

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.379 of 2015

Arising Out of PS.Case No. -25 Year- 2008 Thana -CHAKAMHESI District- SAMASTIPUR

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Rajesh Kumar @ Mantu, Son of Late Ram Lalit Mahto, Resident of Village -
Gorain, Police Station - Chak Mehsi, District - Samastipur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Choudhary Shyam Nandan-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 11-12-2017

Appellant, Rajesh Kumar @ Mantu has been found guilty for an offence punishable under Section 417 of the I.P.C. and sentenced to undergo S.I. for one year as well as slapped with fine appertaining to Rs.20,000/-, in default thereof, to undergo S.I. for two months, additionally vide judgment of conviction and sentence dated 29.04.2015 passed by the 5th Additional Sessions Judge, Samastipur in Sessions Trial No.65 of 2009.

2. Bharti Kumari @ Munni filed Complaint Petition No.412 of 2008 disclosing the date of occurrence dated 25.02.2008 at about 2.00-3.00 p.m., P.O. village-Kushiari, P.S.-Chakmehsi, District-Samastipur against Rajesh Kumar @ Mantun and his father Ram Lalit Mahto with an allegation that she happens to be seven sisters. One of



her sisters (5th) in number has been married with Anil Singh of village-Gorai, P.S. Chakmehsi, Samastipur about five years ago. After marriage, cousin of her brother in-law namely Rajesh Kumar @ Mantu began to visit her place and gradually, he trapped her on the promise of marriage and then, under the guise of aforesaid promise, he succeeded in establishing physical relationship which he continued. On the other hand, whenever complainant reminded him of his promise, he used to instruct to send her father for finalization of negotiation. Accordingly, she disclosed the event to her father, whereupon, on 25.02.2008, her father had gone to the place of Rajesh Kumar and talked with his father Ram Lalit Mahto for settlement of marriage and during course thereof, he also apprized the continuing intimate relationship in between Rajesh and his daughter. They have completely ignored the same and said that marriage will be finalized only after payment of Rs.1,50,000/-, one colour television, one Hero Honda Motorcycle in lieu of dowry. Because of the fact that her father happens to be under financial constrain whereupon, accused persons refused. Thereafter, her father had rushed to local Mukhiya, Sarpanch as well as respectable persons of the locality, but shown fruitless effort. From reliable sources, she has come to know that accused Rajesh Kumar @ Mantun's marriage has been fixed at different place, whereupon instant complaint petition has been filed. So, it has been



alleged that she has been subjected to continuous sexual exploitation by Rajesh Kumar on the false pretext of marriage and further, they have declined to marry unless there happens to be fulfillment of demand of dowry.

3. After having the aforesaid complaint petition, the learned Court below directed the same to be sent to the local police station for registration and investigation of the case in accordance with Section 156(3) of the Cr.P.C., whereupon Chakmehsi P. S. Case No.25 of 2008 was registered and after concluding investigation, chargesheet was submitted, whereupon the trial commenced and concluded in a manner, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. However, neither oral nor documentary evidence has been adduced on their behalf.

5. In order to substantiate its case, prosecution had examined altogether eight PWs viz. PW-1 Naresh Rai, PW-2 Hirday Mahto, PW-3 Sanjay Mahto, PW-4 Pradeep Rai, PW-5 Bharti Kumari @ Munni, the victim, PW-6 Ram Sunder Mahto, father of the victim, PW-7 Tej Narain @ Tejendra Mahto and PW-8 Koushalya Devi, mother of the victim. As stated above, defence has not produced either



oral or documentary evidence.

6. It has been submitted on behalf of appellant that whatever finding has been recorded by the learned lower Court appears to be impermissible in the facts and circumstances of the case, and so, is fit to be annulled. In order to substantiate the same, it has been submitted that there happens to be complete absence of the material at the end of the prosecution that victim was minor. It is not the case of the prosecution that appellant took control over victim and committed rape or forced her to indulge in relationship against her will or without her consent rather from the narration of the written report as well as evidence of the prosecutrix, it is crystal clear that they ab-loomed their commitment for years together and then, developed their physical intimacy, which they carried on without any hitch. There happens to be no disclosure even at the initial version that appellant had refused or rejected the proposal and was not ready to marry. Therefore, there happens to be no question of deception and in likewise manner, allurements for the purpose of indulging in physical relationship only. Consent was voluntarily and being major, sound mind was fully competent.

7. It has further been submitted that aforesaid event is visualizing from the prosecution version itself. So far evidences are concerned, that it found completely contrary to the version,



whereupon the dubious character of the prosecution is found duly exposed, who on one pretext or the other provoked her to allege in order to get the victim married with the appellant and on being refused woven peculiar kind of story and got the appellant involved.

8. Furthermore, it has been submitted that neither sister nor brother-in-law of the so alleged victim has come up in support of her allegation nor any of her family members which cast serious doubt over authenticity of prosecution version. Apart from this, it has also been submitted that independent witnesses had gone adverse to their interest whereupon were declared hostile and whoever remains, happens to be the victim as well as her parents whose evidence in the facts and circumstances of the case, could not be relied upon.

9. On the other hand, learned Additional Public Prosecutor opposed the submission and submitted that the delicacy of relationship amongst the informant as well as the appellant is a circumstance, which was misused, exploited at the end of the appellant whereunder, he assured to enter into nuptial knot with her and further, the effort was being continued at the end of the appellant in persisting the informant harried with sole moto to steal her virginity wherein lastly, he succeeded and then thereafter, she had been shown the door as a result of which, lastly she has no other option, than to file instant case. It has also been submitted at the end of the learned



Additional Public Prosecutor that intention of the party is to be gathered from their conduct whether it happens to be is a genuine or it happens to be dishonest, malicious only to avail the sexual pleasure exploiting the victim in the background of inter se relationship. Once the same is perceived from the angle of the victim, the appellant is found to be the rapist and for that, he would have been convicted and sentenced for attracting Section 376 of the I.P.C. Although the same has not been challenged at the end of the prosecution.

10. Before going to scrutinize the evidence, it looks desirable to peep into the matter. Consent as defined under **Jowitt's Dictionary in English Law**.

“Consent supposes three things, a physical power, a mental power and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion and not as a deliberate and free act of the mind.”

11. In **Yedla Srinivasa Rao vs. State of A.P. reported in (2006) 11 SCC 615**, the Apex Court has held as follows:-

“But, here in the present case the age of the girl was very tender between 15-16 years. Therefore, Jayanti Rani



Panda's case is fully distinguishable on facts. It is always matter of evidence whether the consent was obtained willingly or consent has been obtained by holding a false promise which the accused never intended to fulfil. If the court of facts come to the conclusion that the consent has been obtained under misconception and the accused persuaded a girl of tender age that he would marry her then in that case it can always be said that such consent was not obtained voluntarily but under a misconception of fact and the accused right from the beginning never intended to fulfil the promise. Such consent cannot condone the offence. Reliance can also be made in the case of Emperor v. Mussammat Soma reported in (1917) Crl. Law Journal Reports 18 (Vol.18). In that case the question of consent arose in the context of an allegation of kidnapping of a minor girl. It was held that the intention of the accused was to marry the girl to one Dayaram and she obtained Kujan's consent to take away the girl by misrepresenting her intention. In that context it was held that at the time of taking away the girl there was a positive misrepresentation i.e. taking the girls to the temple at Jawala Mukhi and thereafter they halted for the night in Kutiya (hut) some three miles distance from Pragpur and met Daya Ram, Bhag Mal and Musammat Mansa and Musammat Sarasti was forced into marrying Daya Ram. This act was found to be act of kidnapping without consent. But, in the instant



case, a girl though aged 16 years was persuaded to sexual intercourse with the assurance of marriage which the accused never intended to fulfil and it was totally under misconception on the part of the victim that the accused is likely to marry her, therefore, she submitted to the lust of the accused. Such fraudulent consent cannot be said to be a consent so as to condone the offence of the accused. Our attention was also invited to the decision of this Court in the case of Deelip Singh Alias Dilip Kumar v. State of Bihar, [2005] 1 SCC 88 wherein this Court took the view that prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused who promised to marry her. But accused's promise was not false from its inception with the intention to seduce her to sexual act. Therefore, this case is fully distinguished from the facts as this Court found that the accused promise was not false from its inception. But in the present case we found that first accused committed rape on victim against her will and consent but subsequently, he held out a hope of marrying her and continued to satisfy his lust. Therefore, it is apparent in this case that the accused had no intention to marry and it became further evident when Panchayat was convened and he admitted that he had committed sexual intercourse with the victim and also assured her to marry within 2 days but did not turn up to fulfil his promise before the Panchayat. This conduct of the accused stands



out to hold him guilty. What is a voluntary consent and what is not a voluntary consent depends on the facts of each case. In order to appreciate the testimony, one has to see the factors like the age of the girl, her education and her status in the society and likewise the social status of the boy. If the attending circumstances lead to the conclusion that it was not only the accused but prosecutrix was also equally keen, then in that case the offence is condoned. But in case a poor girl placed in a peculiar circumstance where her father has died and she does not understand what the consequences may result for indulging into such acts and when the accused promised to marry but he never intended to marry right from the beginning then the consent of the girl is of no consequence and falls in the second category as enumerated in Section 375 -"without her consent". A consent obtained by misconception while playing a fraud is not a consent.

In this connection our attention was also invited to the decision of this Court in the case of Udav v. State of Karnataka, [2003] 4 SCC 46. In this case also this Court held that for determining whether consent given by the prosecutrix was voluntary or under a misconception of fact, no straitjacket formula can be laid down but following factors stand out; (i) where a girl was of 19 years of age and had sufficient intelligence to understand the significance and moral quality of the act she was



consenting to; (ii) she was conscious of the fact that her marriage was difficult on account of caste considerations; (iii) it was difficult to impute to the appellant knowledge the prosecutrix had consented in consequence of a misconception of fact arising from his promise, and (iv) there was no evidence to prove conclusively that the appellant never intended to marry the prosecutrix. On the basis of the above factors this Court did not feel persuaded to hold that consent was obtained by misconception of facts on the part of the victim. But as already mentioned above, in the present case we are satisfied that looking to the antecedent and subsequent events that the accused never intended to fulfil the promise of marriage, this was not a case where the accused was deeply in love. In the present case in our hand the accused persuaded her for couple of months but she resisted it throughout. But, on one day he came to the house of her sister and closed the doors and committed forcible sexual intercourse against her will and consent, holding out a promise for marriage and continued to satisfy his lust. Therefore, this case stands entirely on different footing. We may add a word of caution that the court of fact while appreciating evidence in such cases should closely scrutinize evidence while taking into consideration the factors like the age of the girl, her education, her social status and likewise the social status of the boy.



In the case of Reg. v. William Case, (a) (1850) Crl. Law Cases 220 (Vol. IV) if a girl does not resist intercourse in consequence of misapprehension, this will not amount to a consent on her part. It was held that where a medical man, to whom a girl of fourteen years of age was sent for professional advice, had criminal connection with her, she making no resistance from a bona fide belief that he was treating her medically, he could be convicted for rape.

Similarly, in the case of The Queen v. Flattery (1877) 2 QBD 410 where the accused professed to give medical advice for money, and a girl of nineteen consulted him with respect to illness from which she was suffering, and he advised that a surgical operation should be performed and, under pretence of performing it, had carnal intercourse with her, it was held that he was guilty of rape.

Likewise, in the case of The King v. Williams (1923) 1 KB 340 the accused was engaged to give lessons in singing and voice production to the girl of sixteen years of age had sexual intercourse with her under the pretence that her breathing was not quite right and he had to perform an operation to enable her to produce her voice properly. The girl submitted to what was done under the belief, wilfully and fraudulently induced by the accused that she was being medically and surgically treated by the accused and not with any intention that he should have sexual intercourse with her. It was held that the accused was guilty of rape.



In this connection reference may be made to the amendment made in the Indian Evidence Act. Section 114 A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:

'Section 114 A- Presumption as to the absence of consent in certain prosecutions for rape.- In a prosecution for rape under Cl. (a) or Cl.(b) or Cl.(c) or Cl. (d) or Cl. (e) or Cl. (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.'

If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became



pregnant and it became clear that the accused did not wish to marry her.”

12. In *Kaini Rajan vs. State of Kerala reported in (2013)*

9 SCC 113, it has been held:-

“12. Section 375 IPC defines the expression “rape”, which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was



consent or not, is to be ascertained only on a careful study of all relevant circumstances. (See State of H.P. v. Mango Ram (2000) 7 SCC 224.)

19. Behaviour of the parents of the prosecutrix viz. PW 3 and PW 4 also appears to be strange. In their evidence they stated that they came to know about the relations between the appellant and the prosecutrix when they found her pregnant. The prosecutrix had told them that the appellant had agreed to marry her. They knew the appellant and his family already. However, there is not even a whisper that they approached the appellant or his family members for marrying the prosecutrix. They straightaway went to the police station to lodge the report, that too after the birth of the child. All these factors cast a doubt on the prosecution version. The version of the victim, in rape commands great respect and acceptability, but, if there are some circumstances which cast some doubt in the mind of the court of the veracity of the victim's evidence, then, it is not safe to rely on the uncorroborated version of the victim of rape."

13. In ***Deepak Gulati vs. State of Haryana*** reported in ***A.I.R. 2013 SC 2071***, it has been held:-

"15. 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.

16. This Court considered the issue involved herein at length in Uday v. State of Karnataka, AIR 2003 SC 1639, Deelip Singh v. State of Bihar AIR 2005 SC 203, Yedla Srinivasa Rao v. State of A.P. (2006) 11 SCC 615 and Pradeep Kumar Verma v. State of Bihar and another, 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.

17. 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.

18. 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.

19. In Deelip Singh AIR 2005 SC 203, it has been observed as under: (SCC p. 99, para 19)

“20. 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.”



20. This Court, while deciding Pradeep Kumar Verma, AIR 2007 SC 3059, placed reliance upon the judgment of the Madras High Court in N. Jaladu, Re ILR (1913) 36 Mad 453,, wherein it has been observed: (Pradeep Kumar case AIR 2007 SC 3059, SCC pp. 418-19, para 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 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.”

21. 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.”

14. In ***Uday vs. State of Karnataka reported in A.I.R. 2003 SC 1639***, it has been held:-

“21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case,



consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

22. The approach to the subject of consent as indicated by the Punjab High Court in Rao Harnarain Singh and by the Kerala High Court in Vijayan Pillai has found approval by this Court in State of H.P. v. Mango Ram. Balakrishnan, J. speaking for the Court observed: (SCC pp. 230-31, para 13)

“The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

15. In *Karthi alias Karthick v. State Rep. by Inspector of Police, Tamil Nadu* reported in *A.I.R. 2013 SC 2645*, it has been



held:-

“15. The second contention advanced at the hands of the learned counsel for the appellant was, that the appellant-accused Karthick had not given any promise to the prosecutrix Poomari (PW 1), that he would marry her. From all the reasons referred to by us, while dealing with the first contention advanced by the learned counsel for the appellant, it is not possible for us to accept the instant contention as well. However, in addition to the factual position referred to while dealing with the first contention, there is something further that needs to be recorded. It is necessary to notice that in the first instance when the prosecutrix Poomari (PW 1) disclosed the matter of deception and sexual intercourse to her family the matter was taken to the village elders. Four village elders have appeared before the trial court and recorded their statements. Each one of them affirmed, that they had required the appellant-accused Karthick to agree to marry the prosecutrix Poomari (PW 1) on account of his physical relationship with her. Only on denial to accede to their request, on their suggestion, the matter was reported to the police. The instant aspect of the matter fully demolishes the projection made by the appellant-accused Karthick, while recording of his statement under Section 313 of the Code of Criminal Procedure. During his aforesaid statement, he had expressly alleged, that it was for the purpose of forcing the appellant-



accused to shell out an exorbitant sum of money to the prosecutrix Poomari (PW 1) and her family members, that the instant accusation had been levelled against him. Actually from the statements of Veerachamy (PW 5), Ramasamy (PW 6), Ayyavoo (PW 7) and Nagesh (PW 8), it clearly emerges that the intention of the prosecutrix Poomari (PW 1) and her brother Manikannan (PW 2), as also her father, Muthukaruppa Thevar (PW 4) was, that he should marry her. The desire of the family, that the appellant-accused should marry the prosecutrix was based on the undisputed factual position, that Karthick had had sexual intercourse with Poomari repeatedly. No such suggestion was shown to have been made to the prosecution witnesses concerned. This was only an afterthought. It is, therefore, not possible for us to accept the plea canvassed at the hands of the learned counsel for the appellant, that the appellant-accused had not made any promise to the prosecutrix Poomari (PW 1), that he would marry her.

16. *The last contention advanced at the hands of the learned counsel for the appellant was that the first occurrence of sexual intercourse commenced six months prior to the date when the complaint was made to the police (on 10-10-2003). It was, therefore, the contention of the learned counsel for the appellant, that same should be treated as an afterthought. It was pointed out, that the registration of a case by the prosecutrix Poomari (PW 1) was no more than a scheme to*



falsely accuse and harm the appellant-accused. It was submitted, that even a day's delay in registering a complaint has vital repercussions. It was also pointed out, that delay in the instant case, had obviated any positive finding on the basis of a medical examination of the prosecutrix Poomari (PW 1). It is, therefore, the vehement contention of the learned counsel for the appellant, that delay in registering the complaint with the police in the facts and circumstances of this case, should be accepted as sufficient to infuse a sense of doubt in the prosecution story.

17. Having examined the contention advanced at the hands of the learned counsel for the appellant, we are of the view that there has been no delay whatsoever at the hands of the prosecutrix Poomari (PW 1). As long as commitment of marriage subsisted, the relationship between the parties could not be described as constituting the offence of rape under Section 376 of the Penal Code. It is only after the appellant-accused Karthick declined to marry the prosecutrix Poomari (PW 1), that a different dimension came to be attached to the physical relationship, which had legitimately continued over the past six months. Things changed when the appellant-accused declined to marry the prosecutrix. After the promised alliance was declined, the prosecutrix without any delay disclosed the entire episode to her immediate family. Without any further delay, the brother and father of Poomari (PW 1) approached the village elders. The village elders immediately



summoned the appellant-accused Karthick by holding a panchayat. The village elders made all efforts to settled the issue amicably. The family, as is usual in such matters, wished to settle the matter amicably by persuading the appellant-accused to view the matter realistically. It is only on the refusal of the appellant-accused Karthick, to marry the prosecutrix Poomari (PW 1), that the question of making a criminal complaint arose. After the meetings of the panchayat, wherein the appellant-accused declined to marry the prosecutrix Poomari (PW 1), without any further delay, the prosecutrix Poomari (PW 1) reported the matter to the police on 10-10-2003. In the above view of the matter, in the peculiar facts of this case, it is not possible for us to hold, that any doubt can be said to have been created in the version of the prosecution, merely on account of delay in the registration of the first information report.”

16. Section 415 of the I.P.C. defines cheating as follows:-

“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”. Explanation.—A dishonest concealment of facts is a deception within the meaning of this section. Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver



to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

17. As explained in ***Ram Jas vs. State of A.P. reported in (1970) 2 SCC 740***, the following ingredients have to be satisfied in order to attract conviction under Section 417 I.P.C.

A) There should be fraudulent or dishonest inducement of a person by deceiving him.

B) (I) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property.

(II) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he



were not so deceived, and

C) In cases covered by (B) (II), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

18. Now, the evidences is to be seen in the background of the aforesaid principle in order to search out whether the finding recorded by the learned lower Court happens to be in accordance with law or not?

19. PW-5 is the victim. She had deposed that accused Rajesh Kumar is the dewar of her sister Kiran Devi, who is married with Anil Singh of village-Gorayan, Chakmehsi about 10 years ago. After marriage of her sister, Rajesh Kumar used to visit her place and during course thereof, they indulged into interaction, whereunder he, after promise to marry, done sin with her. On her insistence to marry, he instructed to send her father for negotiation. Accordingly, she disclosed to her father, who had gone to place of Rajesh Kumar on 25.02.2008, where they have abused her father as well as chased him away. Her father convened Panchayati which did not materialize as Ram Lalit Mahto, father of Rajesh Kumar had not gone there. Then thereafter, they have gone to police station for registering case which, the police declined, whereupon complaint petition was filed before the Court. During cross-examination at Para-2, she had shown topography



of her house having six rooms. It has also been disclosed by her that some of the guests according to their status are allowed to stay at the inner portion of the house. In Para-3, she had stated that Rajesh Kumar happens to be cousin brother of her brother-in-law Anil Singh. Anil Singh is alone, and his cousin brothers are members of joint family. For the first time, when Rajesh Kumar met with her, she was aged about 15-16 years. Rajesh was of her age. On Court question, she replied that when Rajesh Kumar offered to marry, she accepted. In Para-4, she had stated that whenever Rajesh Kumar used to visit her place, she looked after his affair. All the arrangements were being taken by her. She did not sleep along with him, but one day while none of her family members were present and was a rainy day, Rajesh committed rape on her. She was not inclined, whereupon he forcibly committed the same. In Para-5, she had stated that aforesaid occurrence took place 2-3 years ago. Rajesh visited her place so many times even thereafter to the date of institution of the case. When Rajesh committed sexual intercourse with her, she disclosed that she will acknowledge the event to her family members, whereupon Rajesh Kumar had said that he solemnly affirms that he will marry with her, whereupon she put belief and under the garb of aforesaid event, whenever Rajesh came, he continued with the aforesaid activity. Rajesh indulged in sexual activity at so many times. During aforesaid



period, her parents were present. He indulged after sleeping of her parents. Rajesh used to visit her room. As there was no latch affixed in the door so, there was no obstruction. In 2008, for the first time, she had disclosed to her sister. For the first time, the accused had sexually exploited her in the Year 2006. When she came to know about fixing of marriage of Rajesh at somewhere else then she had disclosed to her sister. She had also disclosed regarding rape having been committed by Rajesh Kumar. In Para-7, she had stated that as at the time of first incident, accused had pressed her mouth on account thereof, she had not raised alarm. Subsequently thereof, also she had not raised alarm. On Court question at Para-8, she had kept mum, when she was confronted with the question that what kind of protest, she had made over the first incident. Then there happens to be disclosure with regard to first incident. Again she was recalled and during course thereof, again she has been cross-examined on that very score, wherein she also reiterated the same version as is evident from Paras- 14, 15, 16. She had also shown presence of Kiran Devi and further, having fully acknowledged with the affair.

20. PW-6 is Ram Sunder Mahto, father of PW-5, who had deposed that Kiran Devi is his 5th daughter, who has been married with Anil Singh about 10 years ago. Rajesh happens to be cousin brother of his son-in-law, who used to visit his place. His daughter



Bharti Kumari became very much affectionate with him. Then had said that in the Year 2006, he had gone to his sasural along with his wife. Bharti Kumari was alone at that very time. Rajesh came to his place and committed rape over Bharti Kumari. When Bharti made protest, he gagged her mouth. When his daughter said to Rajesh, she is going to disclose the event to her parents, whereupon Rajesh offered to marry her. He knew the fact through his wife in the month of February, 2008, whereupon, he inquired from his daughter. Then had stated that as Rajesh had instructed his daughter to send him for finalization of negotiation, whereupon he had gone on 25th. He met with father of Rajesh and disclosed the event and further, said that as his son has developed relationship with his daughter and wants to marry, so let marriage be finalized, whereupon Ram Lalit Mahto demanded Rs.1,50,000/- in cash, colour television, one motorcycle as dowry for which, he was not prepared. Then thereafter, Panchayati was convened. They have not participated as a result of which, instant case has been filed. During cross-examination at Para-8, he had stated that accused was adolescent at an earlier occasion. He was on visiting term for the last five years as he was close relative, on account thereof, was allowed to sleep inside the room. In Para-10, he had stated that he came to know regarding the event from his wife and then from his daughter. Then there happens to be suggestion "*It is not*



a fact that he permitted accused inside his house on the pretext that he will marry with his daughter.” He further denied the suggestion that he had taken the step for getting the marriage of his daughter with Rajesh. In Para-11, he had stated that when accused did not become ready to marry, then this case has been registered. If accused has committed sin, so this case has been lodged. In Para-13, he had stated that he had made statement before the police that after deceiving his daughter, accused had developed physical relationship with her. Then had denied the suggestion that he had not made statement before the police that accused after pressing her mouth had committed rape. On recall, he had stated that when he had gone to the place of Rajesh for negotiation, at that very time, only Rajesh and his father were present. At that very time, Kiran Devi, another daughter and son-in-law were not present. Subsequently, he had informed Kiran Devi with regard thereto. In Para-17, he had stated that he along with Pradeep, Tej Narayan had gone to the place of Rajesh. Ram Lal Mahto had said in presence of Rajesh that dowry has to be paid then and then only, marriage will be solemnized. Then had denied the suggestion that it is not the fact that at that very time, Rajesh was not present. As they have declined to marry without dowry on account thereof, Panchayti was convened. In Para-22, he had stated that Rajesh had deceived his daughter. His daughter has not yet married. He denied the suggestion



that it is not the fact that Rajesh has not deceived his daughter. On Court question, he had stated that Rajesh stealthily got married.

21. PW-7 is Tej Narain @ Tejendra Mahto, who had stated that Rajesh is the Dewar of daughter of Ram Sunder, who used to visit at the place of Ram Sunder. He had further stated that his uncle had disclosed that on the pretext of marriage, Rajesh had developed physical relationship with his daughter. He had also disclosed that when he had gone to negotiate, Rajesh and his father had declined. During cross-examination, he had stated that he has got no personal information.

22. PW-8 is the mother of the victim, who had deposed that her 5th daughter has been married with Anil Singh about 15 years ago. Rajesh happens to be cousin brother of her son-in-law and on that pretext, he used to visit her place and during course thereof, developed physical relationship with another daughter Bharti Kumari on the pretext of marriage. About 4 years ago, her daughter had disclosed the same, whereupon she informed her husband. Her daughter disclosed to her father, whereupon her husband had gone to the place of Rajesh for negotiation, Ram Lalit Singh directed him to pay Rs.1,50,000/- cash, one colour television, one motorcycle as dowry. As her husband was not inclined, therefore, they declined. In Para-4 of her cross-examination, she had stated that sometimes, both



the brothers, sometimes alone her son-in-law, sometimes Rajesh used to visit her place. In Para-5, she had disclosed that her daughter disclosed six months prior to the institution of case. In Para-7, there happens to be contradiction. On recall, at Para-9, she had stated that earlier Rajesh frequently visited her place, but for the last 4-5 years, he is not coming as he had married at somewhere else. In Para-10, she had stated that when her daughter had disclosed then she came to know. In Para-12, she had stated that her husband had gone to the place of Rajesh for negotiation. In Para-14, she had stated that father of Rajesh had demanded Rs.1,50,000/- in cash, one colour television, one motorcycle. At that very time, Rajesh was there, who had not protested. In Para-15, she had further stated that her husband did not visit the place subsequently. In Para-20, she had further stated with regard to subsequent activity of her daughter, who has now become completely depressed.

23. PW-1, PW-2 and PW-3 have not supported the case of the prosecution being co-villagers of appellant while PW-4 Pradeep Rai had deposed that he along with Ram Sunder had gone to the place of Ram Lalit where Ram Sunder had disclosed that Rajesh has developed physical intimacy with his daughter on an assurance of marriage, so marriage be finalized over which Ram Lalit declined. Thereafter, he returned back. On the following day, there was



Panchayati, which did not materialize. During cross-examination, he had stated that whatever been deposed by him with regard to relationship, is based upon hearsay. On recall at Para-3, he had stated that he talked with Bharti Kumari after institution of the case. He had also talked with Ram Sunder, who had disclosed the event. In Para-4, he had stated that demand having been made by Ram Lalit, father was not resisted by Rajesh.

24. From the evidence available on the record, it is apparent that there happens to be no denial at the end of appellant, Rajesh Kumar regarding his status being cousin brother of brother-in-law of informant of the victim (PW-5 Bharti Kumari). There happens to be also no denial at his end that he was not on visiting term. There happens to be no denial at his end that he had not developed physical relationship with PW-5. From evidence, it is apparent that they developed affection towards each other right from the stage of adolescence, which continued and further, the suggestion having given at the end of appellant to the victim under Para-13, it is evident that he had accepted the whole event, but over the consent, it has been suggested as “It is not a fact that she was in love with Rajesh. It is not a fact that all the incident had occurred after having her consent.” It is further evident that during course of cross-examination of PW-5, she was not at all cross-examined nor suggested that no promise of



marriage was made by the appellant, nor under garb of such promise, he indulged in physical relationship. During whole cross-examination of PW-5, it is evident that she was not specifically suggested that at the first instance when the occurrence took place, she was minor or major though subsequently her status happens to be that of major. Furthermore, there also happens to be consistency in her evidence over her indulgence on the pretext of assurance having at the end of appellant that he will marry with her. Furthermore, victim a rustic, illiterate, simple on fallen pray at the hand of appellant. That being so, it happens to be a clear case of fraudulent, dvishonest inducement, which could have attracted offence of rape, but as the same has not been challenged, even though, the finding recorded by the learned lower Court is found in accordance with law. That being so, instant appeal sans merit and is accordingly, dismissed. Appellant is on bail, hence bail bond is hereby cancelled directing him to surrender before the learned lower Court to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

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