

Bail Slip

The Appellant/Accused namely Ramesh S/o. Asaikannu was ordered to be enlarged on bail vide order dated 06.06.2014 made in CrI.M.P. No. 1/2014 in CrI.A. No. 272/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 01.04.2021]
[Pronounced on : 14.06.2021]

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.272 of 2014

Ramesh
S/o.Asaikannu

...Appellant/Accused No.1

Vs.

State represented by its
All Women Police Station
Panruti
Cuddalore District
(Cr.No.19 of 2012)

...Respondent/Complainant

Prayer : Criminal Appeal is filed under Section 374(2) of Cr.P.C. to set aside the judgment of conviction and sentence dated 28.04.2014 made in S.C.No.125 of 2013 on the file of the learned Sessions Judge. i/c Mahila Court, Cuddalore District and acquit the appellant herein.

For Appellant : Mr.K.Balasubramaniam
For Respondent : Mrs.V.Sharadha Devi
Government Advocate (CrI.side).

J U D G M E N T

This appeal has been filed to set aside the judgment of conviction and sentence dated 28.04.2014 made in S.C.No.125 of 2013 on the file of the learned Sessions Judge. i/c Mahila Court, Cuddalore District, finding the appellant guilty for the offence u/s.376 and 417 I.P.C and convicting and sentencing the

appellant to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 6 months rigorous imprisonment u/s.376 IPC and to undergo 1 year rigorous imprisonment for the offence u/s.417 I.P.C. and also directed to pay a sum of Rs.2 Lakhs as compensation u/s.357(3) Cr.P.C. to be paid to P.W.1 and in the event of her refusal to accept the amount, to pay the same to the Government.

2. The brief facts of the case are as follows :-

On 14.09.2012, the prosecutrix / victim had given a complaint to the respondent which was taken up in C.S.R.No.171 of 2012. As per the complaint, she had stated that she was in love with the appellant / accused for the past eight years and that during the year 2011, the appellant / accused had induced her on the false assurance of marrying her and had sexual intercourse with her in her house on several occasions, due to which, she had become pregnant. When she had requested him to marry her he had told her that he would marry her only if she aborts her pregnancy, believing him, she had aborted the pregnancy and subsequently on the assurance that he would marry her during the next year had continued to have sexual intercourse with her due to which she became pregnant again during January 2012. Subsequently, when she had requested the appellant / accused to marry her, he had told that she has got elder sisters in her house and that her father would not give any seer for the marriage and at that time the appellant's elder sister (A4) who was nearby had shouted at her and abused her saying that she would find another bride for her brother. When the prosecutrix / victim / P.W.1 had cried, the Appellant's elder brother (A2) and his wife (not charged), his sister (A4) and the mother (A3) had assaulted her and threatened her saying that they would do away with her and fearing danger to her life she had run away from the place and had informed her relatives and thereafter given a complaint to the respondent police.

The respondent police though originally registered the complaint in C.S.R.No.171 of 2012 thereafter registered a case in Crime No.19 of 2012 for the offence u/s.417, 376, 352, 109 IPC against the appellant / accused and his relatives and after completion of investigation filed the final report before the learned Judicial Magistrate No.1, Panruti against the appellant / accused, his elder brother(A2), mother (A3) and sister (A4) of the appellant for the offence u/s.376, 312, 417, 376 r/w 109, 352, 502(ii), 417 r/w. 109 I.P.C.

The learned Judicial Magistrate took up the case in P.R.C.No.2 of 2013 and after completing formalities u/s.207 Cr.P.C. finding that the case is triable by the Court of Sessions, committed the case to the file of the learned Sessions Court / Mahila Court, Cuddalore. The trial Court took the case

on file and after questioning the accused, framed charges against the appellant/ 1st accused for the offence u/s.376, 312, 417 I.P.C. and against the 4th accused for offence u/s.376 r/w 109 I.P.C. and against the 2nd & 4th accused for the offence u/s.352 I.P.C and the 3rd accused for offence u/s.506(2) I.P.C. and 2 to 4 accused for the offence u/s.417 r/w.109 I.P.C.

3. When questioned, the accused denied the charges and sought to be tried. In order to substantiate the accusation, the prosecution examined P.W.1 to P.W.9 and marked Ex.P1 to Ex.P9. On completion of the evidence tendered by the prosecution, the accused were questioned under Section 313 Cr.P.C as to the incriminating substances found in the oral and material evidence of the prosecution and the accused had come out with the version of total denial. However, no witness was examined on the side of the defence and no document was marked.

4. The trial Court after hearing the arguments on either side, found the appellant / 1st accused guilty for the offence and convicted and sentenced him as stated above and acquitted A2 to A4. Against the conviction and sentence, the appellant / 1st accused had filed the present appeal.

5. The learned counsel for the appellant while assailing the judgments of conviction and sentence would submit that even taking into consideration the entire averments to be true, no case for offence u/s.376, 417 I.P.C. can be made out against the appellant. Admittedly, it is a case where the prosecutrix and the appellant are stated to have been in an intimate relationship for more than eight years voluntarily and freely due to which there was physical relationship for two years and she had become pregnant twice and had voluntarily aborted the pregnancy. The prosecutrix is a grown up woman aged 21 years who was of better understanding and was aware of the consequences of physical relationship and it is not a case of becoming pregnant once but twice and in both occasions the prosecutrix had aborted the pregnancy. The conduct of the prosecutrix in not disclosing the 1st pregnancy and continuing with the relationship and not disclosing it to anybody at the earliest point of time put together would only go to show that it was only a consensual physical relationship. The evidence of the prosecution itself would go to show that the prosecutrix had come out with the allegation of rape and cheating only after the physical relationship between them got exposed and came to be witnessed by P.W.4, the cousin of the prosecutrix whose family had previous enmity with the appellant and a case was also pending between them.

The learned counsel for the appellant would further submit that admittedly even as per the prosecutrix there was a love

affair for several years and only after two years of love affair they got into physical relationship and that they had physical relationship more than 30 times thereby suggesting that the relationship was mutual and consensual. Further taking into consideration the love affair being spread over a period of eight years and the physical relationship being spread over a period of two years and on several occasions cannot be construed to be on account of misconception. Further even as per the prosecutrix the physical relationship between her and the appellant was known to both families for about four years and later there was enmity between the families on account of which the marriage between them could not materialised.

In order to establish that the consent of the prosecutrix / victim was obtained by "misconception of fact" the prosecution has to establish that 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 and the false promise itself must be of immediate relevance or bear the direct nexus to the prosecutrix's decision to engage in the sexual act. The medical evidence also does not support the case on hand. Taking the entire facts on record, the trial Court without proper appreciation of facts and evidence and without proper understanding of law had committed grave error in finding the appellant guilty for offence u/s.376 I.P.C. and 417 I.P.C.

6. In support of his contentions, the learned counsel for the appellant would rely on the following judgments;

1. Deepak Gulati v. State of Haryana reported in (2013) 7 SCC 675.
2. Pramod Suryabhan Pawar v. State of Maharashtra and another reported in (2019) 9 SCC 608.
3. Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and others reported in (2019) 18 SCC 191.

7. Mrs. V. Sharadhadevi, the learned Government Advocate (Crl. Side) appearing for the State would submit that though the relationship between the appellant / accused and the prosecutrix has been spread over a period of eight years and the sexual act is stated to have taken place over a period of two years, it is the case where a village girl had been fraudulently induced and made to consent for physical relationship on the promise of marriage. In support of her case, the learned Government Advocate relied on the judgment of the Hon'ble Apex Court in Anurag Soni v. State of Chhattisgarh reported in (2019) 13 SCC 1.

8. In reply, the learned counsel for the appellant would submit that the facts of the case in Anurag Soni v. State of Chhattisgarh (2019) 13 SCC 1, cannot be applicable to the facts of this case. In this case, admittedly there was love affair for more than eight years and there was physical

relationship between the appellant and the prosecutrix / P.W.1 for more than 30 times due to which the prosecutrix / victim had become pregnant twice and she had willingly aborted the pregnancy. Further the complaint has been made only after the appellant and the prosecutrix were caught in the act and being witnessed by P.W.4 who was having previous enmity with the appellant. Taking into consideration the entire materials on record, there is absolutely no evidence for the offence u/s.376 and 417 I.P.C. and there is no evidence to prove prosecutrix had given her consent to misconception.

9.Learned counsel for the appellant would further submit that after the conviction the appellant had married the prosecutrix and out of the wedlock they have got a boy child.

10.Learned Government Advocate would submit that a subsequent marriage by the appellant / accused will not absolve the accused from criminal liability.

11.Heard the counsels. Perused the materials on record.

12.While perusing the evidence on record, P.W.1 / prosecutrix had deposed that she was born on 26.04.1993 and P.W.2 Kaliamurthy and Muthulakshmi are her parents and that she knows the appellant / accused since he happened to be from the very same village. She had further deposed that she was in love with the appellant / accused for the past eight years and that 2½ years prior to the occurrence when her parents had gone for sugarcane cutting (harvesting sugarcane) the accused had come to her house around 12 noon and had touched her and on the promise of marrying her had sworn on her head and despite her refusal had compelled her and had sexual intercourse with her later she had become pregnant and that she had informed it to the appellant and that he had taken her to a known hospital at Nellikuppam and had aborted the pregnancy, Thereafter the appellant / accused had assured to marry her and had continued to have sexual intercourse with her due to which she became pregnant once again and that he had brought some pills and gave it to her and she had taken the pills and the pregnancy got aborted. She had further deposed that due to a dispute with a neighbour the appellant / accused was away from the village for some months and that during that time, she came to know that the relatives of the appellant / accused were in search of a bride for him and that she had informed the relatives from the bride's house about the relationship between her and the appellant and the fact of abortion and thereby the girl's family refused to give her in marriage. While so one day when she had gone to the house of the accused and informed them about their relationship and asked them to get her married with the appellant and at that time the 3rd and 4th accused who were there had stated that her

father would not be able to give any seer for the marriage and had abused her with filthy language and the 2nd accused had questioned the other accused as to why they have allowed her inside the house and had beaten her and pushed her out of the house. Thereafter she had informed the same to her parents and later given a complaint to All Women Police Station, Panruti. The complaint is marked as Ex.P1.

P.W.2 had deposed that P.W.1 is his daughter and that he knows the appellant / accused and one day he had gone to the field for cutting sugarcane and he had returned home and had seen his wife and daughter crying, when he had questioned them they have told him that his daughter was in love with the appellant and that they had gone to the house of the appellant for arranging the marriage the relatives of the appellant had assaulted her and that he along with his daughter and wife gave a complaint at All Women Police Station, Panruti.

P.W.3 is the witness for the Mahazar. He had deposed that during 2012, the police had come to the house of P.W.1 and had prepared an Observation Mahazar in which he and one Kaliyan had attested the Observation Mahazar Ex.P2.

P.W.4 is the cousin of P.W.1. He had deposed that he knows P.W.1, P.W.2 and the appellant / 1st accused and that the first accused and P.W.1 were in love with each other for eight years and that two years ago P.W.1 had gone along with her parents for cutting sugarcane and that one day at 4:00 am when he had gone inside the kitchen shed in the sugarcane field the stove was burning and P.W.1 was not available there, thereby P.W.1's mother had asked him to find out the whereabouts of her and that he went in search of P.W.1 and at that time he had seen P.W.1 and the accused / appellant having sexual intercourse and when he had questioned the appellant he had run away from there and he had informed it to Kumar, the elder brother of the appellant and that time the appellant's mother scolded him saying not to spin any stories.

P.W.5 Maheswari had deposed that she knows P.W.1 and P.W.2 and that two years before around 10.00 a.m while she was walking along the road to go to work she had seen P.W.1 and the appellant coming out of the sugarcane fields and it was also seen by P.W.1 and the appellant and later they had gone home and when she had enquired P.W.1 about the same she had told her that there was nothing and gone away.

P.W.6 had deposed that he knows P.W.1, P.W.2 and the appellant / 1st accused and that 1½ years ago P.W.1 and P.W.2 had come to fields for cutting sugarcane and he had also gone along with them to Kozhipakkam village for cutting sugarcane and that one day while P.W.1 was returning alone after work, the appellant had caught hold of the hands of P.W.1 and dragged her inside the sugarcane fields and later he came to know that both of them were in love with each other and that P.W.1 had given a complaint. He had further deposed that he was not aware of the

date or month and it was during the year 2012 and that he had not informed about the incident to anyone.

P.W.7 is the Junior Assistant Surgeon who was working as a Assistant Surgeon in Cuddalore Government Hospital. He had deposed that on 05.10.2012, the respondent had produced the appellant / accused for physical examination and that he was in a fit state of mind to examine and that there was no external injuries on his body and that he had referred him for radiological examination for finding out the age and that on examination he had found that the appellant was potent and that he had given an opinion stating that there was nothing to suggest that the appellant is impotent and nothing to suggest that the said person cannot perform sexual intercourse. The opinion is Ex.P3.

P.W.8 is Dr.Srimathi, the Senior Civil Surgeon at Cuddalore Government Hospital and she had deposed that on 03.10.2012 at 4.00 p.m., P.W.1 was produced before her along with the request of the Judicial Magistrate-1, Panruti and she had conducted medical examination. During the enquiry P.W.1 had informed her that she had earlier aborted her pregnancy twice once during the year 2011 and again during the month of January 2012. P.W.1 had further informed that the abortion was done by a known private doctor at Nellikuppam and that she had sexual intercourse with the person lastly during January 2012 and thereafter there was no relationship between them. She had further deposed that the victim was well built and that her secondary sexual characteristics were well developed and that hymen was ruptured and that her vagina admitted two fingers easily and that her uterus was normal and her dental formula is 8/8 on the upper side and 8/8 on the lower side and the vaginal taken and tested did not disclose spermatozoa either alive or dead. She had opined that the victim girl had intercourse and was not raped and that P.W.1 was not pregnant at the time of examination and that physically she appeared to be of 19 to 20 years of age and that she had referred her to Radiologist for radiological assessment of age. The opinion given by P.W.8 is Ex.P8.

P.W.9 is the investigating officer. She had deposed that on 16.09.2012 at 9.30 a.m. P.W.1 had given a complaint and that the Head Constable 2072 received it and registered it in C.S.R.No.171 of 2012 and had handed it over to her for perusal. On 01.10.2012 at 12 noon she had directed to register a case in Crime No.19 of 2012 for the offence u/s.417, 376, 352, 109 I.P.C. The F.I.R. is Ex.P5. Thereafter she had sent it to the Judicial Magistrate No.1, Panruti and to other higher officials. Thereafter, she had gone to the place of occurrence and examined witnesses Krishnamurthy and Kaliyan and prepared the observation mahazar and rough sketch. Rough Sketch is Ex.P6. Thereafter on the same day she had examined P.W.1, P.W.2 and one Muthulakshmi and recorded their statements and arrested the appellant and other accused on the same day at 14.13 hours near Panruti bus

stand and subjected them to judicial custody on the same day and on 03.10.2012 she gave a request to the Judicial Magistrate for subjecting the appellant and the prosecutrix/ victim for medical examination. On 05.10.2012 she had examined the witnesses P.W.4, P.W.5 and P.W.6 and recorded their individual statements and on 15.10.2012 produced the prosecutrix / victim for medical examination before P.W.8 and produced the appellant / accused for medical examination before P.W.7 and on 22.10.2012 she had examined one Dr.Priyanka with regard to the age of the victim and the Radiological report in respect of the victim is Ex.P7. The opinion regarding the age of the victim is Ex.P5. She had further deposed that based on further investigation she had removed the names of the accused Shankari and Nathiya from the case and altered the F.I.R. The altered F.I.R. is Ex.P9. On 02.12.2012 she had completed investigation and filed final report against the appellant for the offence u/s.417, 312 and u/s.376 I.P.C. and in respect of the 2nd accused for offence u/s.352, 506(2) and 417 r/w 109 I.P.C. and against the 3rd accused for offence u/s.506(2), u/s.417 r/w 109 I.P.C. and in respect of 4th accused for offence u/s.353, 417, 376 r/w 109 I.P.C. In her cross examination she had deposed that the complaint was given to the Police station on 14.09.2012 and that the case was registered on 01.10.2012 and in the cross examination she had also deposed that in Ex.P1 the prosecutrix / victim had not stated that despite her refusal the appellant had sexual intercourse with her on the assurance of marriage and further in Ex.P1 she had not stated about the abortion at Nellikuppam and that she had not stated about informing the relatives of the girl who had come with a marriage proposal for the marriage of the appellant and that the prosecutrix had not stated the dates and the months on which the appellant had committed sexual intercourse with her.

13. Based on the above evidence, the trial Court had found the appellant guilty for the offence u/s.417 & 376 I.P.C. alone and had acquitted him for the charge u/s.312 I.P.C. and had also acquitted all the other accused in respect of the charges against them.

14. Now, what is to be seen is whether the prosecution has proved the charges against the appellant / accused beyond all reasonable doubt and whether the trial Court is right in convicting the appellant for the offence u/s.376 and 417 I.P.C.

15. In the case on hand, admittedly as per P.W.1 she was born on 26.04.1993 and on the date of giving complaint she was aged between 19 and 20 years. As per P.W.1, she and the appellant are known to each other since they belong to same village and that they were in love with each other for eight years and it is the further case of P.W.1 that about 4½ year back when her parents had gone for sugarcane cutting she was at home and that

the appellant had come home around 12 noon and touched her and compelled her to sexual intercourse and when she refused he had sexual intercourse with her on the promise of marrying her due to which she became pregnant. It is her further case that she had told him about the pregnancy and that he had taken her to a known doctor at Nellikuppam and aborted the child and it is also the further case of the prosecutrix that on the assurance of marrying her the appellant had sexual intercourse with her again and that she became pregnant again and that he gave her some pills for abortion and her pregnancy got aborted for the 2nd time also and it is her further case that she came to know that the appellant's relatives were looking for a bride for him and that the relatives of the girl's side had come to their village and that she had disclosed about the love affair between her and the appellant and thereby the girl's side had refused to give their daughter in marriage. The further averment of the P.W.1 is that after sometime when she had gone to the house of the appellant asking for marriage, the relatives of the appellant had abused her and assaulted her and that she had given a complaint. However, in her cross examination, she had deposed that she had studied upto 8th Std. and that the signature found in the complaint Ex.P1 was hers and she was not aware of what is written in the complaint. She had further deposed that there was enmity between the appellant and P.W.4 and one Ramesh and Kumar in respect of hiring tractors. In her cross examination she had stated that they had sexual intercourse more than 30 times and that it was known to both the families four years ago. She had also admitted that there was existing enmity between her family and the family of the appellant.

16.P.W.2 had deposed that he had seen his daughter and wife crying and thereafter he came to know about the facts and that he had gone along with his daughter to give the complaint. In his cross examination he had deposed that he is not aware about the date or month on which the relatives of the appellant had assaulted his daughter.

17.P.W.3 in his cross examination had deposed that the appellant had given a complaint against him and that he had pleaded guilty and paid a fine in that case.

18.P.W.4 is the cousin of P.W.1. He had deposed that he was aware that the prosecutrix / P.W.1 and appellant were having love affair for eight years and that two years ago at 4.00 a.m. in the early morning he had seen the prosecutrix and the appellant indulging in sexual intercourse and that on seeing him the appellant had run away. He had further stated that he had informed it to the elder brother and the mother of the appellant / accused and that the mother of the appellant had scolded him. In his cross examination, he had deposed that he is the cousin

of P.W.1 and that the 2nd accused in this case (since acquitted), the elder brother of the appellant had given a complaint against him and that the case was pending and that there was existing enmity between his family and the family of the appellant. He had further deposed that he was not aware of the date or month on which he had seen the prosecutrix and the appellant indulging in sexual intercourse and that he had not given any complaint at that time.

19.P.W.5 is the witness who had seen the prosecutrix / victim and the appellant coming out of the sugarcane fields two years back and that she had enquired the prosecutrix / P.W.1 and that she had told that there was nothing. In her cross examination she had deposed that there was existing enmity between her family and the family of the appellant.

20.P.W.6 is another witness who had deposed about coming to know about the love affair between the appellant and the prosecutrix and that he had deposed having seen the appellant dragging the prosecutrix by hand and taking her inside the sugarcane fields. However in his cross examination he had deposed that he is known to P.W.2 and that they work together and further he had stated that he was not aware of the date on which he had seen the P.W.1 / prosecutrix and the appellant into the sugarcane field.

21.P.W.7 is the doctor who had conducted medical examination of the appellant.

22.P.W.8 is the doctor who had conducted medical examination of the prosecutrix. She had deposed that the prosecutrix / victim at the time of examination had informed her that she had undergone abortion twice once in the year 2011 and month not known and 2nd time during January 2012 and that those two abortions were done by a private practitioner at Nellikuppam and that the prosecutrix had also informed that she had sexual contact with the appellant finally in the month of January 2012 and after that there was no sexual contact with him. P.W.8 had also pointed out that there were no marks of violence.

23.The allegations made by the prosecution against the appellant is that the prosecutrix / victim had been subjected to sexual intercourse on the false assurance and promise of marriage.

24.In this case, this Court has to see whether the consent of the prosecutrix / P.W.1 was obtained by misconception of fact or on false promise/assurance of marriage. In such circumstances a burden is cast on the prosecution to establish that 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 and the false promise itself must be of immediate relevance or bear the direct nexus to the prosecutrix's decision to submit herself to the sexual act.

25. Taking into consideration the facts of this case as per the complaint Ex.P1, the prosecutrix / P.W.1 had stated that she was in love with the appellant for the past eight years and that during the year 2011 the appellant had induced her on the assurance of marriage and had committed sexual intercourse with her on several occasions in her house, due to which she became pregnant and that she had not told anybody and that she had aborted the pregnancy. It is the further evidence of the prosecutrix that further on the promise of marriage, the appellant continued having sexual intercourse with her due to which she became pregnant again during January 2012 and she aborted it again and later when she had asked the appellant for marriage he had refused stating that there are other elder girls in her family and that her father would not give any seer and further he had instigated his sister and his relatives to assault her. The dates of the occurrence have not been given whereas after the 2nd abortion during the month of January 2012, the complaint had been given to the respondent on 14.09.2012 and the case was registered on 01.10.2012. In her cross examination the prosecutrix / victim had stated that there was a love affair between them for eight years and that they have had sexual intercourse for more than 30 times. It is the evidence of P.W.4 the cousin of P.W.1 that one day two years earlier when he had gone into the kitchen shed in the sugarcane fields at 4.00 a.m. in the morning, he had seen the stove burning and P.W.1 was not found in the kitchen. When P.W.1's mother had asked him to search for her, he had seen P.W.1 / prosecutrix and the appellant indulging sexual intercourse in the sugarcane fields and that on seeing him the appellant had run away from there.

26. From the above it is seen that till such time despite having aborted twice, the prosecutrix / P.W.1 had not questioned the act of the appellant and she had not made any complaint to anybody. Only after the physical act was seen by P.W.4, the complaint came to be given. Further it is the evidence of P.W.5 that she had seen the prosecutrix and the appellant coming out of the sugarcane fields on a particular day and when she had questioned P.W.1, she had not stated anything. Further P.W.6 had also stated that he had seen the prosecutrix and the appellant going into the sugarcane fields.

27. Taking into consideration the facts, only after the relationship got exposed the prosecutrix / P.W.1 had come out with the complaint. Despite two pregnancies and two abortions the prosecutrix and the appellant were continuing with the relationship thus proving that the consent was not obtained on

misconception and it was mutual and consensual. There is nothing in the evidence of the prosecutrix/P.W.1 to demonstrate that without any scope for any deliberation, she succumbed to the pressure exerted or allurements made by the appellant in her weak moment. Her evidence also does not indicate that she was incapable of understanding the future and implications of the act which she consented to. On the other hand analysis and scrutiny of the evidence gives a contra indication that she was fully aware of the pros and cons of the act and the inherent risk involved. Evidence of P.W.4, P.W.5 and P.W.6 suggest that the consent for sexual intercourse was mutual and consensual. Further, it is the admitted evidence of P.W.1, P.W.2, P.W.4 P.W.5 and P.W.6 that there was previous enmity between the families of the prosecutrix and the appellant, thus proving the fact that despite the enmity, they had been continuing with their affairs.

28. At this juncture it is relevant to refer to the judgments relied on by the learned counsel for the appellant

(i). In Deepak Gulati v. State of Haryana reported in (2013) 7 SCC 675 in paragraphs 21 and 24, it was held as under:-

"21. Consent may be expressed or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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.

(ii). In *Pramod Suryabhan Pawar v. State of Maharashtra* and another reported in (2019) 9 SCC 608 in paragraph 18, it was held 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.

(iii). In *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra* and others reported in (2019) 18 SCC 191 in paragraph 23, it was held as under:-

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has

not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

29. The judgment in Anurag Soni V. State of Chhattisgarh (2019) 13 SCC 1, referred to by the learned Government Advocate cannot be applied to the facts of this case.

30. Taking into consideration the over all circumstances in this case, the evidence do not indicate that the promise by the appellant was false or that the prosecutrix engaged in sexual relations with the appellant on the basis of the promise on misconception. Admittedly, there had been love affair between the prosecutrix and the appellant for eight years and there was physical relationship between them which was spread over a period of two years. In between, the prosecutrix has also become pregnant twice and she had aborted it twice and she had not disclosed it to anybody. Whereas it is the evidence of the prosecutrix that the sexual relationship between her and the appellant was known to both the families for about four years. Further the prosecution has not let in any evidence to establish that the consent of the prosecutrix was obtained by misconception of fact and the prosecution has also failed to establish that the promise of marriage was false from the beginning and it was given in bad faith and given with no intention of being adhered to at the initial stage. Further, the alleged false promise itself has no immediate relevance and also does not bear direct nexus to the decision of the prosecutrix to engage in the sexual act.

31. Admittedly, it can be inferred that only after P.W.4 the cousin of the P.W.1 / prosecutrix came to know about the physical relationship, she had given a compliant that too after a delay of nine months. Further, in this case, the prosecutrix is also not clear as to the date on which the first incident had happened and how the relationship originated and developed over a period of time accompanied by continued physical relationship. As stated above, there is nothing on evidence to show that at the initial stage itself the accused had no intention whatsoever

of keeping his promise to marry the victim. This could be brought within a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by the accused. If the appellant had any malafide intention and if he had clandestine motives, it could be brought into the ingredient of rape. The acknowledged consensual physical relationship between the parties would not constitute the offence u/s.376 I.P.C. Further as stated above no evidence has been made out for the offence u/s.417 I.P.C.

32. In the light of the above, the facts and discussion, this Court is of the opinion that the prosecution has not proved the charges against the appellant u/s.417 and 376 I.P.C. and the trial Court on wrong appreciation of facts, evidence and law had wrongly convicted the appellant.

33. In view of the above, the criminal appeal stands allowed and the judgment of conviction dated 28.04.2014 made in S.C.No.125 of 2013 on the file of the Sessions Judge. i/c Mahila Court, Cuddalore District is hereby set aside. The bail bond if any executed by the accused shall stand cancelled and fine amount paid, if any shall be repaid to the appellant.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kas

To

1. The Sessions Judge
i/c Mahila Court
Cuddalore District

2. Do Through The Principal Sessions Judge
Cuddalore

3. The Judicial Magistrate No.I
Panruti

4. Do Through The Chief Judicial Magistrate
Cuddalore

5. The Superintendent
Central Prison, Cuddalore

7.The District General of Police
Mylapore, Chennai 4.

8.The District Collector
Cuddalore

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.K. Balasubramanian, Advocate sr 27877.

Crl.A.No.272 of 2014

RSV(CO)
SP(12/07/2021)



WEB COPY