is also taking care of the prosecutrix and her daughter.

16. Arguments were advanced by Ms. Madhu Arora, Ld.

SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 13 of 35 Additional PP and Sh. V.K. Khurana, Advocate for the accused. Ld. Counsel for the accused argued that there was no incident of rape and the physical relations between the parties were always made with their free consent. He argued that it was agreed between the accused and the prosecutrix that she would come and stay with him and take care of his mother till the time he attains a divorce decree from his earlier wife. Since the process of grant of divorce was pending and he could not have married the prosecutrix legally before the divorce, the aforesaid agreement was entered into. However, the prosecutrix in utter desperation doubting the intentions of the accused got the false case registered. The prosecutrix wanted the accused to marry her which has been done after the divorce was granted by the concerned matrimonial court and there is no grievance pending between the parties.

17. Ld. Addl. PP on the other hand has argued that the prosecutrix has supported the prosecution case in her cross- examination conducted by the prosecutor. She has stated specifically that the

accused had raped her several times when she lived in his house under the agreement to serve his mother. She argued that the latter statement of the SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 14 of 35 prosecutrix was influenced by the fact that the accused married her and so the biased statement should not come in way of prosecution case which stands duly proved in the evidence.

18. Arguments heard. Record Perused.

DISCUSSION, ANALYSIS, OBSERVATIONS AND FINDINGS

19. The important question involved in the instant case is how to test the veracity of the prosecution story especially when it has variations in the evidence on material aspects and versions given which are contradictory to each other. Mere variance of the prosecution story with the evidence, in all cases, can not lead to the conclusion inevitably to reject the prosecution story. Effort has to be made to find the truth, which is the very object for which the courts are created. To search it out, the Courts have been removing chaff from the grain. It has to disperse the suspicious cloud and dust out the smear as all these things clog the truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 15 of 35 the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court within permissible limit to find out the truth. It means, on the one hand that no innocent man should be punished but on the other hand to see no person committing an offence should go scot-free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be given to the accused. For this, one has to comprehend the totality of facts and the circumstances as spelled out through the evidence, depending on the facts of each case by testing the credibility of the witnesses, of course after excluding that part of the evidence which are vague and uncertain. There is no mathematical formula through which the truthfulness of the prosecution or a defence case could be concretised. It would depend upon the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a Judge evoked by the evidence on record. So the Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 16 of 35

20. Under this sphere, I now proceed to test the submissions of both the sides.

IDENTITY OF THE ACCUSED

21. There is no dispute regarding the identity of the accused Manjeet Singh who has been identified in the Court by PW11, the prosecutrix and PW13 the police witness of investigation. It is also not in dispute that the accused and the prosecutrix were known to each other prior to the lodging of the FIR. Accused is also named in the complaint (Ex.PW11/A), and the FIR (Ex.PW2/A).

The identity of the accused stands established.

AGE OF THE PROSECUTRIX

22. There is no dispute that the prosecutrix was above 18 years of age at the time of the incident. In her complaint (Ex.PW11/A), her MLC (Ex.PW4/A) and in her particulars in her evidence, the prosecutrix has mentioned her age as 36 years. As per the prosecution, she was a major at the SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 17 of 35 time of the alleged incident. Her age is not disputed by the accused.

The prosecutrix was a major at the time of incident.

VIRILITY OF THE ACCUSED

23. Dr. Arun Kumar, PW-6 had medically examined the accused vide MLC (Ex.PW6/A). It is written in the MLC that there is no deformity suggestive (sic) that person is not able to perform sexual act.

The doctor had taken and seized the blood sample, pubic hair and nail scrapings of the accused. The accused did not have any fresh injuries. The testimony of this witness has not been challenged by the accused. It thus stands proved that the accused was potent and capable of performing sexual act.

FIR IS DELAYED

24. It is clear from the examination in chief of the prosecutrix that she did not have any grievance against the accused till 18-01-2013, when she went to the Police Station to make a complaint against him after she got pregnant. It is SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 18 of 35 clear that the prosecutrix preferred to remain silent and not complained to anyone prior to the lodging of the complaint on 18-01-2013, the first incident of alleged rape being of April 2012.

25. According to the prosecutrix, she had physical relations with the accused since April 2012 in his house as well as the rented house. Here, the judgment of the hon'ble High Court of Delhi reported as Shashi Chaudhary v. Ram Kumar and anr, 2011 (1) JCC 520 would be relevant wherein it has been observed that where there is no explanation given by the prosecutrix for her not making hue and cry, when the alleged offence took place, nor is there any explanation for failure on her part to lodge the complaint with the police immediately or for that matter within a reasonable time of incident, the prosecution case becomes doubtful.

No explanation is coming forth from the prosecutrix regarding the delay in lodging of the FIR on 18.01.2013 at 22:35 hours, giving her complaint (Ex.PW11/F) on 18.01.2013 when the alleged incidents of rape occurred much earlier (from April 2012 till October 2012). No explanation is coming forth from the prosecutrix regarding SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 19 of 35 her waiting till 18.01.2013 for making the complaint. So far as her pregnancy is concerned, she has admitted in her cross examination that

she had got pregnant earlier also and had got the same terminated. So the pregnancy apparently was not the reason for the lodging of the FIR.

26. The prosecutrix and the prosecution have not been able to justify the delay and why the prosecutrix did not report the matter immediately or earlier, which indicates that there was a possibility of the complaint being motivated or manipulated and the version of the prosecutrix being untrue. The possibility that the FIR was lodged after due deliberation and consultation cannot be ruled out.

It can under the circumstances be said that the FIR was lodged after a delay which is fatal to the prosecution story. The delay has not been satisfactorily explained by the prosecutrix and the prosecution.

EVIDENCE AND OTHER STATEMENTS OF THE PROSECUTRIX

27. I shall now discuss and analyse the different SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 20 of 35 statements of the prosecutrix.

28. The record reveals that the prosecutrix has made several statements which are contradictory to each other at different stages of the investigation and trial. Her first statement given to the police was that the accused had taken her to his house to take care of his old mother and she came to his house under an agreement. She says that in April 2012 the accused came to her room and after threatening her with the life of her daughter, he made physical relations with her. Thereafter, he made physical relations with her several times till October 2012 against her wishes. She remained silent fearing for her life and life of her daughter. She says that she had informed the incident to the mother of the accused, however, she did not support her. She says that she changed her house and went to a rented accommodation. However, the accused visited her in the rented accommodation also and made physical relations with her after threatening her. She was one and a half month pregnant at the time of lodging of the complaint.

29. When she came in the Court, she stated that the accused had told her in January 2012 when he visited her SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 21 of 35 house that he did not want to marry her but wanted an educated woman to take care of her mother. She changed her version a little bit in her cross-examination dated. 15.07.2014 wherein mentioning that the accused had stated that he wanted someone to take care of his ailing mother who was under depression and used to go violent, she added that the accused had conveyed to her that since his divorce case was pending, he could not marry her. She improved her version a little more and stated on 06.08.2015 that the agreement under which she started working in the house of accused was a sham and the actual agreement was that the accused would marry her after taking divorce from his first wife.

The prosecutrix, thus, has given three different versions regarding her relationship with the accused. From her initial stand that the accused had conveyed that he did not want to marry her, she went on to say that he stated that he could not marry her due to his previous marriage and then to say that he

had told her that he would marry her after taking divorce from his first wife (the divorce case for which was pending in the court) . This is the defence of the accused also. He has stated in his statement U/s.313 Cr.P.C. that he had conveyed to the prosecutrix that he SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 22 of 35 could not marry her legally till he gets divorce from his first marriage and that he had all the honest intentions of marrying the prosecutrix after taking divorce, which commitment he honoured by marrying her within a month of his divorce.

30. In the light of the aforesaid nature of deposition of the prosecutrix, PW11, who happens to be the material witness, the prosecution case appears to be not trustworthy and reliable, the prosecutrix having given different versions regarding the material fact of her agreement with the accused vis a vis the relationship which they were likely to share. Reliance can be placed upon the judgment reported as Suraj Mal vs. The State (Delhi Admn.), AIR 1979 S.C. 1408, wherein it has been observed by the Supreme Court as:

"Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witness becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 23 of 35 be based on the evidence of such witness."

Similar view was also taken in the judgment reported as Madari @ Dhiraj & Ors. v. State of Chhattisgarh, 2004(1) C.C. Cases 487.

RELATIONSHIP WAS CONSENSUAL

31. The prosecutrix alleged in her complaint that in April 2012 one day the accused entered her room and forced himself upon her after threatening her with life of her daughter. In her examination in chief, she did not speak anything about the incident of April 2012. In her cross-examination conducted by Ld. Addl. PP, she says that in April 2012 the accused had entered her room and had raped her after threatening her to kill her and her daughter. In her cross-examination conducted by the counsel for the accused dated. 15.07.2014 she stated that when the accused forced himself upon her, her daughter was sleeping in the same room. She did not shout or raise alarm as her daughter was sleeping there (in the room). She also stated that the mother of accused was also present in the house at that SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 24 of 35 time and was in her room. Thus, as per admission of the prosecutrix, there were two more persons present in the house at the time when the accused raped her for the first time in April 2012. One of the persons i.e. her own daughter was sleeping in the same room. The mother of accused was also present in house. It appears that the prosecutrix did not protest and did not raise alarm to seek help from the mother of the accused, who was also in the house. She did not try to run away from the room. It was apparently a big house and a non-willing woman could have, if she wanted her daughter not to be exposed to a violent physical relations imposed upon her, moved out of the room. She could have after coming out of the room sought help of the mother of the accused who was present in the house. From the conduct of the prosecutrix it

appears that she was not completely opposed to the relationship made by the accused with her in April 2012.

32. This proposition of the consent of the prosecutrix gets strength from the fact that the accused after the first incident made physical relations with her several times. She has stated in her complaint to the police that the accused made repeated physical relations with her from April 2012 SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 25 of 35 till October 2012. She alleges that the accused used to threaten her before making the relationship. She has stated that the accused made relations with her after threatening her in the rented accommodation where she had shifted. In her cross-examination by Ld. Addl. PP, she stated that accused committed rape upon her several times after threatening to kill her and her daughter. In her cross- examination conducted by Ld. Counsel for accused, the prosecutrix is not coming out to be a docile, dependent person who could not take a stand in a difficult situation. She admits that while she was living in the house of accused she had access to a mobile phone. She has her sisters and brother. She was not restricted to the house and was freely moving around in Delhi. She as an independent woman was visiting slimming centre and beauty parlour. She used to go to pick her daughter from the school and also used to attend social functions. It seems difficult to believe that all the time she was being raped by the accused against her wishes and did not have anyone to seek help from. She has admitted that there were two police stations near both her houses. The prosecutrix has faced a litigation (of her divorce) earlier and so was acquainted with the legal system and procedure also. She has worked as an independent SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 26 of 35 woman in a city like Mumbai during her first marriage. She states that the accused visited her in her rental accommodation and made physical relations there also. She did not disclose this to her landlady or anyone else. Apparently, at that time she was not under direct authority or control of the accused. The prosecutrix has stated that she had about Rs.11 lacs at her disposal. Rs.6 lacs having been given to her by her ex-husband at the time of settlement of first marriage and Rs.5 lacs given by the accused as a security amount. The prosecutrix as such was not a financial drained or indigent woman who could not have initiated a legal action against the accused. The prosecutrix, thus, was socially and economically an independent woman who was well aware of the structure of the society, having worked and faced legal system earlier in her life. It is, therefore, not acceptable that she was violated several times by the accused against her wishes and she did not take steps because he had threatened her with life of her daughter. On the contrary in the cross- examination conducted on 06.08.2015 the prosecutrix has stated that she has made physical relations continuously with the accused with her free consent. She says that the accused never forced himself upon her nor ever threatened SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 27 of 35 her. She stated categorically that the physical relations made every time were with her free consent. She says that the accused was taking due care of her and her daughter and had provided all kinds of comfort for their day to day living. He had got her daughter admitted in a reputed public school. He was bearing expenses of her social obligations and was also paying for her beauty treatments. This statement appear more consistent with the conduct of the prosecutrix in having not opposed or reported the physical advances of the accused, the relationship being consensual.

33. In the judgment reported as Namdeo Daulata Dhayagude and others v. State of Maharashtra, AIR 1977 SC 381, it was held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016
28 of 35 FREE CONSENT

34. In the case reported as Uday v. State of Karnataka, AIR 2003 SC 1639, the Hon'ble Supreme Court held as under :-

"In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

In the case reported as Deepak Gulati v State of SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 29 of 35 Haryana, (2013) 7 SCC 675 : 2013 Law Suit (SC) 442 , the Hon'ble Supreme Court has held that:

"Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had malafide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at any early stage a false promise of marriage by the accused; and whether the consent SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 30 of 35 involved was given after wholly, understanding the nature and consequences of sexual indulgence.

..... An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was malafide, and that he had clandestine motives. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention

whatsoever, of keeping his promise to marry the victim.

There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The " failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 31 of 35 misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance." Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

35. In the case reported as Kuldeep Tyagi v The State NCT of Delhi, 2013(2) JCC 840, it was observed that it was never the case of the prosecutrix that she ever insisted the accused to marry her. Thus, it was not a case of refusal to marry, despite promise, hence, not relevant.

In the present case the prosecutrix has come out with three different versions regarding the possibility (promise) of marriage. The accused ultimately has married her, which he could not do initially due to the legal Impediment of his subsisting marriage. The prosecutrix says she is satisfied as the accused has honoured his promise SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 32 of 35 made to her.

36. Thus, on analyzing the law laid down by the Hon'ble Superior Courts, it appears that the intention of the accused at the time of entering into a relationship is to be seen by the Court as to if he really intended to marry the prosecutrix or he merely made the promise to get sexual favours from the prosecutrix. If the facts suggest that the accused genuinely wished to marry prosecutrix but it could not materialize due to reasons beyond his control, then in such an event no offence could be made out. However, on the contrary, if he had no intention to marry the prosecutrix since beginning then his case would be squarely covered within the ambit of offence under section 376 IPC. Prosecution must lead positive evidence to give rise to inference beyond reasonable doubt that accused had no intention to marry prosecutrix at all from inception and that promise made was false to his knowledge. The failure to keep the promise on a future uncertain date may be on account of variety of reasons and could not always amount to "misconception of fact" right from the inception."

37. In the light of above judgments, the materials and SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 33 of 35 evidence on the record do not bridge the gap between "may be true" and must be true" so essential for a Court to cross, while finding the guilt of an accused, particularly in cases where the prosecutrix has herself claimed that the accused is innocent and has not committed any offence.

On carefully scrutiny of different statements made by the prosecutrix, it transpires that the prosecutrix has made several improvements; there are contradictions and inconsistencies in her evidence and her deposition is contrary to her earlier statements. She has finally stated that the accused had promised to marry her, which she avoided to say in the complaint and earlier

statements. It is apparent from her testimony that the accused had initially met her with a proposal of marriage in mind, having found her matrimonial alliance on a website. It is also clear from this fact that she and her family was also interested in marriage. She lodged the complaint as she got threatened due to the delay in the marriage. The delay as it comes out from the record was beyond the control of the accused as his divorce case was subjudice and he was not legally SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016 34 of 35 free to marry. The case is not covered by the provisions of section 376 IPC as the prosecutrix appears to have made consensual relations with the accused under an agreement that he will marry her after he gets divorce from his first wife. The FIR was seemingly lodged in a state of utter desperation emanating out of delay occurring in the fulfillment of promise.

38. Consequently, no inference can be drawn that accused is guilty of the charged offence under section 376/506 of the IPC. Accused is hereby acquitted of the charge for the offence under section 376 / 506 of the IPC.

39. Compliance of section 437-A Cr.P.C. is made in the order sheet.

40. Case property be destroyed after expiry of period of limitation for appeal.

41. One copy of the judgment be given to the Additional Public Prosecutor, as requested.

SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v. Manjeet Singh DoJ- 12.05.2016
35 of 35

42. After the completion of formalities and expiry of the period of limitation for appeal, the file be consigned to the record room.

Announced in the open Court on this 12th day of May, 2016.

(ANURADHA SHUKLA BHARDWAJ) Additional Sessions Judge (Special Fast Track Court)-01,
West Tis Hazari Courts, Delhi SC No. 97/13 FIR No. 23/13 PS Vikas Puri U/s. 376/506 IPC St. v.
Manjeet Singh DoJ- 12.05.2016