IN THE COURT OF SH. SATISH KUMAR,
ADDITIONAL SESSIONS JUDGE- SPECIAL FTC – 2 (CENTRAL)
TIS HAZARI COURTS: DELHI.

Case No.	**182/2018**
State V	**Vivek Tomar s/o. Rajender @ Raju r/o. J-IIND, 62 IIND Floor, JJ Colony, Wazirpur, North West, Delhi.**
FIR No.	**229/2017**
U/s	**376 IPC**
Police Station	**Nabi Karim**
Assigned to Sessions	**14.03.2018**
Charges framed on	**23.03.2018**
Arguments heard on	**31.05.2019**
Judgment pronounced on	**01.07.2019**
Decision	**Acquittal.**

JUDGMENT:

1. That, the case of the prosecution is that, the Station House Officer of Police Station Nabi Karim had filed a charge-sheet before the court of Ld. Metropolitan Magistrate vide FIR No.229/2017 dated 31.07.2017 u/s. 376 IPC for the prosecution of accused Vivek Tomar and after compliance of the requirement of section 207 Cr. P.C. the case was sent to this court being the designated Special Fast Track Court for trial of the offences of sexual assault against the women through the Office of Ld. District & Sessions Judge (HQ), Tis Hazari Courts, Delhi. Keeping in view of section 228 (A) IPC and directions of Hon'ble Supreme court in **"*State of Karnataka Vs. Puttraj 2004 (1) SCC 475*" and "*Om Prakash Vs. State of U.P. 2006, CRLJ. 2913*"**, the

name and identity of prosecutrix is not being disclosed in the judgment.

BRIEF FACTS OF THE CASE:

2. That, in this case, criminal law was set into motion on the statement of prosecutrix dated 31.07.2017 and FIR No.229/2017 u/s 376 IPC was registered. In her statement, prosecutrix has alleged that for the last six months she was in friendship with the Vivek (accused herein) and they both used to meet in the market and accused Vivek used to say that he will marry with the prosecutrix. About two months back accused Vivek stated to the prosecutrix to go somewhere for talking for their marriage and thereafter, accused took the prosecutrix to Hotel at about 11:00pm where accused ask the prosecutrix to climb the stairs and the accused came behind her with key of the room at the 4th floor of the hotel and then closed the door of the room. When the prosecutrix asked the accused as to why he has close the door, he said to her 'koi baat nahi, kal hume shadi karni hi hai'. Then accused forcibly removed the clothes of the prosecutrix and establish physical relationship with her. The prosecutrix started weeping, on that accused said to her that he will talk to his family member soon regarding marriage. On the very next day at about 10:00am, accused took the prosecutrix to Wazirpur and from there, she left for her home. After 4-5 day, accused get the prosecutrix in a rented house L-427, near Valimiki Mandir as his wife.

3. That, on dtd. 22.07.2017, the prosecutrix told the accused that she was going to be mother of his child. On that accused said to her that he will not marry with her and left leaving behind the prosecutrix. Prosecutrix waited for many days there, but the accused did not return back and also switched off his mobile phone nos. 844780621 and 8383980573. Thereafter, prosecutrix

reached her house and told about the incident to her bhabhi 'S' who took the prosecutrix to Police Station. Prosecutrix further stated that the accused has established physical relationship with her on the pretext of marriage and requested to take legal action against him and on the basis of this complaint, W/ASI Babita got registered the case. Prosecutrix was medically examined and thereafter on dtd. 01.08.2017, her statement u/s 164 Cr.P.C. was got recorded by the Ld. Lady Magistrate.

4. That, on dtd. 30.11.2017, accused was arrested. His disclosure statement was also recorded. Investigation was carried out and charge-sheet was filed against the accused.

CHARGE:

5. That, on the basis of material available on record as well as the evidence, collected by the I.O. during the course of investigation, Ld. predecessor of this court vide order dated 23.03.2018 framed charge against the accused Vivek Tomar u/s. 376 IPC to which accused pleaded not guilty and claimed trial.

PROSECUTION WITNESSES:

6. That, in order to prove its case, prosecution has examined **09** witnesses including **PW1** ASI Shyam Sunder Gautam, **PW2** Prosecutrix 'DM', **PW3** W/Ct. Poonam Yadav, **PW4** Ct. Mahesh, **PW5** Sh. Shahwaz, **PW6** Smt. Shivani, **PW7** Sh. Ramesh Chand, **PW8** Shri Shobha Singh and **PW9** W/ASI Babita**.**

PWs	Name of the	Nature of the	Documents proved

	Witness	witness	
PW1	ASI Shyam Sunder Gautam	Police witness	This witness has proved copy of FIR vide Ex.PW1/A and he also proved his endorsement on rukka vide Ex.PW1/B. He has also issued certificate u/s 65 B of Indian Evidence Act regarding correct contents of FIR vide Ex.PW1/C.
PW2	Prosecutrix 'DM'	Victim/ complainant	Prosecutrix being victim of the alleged sexual assault has testified about the incident and has testified about her complaint given to the police which is Ex.PW2/A as well as made her statement u/s 164 CrPC before Ld MM Ex.PW2/B. She has proved her MLC vide Mark-A.
PW3	W/Ct. Poonam Yadav	Medical witness	This witness has deposed that on dtd. 31.07.2017 she was posted at PS Nabi Karim and working at Women Help Desk and during her working hours at about 1:00 a.m.-2:00 a.m. (midnight) duty officer called her and handed over copy of FIR and rukka with directions to deliver the same to the W/ASI Babita in Lady Hardinge Hospital. She reached there at about 3:00 a.m. and handed over the copy of FIR and rukka to her. In her presence, I.O. had checked guest entry register available at the Hotel reception but no entry pertaining to accused and prosecutrix could not be found and in her presence, I.O had prepared site plan.
PW4	Ct. Mahesh	Police witness	This witness has proved arrest

			memo of accused vide arrest memo Ex.PW4/A. In his presence, I.O. had recorded disclosure statement of accused vide Ex.PW4/B. He further deposed that in pursuance to his disclosure statement accused had led them to a room at fourth floor of Hotel Sangrila and pointed out the room and I.O. had prepared pointing out memo in this regard vide Ex.PW4/C.
PW5	Sh. Shahwaz	Manager/ Public Witness	This witness is the Manager of Hotel Sangrila. He has brought the summoned record of the hotel guest entry register. He deposed that he does not remember the date however, police had come in their hotel to make inquiry about one person Vivek Tomar if he had stayed in their hotel or not and after checking the record he found not such person by the name of Vivek Tomar had stayed in their hotel on dtd. 31.07.2017 and when police official asked for CCTV footage, he told the police that CCTV footage of 29 days was only preserved in their system, as such more than 29 days had passed so, he had not given any CCTV footage to the police. He further deposed that whenever a guest stays in their hotel, they take proper ID of the person and make mention in their register.
PW6	Smt. Shivani	Public witness	She deposed that she is living at

			her abovesaid house for last six years after her marriage and in her family her devar Naresh, her mother in law, Salochna, her husband Ravinder and prosecutrix (her nanad) live together. She further deposed that about two months prior to registration of this case, her Nanad, prosecutrix had left the house and she had taken separate rented accommodation and was living alone there near the house of accused Vivek Tomar and accused had also started living with her Nanad in rented accommodation and her Nanand became pregnant and she returned back to their house and she informed that accused had left her and run away. She further deposed that prosecutrix did not make any complaint against the accused to her nor she was told as to how prosecutrix and accused were living in the said rented accommodation.
PW7	Sh. Ramesh Chand	Public witness	This witness deposed that about two years back from now, he had rented the ground floor of her house to one Vinod through a property dealer and he does not remember for how much rent was fixed. This witness was declared hostile by ld. Addl. PP for the State and even cross examined by ld. Addl. PP for the State, he has not supported the case of prosecution.

PW8	Shri Shobha Singh	Public witness	This witness is also the Manager of Hotel Shangrila, Pahar Ganj, Delhi. He deposed that in the year 2017, police had come in his hotel to make enquiry regarding stay of the prosecutrix of this case in their hotel and he had checked the details of the relevant period i.e. 01.03.2017 to 01.07.2017 and not girl in the name of prosecutrix had stayed in their hotel as per record. She further deposed that the prosecutrix had also accompanied police official when visited his hotel and she did not identify him as Manager and the CCTV footage in their hostel only preserved for 29 days so the same could not be given to police.
PW9	W/ASI Babita	Investigating Officer	This witness is the investigating officer. She has deposed on the lines of investigation. She has proved statement of prosecutrix vide Ex.PW2/A and prepared rukka Ex.PW9/A and got registered the FIR. This witness has taken the prosecutrix to Lady Harding Medical College where she was medically examined vide MLC Ex.PX-1. This witness has prepared site plan of the place of occurrence at the instance of prosecutrix vide Ex.PW9/B. This witness has got recorded the statement of prosecutrix u/s 164 Cr.P.C. from Ld. MM. During the curse of investigation,

			this witness has arrested the accused vide arrest memo Ex.PW4/A and recorded disclosure statement vide Ex.PW4/B.

STATEMENT OF ACCUSED U/S 313 CR.P.C.:

7. That, after recording the evidence of the prosecution witnesses, all the incriminating evidence has been put to the accused and his statement u/s 313 Cr.P.C. was recorded. Accused claimed that he is innocent and has been falsely implicated in this case and this case was registered only to extort money from him and he has not committed any offence. Accused has not preferred to lead defence evidence.

ARGUMENTS:

8. Ld. counsel for accused argued and submitted that prosecutrix has not supported her statement made to the police as well as before the Ld. MM and make a submission that accused may kindly be acquitted in this case FIR.

9. Per Contra, Ld. Addl. PP for the State submitted that the statement of the prosecutrix made to the police as well as to the Ld. MM when her statement u/s 164 Cr.P.C. was recorded and these both statements are corroborative and make a submission that accused is liable to be convicted.

PERUSAL OF RECORD:

10. Arguments heard. Record perused. On perusal of record, it is revealed that on the written complaint of prosecutrix Ex.PW2/A, present FIR was registered against the accused.

11. Before reaching at any conclusion, let the relevant sections i.e. 376 IPC be re-produced, which is as under: -

Section 376 IPC:

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

(2) Whoever,-

(a) being a police officer commits rape -

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house; or

(iii)on a woman in his custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under twelve years of age; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(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 be 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.

Explanation.- For the purposes of this sub-section,-

(a) “armed forces” means the naval, military and air force and

includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government.
(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);
(d) "women's or children's institution" means an institution, whether called an orphanage or home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Explanation 1 – Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.
Explanation 2 - "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.
Explanation 3 - "Hospital" means the precincts of the hospital and includes the precincts of any institution for a reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]

FINDINGS OF THIS COURT:

12. Having heard the arguments advanced by Ld. counsel for the accused as well as ld. Addl. PP for the State and after gone through the case file as well as evidence, this court is of the considered view that the FIR was registered on the complaint of the prosecutrix on the ground that for the last six months she was in friendship with the Vivek (accused herein) and they both used to meet in the market and accused Vivek used to say that he will marry with the prosecutrix. About two months back accused Vivek stated to the prosecutrix to go somewhere for talking for their marriage and thereafter, accused took the prosecutrix to Hotel at about 11:00pm where accused ask the prosecutrix to climb the stairs and the accused came behind her with key of the room at the 4th floor of the hotel and then closed the door of the room. When the

prosecutrix asked the accused as to why he has close the door, he said to her 'koi baat nahi, kal hume shadi karni hi hai'. Then accused forcibly removed the clothes of the prosecutrix and establish physical relationship with her. The prosecutrix started weeping, on that accused said to her that he will talk to his family member soon regarding marriage. On the very next day at about 10:00am, accused took the prosecutrix to Wazirpur and from there, she left for her home. After 4-5 day, accused get the prosecutrix in a rented house L-427, near Valimiki Mandir as his wife.

12. That, on dtd. 22.07.2017, the prosecutrix told the accused that she was going to be mother of his child. On that accused said to her that he will not marry with her and left leaving behind the prosecutrix. Prosecutrix waited for many days there, but the accused did not return back and also switched off his mobile phone nos. 844780621 and 8383980573. Thereafter, prosecutrix reached her house and told about the incident to her bhabhi 'S' who took the prosecutrix to Police Station. Prosecutrix further stated that the accused has established physical relationship with her on the pretext of marriage and requested to take legal action against him and on the basis of this complaint, W/ASI Babita got registered the case FIR. It is mentioned in the complaint that accused, on pretext of marriage has made physical relation with her forcibly and she also made the statement before the Ld. MM when her statement u/s 164 Cr. P.C. was got recorded but after framing the charges u/s 376 IPC against the accused, the prosecutrix appeared in the witness box for recording her evidence and deposed that accused had established physical relationship with her with her consent and she does not remember its date and they continuously lived in live-in relationship for about three months with their consent and was declared as hostile witness and when she was cross

examination by ld. Addl. PP for the State, she has deposed that "It is correct that on the day of incident, when accused raped me for the first time he had taken me to Shangrila Hotel in the night and there on 4th floor in a room accused had forcibly removed her clothes and then raped me and that I started weeping." "It is also correct that at that time accused had promised to marry me and we returned back from the hotel at about 10:00 a.m. on next day." "It is further correct that after 4-5 days accused took a room on rent near Valmiki Mandir in Wazirpur Delhi and kept me there as his wife and during the cross examination made by ld. Defence counsel for the accused, she has admitted that "It is correct that accused never used force for physical relation with me at any point of time." and if this court go by the examination in chief as well as the cross examination then this court is of the considered view that the prosecutrix did not support the case of the prosecution in any manner and the other witnesses examined by the prosecution is not sufficient to prove the guilt of accused.

15. It is pertinent to mention that perusal of the MLC carried out by the doctor of Lady Hardinge Medical College, the prosecutrix has not consented for her internal medical examination and there is no medical or scientific evidence against the accused to prove that the accused has made physical relation with the prosecutrix without her consent.

16. Since the prosecutrix has not supported the case of prosecution in any manner against the accused and the prosecution has not been able to prove its case against the accused beyond reasonable doubt and therefore, this court has no option except to acquit the accused. Therefore, in view of the aforesaid, accused Vivek Tomar is acquitted from the charge u/s 376 IPC.

17. In terms of section 437 A Cr. P.C., accused is directed to execute bail bond in sum of Rs.25,000/- with one surety in the like amount.

18. Since prosecutrix has turned hostile and because of resiling of her statement the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. Therefore, there is no order to compensation to the victim/complainant.

19. Every page of this judgment is signed by me.

20. Ahlmad of this court is directed to consign the file to record room after completion of all the requisite formalities.

PRONOUNCED IN THE OPEN COURT ON 01.07.2019

(SATISH KUMAR)
ASJ/SFTC-2(CENTRAL),
TIS HAZARI COURTS, DELHI.