



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 529 OF 2025

BETWEEN:

THE STATE BY POLICE INSPECTOR
SUBRAMANYA POLICE STATION,
SULLIA CIRCLE, D.K.,
REPTD. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING, BENGALURU-1.

...APPELLANT

(BY SRI. VIJAYAKUMAR MAJJAGE., SPP-II)

AND:

SRI RAKSHITH
S/O BELLIAPPA GOWDA,
AGED ABOUT 31 YEARS, RESIDING AT ALPEKODI
HOUSE, IVATHOKLU VILLAGE,
SULLIA. 574239

...RESPONDENT

(BY SRI. ABISHEK MARLA M J.,ADVOCATE)

THIS CRL.A IS FILED U/S 378(1)(3) OF CR.P.C PRAYING
TO a) GRANT LEAVE TO APPEAL AGAINST THE JUDGEMENT
AND ORDER OF ACQUITTAL DTD. 04.03.2024 PASSED BY THE
VI ADDL. DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU,
IN SC.NO.24/2019, ACQUITTING THE ACCUSED, FOR THE
OFFENCE P/U/S 417, 376(2)(n) OF IPC. AND ETC.



THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The State has filed this appeal against the judgment dated 04.03.2024 passed in S.C.No.24/2019 on the file of the Court of VI Additional District and Sessions Judge, D. K., Mangaluru, acquitting the accused / respondent of the offences punishable under Section 376(2)(n), and 417 of IPC.

2. There is a delay of 256 days in preferring the appeal. I.A.No.1/2025 is filed seeking to condone the delay, along with the affidavit of the Deputy Director of Prosecution, Bengaluru.

3. The Sessions Court records are received. Hence, we have heard the learned Additional SPP-II and the learned counsel for respondent on merits of the case.



4. It is the case of the prosecution that the accused got acquainted with the victim, studying in 2nd year commerce course at Subramanya K.S.S. College. Since 1½ years both were loving each other. On 09.09.2017, at about 06:00 p.m., with a promise of marriage, he took the victim to his house situated at Alpekodi, Ivathoklu village, Sullia Taluk, in the guise of taking her to some function in his house and committed forcible sexual intercourse on her in the bathroom and again during night hours committed sexual intercourse and later, cheated her and thereby committed the offences punishable under Section 376(2)(n) and 417 of IPC.

5. The learned SPP-2, contended that the victim, examined as PW.1 has supported the case of prosecution and corroborated the complaint averments. Her evidence clearly shows that the accused with a false promise of marriage, committed sexual intercourse on her, against her wish. Even though the victim is a major, the consent was under misconception of the fact and therefore, the trial Court was not proper in discarding the evidence of PW.1 and acquitting the accused. Learned SPP-2 further contended that the evidence of



PW.1 is corroborated by the evidence of PW.11, doctor who conducted her medical examination and issued certificate-Ex.P13. PW.11, has given final opinion stating that there are evidence suggestive of penetrative sexual intercourse. He further contended that the evidence of PW.1 is also corroborated by the evidence of PWs.4 and 8 and therefore, the trial Court was not justified in acquitting the accused. He contended that the reasons assigned for acquitting the accused are not in accordance with law.

6. Learned counsel for respondent has contended that there is an in-ordinate delay in lodging the complaint. The earlier complaint alleged to have given by the victim has been suppressed. Further, there are contradictions in the evidence of the victim and her statement given under Section 164 of Cr.P.C. Victim is a major and even accepting the case of prosecution, it cannot be said that there was any act committed by the accused against the victim's consent and allegation that with a false promise of marriage, accused took the victim to his house and committed the offence etc. are not proved by the prosecution. He contended that the trial Court based on the



material on record and appreciating the evidence of the victim and other prosecution witnesses, and after giving valid reasons, acquitted the accused. Hence, the presumption of innocence infavour of the accused is doubled by the acquittal judgment. He has therefore, sought to dismiss the appeal.

7. In support of his arguments, learned counsel for respondent has relied on a decision of the Hon'ble Apex Court in ***Rajnish Singh Alias Soni V/s. State of Uttar Pradesh and Another*** reported in **(2025) 4 SCC 197**.

8. It is the case of prosecution that the accused and the victim were acquainted with each other and they were in love since 1½ years. The alleged offence of committing sexual intercourse on the victim against her wish, with a false promise of marriage, is on 09.09.2017. In the complaint, at Ex.P1, the victim has averred that she got acquainted with the accused when both of them were studying in the same college and they were in love with each other. The accused had promised that he will marry her. On 09.09.2017, the accused took her to his house stating the there is some function in his house. However, there was no one present in the said house and



inspite of her resistance, he committed sexual intercourse on her and later, refused to marry and thereby cheated her.

9. According to the victim, the incident took place on 09.09.2017. The complaint was lodged on 26.11.2017. Though in Ex.P1, it is stated that, the accused had promised that he will marry, in her evidence, the victim-PW.1 has not stated that in the beginning there was an assurance of marriage by the accused. She has only stated that both became friends and thereafter, the accused told her that he is in love with her. Initially she refused, but later, she started loving the accused.

10. In Ex.P1-complaint, there is no mention about the earlier complaint given at Ballari Police Station. However, in her evidence, PW.1 has stated that initially she lodged a complaint at Ballari Police Station. The Ballari police secured the accused and his father to the police station and the matter was settled in the panchayat, wherein the accused promised that he will marry the victim after 6 months.



11. The complaint lodged at Ballari Police Station is not part of the record. The said document is not marked in evidence. Further, in the complaint at Ex.P1, the fact that there was a complaint lodged at Ballari Police Station, where the accused alleged to have agreed to marry the victim etc. is also not stated. None of the witnesses examined by the prosecution including PW.2-victim's sister, PW.4-victim's grandmother and PW.8-victim's uncle have corroborated the same. She has admitted in her cross-examination that while giving statement before the learned Magistrate, she has not stated about lodging of complaint at Ballari Police Station and also the undertaking given by the accused. Further, in her evidence, PW.1 has stated that the accused committed sexual intercourse in the bathroom, which is absent in Ex.P1. As could be seen from the evidence of PW.1, when the accused took her to his house, brother-in-law of the accused was present in the house. Her evidence further reveals that after a complaint was given against her to the principal of the



college, by the father of the accused, she lodged a complaint at Ballari Police Station and then lodged a complaint as per Ex.P1.

12. Admittedly the victim is a major. She has categorically stated that both of them were studying in the same college and both were in love for the past 1½ years. The alleged incident took place on 09.09.2017. It is only after the father of the accused lodged a complaint to the Principal of the college, Ex.P1 was lodged by the victim alleging that the accused has committed rape on her with a false assurance of marriage and then cheated her etc.

13. The Trial Court, on appreciation of the oral and documentary evidence on record, has acquitted the accused of the charges leveled against him under Section 376(2)(n) and 417 of IPC. The trial Court has observed that if the contention of the victim is believed to be true that, she lodged a complaint before the Ballari Police Station as alleged, and if the statements of PW.1 and the



grandmother-PW.4 were recorded and undertaking in writing was given by the accused that he will marry PW.1 six months later, definitely the prosecution would have produced such documents, but no such documents are forthcoming. The reasons assigned by the trial Court for acquitting the accused cannot be said to be either perverse or illegal.

14. It is noteworthy to refer to the judgment of the Apex Court referred *supra* by the learned counsel for the appellant. Paragraph Nos.29 and 38 of the judgment is extracted herein.

29. "In mahesh Damu Khare V/s. State of Maharashtra, this Court held that to make a man, accused of having sexual relationship by making a false promise of marriage criminally liable, the physical relationship must be traceable directly to the false promise made and it must not be qualified by the other circumstances or consideration. In a situation where the woman knowingly maintains the physical relationship for a prolonged period, it cannot be said with certainty that the said physical relationship was purely because of alleged promise made by the accused to marry her."

38. It is trite that there is a distinction between rape and consensual intercourse. This Court in Deepak Gulati v. State of Haryana, differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be



liable if the Court concludes that his intentions are malafide and he has clandestine motives, The relevant extract is reproduced hereinbelow: (SCC pp. 682-84, paras 21 & 24)

"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 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.

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."

15. In the instant case, the prosecution has failed to prove that the accused has committed forcible sexual intercourse on the victim with a false promise of marriage or that the consent given by the victim was under misconception of fact. Having regard to the entire evidence and material on record, we are of the view that the prosecution has not proved the guilt of the accused beyond reasonable doubt.

16. This being an appeal preferred against the judgment of acquittal, we find no compelling or substantial



ground to interfere with the impugned judgment of the trial Court. Accordingly, appeal is ***dismissed***.

I.A.No.1/2025 is *dismissed*.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

LDC
List No.: 1 Sl No.: 22