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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: September 30, 2016

+ CRL.A.46/2016

NAIM AHAMED

..... Appellant

Through: Mr.Raj Kishor Choudhary, Mr.Aslam,
Mr.Mazyar Ahmad & Mr.Anupam
Bhati, Advocates

Versus

STATE (NCT OF DELHI)

..... Respondents

Through: Ms.Neelam Sharma, APP with Sub-
Inspector Surendar Singh, PS
Bindaspur

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This appeal is directed against the judgment and order of learned Additional Sessions Judge dated 23.11.2015 and 27.11.2015 in Sessions Case No.67/2015 arising out of FIR No.412/15 under Section 376 IPC Police Station Bindapur whereby the appellant was convicted for offence under Section 376 IPC and was sentenced to undergo rigorous imprisonment for a period of 10 years with a fine of Rs.50,000/- in default, to undergo further imprisonment for a period of one year. He was also directed to pay a compensation of Rs.5 lacs to the prosecutrix in order to enable her to

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maintain herself as well as minor child and also to take care of the education and other expenses of the minor child. A direction was also given to Secretary, Delhi Legal Services Authority, Dwarka to award appropriate compensation to the prosecutrix and so far as possible, to take care of education of the minor child born to the prosecutrix from the loin of the convict.

2. Prosecution case, succinctly stated, is as follows.

3. Prosecutrix was residing at C-1/3/5, Sanjay Enclave, Uttam Nagar, Delhi along with her husband and three children in a tenanted premises in the year 2009. The accused was also residing in a tenanted premises in front of her house. He started persuading her that her husband is not earning sufficient and is unable to maintain her and her children and that he is having a good job and handsome salary he would maintain her according to his status and that he will solemnize marriage with her. He called her on various places and had illicit intercourse with her. She got pregnant in the year 2011 and informed the accused who persuaded her that after the delivery he will solemnize marriage with her and assured that he is not a married man and wants this child after the delivery and he would take her to his native village. He took her to a rented premises in Kapashera Border, Nathumal Building, near Government School where he continuously had physical relations with her but did not solemnize the marriage. Thereafter, he vacated the premises with the false excuse that his parents are severely ill and he has to visit his native village. He forced her to take divorce from her husband. However, the accused told a lie that he is visiting his village. He continuously made telephone calls to her. She went to the call centre where he was working and he again assured to marry her and asked her to take

shelter in a shelter home as he was not having any accommodation. In the year 2012, she visited his native village then she came to know that he is already married having children. His parents refused to keep her. When accused came to know about her visit to his native place, he asked her to return immediately and persuaded her that as soon as his salary will increase he will solemnize the marriage but he did not do so. She is an illiterate lady having no means to maintain herself as well as the minor child. She had no option but to take shelter in a Government shelter home in Connaught Place. Feeling cheated and sexually exploited by the accused, she sent a typed complaint by post to the Police Station Bindapur on 04.02.2015.

4. The complaint of the prosecutrix was marked to ASI Kusum. After obtaining legal opinion from the prosecution branch, the FIR was got registered. Her statement under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C was recorded. Accused was formally arrested. Blood samples of the prosecutrix, accused and the minor child born to the prosecutrix were obtained in DDU Hospital and the same were sent to FSL Rohini for DNA profiling. After completing investigation, chargesheet was submitted against the accused.

5. Charge under Section 376 IPC was framed against the accused. He abjured his guilt and claimed trial. Prosecution examined as many as 11 witnesses to substantiate its case. In his statement recorded under Section 313 Cr.P.C. the accused denied the case of prosecution. According to him, he was having consensual physical relation with the prosecutrix. The prosecutrix was aware that he is a married person having children and she had also met his wife at his house. According to him, he had been providing

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financial help to the prosecutrix regularly and when he refused to fulfill her demand of Rs.1.5 lacs to Rs.2 lacs, she lodged a false complaint against him.

6. Vide impugned judgment the appellant was convicted for offence under Section 376 IPC by observing that although the physical relations between the prosecutrix and the accused were consensual but her consent was obtained by the accused by practicing deception upon her casting a false belief in her mind that he is unmarried and would marry her. He made her to cohabit with him in that belief and at the same time was himself aware that she has consented to cohabit with him only by reason of misconception that he is unmarried and going to marry her. The fact that prosecutrix obtained divorce from her husband and started residing with the accused makes it manifest that she was having a firm belief that accused is unmarried, loves her and would marry her, as such, the consent given by the prosecutrix to cohabitation with the accused can, by no means, said to be voluntary. It is clearly hit by Section 90 of the Indian Penal Code and the said consent is no consent in the eyes of law. Feeling aggrieved and dissatisfied, the present appeal has been preferred.

7. I have heard the learned counsel for the appellant and learned Additional Public Prosecutor for the State and have examined the record.

8. Learned counsel for the appellant would urge that there is no dispute that the prosecutrix and the accused were having physical relations. It was, however, denied that the child Master Naman was born from the physical relations between the prosecutrix and the accused. For raising this submission reliance is placed upon the divorce petition filed by the prosecutrix wherein statement of prosecutrix as well as her husband Bhagwan Singh were recorded where both of them admitted that from the

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wedlock of prosecutrix and Bhagwan Singh four children were born. Even in the judgment passed by the learned Additional District Judge whereby the marriage was dissolved by a decree of divorce, it was mentioned that four children were born from the wedlock of prosecutrix and her husband. Counsel further submitted that although the blood samples of the prosecutrix, accused and the minor child were taken and were sent for DNA profile, however, no report was received which could conclusively prove that the child was born from the loins of accused. The prosecutrix was married having children and, therefore, had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. She was also aware of the fact that the accused is also married having children and therefore he could not have married the prosecutrix. That being so, there was no misconception of fact. Under the circumstances, he could not have been convicted for the offence and the impugned judgment deserves to be set aside. Reliance is placed on *Deelip Singh alias Dilip Kumar vs. State of Bihar*, (2005) 1 SCC 88; *Uday vs. State of Karnataka*, (2003) 4 SCC 46 and *Hari Mohan Sharma vs. State of NCT of Delhi*, CrI.A.No.135/2014.

9. Refuting the arguments, so advanced, learned Additional Public Prosecutor for the State would submit that though the prosecutrix had consented to have sexual intercourse with the appellant, that consent was no consent within the meaning of Section 375 IPC having regard to Section 90. According to her, the consent was obtained by making a false promise of marriage and, therefore, it was a consent obtained by fraud and misrepresentation. She therefore submitted that the appellant had sexual intercourse with the prosecutrix without her consent and was therefore

rightly held guilty of the offence of rape punishable under Section 376 of the Indian Penal Code. Learned Additional Public Prosecutor further submits that in case the child was not born from the loins of appellant why this child alone is living with the prosecutrix in the shelter home. She further referred to the plight of the prosecutrix for submitting that on the false promise of marriage the prosecutrix had physical relations with the accused and when she got pregnant and her husband became aware of this fact, he left her along with three children. Thereafter the prosecutrix gave birth to a child. Accused lived with her for some time but then left her in lurch but now she is compelled to live in a shelter home. She also referred to the latest DNA report which opined that appellant is the biological father of the child.

10. There is no dispute that the physical relations between the prosecutrix and the accused were consensual. The only question which requires determination in the instant case is whether the consent was obtained by making a false promise of marriage and, therefore, it was a consent given under "*misconception of fact*".

11. At the threshold, it will be appropriate to notice the relevant provisions of Indian penal Code namely Section 375 and Section 90 which reads as follows:-

"375. Rape – A man is said to commit "rape" if he –

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. – With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. – With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. – A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not .]

90. Consent known to be given under fear or misconception. – A consent is not such a 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; or

Consent of insane person. – if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child. – unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

12. What is the meaning and content of the expression “*without her consent*”? Whether the consent given by a woman believing the man’s promise to marry her is a consent which excludes the offence of rape? These are the questions which have come up for debate directly or incidentally. The Indian Penal Code does not define consent in positive terms but what cannot be regarded as consent under the Code is explained by Section 90 reproduced above. Consent given firstly under fear of injury and secondly under a misconception of fact is not “*consent at all*”. That is what is enjoined by first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country.

13. In *Som Dev vs. State (NCT of Delhi)* reported in 2015 VII AD (Delhi) 293, a Single Judge of this Court while dealing with the aspect of ‘promise to marry’, observed that :—

“17. The law has been succinctly discussed by the Supreme Court in ‘Deepak Gulati vs. State of Haryana’, 2013 (7) SCC 675 as under :

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“19. This Court considered the issue involved herein at length in the case of ‘Uday v. State of Karnataka’ (2003) 4 SCC 46; ‘Deelip Singh @ Dilip Kumar v. State of Bihar’ (2005) 1 SCC 88; ‘Yedla Srinivasa Rao v. State of A.P.’ (2006) 11 SCC 615; and ‘Pradeep Kumar Verma v. State of Bihar and Anr.’ (2007) 7 SCC 413, 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.

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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 mis-representation 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* (supra), it has been observed as under:

"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 Verma* (Supra), placed reliance upon the judgment of the Madras High Court delivered in *N. Jaladu Re* (supra), wherein it has been observed:

11. "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 Indian Penal Code is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence."

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

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14. In the case of *Yedla Srinivas Rao v. State of A.P.* reported in (2006) 11 SCC 615, the Supreme Court held the accused guilty of the offence of rape as he had obtained the consent of the prosecutrix fraudulently, under a misconception of facts by observing 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.

17. 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."

15. Keeping in view the approach that the Court must adopt in such cases, let us now proceed to consider the evidence on record.

16. The statement of the prosecutrix was recorded on various occasions. Initial complaint Ex.PW2/A was made by her which resulted in registration of FIR. Thereafter her statement u/s 164 of the Code of Criminal Procedure Ex.PW2/B was recorded by the Metropolitan Magistrate and then she was examined in the Court. On all these occasions, her testimony is consistent. It is her case that accused was residing nearby her house, used to stare at her and used to stop her. Everybody in the neighborhood started suspecting that she is involved with him. She quarreled with him and also made a complaint against him to her brothers and to his friends. However every time accused used to plead his innocence. According to her, after some time accused told her that he loves her and wants to marry her. Initially, she did not believe him but when he said it repeatedly she started believing him that he truly loves her and wants to marry her. Thereafter accused took her to the house of his friend in Nanhe Park, Uttam Nagar where he used to have sexual intercourse with her. She became pregnant on account of sexual relations with the accused. When she informed him about the pregnancy he told her that he would get some medicines for her so that pregnancy may be aborted but he did not do anything for a long time. In the meanwhile, her husband came to know about her pregnancy and told her that she has not conceived from his loin and he is not the biological father of the unborn child. He

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became annoyed and accordingly left her along with his three children. She told the accused that now since she has become pregnant from his loin, he should marry her. He however asked her to take divorce and only then he would marry her. She gave birth to a male child on 28.10.2011. On being informed, accused came to see the child. She obtained divorce from her husband on 12.09.2014. Accused was informed who asked her to wait for some time till his salary is increased. Thereafter he took her to Nathu Mal Building at Kapashera Border and stayed for one month and then left. Accused was taken to police station Bindapur where he gave in writing that he would solemnize marriage with her. From police station he took her to a house at Kapashera where he stayed with her for two or three days and then disappeared. She visited his native village Salmeda in Muzaffarnagar, U.P where she came to know that he is already married having children. When accused came to know about her visit to his village he asked her to leave that place immediately then she returned to Delhi and started living with her paternal aunt from where she shifted to shelter home and residing along with her minor child.

17. No valid reason exists to suspect the prosecution version in this regard. It is settled law that the testimony of victim of assault has great probative value. No corroboration would be required unless there are compelling reasons which insist the Court for corroboration of her statement. In the instant case, undisputedly, the prosecutrix and appellant had physical relations. She did not nurture any grievance against him to falsely level allegations against him. In fact, the act of the accused left behind a trail of misery, ignominy and trauma. After coming to know about the pregnancy of the prosecutrix her husband left her along with the three children. When the

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accused was informed about the pregnancy and that he should marry her then he told her that he would get some medicines by which the pregnancy would get aborted however he did not do anything for a long time. When her husband left her along with the children she asked the accused to marry her then he asked her to take divorce from her husband and only then he would marry her. At that time she was residing with her paternal aunt at Trinagar. She delivered a male child on 28.10.2011 and informed the accused about the delivery who came to see the child. She again asked him for the marriage then he asked her to wait for some time so that his salary gets increased and would take some accommodation where they could reside together. She obtained divorce from her husband on 12.09.2014 and again asked the accused to marry her but he avoided the marriage and asked her to wait for some time. Then he stayed with her for one month in Nathu Mal Building at Kapashera Border and then left her. Family members of the prosecutrix apprehended the accused and took both of them to police station Bindapur, where accused gave in writing that he would solemnize marriage with her and would keep her with him as his wife. From police station he took her to a house at Kapashera where he stayed only for two or three days and then disappeared. Thereafter she visited his native village in Muzaffarnagar, U.P where she came to know that he is already married having children. On coming to know about her visit to his village accused asked her to leave that place immediately. She returned to Delhi and started residing with her paternal aunt. Again from there she shifted to shelter home where she is residing along with her minor child. Trial court record reflects that she also moved an application stating therein that she is taking shelter in a shelter home Bapudham near Mandi House along with the minor child who is now

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aged four years. She is an illiterate lady and has been shifting to different shelter homes because she is not allowed to remain in a shelter home for a longer time. The education and upbringing of the minor child is getting affected and therefore the child be sent to a children home. However, complainant was directed to approach CWC for such help.

18. A feeble attempt has been made by the appellant for alleging that there was no misconception of facts as prosecutrix was well aware of the marital status of the appellant that he is already married and had children. It was alleged that wife of the appellant had come and stayed with him at his house in Uttam Nagar and that the appellant had invited the prosecutrix and other neighbours on the occasion of birthday party of his son where prosecutrix had also given gifts to his son. All these suggestions have been denied by the prosecutrix. Rather it is her consistent stand that appellant never disclosed about his marital status to her and for the first time, she came to know about this fact when she visited his native village. In order to prove his case, the appellant could have examined his wife but the same was not done, as such, for withholding a material piece of evidence/material witness, learned Trial Court rightly drew an adverse inference against the appellant that the prosecutrix was unaware of the marital status of the appellant.

19. Reliance placed by the learned counsel for the appellant on the statement made by the prosecutrix and her husband Bhagwan Singh before the matrimonial court where the petition for divorce by mutual consent was filed and it was recorded that from the wed lock of prosecutrix and Bhagwan Singh, four children were born does not help the appellant as the circumstances available on record tells a different story. Immediately after

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coming to know about the fact that the prosecutrix has conceived, Bhagwan Singh disowned the child by stating that she did not conceive from his loins and left the prosecutrix and took along with him his three children. If the child, i.e., Master Naman was born from the wedlock of Bhagwan Singh, there was no occasion for Bhagwan Singh to leave the prosecutrix and took along with him his three children. Although initially the blood sample of the prosecutrix, appellant and the child were sent to Forensic Science Laboratory for DNA test, however, at that time, no conclusive report could come. In view of the denial by the appellant that he is the biological father of the child, fresh DNA test was ordered to be conducted and the latest DNA report dated 7th September, 2016 finally clinched the controversy as it has opined that the appellant is the biological father of the child. Under the circumstances, ample evidence has come on record to prove that the alleged consent stated to have been obtained by the accused was not voluntary. The intention of the appellant right from the beginning was not honest. He kept on promising that he will marry her but did not do so with the result that the prosecutrix is now homeless. She is made to shift from one shelter home to another. During the pendency of hearing of the appeal, keeping in view the plight of the prosecutrix and the minor child, a request was made by the learned Additional Public Prosecutor for the State that some arrangement for her rehabilitation has to be made and, therefore, Delhi Commission for Women was inquired as to whether any such arrangement for rehabilitation can be made or not. A letter has been received from Member, Incharge, SSH, Bapnu Ghar, AIWC to the effect that in order to rehabilitate the prosecutrix she has been given a training of six months in beautician course

so that she can earn her own livelihood, however, even there the maximum period of stay is up to three years only.

20. The learned Trial Court appreciated the evidence on record in correct perspective and convicted the appellant for the offence of rape by holding that he had obtained the consent of the prosecutrix under misconception of facts which tantamount to an offence. He brazenly raped her for more than three years giving her the false assurance that he would marry her and persuaded her to have sexual relation which caused pregnancy, as a consequence of which, she delivered a child and now she is made to move from one shelter home to another.

21. In *State of U.P. vs. Naushad* reported in AIR 2014 SC 384, the Apex Court held that-

"A woman's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it. The accused in this case has committed the vile act of rape and deserves to be suitably punished for it."

22. In view of the foregoing, the impugned judgment convicting the appellant based upon fair appraisal of evidence warrants no interference and is affirmed.

23. The appellant was sentenced to undergo rigorous imprisonment for ten years with fine of Rs.50,000/-; in default to undergo further imprisonment for a period of one year.

24. As per the nominal roll dated 26.09.2016, the appellant has already undergone 10 months and 2 days of sentence. He is the first time offender and is not involved in any other criminal case. His overall conduct is reported to be satisfactory.

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25. Taking into consideration all the facts and circumstances of the case, the sentence order is modified to the extent that substantive sentence shall be reduced to rigorous imprisonment for seven years with fine of Rs.5,000/-; in default of non-payment of fine; three months simple imprisonment. The other terms and conditions of the sentence of paying Rs.5 lacs as compensation to the prosecutrix and direction to the Secretary, Delhi Legal Services Authority, Dwarka to award compensation to the prosecutrix and as far as possible to take care of the education of minor child, are left undisturbed. The compensation amount be deposited within 12 weeks in the Trial Court and shall be released to the prosecutrix/victim after due notice.

The appeal stands disposed of in above terms.

Trial Court record be sent back forthwith along with a copy of this judgment.

A copy of this judgment will also be sent to Superintendent Jail for information.

Sunita Gupta
(SUNITA GUPTA)
JUDGE

September 30, 2016
mb/rd

CA. M. A- 8465/17. Discretion