



registered under Sections 376 and 120-B of IPC, at Police Station Manimajra, Chandigarh. All the appellants were sentenced in the following terms: -

Under Section	Sentence
376(2) IPC	<i>R.I. for 10 years along with a fine of Rs.50,000/- and in case of default on fine, S.I. for six months.</i>
120-B IPC	<i>R.I. for 10 years along with a fine of Rs.50,000/- and in case of default on fine, S.I. for six months.</i>

It was ordered that both sentences shall run concurrently.

FACTUAL MATRIX

3. Succinctly, the facts as per the prosecution case are that the complainant first met appellant-accused Geeta approximately 10–12 years prior to the day of the alleged occurrence at a sewing training center, after which they developed close friendship and frequently visited each other's homes. One day, Geeta invited the complainant to her house under the pretense of discussing something, where she was confined in a room. Subsequently, the appellant-accused Jai Parkash, who was already present in the adjoining room, sexually assaulted her. Despite her resistance and cries for help, she was unable to escape as the door was bolted from the outside. After the incident, the other appellants-accused, Geeta, Sonu, and Chandrawati (now deceased), assured the complainant that Jai Parkash would marry her and requested her not to report the matter. Trusting their assurance, the complainant continued her interactions with Jai Parkash, who repeatedly coerced her into a physical relationship at Geeta’s house. Later, the complainant discovered that Jai Parkash was married. When confronted, Jai Parkash claimed to be seeking a divorce, a statement supported by the co-accused.



4. In 2009, the complainant learned that Jai Parkash had children, which led to a dispute. She disclosed the relationship to her elder sister, who arranged her marriage to a man named Joginder. However, Jai Parkash interfered in her marriage by revealing their past, leading to the complainant's estrangement from her husband. Following this, Jai Parkash coerced the complainant into living with him in various rented accommodations, where he repeatedly assaulted her and threatened her. Subsequently, the complainant started residing with her father but she again reconnected with Jai Parkash in 2012 after he met with an accident. During this period, the co-accused reiterated their assurances of marriage. However, despite these assurances, Jai Parkash continued to exploit her physically and financially. The complainant became pregnant but was subjected to violence by Jai Parkash, leading to a miscarriage. When she approached the co-accused to seek help regarding her pregnancy and the alleged theft of her salary and ornaments by Jai Parkash, they assaulted her and claimed ignorance about Jai Parkash's whereabouts. The complainant alleges repeated sexual exploitation, false promises of marriage, and physical and emotional abuse by the appellant-accused Jai Parkash, with active support and abetment by appellants-accused Geeta, Sonu, and Chandrawati. The present FIR was registered on the basis of complaint under Section 156(3) of Cr.P.C. moved by the complainant.

5. The learned trial Court upon finding a prima-facie case, framed charges against the appellants for commission of offences punishable under Section 120-B of IPC and Section 376(2) read with Section 120-B of IPC, to which they pleaded not guilty and claimed trial.



6. On assessing the evidence available on record, the learned trial Court vide judgment and order of sentence dated 08.12.2016/12.12.2016 convicted and sentenced the appellants-accused under Sections 376(2) and 120-B of IPC. Aggrieved by the same, the appellants have approached this Court by way of the present appeal.

CONTENTIONS

7. Learned counsel for the appellants-accused *inter alia* contends that the learned trial Court was wrong in rejecting the defence plea of the appellants. The learned trial Court gave too much weight to the version advanced by the complainant-victim without appreciating the fact that there are serious doubts over her truthfulness and conduct. The appellant Jai Prakash and the complainant-victim were in a relationship spanning more than 5 years i.e. from 2007 to 2012 and, therefore, her testimony would have to be scrutinized from an entirely different perspective, particularly so, when the victim-complainant is herself married to another person and yet resided with Jai Prakash of her own free will and volition. All the circumstances proved that the victim was a consenting party and therefore, no offence whatsoever has been committed by the appellants. 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 victim. 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.

8. Learned State counsel contends that there is ample evidence on record to prove that the appellant Jai Parkash with the help of other appellants-accused raped the victim and sexually exploited her over a prolonged period of time. Further, making a false promise of marriage clearly vitiated consent. As such, the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and therefore, no interference is warranted by this Court.

OBSERVATIONS AND ANALYSIS

9. 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. Furthermore, according to the testimony of the victim, it is alleged that Jai Parkash committed rape during their initial encounter. However, it has been noted that the victim continued to meet and communicate with the accused on multiple subsequent occasions. Additionally, there is no record of any complaint being lodged by the victim with the police during this time. 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?



10. 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.”*

11. 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.

12. 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.

13. 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]**

14. Reverting to the facts of this case it is important to mention that when the relationship between the appellant Jai Prakash and the victim began, the victim within a few days, discovered that Jai Prakash was already married. Despite this knowledge, they continued to cohabit. Subsequently, in 2009, the victim further learned that he had children from his marriage. Upon this discovery, the victim confided in her sister, who arranged her marriage to one

Joginder. However, following the breakdown of this marriage which is



attributed to Jai Prakash's interference, the victim returned to reside with the appellant for approximately two years. During this period, the victim neither disclosed any allegations of coercion or threat against the appellant nor raised any alarm or protest regarding his conduct, even though they lived in a densely populated area. According to her testimony, she did not inform anyone that she was living with the appellant out of fear or duress. In 2012, when the victim began residing with her father, she came to know of Jai Prakash's accident. By her own admission, this led to a resumption of communication and visits to his residence. In light of these facts, the court finds it difficult to conclude that the consent of the victim was absent throughout the duration of her association with the appellant.

15. Moreover, to hold a person guilty of rape on account of making a false promise of marriage, it is crucial to establish that 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. However, in the present case the relationship continued long after the victim learned that Jai Prakash was already married to someone else. Resultantly the immediate relevance of false promise and the decision of the victim to engage in sexual act is conspicuously missing. Lastly, except for the testimony of the victim, no other evidence has been brought on record to substantiate the version put forward by the prosecution. In her cross examination, the victim disclosed that Jai Prakash made her undergo abortion twice. Also, there were allegations of physical assault against the appellants. However, no medical evidence was produced before the learned trial Court to vindicate these claims.



16. In view of the above discussion, this Court finds that learned counsel for the appellants has been successful in establishing the case of the appellants. Hence, the present appeals are allowed and the impugned judgment of conviction and order of sentence dated 08.12.2016 and 12.12.2016 respectively, passed by learned Additional Sessions Judge-cum-Judge, Special Court, Chandigarh, are hereby set aside.

17. The appellants are hereby acquitted of the charges framed against them in the present case and their bail bonds and surety bonds also stand discharged.

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

(HARPREET SINGH BRAR)
JUDGE

22.11.2024
Neha

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