

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30 . 03 . 2021

Pronounced on : 26 . 07 . 2021

CORAM

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.A.No.326 of 2018

Subasakthi
D/o.Vijaya Bharathi

... Appellant

Vs.

1. Anu Ranjith
S/o.Chandran

2.The Inspector of Police
All Women Police Station (East)
Coimbatore

(2nd respondent was impleaded vide order
dated 30.11.2018 made in Crl.MP.No.15948 of 2018)

... Respondents

Prayer: Criminal Appeal filed under Section 378 of Code of Criminal Procedure to call for the records and to set aside the order of acquittal passed by the Mahila Court, Coimbatore dated 06.12.2017 made in S.C.No.10 of 2016.

For Appellant : Dr.P.Vasudevan

For Respondents : Mr.Kingston Jerold for R1.

Mrs.Saradha Devi

Govt. Advocate (Crl. Side) for R2.

J U D G M E N T

(This case has been heard through video conference)

This Criminal Appeal has been filed to call for records and to set aside the order of acquittal passed by the Mahila Court, Coimbatore dated 06.12.2017 in S.C.No.10 of 2016.

2.The brief facts of the case is that the appellant/prosecutrix /P.W.1 was resident of Kamarajar Road, Varadharajapuram, Singanallur and that prior to 1 ½ years of the occurrence, she had gone to Arvind Hospital for eye treatment. At that time, the first respondent/accused who was working in the Armed Police, Palakkad, as a Police Man had come there for eye treatment of his father. During that time, they got acquainted with each other and that the first respondent/accused had made her believe that he would marry her after his younger sister's marriage and that he used to speak with her in mobile phone often.

3. Whiles, on 04.10.2013 at 12.30noon he had come to meet her at her house when no one was there and had induced her saying that he would marry her and by deceit made her believe that she is lawfully married to him and had forceful sexual intercourse

with her. Thereafter, the first respondent did not contact her and thereby the appellant along with her parents had gone to Muttukulangara police camp Palakad, where the first respondent/accused was working. At that time, the first respondent/accused had taken them to his house, and there he had told the appellant and her family members that they are Malayalees and the appellant is Tamil girl, that his family members had refused to give concurrence for marriage. On refusal of marriage, the appellant had given a complaint to the District Police at Palakad, Kerala who had taken up the complaint and later finding that the offence was committed within the jurisdiction of Tamil Nadu had referred the same to the second respondent under Reference G/66413/13P dated 21.12.2013, on the point of jurisdiction. The second respondent police based on the reference registered a case in Cr.No.5 of 2014 under Section 376 IPC, and thereafter proceeded with the investigation and filed the final report against the first respondent/accused before the Mahila Court, Coimbatore for the offence under sections 376, 417 and 493 IPC. The case was taken up in PRC.No.10 of 2016, on appearance of the first respondent/accused copies of the documents were furnished to him under Section 207 Cr.PC. and the Court finding that the case was

exclusively triable by the Court of Sessions had committed the case to the Principal District and Sessions Judge, Coimbatore and the case was taken up in SC.No.10 of 2016. Later it was made over to the Sessions Judge, Magalir Neethimandram, Mahila Court, Coimbatore for trial. The trial judge after perusal of the documents and initial questioning, framed charges against the first respondent/accused for the offence under Section 376, 417 and 493 IPC.

4. When the accused was questioned he denied the charges and sought to be tried.

5. On the side of the prosecution, PW1 to PW14 were examined and Exs.P1 to Ex.P21 were marked and no material objects were marked. After completion of evidence, on the side of the prosecution when the accused was questioned under Section 313 (1)(b) in respect of the incriminating materials found against him, he denied charges and submitted a written explanation and claimed to examine witnesses on the side of the defence. However, no oral or documentary evidence was let in on behalf of the accused. The trial court after hearing the counsel on either side,

rendering a finding that the charges against the first respondent/accused were not proved by the prosecution beyond reasonable doubt had acquitted the first respondent/accused. As against the order of acquittal, the present appeal has been filed by the appellant/prosecutrix/defacto complainant.

6. The learned Counsel for the appellant/Prosecutrix submitted that the order passed by the trial Court is patently culpable, inherently improbable and is against procedural safeguards. The learned trial Judge failed to note that in a case of rape, delay in preferring the complaint does not assume much importance since in the Indian society, the women are reluctant to give complaints immediately and in this case only on the failure of the accused to honour the promise of marriage, the prosecutrix had given the complaint. He would submit that the respondent/accused had given a promise to the victim to marry her and on the promise, he had made her believe she is lawfully wedded to him and committed rape on her and thereafter, he had also threatened her not to disclose the same to anybody stating that he would commit suicide, if the same was disclosed to anybody. It is the case of the appellant that she believed him and kept quiet. Further, the

respondent/accused had been delaying marriage stating that he would marry her once his younger sister gets married and thereafter, he had switched off his mobile phone. Since, the respondent/accused was working as a Police Constable at Palakkad in Kerala, the appellant had given a complaint to the Superintendent of Police, Palakkad which was later referred to the All Woman Police Station, Palakkad and later on the point of jurisdiction the case was transferred to the file of the second respondent. He would submit that the trial Court erred in holding that the term "misuse" which was stated by the appellant in the first complaint would not amount to a case of rape and that the trial Court had erred in taking into consideration the minor inconsistencies in the evidence of the witnesses and had acquitted the first respondent/accused which is illegal. He would further submit that the trial Court failed to take into consideration the fact that the delay in lodging the complaint and the delay in medical examination is not due to the fault of the appellant/ prosecutrix and it had occurred due to the prosecution on account of the case being transferred from Kerala to Coimbatore. Further, the trial Court erred in concluding that the evidence of the victim/prosecutrix lacks credence. The trial Court failed to note that the complaint is not an "Encyclopaedia" and that the trial Court

failed to take into consideration the subsequent statements given by the appellant victim/prosecutrix which has also been corroborated by P.W.11/Nirmala who has spoken about the incident as narrated by P.W.1./victim. The evidence of P.W.1 regarding incident that had happened on 04.10.2013 is corroborated by the evidence of P.W.2/mother of P.W.1 and further P.W.3 & P.W.4/their neighbours have spoken about having seen the respondent /accused on 04.10.2013 near the residence of the appellant. It is their evidence that when they had enquired him, he had told them that he was going to marry the appellant and that they were in love with each other. He would further submit that the trial Court failed to see to that even if there had been a consent for sexual intercourse, the consent had been given under misconception that the respondent/accused would marry her at a later point of time. The prosecution through the testimonies of the witnesses and through documentary evidence had succeeded in establishing its case beyond reasonable doubt, however, the trial judge without considering the same had ventured to overanalyse the same and basing reasoning on technicalities and surmises which are perverse had wrongly acquitted the 1st respondent/accused, thereby rendering the impugned judgment illegal which deserves to be set

aside. In support of his contention, he would rely on the following Judgements of the Hon'ble Apex Court;

1. Anurag Soni Vs. The State of Chhattisgarh reported in **(2019) 13 SCC 1**

2. Karthi @ Karthick Vs. State Rep. by Inspector of Police, Tamil Nadu reported in **(2013) 12 SCC 710**

7. Per contra, Mr. Kingston Jerold, the learned counsel appearing for the 1st respondent contended that the appeal is against a well considered order of acquittal. The trial Court had carefully analysed the evidence on record and rendered a reasoned order finding the 1st respondent not guilty. There is nothing perverse in the finding of the trial Judge. The trial Court has given cogent reasons for disbelieving the testimonies of the prosecutrix and her mother and also given reasons for not taking into consideration the other evidence.

8. Learned counsel further submitted that the scope of interference with an acquittal order is very much limited, an order of acquittal can be set aside only if it is perverse. The perversity

would emanate only if the trial Court has either ignored an evidence, which was readily available on record, or has based its reasoning on conjectures and surmises, or has misapplied the law. In this case, the trial Judge having carefully examined the oral and documentary evidence had rendered an order of acquittal which needs no interference. The judgment is not a perverse one and it cannot be disturbed lightly.

9. He further submitted that in this case, the trial Judge had framed charges against the 1st respondent/accused for the offence u/s.376, 417 and 493 I.P.C., the appellant/prosecutrix was examined as P.W.1 and her mother was examined as P.W.2 to prove charges of rape. Further the trial Court has also taken into consideration the evidence of P.W.8 and P.W.9 who are the medical experts. The alleged occurrence is said to have taken place on 04.10.2013 in the bedroom of the appellant's house when her mother had gone out. The place of occurrence is a compounded house consisting of several adjacent row houses and the occurrence is stated to have taken place during the noon time. Though P.W.3 and P.W.4, the neighbours have been examined by the prosecution, they have not spoken anything about P.W.1 informing them about

the rape and they have just stated that they have seen the 1st respondent / accused near their house and that he had told them that he is going to marry P.W.1. The evidence of P.W.3 and P.W.4 seems to be highly artificial since there was no necessity for the 1st respondent / accused to disclose anything to strangers. The 1st complaint which itself was with much delay had been given to the Superintendent of Police on 21.12.2013 in which nothing had been stated as if the 1st respondent /accused had committed sexual intercourse with her on the promise of marrying her. Even in the complaint/Ex.P1 it had been stated that the appellant and the 1st respondent fell in love and that he had assured her that he will marry her after convincing his family members and that the appellant had also stated that the 1st respondent/accused's father, mother and sister were against the marriage since she is a Tamilian and he is a Malayalee and there was also caste problem between the families and that the parents of the 1st respondent / accused were not willing and accepting for the marriage. The appellant had only stated that the 1st respondent had misused her and that since her father had scolded her using filthy words, she had attempted to commit suicide. No where in the complaint the appellant had stated that the 1st respondent / accused had induced her on the false

promise of marrying her and committed sexual intercourse with her. Later after deliberation a subsequent complaint had been given by the appellant on 26.12.2013 with exaggerated facts which was in Malayalam and marked as Ex.P2. Even in that complaint, the appellant had stated that they were in friendship with each other for sometime and that the family members of the 1st respondent were not happy about their relationship and created problem and that there was also a caste problem between them and that the family of the 1st respondent was not accepting the marriage because the appellant belongs to Tamil Nadu and the 1st respondent belongs to Kerala and they also belong to a different caste. Even in the complaint dated 26.12.2013 nothing had been stated as if the 1st respondent/accused induced the appellant on the false promise, whereas an exaggerated version with improved allegations were given during the recording of statement u/s.164 Cr.P.C. Even in the complaint dated 21.12.2013 and 26.12.2013 the appellant had stated that the family members of the 1st respondent / accused were not convinced with their relationship and that she had stated that the 1st respondent had informed her that he would marry her only after convincing his father and mother and after his sister gets married. The trial Judge, after analysing the materials and evidence

on record finding that the evidence of P.W.1 and her mother PW2 was exaggerated, had acquitted the 1st respondent/ accused. Even as per the complaint dated 21.12.2013, the complainant had only made a request seeking to enquire the 1st respondent / accused to see to that he marries her. Only at a later point of time the appellant had stated about the physical relationship between them. The trial Judge having seen the demeanour of the witness and finding that there were inconsistencies and exaggerations in the complaint and in the further evidence in Court during trial had acquitted the 1st respondent / accused. The learned counsel for the first respondent/accused further submitted that the trial judge who had the benefit of watching demeanour of the witnesses is the best judge to assess the credibility of evidence. The trial judge also finding that the evidence of P.W.1 and P.W.2 lacked credence and also taking into consideration the various self contradictory statements of P.W.1 and contradictions between the evidence of P.W.1 and her mother PW2 had rightly disbelieved the prosecution story of rape/forceful intercourse. The trial Court after analysing each and every material carefully has passed a reasoned order. The trial Court is justified in concluding that there was no evidence for cheating. Further it is the admission of P.W.1 that she and the

accused were in deep love for 1½years. It is the further admission that the marriage could not be materialised because the father of the accused had told that he would commit suicide if the 1st respondent/accused marries the appellant and the trial Court has also found that the prosecution has not let in any evidence to prove that the 1st respondent / accused had the intention to cheat her right from the inception of the relationship between them and that he did not have any intention of marrying her right from the beginning and that the promise was made only with the bad intention of satisfying his lust.

10. The learned counsel ultimately contended that this appeal is against and well considered order of acquittal and this Court has to take into consideration the legal principles regarding appeal against acquittal. In support of his contention he relied on the following decisions :-

(i) **Rajesh Patel v. State of Jharkhand**
reported in **(2013) 3 SCC 791**

(ii) **Deelip Singh @ Dilip Kumar v. State of Bihar** reported in **(2005) 1 SCC 88**

(iii) **Deepak Gulati v. State of Haryana**
reported in **(2013) 7 SCC 675**

(iv) **Tilak Raj v. State of Himachal Pradesh** reported in **(2016) 4 SCC 140**

(v) **Santhosh Prasad @ Santhosh Kumar v. State of Bihar** reported in **(2020) 3 SCC 443**

(vi) **Pramod Suryabhan Pawar v. State of Maharashtra and another** reported in **(2019) 9 SCC 608**

(vii) **Maheshwar Tigga v. State of Jharkhand** reported in **(2020) 10 SCC 108**

(viii) **Guru Dutt Pathak v. State of Uttar Pradesh** reported in **2021 SCC online SC 363**

(ix) **Sampat Babso Kale and another v. State of Maharashtra** reported in **(2019) 4 SCC 739**

(x) **Anwar Ali and another v. State of Himachal Pradesh** reported in **(2020) 10 SCC 166**

11. Mrs.Saradha Devi, learned Government Advocate (Crl.side) would submit that as per the prosecution the accused got acquainted with the victim girl and that they were talking over phone for some time and that on 04.10.2013, the accused had gone

to the house of the appellant and when her mother had gone away to buy fish, the accused had induced her with the promise to marry her and by deception stating that he would marry her and making her believe that she is his lawfully wedded wife had committed sexual intercourse against her will, thereafter, he had refused to marry her. Originally, the complaint dated 02.12.2013 was given at Kerala and a FIR was registered by the Kerala Police and thereafter finding that the offence was committed within the jurisdiction of Tamil Nadu had transferred the case to the second respondent. The case was investigated by the second respondent and the first respondent was charged for the offence under Sections 417, 376 and 493 IPC. The trial Court had acquitted the first respondent. She would further submit that the State/second respondent has not preferred any appeal against the order of acquittal.

12. This is an appeal against acquittal by the trial Court.

The trial Court holding that the case of the prosecution has not been proved had acquitted the accused while looking at the evidence on record :-

PW1/Subsakthi the prosecutrix in her evidence had deposed that she had completed M.Sc and that she was at

home without going to any work and that one day during the month of March 2012 she had gone to Aravind Hospital for eye treatment and that the father of the accused had also come there for eye treatment and both of them were allotted the same room after eye surgery and since she underwent surgery she had not seen him. Later after six months she had gone there for regular check up and since it was crowded, the father of the accused who was diabetic, went to canteen to take tiffin and had asked her to save his mobile number and had requested her to call him when his turn comes and she had called him on his mobile phone and helped him and after that one day, the accused/Anu Ranjith had called her over phone and proposed his love to her and that she too had accepted the proposal and that both of them had been talking over phone for some time and that both their parents came to know that they were in love with each other. Her father had told that he wanted to meet the family members of the accused and when she had told the accused about the same for several times, he had told her that he would meet them after his sister's marriage gets over and thereafter, the accused had not called her father at all. Since, the accused did not call her father, her father had informed that he had seen some other bride groom for her, whereas she had informed

him that she will marry the accused only and due to that there was a problem in the family and because of the said problem they had sent her to her grand mother's house at Coimbatore and asked her to stay there and her mother also accompanied her. She had intimated all those things to the accused. The accused had told her that they could register the marriage after his sister's marriage and she had compelled him to come and meet her father. Whiles, on 04.10.2013, the accused had come to her grand mother's house and the neighbours have seen the accused. When they have enquired whether he was the groom, he had told them that he would marry her, after his younger sister gets married and told them he had come to meet her father.

13. PW1 had further deposed that accused had come at about 12.10hours on 04.10.2013 and told her that he is very hungry and that he would take lunch and thereafter go and meet her father. Her mother had gone to buy fish and at that time, the accused had shown a packet of condom to her. She had told him that it is not proper thing to do before marriage and had thrown the condom packet through window. The accused had told her that he wanted to talk with her a little bit and had bolted the door from

inside and that there was a cot in the room and the accused had pushed her on to the cot forcibly. When she had attempted to get up, the accused had unzipped his pant and attempted to remove her pant, she had resisted him and he had forcibly placed his private part on her private part and began to press her breast. She had pain on account of this and when she had tried to push the accused, he caught hold of both the hands and lifted her tops and since she raised alarm, he had increased the TV volume and kissed her on her mouth. She had tried to push the accused to maximum possible extent and she was unable to push him and that he hold on her breast and laid down her and raped her and when she got up and attempted to go away the accused also had anal sex with her and since, it was paining she pushed the accused and cried. She had thought of calling her mother over phone, whereas her mother had left her phone in the house itself and that her mother had come back after some time and knocked the door and that the accused had told her not to disclose about the incident to her mother and that threatened her saying that if she discloses it to her mother he would not marry her and would commit suicide on the way back to home.

14. PW1 had further deposed that the accused had asked her to wait for two days saying that he would bring his father and that they could discuss. He left the house at 4.00pm in the evening and till such time he did not allow her to speak to her mother and told her that he would come back after two days with his family members. Since, the accused had not come in two days she had enquired him and he had informed that he had to go for physical training and thereby he was unable to come. Meanwhile, two months had gone and the accused had called her over phone on 29.11.2013 and informed her that despite his best efforts to convince his parents they have not given their consent for the marriage as she is a Tamil girl and he is Malayalee. When she had questioned him whether it was not known to them, when they were in love and was he not able to convince his parents, the accused had told her that despite his best efforts to convince his parents they are refusing to accept her and he would not be able to go against their wishes and he had told that he is showering his blessings on her and asked her to get married to some body else and to live happily. He had further told her that he would be punished for the mistake committed by him and saying so had disconnected the phone and later switched off the phone and she

was unable to contact him. She had further deposed that during the first week of December 2013, she sent a complaint against the accused to the Superintendent of Police, Palakad and after one week she went to the Armed Reserve Camp situated at Muttukulangara, the work place of the accused to meet him. She enquired at the camp by showing the photos of the accused and she was informed that the accused was working in some other camp. When the officer in the camp had called the accused and questioned about the love affair, he had denied the relationship and the officer had advised her to go to the house of the accused and inform his parents. When she was on the way to the house of the accused in search of him, he had guided the Autorickshaw driver with regard to the route to his house over mobile phone and when she reached his house, she found that the accused and his family members had deceived her and left the place. Once again on 21.12.2013, she had gone to the office of the Superintendent of Police to give the complaint and he had directed her to the All Women Police Station. On the same day at 18.00hrs, the All Women Police summoned the accused for enquiry and he along with his father had come to the police station around 6.00pm and during enquiry the accused had told that his father is not agreeing for the marriage and that he was

unable to do anything. He had asked the police to enquire his father, if required. The father of the accused is a retired Assistant Commissioner of police and when the police had enquired him, he had told the police that if the accused marries her, he would commit suicide by hanging there itself. The police had informed her that they would call her again after arranging an interpreter and asked her to come back. On 26.12.2013, the police had called her and when she had gone there, the police had recorded statement from her and her mother. Whiles0, on the previous day on 25.12.2013, the accused had called her over phone and asked her not to lodge any complaint and asked her to wait for six months and that by that time his younger sister marriage will get over and that he would do what ever she says and asked her to withdraw the complaint. However, the police had registered the case based on the complaint dated 26.12.2013.

15. She had further deposed that later the accused had called her over phone and asked her whether she wants to sent him to prison for 14years and said that he would commit suicide, if the case is registered. Later, four friends of the father of the accused had come to her house at Coimbatore and asked her to withdraw

the case and told her that the accused had gone missing and that only the father of the accused had been opposing the marriage and that they would convince him to perform the marriage. The friends of the accused had demanded 200 sovereigns of jewels. PW1 had further deposed that she had told them that if they had asked it earlier itself her father would have given that and asked them to bring the accused for discussion and they had informed that the whereabouts of the accused was not known and that they were thinking they can settle the issue by paying some amount to her and she informed them that she would not withdraw the case and preferred the complaint. The complaint given by her on 02.12.2013 to the Superintendent of Police, Palakad was marked as Ex.P1. The statement given by her on 26.12.2013 to the Palakad police which was reduced into writing with the help of the interpreter one Murukavel was marked as Ex.P2. Se had further deposed that it was informed to her by Kerala police that the case was subsequently, transferred to Coimbatore after five months and the files pertaining to the case were transferred to the All Women Police Station, Coimbatore East. The All Women Police Station, Coimbatore had called her and further enquired her and subjected her to medical examination and later produced her before the

Judicial Magistrate for recording statement. She had also deposed that she took photographs alongwith the first respondent/accused. The statement recorded by the Judicial Magistrate was marked as Ex.P3. The Photographs were marked as Exs.P4 to P9.

16. P.W.2 Soundaravalli is the mother of P.W.1 she had deposed that her daughter Subasakthi underwent eye surgery in Aravind eye hospital, Coimbatore in the year 2012 and the accused got acquainted with her daughter during that time and that she was also present there. Later in the year 2013, they shifted their residence to Coimbatore itself; that in the interregnum period, the accused had been talking with her daughter over phone, and he used to come to Coimbatore, from Palakad, Kerala to meet her daughter frequently, that the accused had told her that he was working in the police department and that he was in love with her daughter and that he promised to marry her daughter after the marriage of his younger sister was over and had asked her to come and meet his parents and convince them and had given his address to them; Subsequently, the accused had come to their house once and that when her daughter had asked him to come and talk with her husband, the accused had come to their house on 4.10.2013,

around 1.00 O' clock in the afternoon, and that at about 1.30 p.m. she had gone out to buy fish, and that as there were no fish shops nearby on that day, and that she went to Singanallur by bus, and that she booked a call taxi there itself, since the accused was about to meet her husband at Gobichettipalayam, and that she returned home at about 2.15 p.m. At that time the accused had telephoned and spoken to his father, and by saying that he has to go to Palakkad immediately and saying that he would meet her husband some other day had left and that even after two days, no response was received from the accused. When her daughter had contacted him over phone, the accused had stated that since a sports training is going on at Coonoor he would come and meet her husband later. Further the accused was conversing with her daughter over phone till 30th November 2013, and on that day there was wordy quarrel between them, and when she asked her daughter as to what the matter she had informed her that since she was a Tamil girl, the family members of the accused were not giving concurrence for the marriage and by asking her daughter not to talk to him further had switched off his phone. She had further deposed that later a complaint was lodged to the Superintendent of Police, Palakkad, and that when she asked her daughter she had told that on 04.10.2013

when she had gone out to purchase fish, the accused had raped her forcibly and had told her that if she discloses it to her mother he would commit suicide and that they visited the place called Muttukulangara, where the accused was working and enquired, and that the accused had called her daughter over phone and asked as to why she disclosed the problem between the two houses and that he lost his reputation and asked them to come to his home to solve the issue there. Since, they did not know the way to his house, the accused himself had guided the auto driver and that they went there and stayed outside the accused's house and at that time, the accused had told that his father would come and discuss. They came in two vehicles and asked them to follow, and after covering a short distance they asked to send auto by paying money and asked to get into the two wheeler. The auto driver refused to allow them to go alone as it was not safe and followed them for some distance, whereas they left somewhere in the two wheeler and later they also switched off their mobile phones and after 10minutes a person had called her in the mobile phone and advised them to return back to their place saying that the matter will be settled within two days and when she had enquired who he was he had told that he is Sukumar, Sub Inspector of Police and friend of father of the accused and after

two days he had called her over phone and told her that the family of the accused is not agreeing for the marriage and she could proceed legally. Thereafter, they had sent a complaint to the Superintendent of police and that she had received the acknowledgement and that there was no other information from them. After two days she had gone to the office of the Superintendent and they had directed her to the All Women police station. The first respondent/accused and his father had come for enquiry, the police conducted enquiry and since there was no interpreter the police saying that it was 7.00pm had asked them to come on some other day. Thereafter, on 26.12.2013, the police had called her over phone and she along with her daughter had gone to Palakad All women police station and they had enquired her and her daughter narrated about the entire facts. When they were returning home, the accused had called her daughter and asked her to withdraw the complaint saying that he will loose his job. After four days, four persons had come from the accused village saying that they belong to the police and that the accused was found missing and they had come in search of him and one of the person had told her that whether she would be able to give 200soverigns and to pay the marriage expenses and another person had told

them that the father of the accused will not agree for the marriage, since, they are Tamils and that the father of the accused was ready to settle them. She had shouted at them and sent them back and that she had also informed it to her husband. She had further deposed that the case was later transferred to Punniyankulam police station and that the Punniyankulam Police station had subjected her to medical examination

17. P.W.3 Sulokshana, a neighbour of P.W.1 had deposed that the accused used to visit the house owner Soundaravalli's house frequently to meet her daughter Subasakthi and that she being a neighbour used to see him, that she had enquired Subasakthi, that she had informed her that she is going to marry him and that she had seen him lastly in that house on 04.10.2013 around 12.00 noon when he had come and that at that time Soundaravalli P.W.2 and her daughter P.W.1 were present in their house. Since the accused Anuranjith had asked for non veg food, P.W.2 had gone outside for buying meat; and the accused and P.W.1 were alone at home and that they had stayed in the house for about 45minutes and that P.W.2 had returned after 45 minutes, that she had enquired P.W.2 as to where she had gone; and she

had replied that she had gone out to buy meat, that when she enquired her, she had told that P.W.1 was going to marry the accused; and she had enquired after 2 or 3 years, P.W.2 had informed her that the accused had refused to marry P.W.1 and thereafter she had lodged a complaint in the Kerala Police Station.

18. P.W.4 Arukkani neighbour of PW1 in her evidence had deposed that the accused Anuranjith used to visit PW2's house frequently in order to meet P.W.1 and that she had seen the accused 2 or 3 times in the house of P.W.2 and that the accused and P.W.1 were moving closely with each other and they were in love with each other; that they had told that they are going to get married, that the accused had told her that he is going to marry P.W.1 after his younger sister gets married and that she had lastly seen the accused in the house of P.W.1 on the 04.10.2013 at about 12.00 noon and that on that day the accused alone had come there. At that time, P.W.2 and P.W.1 were present in P.W.2's house and that P.W.2 had gone outside to buy meat and that as soon as P.W.2 had gone outside, the accused and P.W.1 had gone inside the house and that both of them had come outside only after about 1/2 an hour. Then P.W.2 had returned; that when she had enquired her as

to why she was late, P.W.2 had told her that there was no non-veg shops in that locality and she had gone to Singanallur to buy non-veg and that P.W.1 had later told her that the accused had raped her during his last visit after having promised her that he would marry her. Later the accused had refused to marry her, and P.W.1, Subasakthi had lodged a complaint with Kerala police.

19. P.W.5 Ambrose in his evidence has deposed that the police had inspected the house of P.W.2 on 09.05.2014 at 4.00 hours in the evening and had prepared a rough sketch; that the signature found in the observation mahazar which is shown to him belongs to him; that one Ramachandran had affixed his signature along with him, and that observation mahazar is Ex.P.10.

20. P.W.6, Ramachandran in his evidence had deposed that the police had come to the house of P.W.1, which is situated nearby to his house on 09.05.2014 between 2.00 hours and 4.00 hours in the afternoon, and after having observed P.W.1's house, had prepared the sketch and mahazar, and that he and one Ambrose, who is residing nearby to his house, had signed, and that the said observation mahazar has been marked as Ex.P.10

21. P.W.7, V.S.Muralidharan, S.I. of Police in his evidence had deposed that on the basis of receipt of a petition of Selvi.Subasakthi from Palakkad District Police station on 01.01.2014, a case was registered the respondent station Crime No.5/2014, U/s 376 of IPC and FIR was prepared and the said FIR is Ex.P.11.

22. P.W.8, Doctor P.Pandieswaran who conducted medical examination of the accused in his evidence had deposed that on 17.06.2014 the police have produced the accused, before him with a requisition to conduct masculinity/potency test, in connection with the case in crime No.16/2014, on the file of East All Women Police Station and that he had examined him, and in his report, he had opined that there are no grounds to state that the accused is impotent and the certificate issued by him in this regard is Ex.P.12.

23. P.W.9, Dr.Nandhini who conducted the medical examination of P.W.1 deposed that on 24.05.2014 at 01.20pm, the police had brought a woman named Subasakthi, aged about 27 years, in respect of the case in Crime No. 16/2014, on the file of All Women Police Station, Coimbatore East, for medical examination;

that when she examined her, the hymen was not present and that her genitalia easily admitted one finger and that she had collected the vaginal fluid and pubic hair and had sent it for chemical analysis and that the carbon copy of the Accident Register issued by her was marked as Ex.P.13. Since it was not clear, the Court had asked for a clear report and the medical certificate issued by her, containing the same details was marked as Ex.P.14 and that the requisition letter received from the court was marked as Ex.P.15. She had further deposed that since the victim was brought seven months after the occurrence, there was no chance to find out the presence of semen in the vaginal fluids and public hair.

24. P.W.10, Mr.Venkateshwaran, who has been working as the Scientific Officer at Regional Forensic Science Laboratory, Coimbatore, had deposed that, on 26.05.2014, he had received the requisition letter dated 21.05.2014 from the Residential Medical Officer, Coimbatore Medical College Hospital, and along with that letter, he had received the vaginal fluid and pubic hair which were collected during the medical examination of the girl Subasakthi in connection with Cr.No.16/14, on the file of the All Women Police Station, East, and had analysed the same, and the chemical analysis report, issued by him is Ex.P.16.

25. PW11/Mrs.Nirmala, Inspector of Police, All Women Police Station, Palakad had deposed that on 21.12.2013, PW1 lodged complaint to the Deputy Superintendent of Police, Palakad and that the complaint was forwarded to her. She had further deposed that PW1 had requested her to see to that she gets married to the accused. She had further deposed that thereafter PW1 had came to the police station on 26.12.2013 and that she recorded statement of PW1 with the help of a Tamil teacher/Murukavel. In the complaint PW1 had stated about her relationship with the first respondent/accused and he having committed sexual intercourse with him on 04.10.2013 at 12.30pm on the promise of marriage, she had further deposed that on 27.12.2013 she had sent her enquiry details in the form of report to the District Superintendent of Police, Palakad informing to take appropriate legal action against the first respondent/accused. The report sent by her is marked as Ex.P7.

26. PW12 – Tmt.Renuka Devi, District Munsif in her evidence had deposed that, while she was serving as the Judicial Magistrate No.I, Coimbatore, she had recorded the statement of the witness Subasakthi/PW1 under Section 164 CrPC on 26.04.2014, in

connection with the case registered in Cr.No.16/2014 on the file of the Coimbatore All Women Police Station East and that she had submitted the recorded statement to the Additional Mahile Court on 30.05.2014 and that the proceeding file, which contains the aforesaid Subsakthi's statement is Ex.P18.

27. PW13 – Tmt.Kalaiarasi, the Inspector of Police, in her evidence had deposed that she had received the case file in respect of the case registered in the Palacode Town Police Station in Cr.No.5/14, under Section 376 IPC, which was transferred to her on the point of jurisdiction was received through post on 09.05.2014 at around 3.00hours vide RC.No.G1/17958/304/14, dated 02.05.2014 and that as per the direction, she had registered the FIR Ex.P19 u/s.276 IPC in Cr.No.16/2014 on the file of the Coimbatore District East All Women Police Station, and had taken up the investigation in the case and had gone to the place of occurrence at about 4.00pm on the same date, and had prepared the observation mahazar and rough sketch/Ex.P20 in the presence of the witnesses Subasakthi, Soundaravalli, Vijayabharathi, Sulochana, Arukani, Amburose and Ramachandran and recorded their statement and finding that the

occurrence in this case to be true, had gone in search of the accused. Since, the accused in this case is a resident in the district of Kerala she had after receiving the passport from the Superintendent of Police, Crime Records Bureau, Coimbatore city had gone to his residence and his workplace and since he was not available had issued instructions to give information to find out the accused. Later she had enquired Thiru.Muralidharan, SI of Police, Palakkad Town Police station who had registered the FIR based on the complaint and Tmt.Nirmala. Inspector of Police of the Palakkad Vanithasel Police Station, on 17.05.2014 and recorded their statements. Later gave a request to the Judge, Additional Mahila Court for conducting medical examination on the victim and on the same day, a requisition letter was given for obtaining the statement of the victim under Section 164 Cr.PC and as per the order issued by the Judge, Additional Mahila Court, Coimbatore on 20.05.2004, PW1/victim was sent to the Coimbatore Government Medical College Hospital for medical examination, through Tmt.Muthulakshmi-Grade-I Women Police Constable 806, and was produced before the Doctor and after completion of medical examination, the evidences gathered from the victim during the medical examination were handed over to the Regional Forensic Science Laboratory,

Coimbatore and after enquiring the woman police constable, who attended the duty, recorded her statement. The accused, in this case, had obtained anticipatory bail from the Court on 22.05.2014 and a requisition was given to the Judge, Additional Mahila Court for conducting medical examination for the accused and as per the summons received from the Judicial Magistrate No.I, Coimbatore on 26.05.2014, the victim girl was produced before the Judicial Magistrate and her further statement was recorded under Section 164 Cr.PC on 17.06.2014. As per the Court order, the accused was sent through Pratap Chandiran-Grade I Police constable 700, Singanallur Police Station, for medical examination to the Coimbatore Government Medical College Hospital and after completion of the medical examination, the evidences which were collected during the medical examination were handed over to the Regional Forensic Science Laboratory, Coimbatore. Thereafter, she enquired the police constable and recorded his statement. The requisition letter, which was sent from the Additional Mahila Court, Coimbatore to the Coimbatore Government Medical College Hospital for conducting medical examination on the accused, was marked as Ex.P21.

28. PW14 – Tmt.Priyamalini, the Inspector of Police, had deposed that on 04.07.2014, she took up the case in Cr.No.16/2014 for offence u/s.376 IPC for further investigation and that she recorded further statement of PW1 and that on 20.01.2015, she enquired the earlier Inspector of Police, Tmt.Nirmala and recorded her statement and thereafter went to Palakkad Town North Police Station and enquired Sub Inspector of Police Muralidaran and recorded his statement and thereafter, on 13.12.2015 had examined Dr.Nandhini who had treated and given the medical report for PW1/victim and examined her and recorded her statement and thereafter enquired Dr.Pandeeswaran who had examined the accused and obtained the medical certificate. Thereafter, she had examined Grade-I Police constable 806 Tmt.Muthulakshmi and Grade-I Police Constable 700 namely Pratap Chandiran and recorded their statements and on 23.01.2015, examined Thiru.Venkateshwaran, Scientific Officer in Forensic Department and 04.02.2015 completed the investigation and after obtaining the opinion from the Deputy Director filed charge sheet against the accused for the offence under Section 417, 376 and 493 IPC.

29. The trial Court after analysing the materials and the evidences on record, finding that the prosecution has not proved the case beyond reasonable doubt had acquitted the first respondent/accused.

30. At the outset, this is an appeal against acquittal and before venturing further, this Court is reminded itself of the law regarding the scope and the principles regarding appeal against acquittal as laid down by the Hon'ble Apex Court in its various judgments.

31. In **Guru Dutt Pathak v. State of Uttar Pradesh** reported in **2021 SCC online SC 363** the Hon'ble Apex Court has held that :-

"24.In the case of **Babu v. State of Kerala (2010) 9 SCC 189**, this Court has stated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

"12. *This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of*

the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P. (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P. (2003) 1 SCC 761, Narendra Singh v. State of M.P. (2004) 10 SCC 699, Budh Singh v. State of U.P. (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In *Sheo Swarup v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under : (IA p. 404)

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court.

(See *Tulsiram Kanu v. State* AIR 1954 SC 1, *Balbir Singh v. State of Punjab* AIR 1957 SC 216, *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, *Khedu Mohton v. State of Bihar* (1970) 2 SCC 450, *Sambasivan v. State of Kerala* (1998) 5 SCC 412, *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85 and *State of Goa v. Sanjay Thakran* (2007) 3 SCC 755)

15. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under : (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is

further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In *Ghurey Lal v. State of U.P.* (2008) 10 SCC 450, the Apex Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of the Apex Court and laid down that : (SCC p. 374, para 20)

"20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P. v. Banne* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p. 286, para 28)

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) *The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*

(iv) *The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*

(v.) *This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."*

A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

सत्यमेव जयते (emphasis supplied)

25. When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. *The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may*

also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P. (2009) 10 SCC 636)."

(emphasis supplied)".

32. Further the Apex Court in **Sampat Babso Kale v. State of Maharashtra** reported in **(2019) 4 SCC 739** has laid down the principles with regard to the powers of an appellate Court in an appeal against an acquittal order.

"8. With regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses. This Court in Chandrappa v. State of Karnataka [(2007) 4 SCC 415, laid down the following principles : (SCC p. 432, para 42)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

33. The above principles have recently been reiterated by the Hon'ble Supreme Court in the case of **Anwar Ali v. State of Himachal Pradesh** reported in **(2020) 10 SCC 166**. As discussed

above, this Court while examining the legality or illegality of judgment of acquittal has to keep in mind the above settled principles of criminal jurisprudence.

34. Further before embarking to analyse the evidence of witnesses, this Court deems it fit to refer to the judgments relied on by the both counsels with regard to the offences of cheating, rape and cohabitation or sexual intercourse by a man deceitfully inducing a belief of lawful marriage.

35. In **Anurag Soni Vs. The State of Chhattisgarh** reported in **(2019) 13 SCC 1** referred to by the counsel for the appellant, the Hon'ble Apex Court has held that if it is proved that from the very inception, promise given by the appellant accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of accused to marry the prosecutrix, the consent of the prosecutrix can be said to be a consent on misconception of fact as per Section 90 IPC and held that the accused can be convicted.

36. In the next case referred to by the Counsel for the appellant in **Karthi @ Karthick Vs. State Rep. by Inspector of Police, Tamil Nadu** reported in **(2013) 12 SCC 710** the Hon'ble Apex Court has held that obtaining consent for having sex by exercising deceit (i.e,) false promise of marriage cannot be legitimate defence to exculpate accused.

37. In respect of the cases referred to by the learned counsel for the first respondent/accused.

(i) In **Rajesh Patel v. State of Jharkhand** reported in **(2013) 3 SCC 791** – the Hon'ble Apex Court considering the evidence of the prosecutrix to be unnatural, inconsistent and improbable and having found that there is no proper explanation for the delay in lodging the FIR had acquitted the accused, charges for the offence under rape granting benefit of doubt.

(ii) In **Deelip Singh @ Dilip Kumar v. State of Bihar** reported in **(2005) 1 SCC 88** it is held as follows :-

"12. *The next question is whether the appellant had sexual intercourse with the victim girl against her will (vide first clause of Section 375). The expression "against the will" seems to connote that the offending act was done despite resistance and opposition of the woman. On this aspect, the trial court did*

believe the version of the informant-victim without much of discussion. In reaching this factual finding, the trial court failed to analyse and evaluate the evidence of PW 12, the victim girl. The High Court merely affirmed the trial court's finding on this point. We should, therefore, scrutinise her evidence and examine whether it would, beyond reasonable doubt, lead to the conclusion of the accused having had sexual contact against her will. Though in the FIR, the version of forcible sexual intercourse has not been put forward, in the deposition before the court, PW 12 tried to build up this plea. According to PW 12, the first act of rape took place in the wheat field of her father. This is how she described the incident:

"In the field, once getting a chance, Dilip Singh forcibly raped me. Dilip Singh told, 'you marry me', when I was weeping. He said weeping is useless and we shall marry. He promised me of marriage and raped me several times."

13. She then stated that after she became pregnant, she revealed to her mother about the rape. Later on, the accused became ready to marry her but his father and others took him away from the village. She also stated that the accused time and again told her that they will have a "court marriage" (means, registered marriage). In substance, what she deposed was that the first sexual intercourse took place against her will, though she became a consenting party later on. The first thing to be noticed is that in the report which she admittedly gave to the police, this version was not given by her and she did not complain of forcible rape. That apart, the version of rape in the wheat field seems to be highly doubtful when tested in the light of her statements in the cross-examination. She stated in para 14 that

"one day, while talking, he pulled me down and forcibly raped me. This incident occurred at 12.00 in the night".

That means, according to her version, the first incident of rape took place on the wheat field at 12.00 in the midnight. It is highly doubtful whether they would go to the wheat fields at that hour. Moreover, in cross-examination, she makes a further improvement by stating that at the time of first incident of rape at midnight, when she started shouting, the accused gagged her mouth. One more thing which affects the credibility of her version is her statement in the cross-examination that when the accused kept on making gestures, she went to the house of the accused and lodged her protest with his bhabhi. It is most unlikely that such unwilling person will go to a secluded place in the company of the accused at an odd time in the night and take the risk of being sexually assaulted. In any case, if the rape was committed by the accused much against her will, she would not have volunteered to submit to his wish subsequent to the alleged first incident of rape. She admitted that the accused used to talk to her for hours together and that was within the knowledge of her parents and brother. This statement also casts an element of doubt on her version that she was subjected to sexual intercourse in spite of her resistance. Above all, the version given by her in the court is at variance with the version set out in the FIR. As already noticed, she categorically stated in the first information report that she "surrendered before him" in view of his repeated promises to marry. In short, her version about the first incident of rape bristles with improbabilities, improvements and exaggerations. It is a different matter that she became a consenting party under the impact of his promise to marry her. That aspect, we will examine later. But, what we would like to point out at this juncture is, it is not safe to lend credence to the version of PW 12 that she was subjected to rape against her will in the first instance even before the appellant held out the promise to marry. We cannot, therefore, uphold the finding of the trial court that the girl was raped forcibly on the first occasion and that the talk of marriage emerged only later.

The finding of the trial court in this respect is wholly unsustainable.

35. *The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] at para 24 come to the aid of the appellant.*

36. *We reach the ultimate conclusion that the findings of the trial court as affirmed by the High Court are either perverse or vitiated by non-consideration of material evidence and relevant factors emerging from the prosecution evidence. We cannot, therefore, sustain the conviction.*

37. *In the result, the conviction and sentence is set aside and the appeal is allowed."*

(iii) In **Deepak Gulati v. State of Haryana** reported in **(2013) 7 SCC 675** it is held as follows :-

"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."

(iv) In **Tilak Raj v. State of Himachal Pradesh** reported in **(2016) 4 SCC 140** the Hon'ble Apex Court has held that for conviction of an offence under Section 417 IPC, the prosecution has to prove the charge under Section 415 IPC and it is important that all the necessary ingredients constituting the offence under the said Section must be proved beyond all reasonable doubt. The prosecution has to prove that the petitioner had the intention to cheat right from the inception of the relationship and that he never had the intention of marrying the prosecutrix.

(v) In **Santhosh Prasad @ Santhosh Kumar v. State of Bihar** reported in **(2020) 3 SCC 443** the Hon'ble Apex Court finding that the FSL report was not supporting the prosecution case and that variations were found in the prosecutrix version about giving complaint had held that the prosecutrix has failed to pass the test of sterling witnesses and acquitted the accused.

(vi) In **Pramod Suryabhan Pawar v. State of Maharashtra and another** reported in **(2019) 9 SCC 608** it is held as follows

"14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held: (SCC para 12)

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined

under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (*Deepak Gulati*): (SCC p. 682, para 21)

"21. ... 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;"

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."

(vii) In **Maheshwar Tigga v. State of Jharkhand** reported in **(2020) 10 SCC 108** it is held as follows :-

15. In *Uday* [*Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] , the appellant and the prosecutrix resided in the same neighbourhood. As they belonged to different castes, a matrimonial relationship could not fructify even while physical relations continued between them on the understanding and assurance of marriage. This Court observed as follows: (SCC pp. 56-57, para 21)

“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.”

16. The appellant, before the High Court [Maheshwar Tigga v. State of Jharkhand, 2018 SCC OnLine Jhar 1731] , relied upon Kaini Rajan [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] in his defence. The facts were akin to the present case. The physical relationship between the parties was established on the foundation of a promise to marry. This Court set aside the conviction under Section 376 IPC also noticing K.P. Thimmappa Gowda v. State of Karnataka [K.P. Thimmappa

Gowda v. State of Karnataka, (2011) 14 SCC 475 : (2013) 3 SCC (Cri) 464]. Unfortunately, the High Court did not even consider it necessary to deal with the same much less distinguish it, if it was possible. It is indeed unfortunate that despite a judicial precedent of a superior court having been cited, the High Court after mere recitation of the facts and the respective arguments, cryptically in one paragraph opined that in the nature of the evidence, the letters, the photograph of the appellant with the prosecutrix and the statement of the appellant under Section 313 CrPC, his conviction and sentence required no interference.

17. This Court recently in Dhruvaram Murlidhar Sonar v. State of Maharashtra [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672 : AIR 2019 SC 327] and in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] arising out of an application under Section 482 CrPC in similar circumstances where the relationship originated in a love affair, developed over a period of time accompanied by physical relations, consensual in nature, but the marriage could not fructify because the parties belonged to different castes and communities, quashed the proceedings.

20. We have no hesitation in concluding that the

consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in Uday [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] are considered relevant: (SCC p. 58, para 25)

"25. ... It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she

also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.”

38. Bearing the above principles in mind, this Court has to independently consider whether the prosecution has proved its case beyond all reasonable doubt and whether the judgment of the trial Court suffers from any illegality or perversity and whether the trial Court is justified in acquitting the accused.

39. It is the case of PW1 that she got acquainted with the first respondent/accused after meeting him in a hospital and that they shared their numbers and they were in touch with each other over phone and they got deeply in love with each other. The appellant/PW1 had asked him to contact her father, the respondent accused had told her that he would meet her father after the marriage of his younger sister. The prosecutrix had repeatedly asked him to contact her father and she has also informed her

father that she is going to marry the first respondent/accused only. However, since he did not contact her father, her father had decided to find out another bride groom for her, due to which there was quarrel between her and her father. She was adamant and that she had told her father that she will marry the first respondent only and there was continuous problem in the house and she was sent to her grand mother's house at Coimbatore and that she had intimated the same to the first respondent/accused, for which he had told her that he would marry her after his sister's marriage. While so on 04.10.2013, the first respondent accused had come to her house and that she had introduced him to her neighbours and thereafter he wanted to have food and PW2 her mother had gone out to buy fish. It is her further evidence that the first respondent/accused had shown her a condom packet and that she had thrown it out of the window and that he had pushed her in the cot in her room and removed her dress and had sexual intercourse against her will and also had unnatural sex with her and that she suffered pain and after sometime her mother had come and knocked the door and she opened the door. It is further evidence that the first respondent/accused had told that not to disclose it to her mother and threatened her that if she discloses he would commit suicide on

the way back to home and asked her to wait for two days stating that he would come along with his family members and meet her father. However, he did not come back and contacted her and her father got angry with her and even thereafter he continued to speak with her over phone and however he did not come and meet her father. On 29.11.2013, the first respondent/accused is stated to have told her that despite his request to allow him to marry the appellant, the family members have not agreed saying that she is a Tamil girl and he is Malayali and that they are against the marriage. He had asked her to forget him and marry some one else and that he had switched off his mobile phone.

40. It is the further case of the appellant that she sent a complaint to the Superintendent of Police, Palakad during December 2013. The complaint was marked as Ex.P1. In the complaint she had stated that she fell in love with the accused and that he assured that he shall marry her after convincing the family and after one year he denied to marry her and reason for not marrying her is that his father, mother and sister are against the marriage and they are not accepting to marry her. In the complaint dated 02.12.2013 Ex.P1 which had been given after delay, no averments had been

made against the first respondent/accused stating that he induced her on the false promise of marrying her and committed sexual intercourse with her on 04.10.2013. In Ex.P1 she had stated that she and the first respondent/accused are in love and that he had assured to marry her after convincing the family and did not marry her and the reason for denial is that his father, mother and the sister are against the marriage and that she is Tamil girl and the first respondent is a Malayali and that due to the caste problem they are not accepting for the marriage. She had further stated that the accused misused her and that her father was using filthy words against her and that she attempted to commit suicide twice and that she was admitted in the hospital by her parents. She had further stated that if the accused does not marry her, her life will be in a problem. Ex.P1 had been given after two months of the occurrence. The complaint was forwarded to Inspector of Police, Women Cell, Palakad and subsequently a statement was recorded from the appellant with the help of an interpreter on 26.12.2013. In the statement and the translation which were marked as Ex.P2, the appellant had told that after one month of their acquaintance their relationship came to be known to the first respondent/accused family members and there was a problem in her family and that he

had told her that he would convince his parents after his sister's marriage and marry her and asked her to keep quiet for time being. Later they used to meet once in two months at several places in Coimbatore at the parking area and he used to kiss her and touch her breasts and that on 04.10.2013, he had sexual intercourse with her forcibly, despite her hesitation. She had further stated that after the occurrence, they had food together and he fed her making her to sit on his lap and the first respondent/accused was in her house till 4.00pm. After that the first respondent/accused called her repeatedly and told her that his father was not agreeing for the marriage and because of that she tried to commit suicide twice. Later on 30.11.2013, the first respondent had called her over phone and informed her that his family will not allow her to marry and he don't know what to do. Subsequently, the case had been transferred to the file of the second respondent in Tamil Nadu on the point of jurisdiction.

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41. In her cross examination, the appellant had deposed that they were in serious love for the past 1½years and that it was a true love and that the accused had real intention to marry her.

She had further deposed that she was aware that right from the beginning of the relationship, the father and the other family members of the first respondent/accused were against the marriage and that she was also aware that the chances of them getting married was very less.

42. PW2/mother of the appellant had deposed that she came to know about the love affair of her daughter with the first respondent/accused and he had told her that he will marry her daughter after her younger sister gets married and that he will convince his parents and get married and he had also given his residential address to her. She had stated that the accused had come to her house on 04.10.2013 at 1.00pm and she had gone out to buy fish around 1.30pm and come back home by 2.15pm and when she had come back, the accused had informed her that he needs to go to Palakad and left the place. The evidence of PW2 is contrary to the evidence of PW1 who had stated that the first respondent had food with her after the occurrence and that she sat on his lap and that he fed her and left home by 4.00pm. PW2 in her cross examination had deposed that she was aware that her daughter/PW1 and the first respondent/accused were truly loving

each other. PW2 had deposed that the accused had come to her house only twice.

43. PW3 neighbours had deposed that the accused used to frequently visit the house and that PW1 had introduced him as her fiancée.

44. PW4 another neighbour had also corroborated the evidence of PW3.

45. PW8 and PW9 are the Doctors, PW8 is the Doctor who had examined the first respondent/accused with regard to the masculinity in respect of the first respondent/accused and he had issued Ex.P12. PW9 is the Doctor who had conducted medical examination on the appellant and issued Ex.P13/Accident Register and Ex.P14/Medical certificate and Ex.P15/Intimation from the Court.

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46. As per the evidence of PW9 she had stated that the appellant was examined by her and no external or internal injury were found on the body of the appellant and that the hymen was

not intact. PW9 had opined that since the medical examination had been done after several days there was no proof of rape. The trial Court had held that based on Ex.P14 it cannot be inferred that the appellant was subjected to sexual intercourse by force. The trial Court after analysing the evidence of PW1 and PW2 had taken into consideration the contradictions between them to disbelieve the evidence of PW1 regarding rape/sexual intercourse against her will.

47. Now considering the evidence of the PW1, she had admitted that she and the first respondent/accused were in love with each other for 1½ years and it was a true love and both of them had strong intention to marry each other. Further it is the evidence of PW3 and PW4 that they had seen the 1st respondent/accused and when enquired he had told them that he is going to marry the prosecutrix. Further it is the evidence of PW1 that right from the knowledge of the relationship, the father of the accused was against their relationship and that she was also aware that the chances of them getting married was less. Further PW1 had also deposed that during the police enquiry the first respondent/accused had informed the police that his father was against the marriage. The father of the first respondent had stated

that if he marries the appellant, he would commit suicide by hanging. Taking into consideration, the admission of PW1, it is clear that the first respondent/accused did not have the intention to cheat the appellant right from the inception of the relationship. The love between them even as per the admission of PW1 was continuing for 1½ years and that they use to roam around frequently and that it was a true love and only because of the opposition of the father and other family members of the first respondent/accused that the appellant was Tamil girl and the first respondent/accused was Malayali and they belong to different community the marriage could not be solemnised.

48. The trial Court taking into consideration the grave contradictions in the statement of PW1/prosecutrix and her mother/PW2 had held that the evidence of PW1 with regard to rape/forceful sex has not been proved. Even assuming that there had been sexual intercourse between PW1 and the first respondent a burden is cast on the prosecution to prove that the consent of the prosecutrix was obtained by playing fraud or deceit and that the accused right from the beginning had no intention of marrying the prosecutrix and that the promise was made only to satisfy his lust.

49. Now while analysing the evidences in consonance with the cases referred to on either side, this Court is able to see that as per the evidence of PW1/prosecutrix she had deposed that she and the first respondent/accused were deeply in love with each other for several months and it is her case that they were roaming around to several places and they used to be close to each other. Further, it is her case that right from the beginning the accused had informed her that there was objection from his family for the marriage, since, both of them belong to different linguistic group and different communities and that he would marry her after convincing them and they had continued with the relationship. The prosecutrix being a matured girl was conscious of the consequences.

50. In the first complaint given by the prosecutrix to the Kerala Police there had been no whisper about any kind of sexual intercourse between her and the accused. She had only stated that they were in love with each other and had wanted the police to see that they get married. Immediately, based on the complaint the accused and his father were called to the police station for enquiry and the father of the accused was adamantly against the marriage.

It is the evidence of the prosecutrix that father of the accused had even threatened to commit suicide, if police arranges for the marriage between them. Only after few days the prosecutrix had come out with the version that on the promise of marrying her the accused had sexual intercourse with her. Even assuming there had been sexual intercourse between them, the evidence of PW1 does not disclose that the accused had intention to cheat her right from the beginning and that the promise of marriage was made only to satisfy his lust. The trial Court disbelieved the evidence of prosecutrix and held that her evidence lacked credence. Further, the trial Court had rightly held the prosecution has not proved that right from the beginning the accused had the intention to cheat her and did not have intention to marry her. The trial Court having seen demeanour of the witness acquitted the first respondent/accused. In this case as stated above the appellant and the first respondent/accused were having relationship for about 1½years and the relationship which originated in a love affair, developed over a period of time but the marriage could not fructify because they belonged to different linguistic and communal group. It seems to be a case of breach of promise rather than a case of false promise to marry. Further there is absolutely no evidence to

suggest that at the initial stage itself the accused had no intention whatsoever of, keeping his promise to marry and that the false promise was made only to satisfy the lust. Further, the term misconception of fact must have a immediate relevance as pointed above. The appellant and the accused were admittedly in deep love with each other and the accused had also informed others that he is going to marry the appellant. However, from the evidence it is seem that the marriage could not fructify in the above circumstances beyond his control.

51. The trial Court had critically analysed the evidence of the prosecution. The trial Court has made a reasonable assessment of the evidence produced by the prosecution. The trial Court after giving cogent and convincing reasons had acquitted the accused. This Court does not find any illegality or perversity in the impugned judgment of acquittal.

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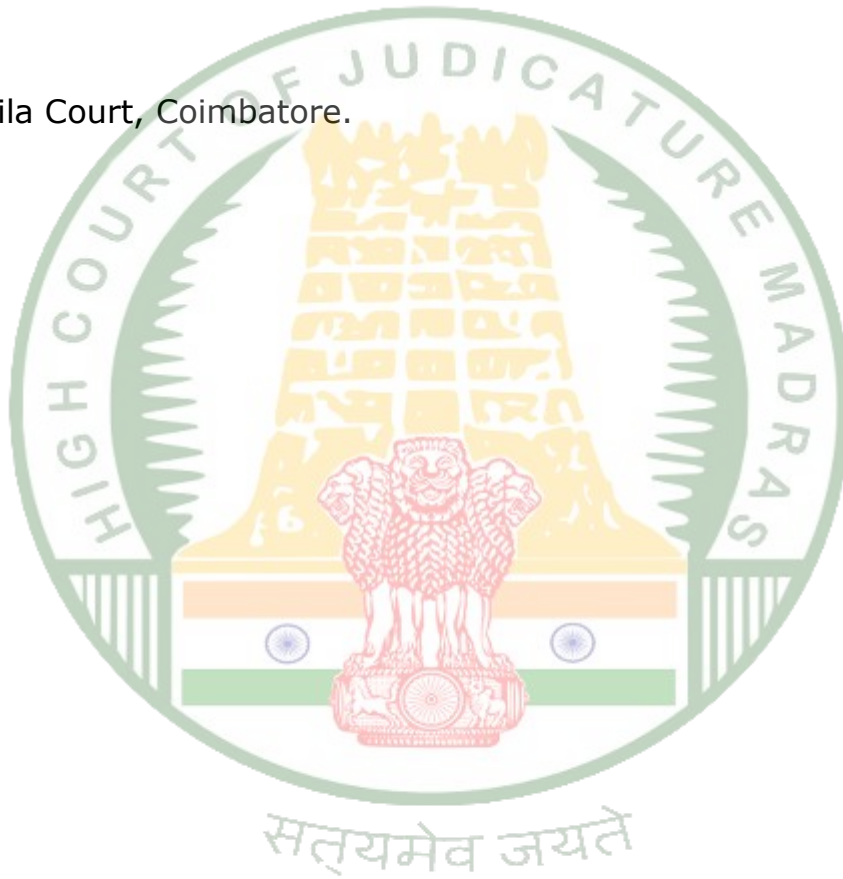
52. In view of the above, this Court does not find any merit in the present appeal and the same is hereby dismissed and the judgment of acquittal passed by the Mahila Court, Coimbatore

dated 06.12.2017 made in S.C.No.10 of 2016 stands confirmed.

53. In the result, the criminal appeal stands dismissed.

26.07.2021.

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To
The Mahila Court, Coimbatore.



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A.D.JAGADISH CHANDIRA, J.

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Pre Delivery Judgment in

Crl.A.No.326 of 2018

26.07.2021.

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