

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 655 OF 1996

Jayaram Dattatraya Patil	)	
Age: 26 years, Occ: Service,	)	
r/o. Village Palsunde, Taluka: Mokhada,	)	
Dist. Thane.	).. Appellant	
	(Orig. Accused)	
Vs.		
The State of Maharashtra	.. Respondent	

Mr.Kartik Garg i/b.Mr. S.V.Marwadi, Advocate for the appellant.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 11th April, 2016.

ORAL JUDGMENT :

The appellant herein is convicted for the offence punishable under Sections 376 and 420 of Indian Penal Code and sentenced to suffer R.I. for seven years and fine of Rs.1,000/- in default, further R.I. for four year, he is also sentenced R.I. for four years for the offence punishable under Section 420 of IPC and fine of Rs.1,000/- in default R.I. for one year by IIIrd Addl. Sessions Judge, Raigad in Sessions Case No.123 of 1995 vide judgment and order dated 30.10.1996.

2. It is the case of the prosecution that the appellant herein was

pursuing his D.Ed. Course at Village Palsunde, Taluka Mokhed, District Thane. He was residing as a paying guest in the house of Smt. Pramila Tukaram Mhatre. He had financial difficulties. Pramila Mhatre had sympathy for the boy since he hailed from a poor family and therefore he was given lodging and boarding by Pramila. Mhatre. He was not paying either for food or for shelter. She demanded the rent as well as the expenses towards boarding. At that time, he suggested that instead of giving rent, he would get married to the daughter of Pramila. He had also assured her that in the eventuality that he gets the job elsewhere, he will continue to stay with her. He resided as a family member. Her daughter was also acquainted with him and had cordial relations with him. He had brought one of his colleagues viz. Shivram Khade to act as a mediator for the marriage. That Pramila was insisting upon him to get married. However, he had assured her that after completing a year in service, he would get married to her daughter. On 15.12.1994, he had approached Pramila along with his colleague. The marriage was settled. That he had assured Pramila that he would return along with his parents within 8 – 10 days. On 14.1.1995, the appellant, his parents and relatives had come to her house and had assured her that he will get married to the daughter of Pramila before 15th March, 1995. However, after the meeting, his whereabouts were

not known and he did not return to the house of Pramila. Thereafter, the son of Pramila Mhatre had searched for the appellant at various places, including the school where he was teaching. There he was informed that the whereabouts of the appellant are not known for quite some time. Smt. Mhatre was therefore constrained to approach the police station and accordingly she filed a written report with Police Inspector at Uran Police Station. She had informed the police that by his behaviour the appellant had exposed the mother and daughter to social obloquy. The said application was registered as Misc. Application No.14 of 1995. However, it appears that the police had not seriously taken cognizance of the report. They had pursued the complaint, but to no avail. At last, on 2.4.1995, Ms 'x' daughter of Smt. Pramila Mhatre lodged a report at the police station alleging therein that since 1989, the appellant was residing at Village Palsunde as their paying guest. He was not paying the rent nor the boarding charges. He had offered to get married to her. Thereafter, one fine day, when the victim was alone at home, he had forced himself upon her and ravished her. He had convinced her that since he had offered to get married to her, she should not shy away. He had demanded Rs.10,000/- towards expenses for the marriage. Her paternal uncle Hasuram had taken money from her mother and give it to him, but the appellant did not return the said amount and

neither got married to her. He had ravished her intermittently. She has further alleged that the appellant had got a job at Vashim. He used to come to visit her on Saturday and Sunday. He had impressed upon the victim that they are as good as a married couple. Therefore, she had consented to have sexual intercourse with him. Her mother and brother had been to his village. They had contacted his parents and they had reacted by saying that there is no concern between both the families. According to the victim, the appellant had induced her to have sexual intercourse with him on the ground that he was going to get married to her. He did not get married to her and hence cheated her.

3. On the basis of her report, Crime No.61 of 1995 was registered against the appellant for the offence punishable under Sections 376 and 420 of IPC. After completion of investigation, charge-sheet was filed. The case was committed to the Court of Sessions. On 28.6.1996, charge was framed against the accused for the offences punishable under Sections 376 and 420 of IPC. The prosecution examined as many as six witnesses to bring home the guilt of the accused. The case mainly rests upon the evidence of PW-1. The victim herself is PW-2. The victim has deposed before the Court in consonance with the first information report

lodged by her. She has given instances when she was ravished by the appellant. It appears that the old woman had given shelter to the appellant. The victim has deposed before the Court, that immediately after the first incident, she had informed her mother that she has been ravished by the appellant. However, the mother was assured that the appellant desires to get married to the victim. She has deposed before the Court that she has conceived pregnancy. She disclosed about it to the appellant. He had given her some tablets. The mother of the victim had called for a meeting. In the said meeting, the accused had agreed for performing marriage on 15th May and also agreed to settle the date of marriage. That the accused had demanded Rs.10,000/- for marriage expenses and the mother of the victim had obliged him. The appellant went to the place of service and did not return thereafter.

In the cross-examination, it is admitted that the first incident had taken place in the room of her grand-mother and that her grand-mother is incapacitated and therefore lives at home. The defence has made attempts to create a dent in his substantive evidence. However, the defence has failed. She has agreed that her mother had filed a complaint at Uran Police Station. It is elicited in the cross-examination that the victim

belongs to Agri caste, whereas the accused belongs to Mahadev Koli caste.

4. PW-2 Pramila Mhatre is the complainant. She has deposed before the Court that within 3 – 4 months after graduation he had got a job at Shenvi. Even when he was serving at Shenvi, he used to visit the house of PW-2 on every week-end. He would never visit his own village. He had also informed PW-2 that he needs time to save money and thereafter he would perform the marriage. He used to reside with PW-2 during the summer vacation, festival and other holidays. PW-2 has deposed before the Court that when he had visited her house during Diwali vacation, one day in the afternoon, she woke up as she heard shouts and soon she went to the adjoining room and saw her daughter and Jayram in a compromising position. She had objected such acts. At that juncture, for the first time, the appellant had told PW-2 that they had indulged into such acts many times before and that he had agreed to marry. It appears from the evidence that was the first time in Diwali vacation in 1994 that PW-2 had realized that her daughter had sexual intercourse with the appellant and, therefore, on Sankrant day, she had arranged for a meeting and she had called respectable persons in the house. The parents of Jayram were also present. That in the said meeting, Jayaram had agreed to get married to the victim on 15th May.

According to PW-2, that was the last occasion when he visited the house of PW-2. She therefore sent her son Mahesh for enquiry at village. After the said meeting, the accused had allegedly come to the house of PW-2 and had taken Rs.10,000/- from her for marriage expenses and thereafter he never returned. Mahesh was informed by the school master that Jayram has left the job. Mahesh therefore went to the village of Jayaram. His parents had told Mahesh that they did not know about his whereabouts and therefore, she had lodged the report which is at Exhibit 13. She has also deposed before the Court that the accused was referred as son-in-law in her village.

It is elicited in the cross-examination that she was aware about the sexual relations between her daughter and Jayaram. She has admitted in the cross-examination that she was assured that in the eventuality the accused get married to her daughter, her daughter would lead a comfortable life. She has also admitted that in the year 1991, there was no earning male member in her family.

5. PW-3 Meghnath Mokashi happens to be the resident of village Pandive i.e. the village of PW-2. He has deposed before the Court that upon enquiry made by him, PW-2 had told him that she did not charge for

lodging and boarding charges from the accused Jayaram since he was getting married to her daughter. She had told PW-3 not to intervene in her family affairs. PW-3 had also attended the meeting in the house of PW-2.

6. PW-4 is Damodar Mokashi. He had also attended the meeting held at the house of PW-2. According to him, since Pramela did not have a brother, most of the villagers referred her as sister. He was residing as a neighbour of Pramela. It was upon his advise that she had filed the complaint to police.

7. PW-5 Hasuram Mhatre happens to be brother-in-law of PW-2. He had handed over an amount of Rs.10,000/- to Pramila to be given to the accused for marriage expenses.

8. PW-6 is the Investigating Officer. He has deposed before the Court that on 17.2.1995, Pramila had filed an application to the police station. He had not visited the village Pandive to inquire into the matter. He has deposed before the Court that PW-1 and 2 had never come to the police station to enquire about the stand taken by the appellant. Pursuant to the application made by PW-2 on 17.2.1995, PW-6 has proved the

omissions and contradictions in the statements of the witnesses.

9. The learned counsel for the appellant submits that in the present case, which cannot be said that the appellant had ravished the victim against her will. According to him, it was consensual. He has further submitted that the appellant had bonafide intention to get married to the victim and, therefore, he had called his parents for the meeting and in the meeting he had agreed to get married to her. The learned counsel has further submitted that the appellant has been falsely implicated. It is submitted that in the statement under Section 313 Cr.P.C., the appellant had categorically stated that in fact, he had no relation with the victim nor they had sexual intercourse, but the mother of the victim was insisting upon him to get married to her daughter. The learned counsel has drawn attention of this Court to the admission of PW-2 that in the eventuality that the victim would get married to the appellant, her life would be more comfortable. It is further stated that PW-2 was insisting upon him to get married to the victim and since he refused the proposal, he has been falsely implicated. The evidence on record would show that the appellant was visiting the house of PW-2 even after he had got service at Village Shenvi.

10. The learned counsel for the appellant has placed reliance upon a Judgment of the Hon'ble Apex Court in the case of **Uday vs. State of Karnataka (2003) 4 SCC 46**. The Hon'ble Apex Court, while referring to the case of Holman v. R has held that “there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is consent.” The learned counsel rightly submits that there is no evidence on record even to remotely indicate that the victim had refuted the gestures or the advances made by the appellant. The learned counsel has further drawn attention of this Court to the observations of the Supreme Court as follows :-

“That consent obtained by fraud is no consent at all is not true as a general proposition either in fact or in law. If a man meets a woman in the street and knowingly gives her bad money in order to procure her consent to intercourse with him, he obtains her consent by fraud, but it would be childish to say that she did not consent.”

The Hon'ble Apex Court has observed that “Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of

reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure.”

11. In the case of **Deepak Gulati vs. State of Haryana (2013) 0 SCC 494** has held 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. 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. The Hon'ble Apex Court had placed reliance upon the Judgment in the case of **Uday vs. State of Karnataka** (cited supra). In the present case, it cannot be said that the appellant had no intention to marry the victim right from the inception.

12. In the case of **Deelip Singh @ Dilip Kumar vs. State of Bihar (2004) SCC 1395**, the Hon'ble Apex Court has held that the promise to marry without anything more will not give rise to

misconception of fact within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent.”

13. In the case of **Manesh Madhusudan Kotiyam vs. The State of Maharashtra (Criminal Appeal No.892 of 2012)**, this Court had held that it would be justifiable to hold that the consent was not obtained by intimidation, force meditated imposition, circumvention surprise or undue influence and therefore, this Court had acquitted the accused of the charge under Section 376 of IPC, however had convicted the accused for the offence punishable under Section 417 of IPC. In the present case also, it cannot be ruled out that there were such intervening circumstances which must have forced the appellant to refrain himself from getting married to the victim.

14. The learned counsel for the appellant submits that since the victim and the appellant belonging to two different castes, there is every possibility that in order to oblige his parents and avoid unwarranted circumstances the appellant in all probability had refrained from marrying the victim. However, right from the

inception, he had intention to marry the victim. The charge was framed against the accused for cheating PW-2 having obtained Rs.10,000/- by deceitful means. The charge was against the accused for the offence punishable under Section 420 or Section 417 of IPC for having refused to marry the victim or to have not kept up the promise of marriage. However, the same would not be an impediment for this Court to hold the accused guilty for the offence punishable under Section 417 of IPC.

15. Section 415 of IPC reads as under :-

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

16. Section 417 of IPC reads as under :-

“417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

It is not the case of prosecution that the appellant had obtained consent under a misconception of fact or false representation.

In fact, he wanted to marry her right from the inception. Hence, on the set of evidence adduced by the prosecution, this Court is inclined to acquit the accused of the charge under Section 376 of IPC. However, the conviction for the offence punishable under Section 417 of IPC. He is sentenced to the period already undergone.

ORDER

- (i) The appeal is partly allowed.
- (ii) The appellant-accused is acquitted of the charge under Section 376 of Indian Penal Code.
- (iii) The appellant-accused is convicted for the offence punishable under Section 417 of IPC and sentenced to the period already undergone.
- (iv) Bail bonds stand cancelled.

Appeal stands disposed of.

(SMT.SADHANA S.JADHAV, J.)