

Delhi District Court

Prosecutrix Has Filed A Complaint ... vs State Of Nct Of Delhi, Crl. Appeal ... on 11 July, 2014

Author: Sh. Yogesh Khanna

IN THE COURT OF SHRI YOGESH KHANNA,
ADDITIONAL SESSIONS JUDGE - SPECIAL. FAST TRACK
COURT : SAKET COURTS: NEW DELHI.

Unique ID No. 02406R0197472013
SC No. : 216/13
FIR No. : 52/13
U/s. : 323/417/376 IPC
PS : Sangam Vihar, New Delhi

State
(Govt. of NCT of Delhi)

..... Complainant

Versus

Ishwar Singh
S/o Kancharu Singh
R/o K-II/ 925, Sangam Vihar,
New Delhi

.....Accused

Date of Institution	: 05.08.2013
Judgment reserved for orders on	: 11.07.2014
Date of pronouncement	: 11.07.2014

JUDGMENT

1. Prosecutrix has filed a complaint under section 200 CrPC before the court of Ld. MM along with an application under section 156 (3) CrPC for lodging of the FIR under sections 90/323/376/417/506/120 B of IPC SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC against the accused, as also his five family members, alleging interalia that she was working in a private company, having a postpaid connection no. 9582269395 and a bank account no. 007010100686624 in Axis Bank.

The complainant and the accused were known to each other and were good friends for the last 3-4 years. On 14.11.2009, the complainant married with one Sanjay Prasad and that accused was also invited but he did not attend her marriage. However, within a week of her marriage, the accused started interfering in her married life and despite objections, he did not stop. Her husband came to know of her friendship with the accused and ultimately she was forced to leave her matrimonial house and was separated within a span of 24 days of her marriage. The prosecutrix then return to her parental house and there the accused came to meet her and assured her that he loves her and would marry her. The prosecutrix was then turned out of her parental house and hence, she shifted with the accused at house no. K-

SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC II/ 925, Ground Floor, Sangam Vihar, New Delhi 110062 and started residing with him.

One day accused came to the house in an intoxicated condition and had sexual intercourse with her without her consent and later had beaten her badly. As the prosecutrix was weeping, he assured her that he would marry her. Later, he had sexual intercourse with her several times by making inducement of marriage to her but always used to avoid her if she insist him to get her divorce from her earlier husband Sanjay. She was introduced as a wife by the accused in all public functions and to his relations and that his relatives used to visit her and treat her like their daughter in law. She has also filed certain video CDs / DVD to show that she was being treated as the wife of the accused. Later, she came to know that accused was already married and his divorce case was pending in the District Court in UP. On asking this fact from the accused, he beat her badly. She alleged that the accused while fulfilling his sexual desire, SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC got her pregnant three times and forcibly asked her to abort saying that they would have kids only after they were married.

In the month of August 2011, prosecutrix came to know that accused had taken divorce from his earlier wife through a Ld. District Court at UP and when she asked him to marry her, accused refused her and had badly beaten her.

On 04.09.2011, she was again beaten and kicked out of the house and then he started avoiding her. She gave a written complaint to ACP concerned on 21.11.2011 and to Mahila Aayog on 24.11.2011 and on 13.12.2011, but no action was ever taken. She alleged that instead of taking any action, the police of PS Sangam Vihar, New Delhi took her signatures on some blank papers. She also referred to a sting operation, she performed on accused by calling him as well as his jija pretending them that she is inclined to settle the matter with the accused. She has filed a written transcript of SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC talks between her and the jija of accused. She further alleged that family members of the accused were in league with the accused and they used to assure her that they would marry her with the accused.

2. On the basis of above complaint Ex. PW 2/E, an FIR bearing no. 52/13 was registered at P.S Sangam Vihar, New Delhi under section 376 IPC. During investigation, accused was arrested. After completion of investigation, the charge sheet was filed.

3. Since it was a Session's triable case, it was committed to this court. On 12.08.2013, a charge under 417/376/323 IPC was framed against the accused. He pleaded not guilty and claim trial.

4. Prosecution had examined six witnesses in this case. Before proceeding further, it would be appropriate to state in brief the statements made by the prosecution witnesses.

PW 1 HC Dalbir Singh on 02.07.2013, had handed over the copy of complaint dated 21.11.2001 by the prosecutrix along SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC with the final report (10 pages), exhibited as Ex. PW 1/A.

PW 2 is the prosecutrix PW 3 Ct. Siddarth, on 25.04.2013 had taken the accused for his medical examination to AIIMS hospital qua his potency test vide MLC Ex. PW 3/A and after examination, the doctor had handed over to him the exhibits pertaining to the accused, seized by the Investigating officer vide memo Ex. PW 3/B.

On 25.04.2013, accused surrendered and he witnesseth the arrest memo Ex. PW 2/R; the personal search memo Ex. PW 2/S and the disclosure statement Ex. PW 3/C.

PW 4 Dr. Asit Kumar Sikary on 25.04.2013 had examined the accused vide MLC Ex. PW 3/A and opined that there was nothing to suggest that accused was incapable of performing sexual intercourse under normal circumstances.

PW 5 Dr. Kavita has proved the MLC Ex. PW 2/Q of the prosecutrix wherein the detail of the case of the prosecutrix has been mentioned. She was of the opinion that examination is suggestive of previous vaginal intercourse.

PW 6 SI Kamini Gupta was entrusted with investigation on 05.02.2013 as the FIR was registered on 22.01.2013 pursuant to an order of the Ld. MM. She got the prosecutrix medically examined vide MLC Ex. PW 2/Q;

SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC she formally arrested the accused vide memo Ex. PW 2/R; got his personal search conducted vide memo Ex. PW 2/S; got the accused medically examined vide MLC Ex. PW 3/A; seized the exhibits pertaining to the accused vide Ex. PW 3/B; recorded the disclosure statement Ex. PW 3/C of the accused.

5. On the basis of above evidence, the Ld. Addl. PP for State argued that accused may be convicted for the offences for which he is charged with but whereas the Ld. counsel for the accused has argued that the prosecutrix and the accused were friends and were major at the time of incident and that they have indulged in sex fully knowing its effects and that none was competent to marry the another during the period of incident and as such, no case is made out against the accused and thus he be acquitted of the charges framed.

6. To come to a conclusion, it would be appropriate to appreciate the deposition of the prosecutrix, who has been examined as PW 2. She has deposed as under :-

" I am working with M/s Hathway Cables SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC and Data Com. Ltd. and am having a postpaid mobile no. 9582269395 and my salary account is in Axis Bank. I knew the accused for the last 3-4 years from prior to the filing of my complaint. I met the accused for the first time in my previous company at Chirag Delhi, New Delhi through one of the employee namely Raghavan Jha @ Bablu, who was also working with me at that time. The accused was working as a Technician at IGL. Then we both started talking on phone and we became friends. On 14.11.2009 my parents got me married with one Sh. Sanjay Prasad. I invited all my friends, including the accused, but he did not turn up. After some time of my marriage, accused started ringing me on my mobile phone. I always used to tell him that now since I am married, he should

not telephone me. Because of his interfering in my life, the relations between me and my husband became sore and my husband started suspecting me of having relations with some boy. When my husband started raising finger on my character, I went to my parents. After some time, accused came to my parents house and when I asked him as to why he had disturbed my married life, he replied that he is in love with me and could never see my marrying with some other person and that he would marry me. My parents heard this conversation and snubbed me saying that the allegations made by my husband Sanjay were true. They asked me to leave their house. I left my parents house and as accused was SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC present there he told me that since now, my parents had left me so I could accompany him and that he would marry me. Accused then took me to his single storey house at K-2nd / 925, near Amrita Public School, Sangam Vihar, New Delhi. I accompanied the accused on his assurance that he would marry me by getting me divorced from my husband. I started residing in the house of accused in a separate room.

One night in first week of December, 2009, the accused came drunk in the house and committed forcible sexual intercourse with me. I objected to this act of his and kept on weeping the whole night. Accused apologised to me the next morning and felt sorry and further promised to marry me. I stayed with the accused till September 2011. During this period, it has become a habit of accused to drink and to beat me and then to have sexual intercourse with me. The accused used to tell me that he is consulting an advocate and very soon I shall get divorce from my husband and then he would marry me. In the first week of September, 2011 the accused kicked me out of his house and I went to my parents. I talked to the mother and brother in law of accused and they assured me that I would be married with the accused.

On 08.12.2009, the accused took me to Tis Hazari Court in a chamber of a lawyer, where accused made me sign on certain documents of divorce along with my earlier husband Sanjay Prasad. Later I came to know that said divorce documents were illegal only when I went to lodge this SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC complaint. The accused had brought me to his house and had put sindoor in my forehead and had treated me as his wife and we started living together as husband and wife. Later I came to know that accused was married and a divorce case was pending in the court at Bijnore, UP. When I asked the accused about the same, he told me that he is taking divorce from his wife and would then marry me. During our relations, I got pregnant 3 to 4 times but accused got it terminated by saying that it would not be proper to have a child before marriage. Lastly, he got terminated my pregnancy by giving me some tablet without my knowledge. In August, 2011, I came to know from the relatives of the accused that he got divorce from his earlier wife in July 2011. He told me that the girl like me are only for use and not for marriage and he kicked me out of his house.

On 21.11.2011, I made a complaint Ex. PW 1/A at CAW Cell and I was told that there is no proof against the accused and that I should receive an amount of Rs. 70,000/- to Rs. 80,000/- from accused, which I had given to him. I though gave a written note Ex. PW 2/A but did not compromise the matter. When no action was taken by the CAW Cell, then I made a complaint Ex. PW 2/B at PS Sangam Vihar on 13.12.2011 but police did not take any action. Then I sent the copy of a complaint Ex. PW 2/C and also made a complaint to the Commission of Women, Vikas Bhawan, received on 24.11.2011. Finally, I made a complaint Ex. PW 2/E (28 pages) in the SC No. : 216/13 FIR No. :

52/13 U/s. : 417/376 IPC court along with a CD containing conversation between me and the jija of the accused; Video CD containing photographs of Greh Prevesh of my neighbour where we both attended the function; Video CD prepared by me when the brother in law of accused namely Vijender and accused had come to compromise the matter outside Dwarka court; CD of marriage of one of the friend of accused Ishwar Singh. I had also filed a copy of electricity bill which I used to pay through my ATM card when I was residing with the accused. I had also filed the statement of my account. I had also filed the copy of my ration card and Voter ID and details of my mobile phone as also an ultrasound report Ex. PW 2/F with regard to my pregnancy. The transcript of said conversation (running into 28 pages) Ex. PW 2/G between me and Vijender Singh, brother in law of accused; the photographs of the Video CD is Ex. PW 2/H 1 to H-6; conversation between me and brother in law of accused containing in a audio CD is Ex. PW-2/J running into 32 pages; photographs of Greh Prevesh are Ex. PW 2/K-1 to K-4; the electricity bill is Ex. PW 2/L; the statement of account is Ex. PW 2/M, the call detail record of my mobile phone is Ex. PW 2/N (Colly); copy of the ration card is Ex. PW 2/O and the copy of voter ID is Ex. PW 2/P. The CDs containing photograph of Greh Pravesh, marriage video, conversation between me and Vijender and audio conversation between me and brother in law of accused are Ex. P-1 to Ex. P-4. These documents SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC show that we were living as husband and wife. My MLC is Ex. PW 2/Q and accused was arrested in my presence vide arrest memo Ex. PW 2/R and his personal search was conducted vide memo Ex. PW 2/S."

In her cross examination, prosecutrix has admitted that she had written Ex. PW 2/A herself and she may have given an amount of Rs.70,000/- to Rs. 80,000/- to the accused during her stay with the him as his wife. She also admitted that she knew the accused since 2005 and they were friends and that she had stayed in the house of her parents for 5-6 days after she had left her husband in November 2009. She also admitted that she was on talking terms with accused on their mobiles since 2005 and after about 10 days of her marriage with Sanjay, she went to her parents house and that after about 15 days of her marriage with Sanjay Prasad, she had started residing with the accused. She denied that when she visited her parents house after the marriage for the first time, she had telephoned the accused and had told him that she wish to live with him and do not wish to return to her matrimonial house. She admitted that after the holi festival in March 2010 her parents started visiting her and that the mother and brother in law of accused also visited her house. She admitted that she and accused used to stay alone in the rented accommodation. She further admitted that she shifted with accused in the rented accommodation between 29th November to 2nd December, 2009 and she do not remember the exact SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC date of the first incident but it was in the first week of December 2009. She admitted that she had not made any complaint to the police against accused for the rape he had committed and even did not inform her parents about the incident immediately after the incident. She also admitted that she had not filed any complaint to the police or to the National Commission for Women till after the time the accused kicked her out of his house. She voluntarily stated that even after being kicked out of the house, she did not prefer to file the complaint against the accused for some days as the brother in law and mother of the accused had assured her that they would sort out the issues between them and would marry her with the accused. She made the complaint in CAW Cell and may have attended 3 or 4 dates in the CAW Cell and that the accused was also summoned in the CAW Cell. She legally got divorced from Sanjay Parsad on 16.5.2013. She admitted that

divorce cannot be granted by merely signing the documents in the chamber of a counsel. She denied that she ever told the police that if accused would keep her as his wife, she would withdraw her complaint. She also denied that prior to the registration of FIR, she was asked by Investigating officer SI Satish Bhati to accompany her for her medical examination or she refused. She also denied that she never wanted to marry with Sanjay Prasad or for this reason she had left the house of Sanjay within 8 days of her marriage. She admitted that accused was having a mobile no.

SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC 9868946061 and she was using Reliance SIM Card. Though, she had stated that during the 8 days of her marriage, accused used to telephone her and she may have telephoned him for once or twice to tell him not to call her, since she was married by then. She could not tell the date, month or year of first three abortions but her last abortion was in the last week of the month of February, 2011, because of the medicines given by the accused without her knowledge. The accused probably gave her the medicine after mixing it in the milk. He told her this fact when she had a severe pain in her abdomen on next day. She admitted that she had not mentioned this fact in her complaint. She admitted that during her stay with the accused, she came to know in the year 2010 that he was also a married man. She further deposed that her parents did not lodge any complaint against the accused when she went to their house after two years of her stay with the accused. She denied that she was staying with the accused in a live in relationship despite knowing the fact that he was already a married man. She further denied that she ever demanded Rs. 90,000/- from accused to settle this case or that she demanded the house of accused or that she had stated these facts to the relatives of the accused. She also admitted that she had filed the complaint u/s 200 Cr.P.C after about 9 months of her filing the complaint at P.S Sangam Vihar.

7. Heard.

SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC

8. I have perused the statement of the prosecutrix. It is an admitted fact that on 14.11.2009 she had married with one Sanjay Prasad but stayed with him only for 10 days and then had returned to her parents house.

Though, she alleged that accused used to telephone her during her stay in her matrimonial home and for this reason there arose some dispute between her and her husband Sanjay and that it was the reason for her shifting from her matrimonial house to her parents house, but I feel that merely telephoning of a person cannot be the only reason for taking such drastic decision as if the accused was harassing her by telephoning her during her stay at her matrimonial house, she could have conveniently changed her SIM or ought not to have picked up the phone of accused.

The fact that she left the house of her legally wedded husband within 8/10 days of her marriage, do show that she was not inclined to stay with him or for working on her marriage More so, she admitted that she SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC was friendly with accused for the last 3-4 years i.e. since 2005. She also admitted that within 15 days of her marriage, she had shifted with the accused at his House No. K-II/925, Sangam Vihar, New Delhi and stayed alone with the accused in his house for two years. Though, she alleged that accused had promised to marry her

but she also knew that he was already a married man and that she too was not competent to marry as was not divorced. Admittedly she got divorced in 2013.

It is an admitted fact that rather than filing a divorce case against her legally wedded husband, she went on to stay with the accused on an alleged promise of marriage, of which relation she herself was not competent to enter into.

Though, she alleged that she was raped in the first week of December, 2009 or had got her pregnancy aborted for about four times but admittedly she never complained this fact to her parents or to her neighbours or anyone else and had filed the police complaint in SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC December, 2011 after staying with accused for two years, show that she herself was inclined to stay with accused, being in love with him.

Hence, despite the fact she was legally married to Sanjay Prasad and had not taken divorce from him, she willingly took the risk of staying with the accused, to whom she was not married. She rather admitted that during the course of her stay in her matrimonial house, she also telephoned accused once or twice, though she alleges that it was to snub accused; which seems hard to believe. She also admitted that in the year 2010, she came to know that accused was already a married man but despite that she continued staying with him on an alleged promise that he would marry her after obtaining divorce. The bare fact that the prosecutrix left her house in a hurry to accompany the accused within 15 days of her marriage, do show that things were not as pretended by prosecutrix. The fact that both the accused and prosecutrix were friends since 2005 and that her SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC marriage was an arranged marriage by her parents, probably not to her liking, she fled away from her matrimonial house and went on to stay with the accused.

Even her parents did not like her idea and had asked her to leave their house. Hence, these facts do show that she was in love with accused and had voluntarily taken the risk despite being a married woman, to stay with accused in a live-in-relationship.

The document Ex. PW 2/A dated 02.12.2011 further clarifies the air, wherein prosecutrix had stated that in the year 2009, she had married with one Sanjay but could not adjust with him and had returned to her parents house; that she knew Ishwar Singh since 2005 and even went on to reside with him. Though, she had stated in this note Ex. PW 2/A that she is not compromising qua her complaint but admitted that she resided with the accused on her own, do show that it was because of love affair between the two she went to live with accused but later their relations went sore and SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC led to the filing of the present complaint.

9. Since prosecutrix was a married woman, not competent to marry during the subsistence of her marriage with Sanjay Prasad, she cannot allege that accused had cheated her on a promise to marry her. To me, it was probably a unfortunate decision on the part of the prosecutrix. The prosecutrix seems to be swayed by her desire to live with accused being in love and it may have prompted her to leave her husband.

Here, I would like to refer to the judgment of the Hon'ble Supreme Court in the case of Prashant Bharti vs State Of Nct Of Delhi, Crl. Appeal No. 175 of 2013, wherein it was held as under:-

" Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23.9.2008 reveals, that the complainant/prosecutrix was married to Lalji Porwal on 14.6.2003.

It also reveals, that the aforesaid marriage subsisted till 23.9.2008, when the two divorced one another by mutual consent under Section 13B of the Hindu Marriage Act. In her supplementary statement SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC dated 21.2.2007, the complainant/prosecutrix accused Prashant Bhati of having had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/ prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23.9.2008 produced before us by the complainant/prosecutrix herself is taken into consideration alongwith the factual position depicted in the supplementary statement dated 21.2.2007, it would clearly emerge, that the complainant/prosecutrix was in a relationship of adultery on 23.12.2006, 25.12.2006 and 1.1.2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC she was induced to a physical relationship by Prashant Bharti, the appellant- accused, on the basis of a promise to marry her, stands irrefutably falsified."

10. In these facts and circumstances and the law discussed above, I am of the considered opinion that no case under section 376 IPC is made out against the accused. The prosecutrix though alleged that accused has got aborted her pregnancy four times without her knowledge but she never ever, during the period of her stay with the accused, agitated this fact and never filed any complaint to the police. Hence, it shows that she also probably gave her own consent for termination of her pregnancies and now that her relationship has come to an end, she is agitating this fact.

11. I have seen the CDs and photographs. The photographs do show that they were attending parties together. The CDs contain the talks between the prosecutrix and the brother in law of accused, are rather conversations in which the prosecutrix is alleging that SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC accused has spoiled her life and is rather trying to prove her allegations made in her complaint. The conversations between the prosecutrix and her brother in law do not in any way help the prosecutrix as the fact that she was a married woman and was in no capacity to marry the accused do create a doubt in favour of the accused.

The Ld. Counsel for the complainant has though relied upon a judgment of the Hon'ble High Court of Ahmedabad, Gujrat and has file a document but without citation / title and neither he is aware of that. However, even if the facts of the cited case are seen, a lady therein had left her husband and obtained divorce from him by a divorce deed, allegedly recognized by a custom in the State of Gujrat and that she was residing with her new husband since 1997. The issue before the court was whether in such circumstances the passport can be issued to her as a wife of her later husband.

The facts in the cited case are completely different from the case in trial as herein the prosecutrix was not SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC divorced by any mean from her earlier husband namely Sanjay when she entered into relationship with accused and even otherwise, the issue qua competency to marry again, if not divorced from her earlier husband, was never in dispute in the cited case. Thus, the cited judgment is wholly inapplicable to the facts of this case.

12. Thus in view of the above, accused is entitled to be acquitted of the charges framed. Thus stands acquitted. His bail bond stands cancelled and surety discharged. Accused is directed to furnish bail bond in the sum of Rs.10,000/- with one surety in the like amount, in compliance of section 437-A Cr.P.C. File be consigned to record room.

Announced in the open court today i.e. 11th July, 2014 (Yogesh Khanna) ASJ-Spl. FTC / Saket Courts New Delhi.

SC No. : 216/13 FIR No. : 52/13 U/s. : 417/376 IPC