

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.503 OF 2016**

The State of Maharashtra

...Appellant/complainant

vs.

Chandrakant Laxman Patil

Age: 30 years, Occ: Labourer,

Dist. Raigad.

...Respondent

Mr. H.J. Dedhia, APP for Respondent – State.

Mr. Machindra A. Patil, Appointed Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATE : 1st MARCH 2024

JUDGMENT:-

1. Heard learned APP and learned Advocate Shri Patil for the Respondent – Accused who is appointed by way of legal aid. Respondent was prosecuted on the complaint of the victim for the offence punishable under Sections 376, 417 of the Indian Penal Code (for short “IPC”) by the Pen Police Station. During trial, the prosecution in all examined 8 witnesses. They are as follows :-

Sr. No.	P.W. No.	Names	Relation	Page No.
1.	PW.1	Keshav Nana Patil	Father of the victim (Exh.15)	46
2.	PW.2	Narmada Keshav Patil	Victim - complainant (Exh.16)	49
3.	PW.3	Kailash Patil	Brother of the victim (Exh.19)	54

4.	P.W.4	Vilas Damodar Mhatre	Member of Tanta Mukti Committee (Exh.21)	60
5.	P.W.5	Dr. Sandip K. Gokane	Medical Officer who has collected blood sample of the victim and of the female child. (Exh.27)	69
6.	P.W.6	Baburao Bhaguram Shinde	Police Naik – Panch (Exh.31)	76
7.	P.W.7	Pundalik Sakharam Kamothkar	ASI – Panch (Exh.32)	78
8.	P.W.8	Dnyaneshwar Namdeo Kakad	Panch, PSI Pen P.S. (Exh.34)	80

2. The Court of Adhoc District Judge – 1 and Assistant Sessions Judge, Raigad – Alibag vide judgment and order dated 13th July 2012 though acquitted the Respondent – Accused for the offence under Section 376 of IPC but convicted the Respondent – Accused for the offence punishable under Section 417 of the IPC. There was simple imprisonment of one year and fine of Rs.5,000/-.

3. The Respondent appealed against this judgment and the Court of Additional Sessions Judge acquitted him for the offence under Section 417 of the IPC as per the judgment dated 30th January 2016. The State has challenged the said judgment.

4. As per the provisions of clause (b) of Section 378(2) of the Cr.P.C., the Appeal lies before this Court if there is a judgment of

acquittal by the Appellate Court. With the assistance of both the sides, I have gone through the evidence.

Prosecution case

5. The sum and substance of the prosecution evidence is that the marriage of the victim was already performed. However, there was a discord. Since 2003 both of them were residing separately by mutual consent. The victim was residing at her parent's house at village Koproli, Taluka Pen. On the other hand, the Respondent is a married person however he was issue-less. He used to work as laborer on the agricultural field belonging to the father of the victim. He used to visit their house every now and then. He has developed love relationship with the victim.

6. On this background, there is allegation that the Respondent – Accused represented to the victim to have sexual relationship and when she will give birth to a child, the Respondent will marry her and will maintain both of them. That is how, they had sexual intercourse on 4 to 5 occasions and she became pregnant. She gave birth to a female child on 11th January 2010 at Sub-District Hospital at Pen.

7. The Respondent has not stick-up to his promise and he

withdrew. Even P.W.4 – Vilas Mhatre, who is member of Tanta Mukti Samiti has contacted him and given some advise, however, he stoutly denied any co-operation i.e. how the victim lodged a complaint with Pen Police Station on 10th February 2010. The Respondent was charge-sheeted.

Findings by the Courts below

8. Learned APP has invited my attention to the findings given by the trial Court as well as the Appellate Court. After reading the evidence, one fact is clear that sexual relationship is not disputed on behalf of the Respondent. Paternity of the child is also proved. Victim and Respondent are the biological parents and there is forensic report at Exh.29 page 73. The opinion is :-

“The putative father Chandrakant Laxman Patil and Narmada Keshav Patil - victim are concluded to be biological parents of the Female child”.

9. On this background, learned Assistant Sessions Judge has acquitted the Respondent for the offence under Section 376 of IPC. It is also confirmed by the Appellate Court and rightly so. While convicting for the offence under Section 417 of IPC, the learned

Additional Sessions Judge given a reasoning in paragraph 18 of the judgment. It is as follows:-

- (i) Promise was given by the Respondent to maintain her and her child if she will conceive and it has generated hope in her about some kind of security for future life.
- (ii) There is no talk of abortion between them however, the accused has not disowned the paternity.
- (iii) This clearly gave security to the prosecutrix that accused will marry her.
- (iv) She has not disclosed about this to anyone.
- (v) Accused took advantage of the situation and later on refused to fulfill it.
- (vi) It is not the case of mere breach of promise but even paternity is disputed.

10. On the basis of above reasoning, the finding of conviction is arrived at. Whereas, learned Additional Sessions Judge has reversed those findings. The material observations find place in paragraph 11 of the Appellate Court judgment. The observations are :-

- (a) The findings are perverse because evidence of prosecutrix

is silent on false promise of marriage.

- (b) Promise of false marriage by unmarried and married person and consensual sex are different things and they do not go together.

For above reasonings findings are set aside.

Submissions

11. Learned Advocate Shri Patil submitted that the victim has not deposed anything about false promise to marry by the Respondent and it is one of the requirement of Section 415 of the IPC. He also submitted that at the most, the victim can go before the Civil Court and taking recourse as per the Criminal Law is abuse of the process of law. Whereas, learned APP invited my attention to the cross-examination of the victim and according to him, the case of consensual intercourse and the promise is not denied during cross-examination.

Provisions of Section 415 of I.P.C.

12. It is true that as per Section 415 of the IPC, there are different kinds of acts which are prohibited. One of them is delivery of property due to inducement. This is not applicable herein. The relevant clause applicable is :-

“intentionally induces the person so deceived to do or omit to do anything which he could not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.”

13. In nutshell, if there is an inducement given by one person and if it is believed by another person and on the basis of that inducement, he does some act, that is punishable under Section 415 of IPC. It is interpreted by various constitutional courts as *“the inducement should be false and it should be from beginning/inception”*. Applying the same principle to the facts of this case, we may find that the evidence can be considered from two angles:-

- (a) Promise given by the Respondent **to marry** and promise given by him **to maintain the victim and the child** in case child is born and believing on the said promise, she consented for sexual intercourse.
- (b) Now there can be a promise to perform a particular act for various reasons. One of them is promise to marry. Even though in the FIR she has said so, before the court, she has not referred about the same. What she has

referred is '*promise to maintain her and child and hence consented for sexual intercourse*'.

14. On this background, the Appellate Court observed :--

"prosecutrix is silent on false promise of marriage for the accused".

15. Can it be said to be correct appreciation of evidence by the appellate court ? It is not not. While giving evidence, it is true that the victim has not deposed about '*promise to marry*', however she does say '*to maintain the victim and the child in case child is born*'. However the appellate court has not given its observations about :--

"this promise deposed by the victim while deposing before the trial court".

Now '*whether it can be a ground to reverse the judgement of acquittal*' is a question ?

About prosecution evidence.

16. When I have perused the evidence, what I find is the testimony of the victim and her family members - P.W.1 – Keshav Patil - father and P.W.3 – Kailash – brother, if considered together their testimony cannot be believed upon. It is for the following reason :-

- (a) She has not disclosed about this incident to anyone prior to her pregnancy. No explanation is offered. One of the reason may be *'she was not promised by the accused to take her and children case'*.
- (b) Respondent is working as labourer on the agricultural field of father of the victim (it means he is getting wages from her father). The father must be in dominating position as compared to Respondent.
- (c) During the cross-examination she has admitted about the love relationship between both of them.

17. For the above reasoning, it is difficult to believe that there was sexual relationship just because of the promise given by the Respondent. In other words, if the promise would not have been given she would not have consented for the sexual intercourse. That is the requirement of Section 415 of IPC. So, I do not find that the decision taken by the Court of Additional Sessions Judge can be interfered with.

I am unable to accept the submissions of learned A.P.P. Shri Dedhia.

Legal assistance to the victim.

18. At the same time, it is proved that the female child is the outcome of the sexual intercourse in between the victim and Respondent. PW 2 must be taking her care. So this Court do not want to leave the question then and there only by dismissing the appeal filed by the State. But certainly something can be done to protect the interest of the female child. This Court is not aware whether the victim has taken any steps for protecting the interest. So for this limited purpose, this Court feels that the victim can be made aware about the right flowing from such a situation. This Court feels it can be done through District Legal Services Authority, Raigad. They can be directed to apprise the victim of legal rights.

19. At the same time, it is made clear 'this Court never meant to give any observation about the entitlement to any relief by the victim and her daughter *vis-a-vis* the Respondent – Accused. Ultimately, it will be their choice whether to take steps or not to take steps and if yes which steps. If any steps are taken, it is made clear that the rights of the parties are kept open. And if any proceedings are initiated, the concerned

Court is free to take decision on the basis of evidence adduced therein on their behalf. It is no doubt true that this Court cannot direct initiation of any legal proceeding because this issue is not the primary issue involved in this appeal. However still the victim can be apprised about their legal rights. This can be done by issuing necessary directions to the District Legal Services Authority, Raigad.

20. Hence, the order :-

ORDER

- (i) The Appeal is dismissed.
- (ii) The Judgment of acquittal passed by the Court of Additional Session Judge, Alibag in Criminal Appeal No.115 of 2012 for the offence under Section 417 of I.P.C. is hereby confirmed.
- (iii) The Secretary, District Legal Services Authority, Raigad to call the victim – Narmada Keshav Patil r/o Koproli, Tal. Pen and ascertain from her :--
 - a. whether she has already taken legal steps and then leave the issue at that stage only and
 - b. if she has not taken any legal steps, then guide

her about legal rights flowing from such a situation and provide her necessary assistance.

- c. If she chooses not to take any legal steps, then to leave the issue at that stage itself.
- (v) Learned Advocate for the Respondent to be paid fees as per rules.
- (vi) The Secretary, District Legal Service Authority to send compliance report within 7 weeks from receipt of this order.
- (vii) Appeal be listed for compliance after 8 weeks.

[S. M. MODAK, J.]