

HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.2906/2014

Appellant : **Rishabh Saxena**
S/o Shri Mahesh Prasad Saxena,
aged about 29 years, R/o House
No.61/5 Ingle Colony, Shivaji
Nagar, Rajgarh.
At present R/o 334, Ashok Vihar,
Nagar Nigam Colony, Ashoka
Garden, Bhopal (MP).

-Vs.-

Respondent : State of Madhya Pradesh, through
Police Arakshi Kendra-Mahila
Thana, District- Bhopal (M.P)

Present : **Hon. Shri Justice S.K. Gangele**
Hon. Shri Justice Anurag Shrivastava

Shri Sankalp Kochar, learned counsel for the appellant.
Shri Prakash Gupta, Panel Lawyer for the respondent/State

Whether approved for reporting: Yes/No.

J U D G M E N T
(08.08.2017)

Per Anurag Shrivastava, J.

This appeal under Section 374(2) of Cr.P.C. has been directed by the appellant/accused against the judgment dated 07.10.2014, passed by the VIIth Additional Sessions Judge, Bhopal (M.P.), in S.T. No.183/2014, whereby the appellant/accused has been convicted for commission of offence punishable under Section 376(1) of IPC and

sentenced to undergo RI for life with fine of Rs.1,00,000/- with default stipulation.

2. The prosecution story in short is that the prosecutrix on 11.05.2013 made a written complaint at police station Mahila Thana, Bhopal to the effect that the appellant comes in her distant relation. She came in contact with appellant/accused in the month of August, 2011. Appellant developed intimacy with her on promise to marry. It was also known to their families that they like each other. On 23.01.2012 appellant took the prosecutrix to Panchmani on a pleasure toure and established physical relationship with her by assuring her to marry. He promised her that after returning home he would talk to her parents and thereafter, perform marriage with her. Later on, on request of appellant, the sister of prosecutrix took a proposal of marriage of prosecutrix with appellant to the parents of appellant, but they refused to accept the proposal. Thereafter, again the appellant assured the prosecutrix that he would perform court marriage with her and committed sexual intercourse with her. It is alleged by the prosecutrix that till 17.12.2012, the appellant had continuously committed sexual intercourse with her on promise of marriage and when she insisted him to perform marriage, he refused to marry her and broke down the relationship. It is further alleged by the prosecutrix that the appellant had committed rape on her on false pretext of marriage.

3. The police recorded FIR Ex.P-2 on complaint of prosecutrix and registered the offense. Prosecutrix was medically examined, the statements of witnesses were recorded and after usual investigation, a charge has been filed against the appellant.

4. The trial Court has framed the charge of offence punishable under Sections 376 of IPC. The appellant abjured guilt and pleaded innocence. The prosecution has examined 7 witnesses in its support whereas the appellant has not given any evidence in his defence.

5. Learned trial Court, on appreciation of evidence adduced by the prosecution, arrived at the conclusion that the appellant has committed rape on the prosecutrix on false pretext of marriage, which is punishable under Section 376 (1) of IPC and sentenced him as mentioned herein-above.

6. In the appeal, it is argued by the learned counsel for the appellant that the prosecutrix is a major woman. The entire evidence indicates that she is a consenting party. The report of incident has been lodged after a considerable delay of one year four months. She had entered into physical relationship with the appellant voluntarily. There is no reliable evidence to establish that the appellant has obtained consent of prosecutrix on false pretext of marriage. Therefore, the trial Court has committed illegality by holding the appellant guilty for commission of alleged offence. It is further argued by the learned counsel that at present, prosecutrix and appellant have performed marriage and they have a child aged about 6 months. They have filed compromise before this Court and also filed certificate of marriage. They are living peacefully as husband and wife. Therefore, the appeal may be allowed and the appellant may be acquitted.

7. Learned Panel Lawyer for the State has supported the findings recorded by the trial Court and submitted that the

statement of prosecutrix clearly establishes the fact that she was subjected to sexual intercourse on false promise of marriage by appellant. The trial Court has rightly convicted him.

8. Considering the rival contention of the learned counsel for the parties and on perusal of the record, it appears that the prosecutrix (PW-1) is a major woman aged about 28 years. The prosecutrix (PW-1) deposed that she got acquainted with appellant in August, 2011, thereafter their relations became more intimate and appellant had promised her to marry. She went to Pachmari with appellant where he made physical relation with her. Thereafter, appellant used to perform sexual intercourse with her and he always promises her to marry. On the request of appellant, the sister of prosecutrix went to meet the parents of appellant with marriage proposal, but they refused to marry appellant with prosecutrix. Knowing this fact, the appellant again promised the prosecutrix telling her that he would obtain the consent of his parents for marriage and he continued to make physical relations with the prosecutrix. Lastly, on 17.12.2012 the appellant told her that he would not perform marriage with her and stopped keeping relations with her. Then, prosecutrix made a written complaint Ex.P-1 at police station Mahila Thana, Bhopal.

9. In cross-examination, the prosecutrix (PW-1) had admitted that she was in love with the appellant and she also wanted to marry with him. She had admitted that every time whenever appellant had physical relation with her, he had assured her to marry. The sister of prosecutrix went to meet the parents of appellant with marriage proposal on behest of appellant.

10. Other prosecution witnesses Sofiya Khan (PW-3) also deposed in her statement about the love affair and relationship of appellant and prosecutrix. She had admitted that every time appellant gave assurance that he would marry with the prosecutrix. When his parents refused for marriage, he promised to perform Court marriage with the prosecutrix.

11. Another prosecution witness Nirmala Saxena (PW-5) is elder sister of prosecutrix. She deposed that the appellant told the prosecutrix that he wants to marry her and asked her to send her family members with marriage proposal to his parents. On the request of appellant, this witness went to meet the parents of appellant with marriage proposal, but they refused to accept it. When appellant came to know about this refusal, he asked the prosecutrix that he would certainly marry her.

12. Thus, from above evidence, it is established that the appellant had love relations with the prosecutrix. He wanted to marry her and he had sexual relations with the prosecutrix. The prosecutrix did not say that the appellant had love affair with any other woman. He has sent the sister of prosecutrix to meet his parents with marriage proposal. This shows the real intention of appellant to marry the prosecutrix otherwise he would have not asked the prosecutrix to send marriage proposal. Even after, refusal of his parents, the appellant was inclined and ready to perform court marriage with the prosecutrix.

13. Hon'ble Apex Court in **Deepak Gulati Vs. State of Hariyana AIR 2013 SC 2071** held that there is clear distinction between rape and consensual sex and in a case

where there is promise of marriage, 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 later false 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 false promise of marriage by the accused; and where 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 accused, and not souly on account of misrepresentation made to her by accused, or where an accused on account of circumstance which he could not have foreseen, or which where 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 conclusion that the intention of accused was malafide, and that he had clandestine motives. The failure to keep a promise made with respect to a future uncertain date, due to reason 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 of IPC cannot be called into act 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. **(Para 1820).**

14. In the circumstances narrated by the prosecutrix and witnesses of the prosecution and the evidence on record, it is found that there is no material on record to show that the accused had committed forcibly intercourse and that the prosecutrix registered it. Prosecutrix was a woman aged about 26 years who could understand the consequences of physical relationship. She appears to be a consenting party to the act of accused. Even if it is accepted that she consented for sexual intercourse on account of misconception of facts that the accused had promised to marry her, it will not give rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. The accused himself had insisted her to send marriage proposal to his parents. He has not kept his relations secret. There might be some delay due to refusal of parents for marriage. The delay in performance of promise can not be inferred as false promise. It can not be believed that appellant had refused to marry her. At the most it could be a breach of promise to marry rather than false promise to marry and there is nothing on record to indicate that she was incapable of understanding the nature and implication of the act of the accused for which she consented to it. Now the appellant finally kept his promise and married the prosecutrix.

15. In view of the aforesaid discussion, it not proved beyond reasonable doubt that the appellant has committed rape of prosecutrix on false pretext of marriage. Since, prosecutrix is a major woman and consenting party, therefore, no offence is made out against the appellant.

Learned trial Court has wrongly convicted him for commission of rape. Thus, the appeal is allowed.

16. Consequently, the conviction and sentenced awarded by the trial Court on appellant is set aside. He is acquitted of charge of offence punishable under Section 376(1) of IPC. His bail bonds be discharged and he be set at liberty.

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

Rashid*