



1

CRA-1021-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 3rd OF SEPTEMBER, 2025CRIMINAL APPEAL No. 1021 of 2025*VICTIM X**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

*Shri Avinash Gupta - Advocate for the appellant.**Shri Arvind Singh - Government Advocate for State of M.P.**Shri Mukul Singh - Advocate for respondent no.2.*
.....

J U D G M E N T

Per. Justice Avanindra Kumar Singh

Heard on the question of admission.

2. This appeal is filed by the Victim X under Section 413 of Bhartiya Nagrik Suraksha Sahinta 2023/372 of the Code of Criminal Procedure 1973 against the judgment of acquittal dated 26.11.2024 passed in S.T. No.39 of 2023 by IInd Additional Sessions Judge, Gadarwara, District Narsinghpur in Crime No.0016/2023 (State of M.P. Vs. Laxman Kahar) against acquittal of respondent no. 2 under Section 376 (2)(n), 376 (2)(च), of IPC.

3. The instant appeal against acquittal of the respondent no.2- Laxman Kahar is filed on the ground that there was reliable evidence for convicting the respondent no.2. PW-1 victim, PW-2 brother of the victim, PW-4 brother of the victim by their evidence proved case beyond reasonable doubt that respondent no. 2 has committed offence for which he has been charged.

4. It is submitted that in the case of **Deepak Gulati Vs. State of Haryana** reported in (2013) 7 SCC 675, Hon'ble Supreme Court has



distinguished between “Rape” and “Consensual Sex”. On the same point, there is a judgment of Hon’ble Supreme Court in the case of **State of U.P. Vs. Naushad** reported in **AIR 2014 SC 384**.

5. The prosecution story is that on 17.3.2023, the prosecutrix PW-1 went to the Police Station to lodge FIR but respondent no.2 requested the victim not to lodge the report as he was ready to compromise the matter and therefore the FIR (Ex.P-1) was not lodged but since the respondent no. 2 did not enter into compromise, then within one and half months FIR was lodged on 1.5.2023, hence, learned counsel for the appellant –Victim-X craves that this appeal be admitted and is also making a prayer to convict the respondent no. 2 in accordance with law.

6. On the other hand, Shri Arvind Singh, learned Public Prosecutor for the respondent no.1-State and Shri Mukul Singh, learned counsel for respondent no.2 support the impugned judgment.

7. We have perused the record and considered the arguments advanced by learned counsel for the rival parties.

8. PW-1, who stated her age as 35 years on the date of deposition on 11.1.2024, in which charge was that respondent no. 2 on 17.3.2023 and four years before that means about on 17.3.2019 when the age of the prosecutrix would have been around 31 years stated that she knows the respondent no.2. He is son of her brother’s maternal- Uncle-in-laws of her brother. She further stated that she was married about nineteen years ago. She is having three sons. About ten years ago, her husband left her and went away somewhere else. Respondent no. 2 used to visit her house for the last four years. On the pretext of marriage, he used to do wrong with her and when she asked him to marry her he used to procrastinate the issue of marriage.

9. PW-1, the prosecutrix further stated that about four years ago, his son came to know about this relationship, then her son ousted the victim from the house. On 16.3.2023, the respondent no. 2 took her to his house and again committed rape with her. He was also talking about marriage. When she again asked him to marry her, he told that his family members are not ready for this marriage proposal but due to fear of defamation in the



society, she kept mum and did not report the matter. Thereafter, she went to Narsinghpur Police Station to lodge a report, which is Ex.P-1. The Police got her medically examined, report of which is Ex.P-6-A. She also gave statement before the Judicial Magistrate under Section 164 of Cr.P.C. In Para-6 of cross-examination, the prosecutrix admitted that earlier a divorce proceeding was initiated between her and her husband. The maintenance case is pending. She admitted that her marriage with her husband has not been set aside by a decree of divorce. In Para-9 of cross-examination, she again stated that it is true that since she has not been divorced from her husband, therefore, respondent no. 2 could not marry her.

10. PW-2, brother of the prosecutrix has stated in examination-in-chief that he does not know whether there were any illicit physical relations between his sister and respondent no.2. Thereafter, he stated that the respondent no.2 on the pretext of marriage made illicit relations with his sister. In Para-2 of cross-examination, he admitted that his sister is not divorced from her husband. He personally does not know as to what was the relation between his sister and the respondent no.2.

11. PW-4, brother of the prosecutrix has stated that the respondent no.2 kept his sister with him but thereafter he did not marry her. This witness was declared hostile by the prosecution. In para-3 of cross-examination he stated that since his sister's husband had left her therefore her sister wants to marry the respondent no.2.

12. PW-5, Dr. Rashmi Rai stated that she had examined the prosecutrix in which she found that there was no external or internal injury on the body of the prosecutrix. Her hymen was old torn. In cross-examination, this witness stated that on the basis of medical examination, no opinion regarding rape can be given.

13. Looking to the evidence and legal position, the prosecutrix was already married, therefore there was no question of legal marriage between the prosecutrix and the respondent no.2.



14. The medical evidence also does not support the theory of ‘rape’.

15. Learned counsel for the appellant placed reliance on the judgment **State of U.P. Vs. Naushad** reported in AIR 2014 SC 384 in which in the facts and circumstances of the case has been held as under:-

10. We will answer point nos. 1 and 2 together as they are related to each other. [Section 376](#) of IPC prescribes the punishment for the offence of rape. [Section 375](#) of the IPC defines the offence of rape, and enumerates six descriptions of the offence. The description “secondly” speaks of rape “without her consent”. Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape. We have to examine as to whether in the present case, the accused is guilty of the act of sexual intercourse with the prosecutrix ‘against her consent’. The prosecutrix in this case has deposed on record that the accused promised marriage with her and had sexual intercourse with her on this pretext and when she got pregnant, his family refused to marry him with her on the ground that she is of ‘bad character’.

How is ‘consent’ defined? [Section 90](#) of the IPC defines consent known to be given under ‘fear or misconception’ which reads as under:-

“90. Consent known to be given under fear or misconception – A consent is not such consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; xxxx”

Thus, if consent is given by the prosecutrix under a misconception of fact, it is vitiated. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under [Section 90](#) of the IPC. Thus, the alleged consent said to have obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. He made a false promise to her and he never aimed to marry her. In the case of [Yedla Srinivas Rao v. State of A.P.](#) [2], with reference to similar facts, this Court in para 10 held as under:-

“10. It appears that the intention of the accused as per the testimony



of PW1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before Panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent.”

Further, in para 17 of [the said judgment](#), this Court held that:-

“In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW1 as well as PW6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutor that he would marry her.”

Thus, this Court held that the accused [in that case](#) was guilty of the offence of rape as he had obtained the consent of the prosecutrix fraudulently, under a misconception of fact.

11. The High Court has gravely erred in fact and in law by reversing the conviction of the accused for the offence of rape and convicting him under [Section 376](#) of the IPC. It is apparent from the evidence on record that the accused had obtained the consent of the prosecutrix for sexual intercourse under a misconception of fact i.e. that he would marry her and thus made her pregnant. He is thus guilty of rape as defined under [Section 375](#) of the IPC and is liable to be punished for the offence under [Section 376](#) of the IPC. The trial court was absolutely correct in appreciating the evidence on record and convicting and sentencing the accused for the offence of rape by holding that the accused had obtained the consent of the prosecutrix under a misconception of fact and this act of his amounts to an offence as the alleged consent is on the basis of misconception, and the



accused raped the prosecutrix. He brazenly raped her for two years or more giving her the false assurance that he would marry her, and as a consequence she became pregnant. For the reasons stated supra, we have to uphold the judgment and order of the trial court in convicting and sentencing the accused for the offence of rape, by reversing the judgment and order of the High Court. We find the accused-respondent guilty of the offence of rape as defined under [Section 375](#) of the IPC.

16. In above case the prosecutrix made relations with the accused on the promise of marriage and she became pregnant and the prosecutrix was under misconception that the accused will marry her and since the trial court has convicted the accused and the High Court has reversed the judgment, therefore, in the facts and circumstances of the case, Hon'ble Supreme Court restored the judgment of the trial court.

17. In the case at hand before this court, the prosecutrix and other witnesses have admitted that the prosecutrix was already married and had three children and she is about ten years older than the respondent no.2 by age. There was no possibility that when the prosecutrix did not get divorced from her husband then the respondent no. 2 could marry her. Therefore, in this case there is no case of misconception/misrepresentation by the respondent no.2 to the prosecutrix. Therefore, this citation does not help the appellant.

18. In the case of **Deepak Gulati Vs. State of Haryana** reported in (2013) 7 SCC 675 Hon'ble Supreme Court on the question whether in criminal cases involving physical relations between the parties would come under "Consensual Sex" or it was a case of "Rape" has held as under :-

18. Section 114-A of the Evidence Act, 1872 (hereinafter referred to as "the 1872 Act") provides, that if the prosecutrix deposes that she did not give her consent, then *the court shall presume that she did not in fact, give such consent*. The facts of the instant case do not warrant that the provisions of Section 114-A of the 1872 Act be pressed into service. Hence, the sole question involved herein is whether her consent had been obtained on the false promise of marriage. Thus, the provisions of Sections 417, 375 and 376 IPC have to be taken into consideration, along with the provisions of Section 90 IPC. Section 90 IPC provides that any consent given under a misconception of fact, would not be considered as valid consent, so far as



the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape.

19. This Court considered the issue involved herein at length in *Uday v. State of Karnataka* [*Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775 : AIR 2003 SC 1639] , *Deelip Singh v. State of Bihar* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] , *Yedla Srinivasa Rao v. State of A.P.* [(2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] and *Pradeep Kumar v. State of Bihar* [*Pradeep Kumar v. State of Bihar*, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC 3059] and came to the conclusion that in the event that the accused's promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.

20. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

21. 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 mala fide 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 an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual



intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

22. In *Deelip Singh* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] it has been observed as under : (SCC p. 99, para 19)

“19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.”

23. This Court, while deciding *Pradeep Kumar* [*Pradeep Kumar v. State of Bihar*, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC 3059] , placed reliance upon the judgment of the Madras High Court in *N. Jaladu, In re* [ILR (1913) 36 Mad 453] , wherein it has been observed : (*Pradeep Kumar case* [*Pradeep Kumar v. State of Bihar*, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC 3059] , SCC pp. 418-19, para 11)

“11. ‘26. ... “... We are of opinion that the expression ‘under a misconception of fact’ is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act Illustration (d) [states] that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married. ... ‘thus ... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person’. ... Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.”



(*N. Jaladu, In re case* [ILR (1913) 36 Mad 453] , ILR pp. 456-57)' (*Deelip Singh case* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] , SCC pp. 101-02, para 26)”

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the 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 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.*

19. Thus, Hon’ble Supreme Court has made a clear distinction between deception and making false promise to the prosecutrix to marry and not keeping promise where promise could not be kept because of unavoidable circumstances. In the case at hand assuming for a second that respondent no. 2 is ten years younger than the prosecutrix, who is having three children made a promise and thereafter they entered into physical relations but since the prosecutrix was not divorced from her husband and maintenance proceedings were continuing would indicate that it was not possible for the respondent no. 2 to marry her even if he wanted to marry the prosecutrix, hence this citation also does not help the appellant.

20. In the case of **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and others**, (2019) 18 SCC 191, the Hon’ble Supreme Court held that there is clear distinction between ‘Rape’ and ‘Consensual rape’. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide 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 also a distinction between mere breach of a promise and not fulfilling a false promise. Para – 23 of the judgment reads as under :-

“23. Thus, there is a clear distinction between rape and consensual



sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

21. In the light of above discussion and in the light of settled position of law as held by Hon’ble Supreme Court in **Bihari Nath Goswami Vs. Shiv Kumar Singh and others** reported in (2004) 9 SCC 186 in which it was held that appellate court can review the evidence and interfere for compelling reasons where such admissible evidence has been unreasonably and unjustifiably ignored so as to prevent miscarriage of justice but if two views are possible, then the view favourable to the accused should be adopted. In para-8 it is held as under:-

“8. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See *Bhagwan Singh v. State of M.P.* [(2002) 4 SCC 85 : 2002 SCC (Cri) 736 : (2002) 2 Supreme 567]) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and



relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : AIR 1973 SC 2622] , *Ramesh Babulal Doshi v. State of Gujarat* [(1996) 9 SCC 225 : 1996 SCC (Cri) 972 : (1996) 4 Supreme 167] , *Jaswant Singh v. State of Haryana* [(2000) 4 SCC 484 : 2000 SCC (Cri) 991 : (2000) 3 Supreme 320] , *Raj Kishore Jha v. State of Bihar* [(2003) 11 SCC 519 : 2004 SCC (Cri) 212 : (2003) 7 Supreme 152] , *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135 : (2003) 5 Supreme 508] , *State of Punjab v. Phola Singh* [(2003) 11 SCC 58 : 2004 SCC (Cri) 276 : (2003) 7 Supreme 17] and *Suchand Pal v. Phani Pal* [(2003) 11 SCC 527 : 2004 SCC (Cri) 220 : JT (2003) 9 SC 17].”

22. We after careful examination find that the trial court has not misread the evidence or left any evidence from its consideration. Therefore, there is no scope for interference in the judgment of the trial court. Accordingly, the appeal is dismissed at admission stage itself.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

bks