

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.122 of 2009**

Sewaram, S/o. Kejuram Verma, aged about 24 years, R/o.
Village Saklor, PS Suhela, Distt. Raipur (CG)

---- Appellant**Versus**

The State of Chhattisgarh, Through Station House Officer,
Suhela, District Raipur (CG)

---- Respondent

For the appellant : Shri Raghavendra Pradhan, Advocate

For the State/respondent : Shri VB Singh, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28.3.2019.**

1. The appeal is directed against judgment dated 02.02.2008 passed by Second Additional Sessions Judge, Baloda Bazar, Distt. Raipur (CG) in Session Trial No.26/2008 wherein the said Court convicted the appellant for commission of offence under Sections 450 and 376(1) of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of 25,000/- on each count with default stipulation.

2. In the present case prosecutrix is PW-1. As per the version of the prosecution, between 14.02.2007 to 24.01.2008 the appellant made physical relation with the prosecutrix by giving her false assurance of marriage without having intention or inclination to marry her. When the marriage of the appellant is settled with some other girl by his parents, the matter was reported by the prosecutrix, the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) From the evidence of the prosecutrix herself it is established that the appellant was willing to marry with her but the family members of the appellant were not ready for their marriage that is why marriage between the appellant and the prosecutrix could not be solemnized.

(ii) Since the appellant was always willing to marry with the prosecutrix it is not a case where the appellant deliberately made promise without there being any intention to marry with the prosecutrix, therefore, finding of the trial Court on this count is not sustainable.

(iii) There is delay in lodging the FIR and the delay is not explained satisfactorily, therefore, the finding of guilt is liable to be sustained.

(iv) The trial Court ignored the material contradictions and omissions in the statement of the prosecution witnesses, therefore, finding of the trial Court is not sustainable.

(v) Charge under Section 450 IPC is not made out because the prosecutrix herself invited the appellant to her home for a long period which is clear from her statement, therefore, finding of the trial Court is based on conjectures surmises which is liable to be sustained.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Prosecutrix (PW-1) deposed before the trial Court that she made physical relation with the appellant from 14.02.2007 to 24.01.2008. When the marriage of the appellant was settled to some other place she complained to the parents of the appellant and one meeting was convened but the issues between the parties was not settled in that meeting. The prosecutrix admitted in her cross-examination (para 7 & 8) that she fell in love with the appellant that is why she enjoyed picnic with the appellant and she was not able to live without the appellant. She further deposed (para 27) that the appellant was willing to marry with her but it was objected by the parents and other family members of the appellant. Yashoda Bai (PW-2), who is the mother of the prosecutrix, deposed that the appellant was ready to marry with the prosecutrix but because of objection of his family members their marriage could not be solemnized.

7. From the record it appears that the prosecutrix was aged about 20 years at the time of the incident and she was major. The only question for consideration before this Court is whether the appellant made physical relation with the prosecutrix without having intention or inclination to marry with her. From the evidence of the prosecution it is established that the appellant was willing to marry with the prosecutrix, therefore, it cannot be held that the appellant obtained consent of the prosecutrix without having intention to marry her. In the present case, consent was given by the prosecutrix to the appellant because she was in love. The promise made by the appellant is not a promise that the appellant had no intention to

marry with the prosecutrix since inception. Therefore, it cannot be said that consent is given under misconception of facts. Failure to keep promise due to objection by the family members is a fact of future uncertainty and the same is not equivalent of misconception of facts.

8. On overall assessment of the evidence, finding recorded by the trial Court that the appellant had no intention to marry with the prosecutrix is not sustainable, therefore, the same is liable to be sustained.

9. Accordingly, appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. He is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-

(Ram Prasanna Sharma)
JUDGE