

311 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1603-SB-2013
Date of decision: 23.05.2024

Rahul @ DineshAppellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sheena Dahiya, Legal Aid Counsel
for the appellant

Mr. Vikas Bhardwaj, AAG, Haryana

HARPREET SINGH BRAR, J.

1. This instant appeal has been preferred by the appellant-accused against the judgment of conviction and order of sentence dated 08.04.2013 and 12.04.2013 respectively, passed by learned Additional Sessions Judge, Yamuna Nagar in Sessions Case No.45 of 2013 arising out of FIR No.171 dated 15.11.2012 registered under Sections 363, 366, 376, 120-B of IPC and Section 181 of the Motor Vehicles Act, at Police Station Chhachhrauli, Yamuna Nagar. The appellant was sentenced as under: -

Under Section	Sentence
363 IPC	<i>R.I for 2 years along with a fine of Rs.2000/- and in case of default on fine, R.I for one month.</i>
366 IPC	<i>R.I for 5 years along with a fine of Rs.3,000/- and in case of default on fine, R.I for 2 months.</i>
376 IPC	<i>R.I for 7 years along with a fine of Rs.5,000/- and in case of default on fine, R.I for 3 months.</i>

**FACTUAL MATRIX**

2. Succinctly, the facts are that on 15.11.2012, the father of the prosecutrix namely Raj Pal moved an application before the SHO, Police Station Chhachhrauli, wherein, he alleged that his daughter left the house at about 7:00 pm on of her own volition without informing anyone. He frantically searched for the victim but it was to no avail. Hence, he requested the police to recover her. On the basis of this application, the instant FIR was registered under Sections 363 and 366 of IPC was registered. Investigation was commenced and the victim was recovered from Kala-Amb along with the petitioner-accused on 17.11.2012. The victim was subsequently medico-legally examined. Her statement was recorded before the Magistrate as per Section 164 of Cr.P.C. On the basis of her statement before the Magistrate and the report supplied by the doctor, Section 376 of IPC was also added. As per the statement of the victim, the appellant-accused called her outside in order to take her to some place to get married. However, the appellant took her to a tubewell where he raped her on the pretext of marrying her. Subsequently, she was taken to Kala Amb from where she called her father. After completion of investigation, the final report under Section 173 Cr.P.C. was presented before the learned trial Court.

3. The learned trial Court upon finding a prima-facie case, framed charges against the appellant and co-accused Sanju for commission of offences punishable under Sections 363, 366, 376 and 120-B IPC, to which they pleaded not guilty and claimed trial.

4. On assessing the evidence available on record, the learned trial Court vide judgment dated 08.04.2013 convicted and sentenced the appellant-



accused under Sections 363, 366 and 376 of IPC whereas, the co-accused was acquitted of the charges framed against him. Aggrieved by the same, the appellant has approached this Court by way of the present appeal.

CONTENTIONS

5. Learned counsel for the appellant-accused *inter alia* contends that the learned trial Court was wrong in rejecting the defence plea of the appellant. The prosecutrix was major at the time of the alleged commission of the offence and, therefore, her testimony would have to be scrutinized from an entirely different perspective, particularly so, when it has come on record that the prosecutrix eloped with the appellant of her own free will and volition. This is further bolstered by the fact that the prosecutrix stayed with the appellant for 3 days and had traveled a considerably long distance on a motor cycle with him. There was no resistance or protest of any kind on behalf of her. All the circumstances prove that the prosecutrix was a consenting party and therefore, no offence whatsoever has been committed by the appellant. Moreover, the learned trial Court has gravely erred in law by not taking into consideration the medical evidence proved on record by the prosecution, whereby, it has been established that there are no injuries either on the private parts or on the person of the prosecutrix. Lastly, learned counsel submits that the learned trial Court should have looked into the fact that whether the case is one of breach of promise to marry or false promise of marriage with intention to elicit consent. In the present case, the learned trial court has not gone into this aspect of the matter while appreciating the evidence of the prosecutrix. Even if it has been established that the consent was given on account of promise to marry even then no offence under Section 376 IPC is made out on account of a mere breach



of promise. The Court has not appreciated the distinction between these two concepts while passing the impugned judgment of conviction.

6. Learned State contends that there is ample evidence on record to prove that the appellant had kidnapped the prosecutrix with the intention that she might be forced to have intercourse on the pretext of marriage. Making a false promise of marriage clearly vitiated consent. The learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, no interference is warranted by this Court.

OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance. At the very outset it is pertinent to mention that the age of the victim is not in dispute. She was more than 18 years old at the time of the occurrence of the alleged offence. Moreover, there is no evidence to suggest that throughout her time with the accused, the victim raised any alarm or protest. A perusal of the testimony of the victim depicts that she was not abducted by the accused against her wishes. She rode as pillion when she was taken by the appellant to Kala Amb and they stayed there for 2 days. During the entire period, the prosecutrix did not even make a single attempt to inform or alert someone. As such, the only question that needs to be delved into is whether the consent of the victim to engage in sexual activity was based on misconception of fact i.e. whether a false promise was made on behalf of the accused to marry the victim ?

8. Jowitt's Dictionary of English Law and Stroud's Judicial Dictionary provide an identical definition of consent which reads as follows:

“An act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side.”



The Black's Law Dictionary defines consent as:

“a concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therewith. ”

It further refers to ***Hallmark vs. State 22 Okl. Cr. 422*** to define consent qua rape wherein it was held that *“consent of the will, and submission under the influence of fear or terror cannot amount to real consent. There must be an exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent.”*

9. The absence of consent on the part of the woman is sine qua non to attract the offence of rape as defined under Section 375 IPC. While Section 90 IPC does not lay down all the necessary ingredients to constitute consent, it elucidates circumstances that would render consent irrelevant, for instance, when consent is given under misconception of fact, the incident cannot be deemed to be consensual. Therefore, engaging in sexual relations with the victim on a false promise of marriage would invoke the offence under Section 375 IPC as the same is premised on a misconception of fact.

10. Valid consent necessarily requires due and active consideration of all the relevant circumstances, actions, and consequences that flow from the said act, before assenting. Whatever choice one makes, it must be reasoned and adopted after being alive to all the probable outcomes. While adjudicating a case, the factum of consent is to be inferred after closely scrutinizing the surrounding and relevant circumstances.

11. As far as obtaining consent on a promise to marry is concerned, the Hon'ble Supreme Court, in a catena of judgments, has observed that there is a distinction between a false promise given by the accused at the very outset



when he has no intention of following through and a promise made in good faith that could not be fulfilled due to intervening circumstances. In situations like the former, the conduct of the accused is explicitly laced with *mala fide* intentions *ab initio* and thus, the consent to any sexual activities obtained from the victim in furtherance of the same would stand corrupted. [See: ***Pramod Suryabhan Pawar vs. State of Maharashtra and anr. 2019 AIR (SC) 4010; Mandar Deepak Pawar vs. The State of Maharashtra & Anr. 2022(4) RCR (Criminal) 274; Yedla Srinivasa Rao vs. State of Andhra Pradesh, 2006(4) RCR (Criminal) 474; Uday v. State of Karnataka, 2003(2) RCR (Criminal) 99***].

12. Reverting to the facts of this case there is no allegation in the testimony or the statement of the victim that when the appellant promised to marry her, it was done in bad faith or with the intention to deceive her. Additionally as per the testimony of the victim, she had only met the appellant once prior to the day she decided to elope with him. In such a case, this Court finds it highly implausible that the appellant made a false promise to marry the victim only after meeting her for the second time. Even if it assumed that such a promise was made, the failure on the part of the appellant to fulfill his promise cannot be construed to mean that the promise itself was false. This is further bolstered by the fact that the appellant was arrested soon after the incident took place and thus, it cannot be ruled out with certainty that he was not willing to marry the victim. In this backdrop it is unfeasible to find the essential ingredients for the commission of offence as punishable under Section 376 of IPC, to be present in the instant case.



13. In view of the above discussion, this Court finds that learned counsel for the appellant has been successful in establishing the case of the appellant. Hence, the present appeal is allowed and the impugned judgment of conviction and order of sentence dated 08.04.2013 passed by learned Additional Sessions Judge, Yamuna Nagar, is hereby set aside.

14. The appellant is hereby acquitted of the charges framed against him in the present case and his bail bonds and surety bonds also stand discharged.

15. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

Registry is directed to pay honorarium to Ms. Sheena Dahiya, Legal Aid Counsel as per rules.

(HARPREET SINGH BRAR)
JUDGE

23.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No