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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 15th December, 2020*

+ **CRL.A. 613/2020 & CRL.M.A. 16968/2020**

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..... Appellant

Through: Mr Saurabh Kansal, Advocate.

versus

STATE (GOVT. OF NCT OF DELH)
& ANR.

..... Respondents

Through: Mr Ravi Nayak, APP for State
with SI Preeti, PS Malviya
Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning a judgment dated 24.03.2018, whereby the accused was acquitted of the offences for which he was charged – offences punishable under Section 417/376 of the Indian Penal Code, 1860 (IPC).

2. On 15.08.2015, the appellant had filed a complaint with PS Malviya Nagar pursuant to which an FIR (FIR bearing no.1566/2016, under Sections 417/376 of the IPC) was registered. The accused was prosecuted pursuant to the said FIR.

3. The contents of the complaint have been set out in paragraph 1

of the impugned judgment and the same is reproduced below:-

“1. Briefly stated case of the prosecution is that on 15.08.2015 prosecutrix went to police station Malviya Nagar and gave her complaint wherein she stated to the effect that she was resident of Panchsheel Park (complete name and address of prosecutrix is mentioned in the complaint, however, the same has not been reproduced here in to protect the identity of the prosecutrix) and that she was doing work of cooking food at Greater Kailash-II. Rahul @ Golu was resident of Malviya Nagar. She had physical relations with him since the year 2008. After 3-4 months he promised to marry her and made her elope with him. His family members made him understand after which Golu brought her to his house and kept her with him like his bride at his home. He kept her as his wife. During this period she became one month pregnant but Golu told her that he did not want a child as yet. He brought medicine and gave it to her due to which her pregnancy was aborted. She stayed with Golu at his house for one year after which he made her understand and sent her back to her house. After that also they used meet when no one was present at house of Golu. Thereafter Golu had a quarrel with his neighbour. Due to this Golu went to Punjab and stayed at his Chacha's house for a few days and from there he eloped with a girl named Manu and married with her at Arya Samaj Mandir. Golu started staying at his house with Manu and did not call her (prosecutrix) there. He, however, started visiting her and staying with her at her rented accommodation at Khanpur. He used to stay at his house for few days and stayed with her at Khanpur for others. During this period she again became pregnant and accused gave her medicine stating

that he did not want a child. Thereafter they shifted from Khanpur to Savitri Nagar and started staying there in a rented accommodation. After a few months she returned back to her house to stay with her mother and father. After staying there for 3-4 months she took a room at Savitri Nagar and started residing there all by herself. Golu again had quarrel with his neighbour and absconded from Begumpur. He came to her and started staying with her. They stayed together till 15.08.2015. She used to work in Kothi's and managed her own expenses as well as expenses of her house from her earnings. Golu worked with a property dealer at Malviya Nagar. In the said office Golu developed relationship with the girl named Priya. She used to call Golu every day. Today (the day prosecutrix filed her complaint) she visited her house (house of prosecutrix) and took away Golu as well as his articles with her and Golu also sent with her. Golu had cheated her and established physical relations with her repeatedly by making a false promise of marriage to her and now he had left her for Priya. She and Golu used to establish physical relations mostly at his house as he used to take there, when no one was present, both before and after marriage of Golu. She prayed for police help and for strict action against Golu."

4. After registration of the FIR, the statement of the complainant was recorded under Section 164 of the Cr.PC.
5. The prosecution's case rested almost entirely on the statements and the testimony of the complainant. The relevant extract of her examination-in-chief is set out below:-

"I know the accused for the past ten years. The accused used to follow me on the bike when I used to go

to school. We became friends and started speaking to each other on our mobile phones. About 10 years back, I left my house and started living in a house at Geetajali Enclave where I was working as domestic help. The accused and I started having a love affair about ten years back. We used to go for outings. The accused and I went to Punjab to his bua's house where we stayed for ten days. After coming back to Delhi, I went to the house of the accused and stayed in his house as husband and wife for one year in 2008-2009. We did not undergo any marriage ceremony. The accused had physical relations with me telling me that I was his wife. The sister of the accused did not like me because of which there were fights in the house and so the accused asked me to stay somewhere else for sometime till the situation improved. I started staying in my parents house.

After about three months of my stay at my parents house, I and Golu started living in rented premises at Khanpur. During my stay at Khanpur with the accused, I came to know that the accused was in relations with some other girl namely Manu who lives in Punjab. When I made enquiry from accused regarding the girl Manu he told me that his friends had a bet that who will succeed in having friendship with Manu and he had succeeded in friendship with Manu. Accused did not tell me that he was having any other relations with Manu. I remained with the accused in a rented premise at Khanpur for about 1½ years. Accused used to stay sometimes with me and sometimes with his family. I remained with the accused in the rented premises at different places upto year 2013. Accused had left me without informing and I returned to my parents house.

On the next day of karwa chauth in the year 2013, accused had left for Punjab. I came to know from the sister of Golu that accused had married Manu in Punjab. I tried to contact the accused on his mobile phone, but he did not pick up my mobile phone. After about 10-15 days, accused called me at Malviya Nagar market to meet me and I went to Malviya Nagar market and accused met me. When I made enquiry from accused regarding his marriage with Manu, accused started making excuses by saying that he will tell all the things later on. After formal talks with me accused left. I remained in touch with the accused through mobile phone and I also used to meet him.

In the year 2014, I stayed with the accused in a rented premise at Faridabad. The wife of the accused was staying with his family. Accused used to stay sometimes in the day time with me or sometimes at night time. He also used to stay with his family. Accused used to establish physical relations with me during our stay at Faridabad. I had stayed with the accused for about four months. Thereafter, the accused took a rented premises at Savitri Nagar and I stayed with the accused in the said premises. I stayed with accused in the said premises for about 5-6 months. Our physical relations continued during the said period.

Thereafter the accused started meeting another girl namely Priya who was working in some kothi at Saket. I came to know about two and half years before filing of the present case that accused Golu was having relations with Priya. I used to convey to the accused to leave Priya and the accused informed me that he is not having any relations with Priya. I had read the message of Priya on the mobile phone of accused Golu and I called back her.

Priya asked me how I had managed to get her mobile number. I conveyed to Priya that we will sort out the matter after meeting each other. I and Priya met in Sai Saba Mandir at Saket. Accused also reached there later on. Thereafter, accused and Priya had a fight and Priya had slapped the accused. Thereafter Priya damaged the mobile phone of Golu and both of them left. Thereafter, I started calling Priya to have a talk with Golu as both of them left from Sai Saba Mandir together. Priya did not allow me to have talk with Golu. Thereafter, Priya sent her photographs on my Whatsapp and informed me that she had married Golu. I had accepted the marriage of accused Golu with Manu and continued in relation with him but I did not accept the marriage of the accused with Priya. Thereafter, I decided to lodge a complaint against accused Golu. Accused had left me alone in a rented premise at Savitri Nagar and started avoiding me. I made a written complaint to the police in my handwriting and the same is Ex.PW1/A bearing my signatures at point A.”

6. It is apparent from the above that there is no dispute that even according to the appellant, the relationship between the appellant and the accused was consensual.

7. The Trial Court evaluated the said evidence and concluded as under:-

“59. From the complaint Ex.PW-1/A, statement Ex.PW-1/C under Section 164 CrPC and the statement of prosecutrix as PW-1, it is thus evident that the prosecutrix established physical relations with the accused of her own free will and accord as she had genuine affection for the accused and that in the first

instance her consent for physical relations had not been obtained by the accused by making any promise of marriage to her. The talks of marriage, if any, took place between accused and prosecutrix subsequent to their entering into intimate physical relationship.

60. Further from the material placed on record by the prosecution the consent of the prosecutrix in continuing with her relationship with the accused is clearly brought out. From the complaint Ex.PW-1/A itself it is seen that prosecutrix continued with her relationship with the accused despite the fact that she knew that he had eloped and married with a girl named Manu. As per prosecutrix she had physical relations with the accused and became pregnant even after his marriage with Manu. She claimed that after sometime accused had developed relationship with another girl namely Priya but in spite of it prosecutrix continued with her relationship with accused till 15.08/2015 when Priya came to her house and took accused and his articles with him.”

8. This Court finds no infirmity with the aforesaid conclusion. A bare reading of the complaint made by the appellant as well as her testimony clearly indicates that even according to her, her relationship with the accused was consensual. Her allegation that her consent has been vitiated on account of having been obtained by misrepresentation, is clearly, unsustainable.

9. In *Pramod Suryabhan Pawar v. State of Maharashtra and Another: (2019) SCC online SC 1073*, the Supreme Court had observed as under:-

“12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action.

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16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act...”

10. The Supreme Court also referred to various other decisions and summarized the legal position as under:-

“18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad

faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

11. As noted by the Trial Court, according to her complaint, the appellant has stated that she had physical relationship with the accused in the year 2008 and after three or four months, thereafter, he had promised to marry her and she had eloped with him. In view of the said statement, her allegation that her consent to engage in sexual activity with the accused, is vitiated, as the same was secured on a promise to get married, is not sustainable.

12. Inducement to have a physical relationship by promising marriage and the victim falling prey to such inducement may be understandable in the context of the moment. A promise of marriage cannot be held out as an inducement for engaging in sex over a protracted and indefinite period of time. In ***State vs Sandeep: CRL. L.P. 532/2019, decided on 25th September 2019***, this Court had held that in certain cases, a promise to marry may induce a party to agree to establish sexual relations, even though such a party does not desire to consent to the same. Such inducement in a given moment may elicit consent, even though the concerned party may want to say no. In such cases, a false promise to marry with the intention to exploit the other party may vitiate consent and thus, constituting an offence of rape under Section 375 of the IPC. However, it is difficult to accept that continuing with an intimate relationship, which also involves engaging in sexual activity over a significant period of time, can be construed as

involuntary and secured not by affection but only on the lure of marriage.

13. The complainant has also alleged that she had conceived on two occasions; however, the accused did not want any children and therefore, had brought medicines, which had led her to abort the pregnancy. However, in her cross-examination, she could not recollect the date or the time when such miscarriages had taken place. Concededly, there is no other evidence, which would establish that the appellant had miscarried on being administered any drugs.

14. The present appeal is also filed after an inordinate delay of six hundred and forty days. There is no credible explanation for such delay. The only explanation provided is that the accused has once again starting interfering with the complainant's life and therefore, she seeks to revive her complaint. Clearly, the same presents no ground for condoning such delay.

15. In view of the above, the appeal is unmerited and is, accordingly, dismissed both on merits as well as on the ground of delay.

VIBHU BAKHRU, J

DECEMBER 15, 2020
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