

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Soaib khan

FIR No. : 358/16

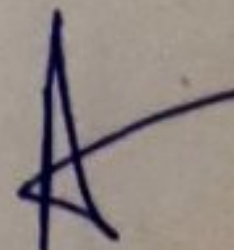
PS. : Ranjit Nagar

25.06.2020

ORDER ON APPLICATION UNDER SECTION 311 Cr.P.C.

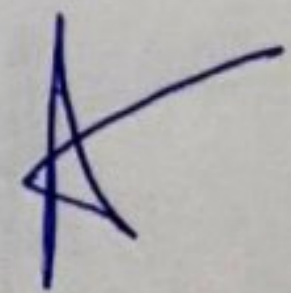
ORDER:-

1. By this order I shall decide an application filed by the prosecution U/s 311 Cr.P.C. seeking permission to recall PW-10 and PW-15.
2. Brief facts as necessary for disposal of the present application are that Mrs. 'S' gave a written complaint that one Sidhguru had thrice committed rape upon her after intoxicating with some substance. On her complaint, the present FIR was registered. After completion of investigation chargesheet was filed against the accused for the offence punishable U/s 328/376/384/506 IPC. On 12.04.2017, the Ld. Predecessor of this court framed charges against the accused u/s 328/376(2)(n)/384/506 IPC. Accused pleaded not guilty and claimed trial. In order to prove its case, prosecution examined 15 witnesses. Statement of Accused was recorded on 04.02.2020. No defence evidence was led and case was fixed for final arguments. On



28.02.2020 final arguments were heard and case was listed for orders for 07.03.2020. On 07.03.2020 it appears that the Ld. Predecessor of this court was on leave and the case was adjourned for 18.03.2020. On 18.03.2020, in terms of the advisory No. 79/RG/DHC/2020 accused was not produced from JC and case was adjourned for 17.04.2020. On 18.03.2020 when the case was adjourned, the present application was filed which was directed to be put with file for date fixed and notice was directed to be served to counsel for the accused.

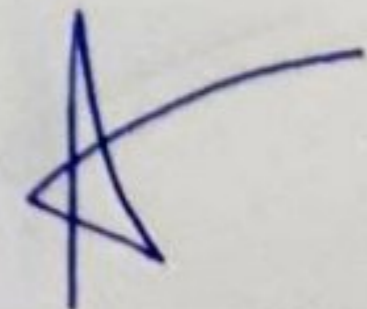
3. In the application it is stated that witnesses are necessary as final opinion after the Penial Doppler Test has not been given. On 17.06.2020, file was taken up, as an early hearing application was filed on behalf of accused and it is then the counsel for the accused was made aware about the pendency of the application and copy of the application u/s 311 Cr.P.C. was supplied to the Ld. Counsel for the accused.
4. Reply to the application has been filed in which it is stated that the trial is in respect of establishing the charges of rape and not with respect to the accused being impotent or sexually incapable of performing sex and moreover this fact is not disputed by the accused.
5. Ld. Addl. PP for the state submits that final opinion would be required in order to establish that accused is capable of performing sex.
6. On the other hand, Id. Counsel for the accused has argued that Section 311 Cr.P.C. cannot be invoked to fill the lacuna in the prosecution case.



Moreover, the accused has never disputed the fact that he was not capable of performing sex. It is argued that the MLCs have been duly admitted by the accused as there is no cross examination.

7. I have Ld. Counsels for the parties and perused the record.
8. It is undisputed that the power conferred U/s 311 Cr.P.C. can be invoked by the court in order to meet the ends of justice and for valid reasons. The power has to be exercised with great caution.
9. In the facts of the present case the accused has denied the incident in toto. Initially the accused was medically examined on 02.09.2016 but no opinion with regard to his potency was taken on 23.09.2016 application was filed by the IO before the Ld. MM seeking permission to get the potency test conducted. The said permission was granted and accused was taken to RML hospital. On 21.11.2016 Dr. Anoop Kr. SR Urology examined him vide MLC Ex. PW6/A and advised for color Doppler of penis after pharmacological stimulation under radiological supervision. On 23.11.2016 accused was again taken to RML hospital where his MLC Ex.PW6/B was prepared, Dr. Deepanshu Gupta SR Urology opined for the Penial Colour Doppler Test. Ex. PW10/A is the report of radiologist. In the report Dr. Poonam Vohra gave her opinion that "*no arterial or venous abnormality detected*". Thereafter no final opinion was sought by the IO from Urology Department.

09. The Hon'ble High Court of Delhi in ***Raghu Nath Vs State (NCT of***



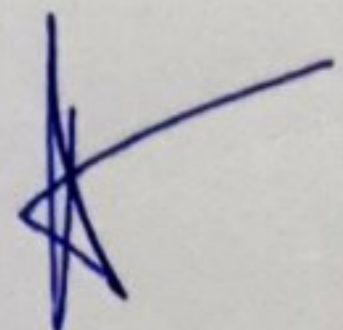
Delhi), 2010 (1)Crimes 812 has held that:

“It was pointed out by the Ld. Counsel for the appellant that as per the opinion of PW-5 Mr. Jain, who examined the appellant, no definite opinion regarding the capacity of the appellant to perform sex could be given. This, in my view does not held the appellant in the facts and circumstances of the case. The medical opinion does not say that the appellant was incapable of performing sexual act.....”.

10. In the above said judgment, despite there being no definitive opinion, the court observed that medical opinion does not say that accused was incapable of performing sexual act. Correspondingly, in the present case there is no report that the accused is incapable of performing sex during the ordinary course. Even during the arguments Ld. Counsel for the accused had fairly admitted that potency of the accused was never an issue and this fact is not being challenged. In the present case there were directions from the Hon'ble High Court of Delhi to dispose of this case in a time bound manner. These directions were prior to the lock down period but still an endeavor is to be made by this court to adjudicate the matter as expeditiously as possible.

11. Lastly, PW 15 Dr. Deepanshu Gupta had deposed that:-

“on 23.11.2016, he was posted at RML hospital as SR (Urology and Renal Transplant). On that day, patient Shoaib @ Nasir was produced before him by HC Vijay, for his potency test, I examined the

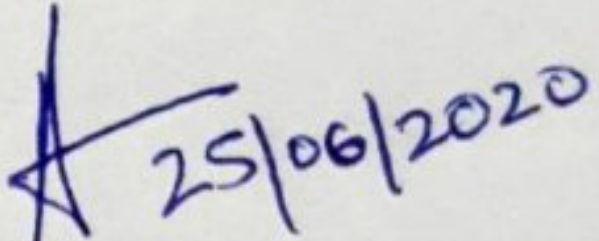


patient and opined that patient was unable to achieve penile erection on usual stimulation. I referred the patient for penile color Doppler study+injection papaverine for assessment of cavemousal blood flow by a radiologist. I made my endorsement at the back of the MLC, in this regard, already Ex. PW6/B which bears my signatures at point B".

12. In cross examination he had specifically stated that patient may not have penile erection on usual stimulation if he is impotent. The radiologist has opined that there is no abnormality either in the veins or artery, the blood flow is normal. Therefore, it can be easily held that the accused was potent and there is nothing to suggest that he was incapable of performing sexual act.

13. Accordingly in the prevailing facts and circumstances of the case I dismiss the application of the accused u/s 311 Cr.P.C.

Announced on **25.06.2020**
Through CISCO Web Ex.


(Ankur Jain)
Addl. Sessions Judge (SFTC-01) West
Delhi

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Soaib khan
FIR No. : 358/16
PS. : Ranjit Nagar

25.06.2020

At 4.00 PM

Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State (through Cisco Web Ex.)
Sh. Javed Ali assisted by Sh. Akash, Ld. Counsel for accused/applicant (through Cisco Web Ex)

Vide separate order dictated and announced through CISCO Web

Ex. application u/s 311 Cr.P.C. of the state stands dismissed.

Put up for final arguments on **01.07.2020** through *CISCO Web Ex..*

Notice be also issued to the complainant for the said date.

(Ankur Jain)

Addl. Sessions Judge (SFTC-01) West
Delhi: 25.06.2020

A 25/06/2020

IN THE COURT OF ANKUR JAIN
ADDITIONAL SESSIONS JUDGE: SFTC (WEST)-01: DELHI

State Vs. Sewa Ram
FIR No. : 423/19
PS. : Rajouri Garden
U/s : 376(2) (n)/328/506 IPC

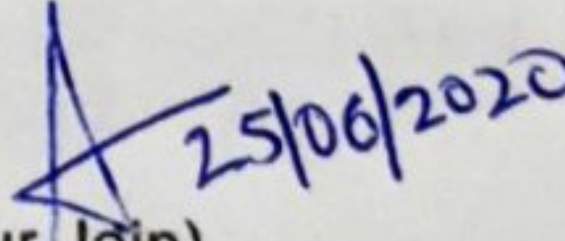
25.06.2020

File taken up for hearing in terms of Circular No. 16-DHC/2020 dated 13.06.2020 of Hon'ble High Court of Delhi and No. NIL/Misc./GAZ/DJ-West/2020 dated 14.06.2020.

Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State (through Cisco Web Ex.)
Sh. Devender Kumar Jain, Ld. Proxy Counsel for the accused/applicant along with accused/applicant (through Cisco Web Ex.)
Ms. Aarti Pandey Ld. Counsel from DCW. (through Cisco Web Ex.)
Sh. B.P. Singh, Ld. Counsel for the complainant (through Cisco Web Ex.)
IO ASI Babita in person.

Report of IO ASI Babita filed through mail.

Ld. Proxy counsel for the accused/applicant submits that the main counsel could not connect through Cisco Web Ex., and submits that the main counsel is on the way to the court. At his request put up at 1:00pm. Ahlmad to join everybody at 1:00 pm.


(Ankur Jain)
Addl. Sessions Judge (SFTC-01) West
Delhi: 25.06.2020

:2:

At 1:00 pm.

Present: Sh. Subhash Chauhan, Ld. Addl. PP for the State (through Cisco Web Ex.)
Ms. Raj Shree Sharma, Ld. Counsel for the accused/applicant.
Complainant Meena in person.
Ms. Aarti Pandey Ld. Counsel from DCW. (through Cisco Web Ex).
Sh. B.P. Singh, Ld. Counsel for the complainant (through Cisco Web Ex).
IO ASI Babita in person.

IO has duly identified the complainant through CISCO Web Ex..

Ld. Counsel for the complainant submits that complainant has no objection, if accused is admitted to interim bail. Ld. Counsel for the complainant is directed to send an email in this regard. I have spoken to the complainant through CISCO Web Ex. and she submits that she has no objection to grant of interim bail, but the accused should not trouble her.

Arguments on interim bail application heard. Put up for orders on

27.06.2020 at 4:00 pm.

(Ankur Jain)
Addl. Sessions Judge (SFTC-01) West
Delhi: 25.06.2020