

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 308 of 2000

Mudi Singh

-Versus-

The State of West Bengal

For the Appellant : **Mr. Dipanjan Chatterjee,
Mr. Sankar Paul,
Ms. Kumari Shipra roy,
Ms. Kakan Das.**

For the State : **Mr. Arnab Chatterjee,
Ms. Rituparna Saha.**

Hearing concluded on : **21.08.2025**

Judgment On : **31.10.2025**

Prasenjit Biswas, J:-

1. This appeal is directed at the instance of the appellant against the impugned judgment and order dated 07.07.2000 passed by the learned Additional Sessions Judge, Islampur in connection with Sessions Case No. 37/98, corresponding to Sessions Trial No. 13/99.

2. By passing the impugned judgement this appellant was found guilty for commission of offence punishable under Sections 376 and 415 of the Indian Penal code and was sentenced to suffer rigorous imprisonment for two years along with a fine of Rs. 7000/- and in default of payment of fine to undergo further rigorous imprisonment for one year. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction passed by the learned Trial Court, the present appeal is preferred by the appellant.
3. The complainant filed a case being Cr 165/96 before the Court stating, interalia that-

“ the accused Mudi Singh and his parents are her co-villagers and the accused Mudi Singh used to come in the house of the defacto complainant in almost every date with whom a love affairs had grown in between them. The accused gave a proposal of cohabitation with the defacto complainant but the complainant refused the illegal proposal of the accused. At that time the defacto complainant was aged about 15 years. It is further stated by the defacto complainant in the petition of complaint that in 13.03.1994 at about 6 P.M., the accused Mudi Singh came to their hose and asked the complainant to get entry in her bedroom and on good faith this complainant along with the accused

entered the bedroom of the defacto complainant and the accused put a garland on the neck of the defacto complainant and convinced the defacto complainant to be his marriage wife and locked the door from inside. It is further stated that the accused asked the defacto complainant to do bad work with her but the complainant refused to do the same and thereafter the accused Mudi Singh forcibly took the complaint to bed and committed rape on her without her consent forcibly. It is said by the accused to the complainant that they became the husband and wife and he would marry her socially subsequently. It is further stated by the defacto complainant that thereafter the accused cohabited with her repeatedly and although the complainant asked the accused to marry her but he adopted dilatory tactics. The matter was brought to the notice of the mother of the defacto complainant and a 'salish' was called on 10.11.1996 through the brother of the defacto complainant. In that 'salish' the accused in presence of the some of the villagers confessed that he had enjoyed the victim and he would marry her but the accused persons demanded Rs. 10,000/- (Ten Thousand) from the mother of the complainant and told that if demand of dowry is fulfilled

then he would marry the defacto complainant. As the mother of the complainant was unable to pay the said demanded amount of dowry to the accused, the accused Mudi Singh did not marry the complainant and refused to marry her. It is further contended in the written complainant that the accused wrote a letter to the defacto complainant on 27.06.1995 demanding dowry of Rs. 10000/- . The complaint filed by the victim before the Court was sent to the Officer-in-Charge, Karandighi P.S. to treat the same as FIR under Section 156(3) of Cr.P.C. Thus, the criminal law was set in motion and after completion of investigation charge-sheet was submitted by the Investigating Agency”.

4. The Trial Court framed the charge against this appellant under Sections 376, 493 and 504 of the Indian Penal Code.
5. In this case, seven witnesses were examined by the side of the prosecution and documents were marked as exhibits. No oral evidence was adduced by the side of the defence but a document was marked as Exhibit- A on their behalf.
6. Mr. Dipanjan Chatterjee, learned Advocate appearing for the appellant, has contended that the materials available on record are wholly insufficient to justify the finding of the learned Trial Court that the accused is guilty of the offences punishable under Sections 376 and

415 of the Indian Penal Code. He argued that a careful scrutiny of the evidences of the prosecution witnesses reveals substantial inconsistencies and contradictions in their respective depositions. While any single inconsistency, taken in isolation, may not be enough to discard the prosecution case altogether, a cumulative assessment of all such discrepancies clearly undermines the credibility of the prosecution story and renders it doubtful.

- 7.** Mr. Chatterjee further submitted that there exists a fundamental inconsistency in the nature of the alleged offences themselves. He pointed out that under Section 376 of the Indian Penal Code, absence of consent is the essential ingredient of the offence, whereas under Section 493, consent is very much present, although obtained under a misconception of fact. This distinction, according to the learned Advocate, has been completely overlooked by the Trial Court. He emphasized that the word “rape” does not even find mention in the petition of complaint, and the allegation of rape is conspicuously absent therein. Hence, the subsequent introduction of such an allegation during trial raises serious doubts as to its veracity.
- 8.** It was also urged that at the time of the alleged occurrence, the complainant was aged about 20 years and 11 months — a major woman capable of understanding the nature and consequences of her actions. The evidences of PW4 and PW6 clearly indicate that there was

a romantic relationship between the accused and the complainant, which further supports the defence version that their relationship was consensual in nature and not the result of any coercion or deception.

9. Mr. Chatterjee also invited the attention of the Court to the inconsistency in the complainant's own statements. He submitted that for the first time before the Court of the learned S.D.J.M., Islampur, the complainant alleged that the accused had committed rape on her and thereafter garlanded her. However, while deposing before the Trial Court, she materially deviated from that earlier version. Such material variation in her statements, according to Mr. Chatterjee, shakes the foundation of the prosecution case and makes it unsafe to uphold the conviction of the appellant on such unreliable and inconsistent testimony.
10. It is said by the learned Advocate that the victim did not raise any alarm at the time of incident of rape and no reason has been shown that what prompted her to go inside the bedroom with the accused. It is said that the complainant did not think the accused Mudi Singh as her husband according to her evidence and as per her statement there was no marriage between them and without marriage there was cohabitation. There is contradictory statement of the complainant and cannot be relied upon at all. As per submission of the learned Advocate the theory of rape is absent in this case and even rape then it was with

her consent. It is assailed by the learned Advocate that the story of 'salish' as stated by the victim and other witnesses of the prosecution is false and Exhibit-A shows that the victim called the accused as elder brother and there was no question of dowry as there was no marriage and as such, the story of dowry and non-payment of that is false one. The learned Advocate has said that PW1 (victim) has stated in her evidence that the act of rape was continued for 5 to 10 minutes with the assurance given by the accused that he would marry her and thereafter, the accused committed rape on the victim on 5/6 days, but no specific date was mentioned by PW1. As per submission of the learned Advocate that there was consensual relationship between the victim and the accused and as such, the allegation of rape does not stand.

11. The learned Advocate has placed reliance upon the following decisions as rendered by the Hon'ble Apex Court:

- i) **Prashant-vs-State of NCT of Delhi** reported in **(2025) 5 SCC 764 (paragraphs 17 to 19).**
- ii) **Deepak Gulati-vs-State of Haryana** reported in **(2013) 7 SCC 675 (paragraph 21).**
- iii) **Rajnish Singh Alias Soni-vs-State of Uttar Pradesh & Anr.** reported in **(2025) 4 SCC 197 (paragraphs 23, 24 and 29).**

iv) **Uday-vs State of Karnataka** reported in **(2003) 4 SCC 46**.

- 12.** It is thus contended by the learned Advocate, relying upon the authoritative pronouncements of the Hon'ble Apex Court that the learned Trial Court has fallen into serious error and illegality while delivering the impugned judgment and order of conviction. According to the learned Advocate, the findings recorded by the Trial Court are not in conformity with the settled principles of law as laid down by the Supreme Court and suffer from manifest irregularities in appreciation of evidence as well as misapplication of legal provisions. Therefore, it is urged that the impugned judgment and order cannot be sustained in the eye of law and deserves to be set aside in its entirety, as the same has resulted in a grave miscarriage of justice.
- 13.** Mr. Arnab Chatterjee, the learned Advocate appearing on behalf of the State, has submitted that there exists no illegality, irregularity, or infirmity in the impugned judgment and the order of conviction passed by the learned Trial Court. According to Mr. Chatterjee, the findings of the Trial Court are well-supported by the evidence available on record and therefore do not call for any interference by this appellate court. The learned Advocate has contended that the defacto complainant and the accused, Mudi Singh, were involved in a love relationship. Taking advantage of this intimacy and under the false assurance of marriage, the accused garlanded the victim to create an impression of a marital

bond and thereafter forcibly committed sexual intercourse with her against her will. Subsequently, when the victim became pregnant as a result of such sexual assault, the accused provided her with herbal medicines to terminate the pregnancy, which ultimately led to an abortion. It has further been submitted that the accused later demanded a sum of Rs. 10,000/- from the victim's mother, and upon her failure to meet such demand, he refused to marry the victim. Consequently, the instant criminal case was initiated at the instance of the defacto complainant.

- 14.** It has been specifically pointed out that PW1, the victim, in her deposition has categorically stated that the accused forcibly took her to bed, removed her clothes, and committed sexual intercourse without her consent. The evidence of the other prosecution witnesses has also corroborated her statement in material particulars. Therefore, the learned Advocate has argued that the cohabitation between the parties was not consensual but was obtained under a false promise of marriage, which squarely attracts the offence as charged against the accused.
- 15.** On these grounds, Mr. Chatterjee has submitted that the prosecution has successfully established its case beyond reasonable doubt. There are no inconsistencies or contradictions in the evidence sufficient to discredit the findings of the Trial Court. Accordingly, he has urged that

the impugned judgment and order of conviction be upheld in its entirety and the appeal preferred by the appellant be dismissed as being devoid of merit.

- 16.** I have bestowed my anxious and thoughtful consideration upon the rival submissions advanced with great emphasis by the learned counsels appearing on behalf of both the parties. With equal care and circumspection, I have meticulously perused and examined the entire body of evidence adduced and brought on record in connection with the present case, so as to arrive at a just, fair, and reasoned conclusion.
- 17.** In the present case, P.W.1, the victim, in her deposition has stated in clear terms that the alleged incident took place on 13.03.1994 at about 6:00 P.M. at her residence situated in village Khanta, where at that time she and her mother were present. The witness has deposed that on the said date, the accused Mudi Singh, with whom she was previously in a love relationship, came to her house carrying a piece of garland. The accused, according to her, proposed that they should start living together, but she refused the same. She further stated that the accused then told her that he would marry her immediately by exchanging garlands and called her inside a room. Once inside, the accused placed the garland around her neck, declaring that from that moment he had become her husband, and insisted that she should now cohabit with him. The victim further narrated that despite her

objection, the accused forcibly took her to bed, undressed her, and committed sexual intercourse against her will and without her consent. She deposed that this act of forcible sexual intercourse continued for about five to ten minutes, during which the accused again reassured her that he would marry her soon.

- 18.** According to P.W.1, after the first incident, the accused repeatedly committed rape upon her on five to six subsequent occasions, as a result of which she eventually became pregnant. The statement of the victim thus attempts to establish a continuing course of sexual assault allegedly committed by the accused under a false promise of marriage, which ultimately resulted in her pregnancy.
- 19.** It is stated by P.W.1, the victim, in her evidence that she was born on 02.01.1974. This fact finds corroboration from Exhibit-3, which is the Transfer Certificate issued by Rasakhowa High School, wherein the date of birth of the victim has been recorded as 2nd January, 1974. Therefore, it is clear from the documentary evidence that at the time of the alleged incident, which took place on 13.03.1994, the victim was more than 20 years old. She was, thus, a major and a matured individual, capable of understanding the nature and consequences of her own acts and decisions. The evidence of P.W.4 and P.W.6 further strengthens this conclusion. Both these witnesses have categorically stated that there existed a love relationship between the victim and the

accused prior to the alleged occurrence. Their depositions indicate that the two were on intimate terms for some time and used to meet each other frequently. The testimony of these witnesses, when read conjointly with the evidence of P.W.1 herself, reflects that the association between the victim and the accused was not one of coercion or intimidation but rather one founded on mutual affection and emotional involvement.

- 20.** P.W.1, the victim, in her deposition has candidly admitted that prior to the alleged incident; she was in a love relationship with the accused, Mudi Singh. She further stated that during that period, the accused had proposed to her for cohabitation, but she did not agree to the proposal. This admission on the part of the victim herself clearly establishes beyond doubt that there existed a close and affectionate relationship between her and the accused before the alleged occurrence took place. The acknowledgment of such a relationship by the victim demolishes the prosecution's theory of a purely forced or one-sided act on the part of the accused and rather suggests that the intimacy between them was based on mutual understanding and affection. This version of the victim also finds corroboration from the testimony of P.W.4, Sukla Singh, who is a co-villager of the victim. During her cross-examination, P.W.4 has categorically admitted that there was indeed a love affair between the accused and the victim. The corroboration from

an independent witness belonging to the same village further reinforces the fact that the relationship between the victim and the accused was well-known and not a matter of sudden or secretive association. Such evidence carries significant weight as it reflects the general perception in the locality regarding their relationship.

- 21.** Furthermore, P.W.7, Esmotara Begam, the Secretary of the Mohila Samity of Roshnhowa, has also testified that the victim herself had filed a written petition before her, stating that she had love affairs with the accused, Mudi Singh. She further deposed that there had been an exchange of love letters between them, and that the accused used to visit the house of the victim frequently. According to this witness, the victim also mentioned that the accused had promised to marry her and that, by way of exchanging garlands, they had even solemnized a form of marriage and thereafter had sexual intercourse. The same witness also stated that the victim approached her later because the accused subsequently refused to marry her as promised. The statement of P.W.7 is particularly significant, as it not only corroborates the existence of a romantic relationship between the victim and the accused but also demonstrates that the alleged sexual intercourse took place in the context of an emotional bond and a promise of marriage, rather than through coercion or physical force. The conduct of the victim, as reflected in her own petition and subsequent actions, suggests a

relationship based on trust, affection, and expectation of marriage, and not one characterized by fear or unwillingness.

- 22.** Taken together, the testimonies of P.W.1, P.W.4, and P.W.7, along with the surrounding circumstances, clearly indicate that the relationship between the parties was voluntary, affectionate, and consensual in nature. The victim was more than 20 years old at the time of the alleged incident, as established by her date of birth (02.01.1974) in Exhibit-3, the Transfer Certificate. Being a major, she was mature enough to understand the implications and consequences of her acts.
- 23.** It is therefore highly improbable that a grown-up woman, who was in a longstanding love relationship with the accused and who had even acknowledged the exchange of garlands and continued association with him, would have maintained such a relationship if the accused had truly forced upon her against her will. The evidence on record, when viewed in totality, does not support the theory of forcible sexual intercourse. Rather, it points to a consensual relationship between two adults who were emotionally attached and fully aware of the nature of their conduct. Hence, the allegation of rape appears to be an afterthought, emerging only after the accused allegedly refused to formalize the relationship through marriage.
- 24.** Moreover, the surrounding circumstances and the conduct of the victim, as reflected in her testimony and corroborated by other

prosecution witnesses, do not demonstrate any immediate protest or complaint after the alleged incident. Her silence and continued association with the accused even after the supposed occurrence are inconsistent with the conduct expected of a person who has been subjected to forcible sexual assault.

- 25.** Hence, considering the pre-existing romantic involvement between the victim and the accused, coupled with the fact that the victim was a consenting adult capable of making her own decisions, it becomes difficult to accept the allegation that the accused had sexual intercourse with her without her consent. The evidence on record does not support the theory of forcible sexual assault; rather, it points toward a consensual physical relationship that arose out of mutual understanding and emotional closeness between the parties. Therefore, the prosecution's claim of rape loses substantial credibility in light of these circumstances.
- 26.** In her deposition, the victim herself has stated that the act of sexual intercourse continued for about 5 to 10 minutes, and during that time, the accused once again assured her that he would marry her in the future. However, it is significant to note that the victim did not mention any specific date or time when such an assurance was made. The absence of any definite date or concrete promise renders the alleged assurance vague and uncertain. Furthermore, PW1 (the victim) also

stated that the accused committed sexual intercourse with her for 5 to 6 consecutive days. This repeated act, coupled with the continued association between the parties, indicates that the relationship was not a result of a one-time deceit or coercion, but rather a continuing affair influenced by mutual emotional involvement. The so-called assurance of marriage, as reflected from her own statement, therefore appears to be more in the nature of an emotional or romantic expression often seen in intimate relationships, rather than a serious or binding commitment that could have misled the victim into giving consent. If the victim had truly believed that the accused had made a definite and genuine promise to marry her, she could have reasonably expected some concrete step or commitment in that regard. The absence of such particulars, along with the prolonged nature of their relationship, suggests that the consent of the victim was not obtained by deception but was voluntary and based on mutual understanding and affection.

- 27.** Further, the record is silent on any medical examination of the victim being conducted immediately after the alleged incident. The absence of medical evidence or any corroboration from a medical source creates a significant gap in the prosecution case regarding the alleged act of rape. In cases of this nature, where the allegation rests primarily on the oral testimony of the prosecutrix and there is no medical evidence to

support the charge, the Court must scrutinize the evidence with greater care and caution.

- 28.** In this case, the victim was aged about more than 20 years old at the time of alleged incident and capable of giving valid consent. When a woman of such maturity enters into a sexual relationship with a person with whom she is admittedly in love and such relationship continues or occurs on the promise of marriage at a later date, it cannot automatically be inferred that the consent was obtained by misconception of fact. In the case of **Rajnish Singh @ Soni (supra)** the Hon'ble Apex Court has held that in a situation where the woman knowingly and voluntarily maintains a physical relationship for a prolonged period; it cannot be said with substantive that the said physical relationship was purely because of alleged promise made by the accused to marry her.
- 29.** It is further held by the Hon'ble Apex Court in case of **Uday (supra)** at paragraph 21, inter alia, that :

“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 latter 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 prosecution 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.”

- 30.** It would appear from the said decisions of the Apex Court that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love, on a promise of marriage which later does not materialize, does not by itself amount to consent given under a misconception of fact, unless it is shown that the promise was false from the inception and was given with the malafide intention of deceiving her only to obtain her consent for sexual intercourse. In the present case, there is no clear evidence to show that the accused never

intended to marry the victim from the very beginning. Rather, the facts and surrounding circumstances suggest that the act was consensual and stemmed out of mutual affection between the two. So, in view of the victim's age, the existing love affair between her and the accused, the absence of any specific date or commitment for marriage, and the lack of medical corroboration, it cannot safely be concluded that the sexual act complained of was committed against her will or without her consent. The evidence, therefore, does not convincingly establish the commission of rape as alleged. The evidence on record reveals circumstances that cast serious doubt upon the veracity of the allegation of rape made by the complainant. Moreover, entire evidences suggest that the relationship between the victim and the accused was not a one-time incident of forcible sexual assault but rather a prolonged physical and emotional relationship shared between two matured persons who were acquainted and, by all indications, had mutual affection for each other.

- 31.** It is stated by the complainant in her evidence that the accused had allegedly committed rape upon her forcibly and without her consent for the first time, and that the said act continued for about five to ten minutes. The complainant has further alleged that after this first incident, the accused continued to have sexual intercourse with her on five to six subsequent occasions. However, it is a matter of serious

concern and astonishment that despite such repeated acts of alleged sexual assault, the complainant did not disclose the incident to anyone immediately—not even to her mother or other family members who were naturally the most accessible and trustworthy persons to her.

- 32.** The silence and inaction on the part of the victim for a considerable period following the alleged occurrence cast grave suspicion on the veracity of her allegations. Ordinarily, a victim of such a grave offence is expected to raise an immediate outcry or at least confide in someone close to her. The complete absence of any such disclosure or complaint at the earliest opportunity undermines the credibility of the prosecution's version. This prolonged silence also creates a reasonable presumption that the alleged sexual relations might not have been entirely non-consensual, but rather the result of a consensual relationship between the parties.
- 33.** In the given circumstances, when the complainant herself admits to having met the accused on several occasions thereafter, her continued association with him further weakens the prosecution's case that the sexual intercourse was without her consent. The conduct of the complainant, therefore, becomes inconsistent with that of a person who has been subjected to forcible sexual assault. Hence, the long and unexplained silence of the complainant after the alleged incidents raises serious doubts as to whether the intercourse was truly against

her will or whether it took place with her consent in the context of a continuing relationship between the parties.

34. The victim also deposed that she had requested the accused to marry her socially, and that the accused had told her that he would do so in the following month. This statement, when read in conjunction with her earlier admission of maintaining relations with the accused on multiple occasions, suggests that the relationship was consensual and based on mutual understanding, though it eventually led to disappointment when the accused failed to marry her. The subsequent refusal or failure to marry cannot retroactively render the previous sexual acts as rape if they were originally consensual in nature.
35. In the case of **Prashant (supra)**, the Hon'ble Supreme Court made a significant observation regarding the conduct of the complainant in the context of allegations of forcible sexual intercourse. The Court held that although the complainant had alleged that the appellant had established a sexual relationship with her by use of force, her subsequent behavior did not align with the claim of absence of consent. The Court noted that despite the alleged coercion, the complainant neither ceased to meet the appellant nor lodged any criminal complaint against him for a considerable period thereafter. The Apex Court emphasized that such continued association between the parties, coupled with the absence of any immediate protest or report to the

authorities, undermines the version that the sexual relationship was forced or against her will. It was observed that it is highly improbable and against the ordinary course of human conduct that a woman, if truly subjected to forcible sexual acts, would continue to voluntarily meet and maintain an intimate relationship with the same person over a prolonged duration. Therefore, the Court inferred that the continued contact and physical relationship between the complainant and the appellant could only be explained by the existence of voluntary consent on the part of the complainant. The alleged acts of sexual intercourse, in such circumstances, were found to have been consensual rather than induced by force or deceit.

- 36.** Thus, the principle laid down in the said case is that when the complainant's own conduct, such as willingly meeting and maintaining physical intimacy with the accused even after the alleged incident indicates an ongoing relationship based on mutual affection or understanding, it becomes difficult to accept the prosecution's claim that the sexual relations were established without consent. The Apex Court, therefore, held that such circumstances render the allegation of forcible intercourse doubtful and inconsistent with the natural probabilities of the case.

- 37.** It is profitable to quote the observation of the Hon'ble Apex Court at paragraph no. 17, 18 and 19 of the said report which, interalia, says that:

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself.

19. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialise. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.”

- 38.** At the time of giving deposition PW1 has stated that the accused supplied her with some herbal medicine, following which an abortion occurred when she was about one month pregnant. Although, this aspect, if true, is serious, the record does not show any medical evidence or independent corroboration to support her claim of pregnancy or abortion. The prosecution has also failed to produce any medical report or witness to substantiate that the accused had provided such medicine or that an abortion indeed took place. PW1 claimed that she had disclosed the incident of marriage and pregnancy to her mother, but she failed to mention the specific date or time when she made such disclosure, the absence of such essential details

considerably weakens the credibility of her testimony and renders it unreliable to establish the rape beyond reasonable doubt.

- 39.** In her deposition, PW1 (the victim) stated that after she became pregnant as a result of the alleged sexual intercourse with the accused, Mudi Singh procured certain herbal medicines from one Bina Devi, a woman belonging to their village, and supplied the same to her for the purpose of terminating the pregnancy. This part of the statement is an important component of the prosecution's version, as it directly relates to the allegation that the accused not only committed sexual assault but also took steps to cause an abortion. However, it is significant to note that Bina Devi, who is alleged to have supplied the said herbal medicine, was not examined by the prosecution as a witness during the trial. Her non-examination assumes considerable importance because she was the most material and independent witness who could have confirmed whether the accused indeed approached her to procure such medicine and whether any such medicine was actually given to the victim. The omission to examine her, therefore, creates a serious gap in the chain of evidence relied upon by the prosecution. Had Bina Devi been produced and examined, her testimony could have either corroborated or contradicted the statement of PW1, thereby strengthening or weakening the prosecution case. In the absence of her evidence, the statement of the victim on this point remains

uncorroborated and unsupported by any independent testimony. Moreover, there is no documentary or medical evidence on record to substantiate the claim that the victim had undergone an abortion as a result of consuming such herbal medicine.

- 40.** This lapse on the part of the prosecution not only raises doubt regarding the authenticity of the alleged abortion but also affects the credibility of the prosecution's narrative as a whole. When an important link in the prosecution story is left unproved due to non-examination of a crucial witness who was readily available and could have thrown light on the facts in issue, the court may draw an adverse inference under Section 114(g) of the Indian Evidence Act, presuming that had such witness been examined, her evidence might not have supported the prosecution version.
- 41.** Thus, the failure of the prosecution to examine Bina Devi, despite her being a key witness connected with a material aspect of the case, creates a serious infirmity in the prosecution evidence and weakens the reliability of the story put forth by the victim regarding the alleged abortion and the conduct of the accused.
- 42.** The victim in her evidence has stated that the accused had told her that he would marry her if she gave him a sum of Rs. 10,000/-. It is further stated by this witness that since her mother was unable to pay the said amount, the accused ultimately did not marry her. This

portion of her testimony reveals a transactional element introduced into the alleged proposal of marriage, which is wholly inconsistent with the conduct of a person who has allegedly committed rape. The demand of money and the victim's acknowledgment that the marriage did not take place only because the amount could not be paid indicates that the grievance may have arisen out of disappointment and frustration over the accused's refusal to marry her, rather than from any act of forcible sexual assault. It is quite possible that such grievance became the motive for implicating the accused in the instant case.

- 43.** The victim stated in her cross-examination that the act of rape continued for 2 to 3 years. Such prolonged physical association between two individuals, without any contemporaneous complaint or disclosure to any authority or family member, negates the theory of forcible sexual intercourse. A relationship of this duration and continuity strongly indicates that the intimacy between the two was voluntary and consensual in nature. The statement made by the victim unequivocally suggests that the alleged sexual relations were not isolated or forced events but were a result of a mutual understanding between the parties. I have already stated in forgoing paragraph that the victim did not make any immediate complaint to the police, local authority or even her relatives immediately after the alleged acts and this long silence mentioned by the victim, despite her claim that the

sexual acts were continued over a span of years, creates a strong presumption that the relationship was not forced. In genuine cases of rape, it is expected that the victim would raise an alarm or at least inform someone in confidence at the earliest opportunity and the silence of the victim in this case for years renders her subsequent complaint highly doubtful and possibly motivated.

- 44.** Further, P.W.6, the scribe of the written complaint, has categorically stated in his evidence that the victim did not state him that her menstruation had stopped, that she had become pregnant, or that she had undergone abortion. This clearly indicates that these facts were not mentioned at the time of lodging the complaint, and appear to be subsequent improvements or embellishments introduced later during her testimony. Such omissions are material in nature and affect the credibility of the prosecution's case.
- 45.** In the present case, even after the alleged act of forceful sexual intercourse the victim did not discontinue her relationship with the present appellant. On the contrary, she continued to meet him regularly and maintained contact over a considerable period of time. This behaviour does not conform to that of a person who has been subjected to a forcible sexual act. The complaint did not lodge any complaint with the police or any appropriate authority immediately after the alleged incident or even during the prolonged period that

followed, during which she admittedly maintained her association with the appellant. The long delay in lodging the complaint without any satisfactory explanation creates a significant doubt regarding the truthfulness of the allegation. The materials on record further show that both the victim and the appellant were known to each other for a long time and assured a close emotional bond. It also emerges from the evidence that there was intention on the part of both to marry each other, though the said plan ultimately did not materialize for reasons best known to them. The relationship, therefore, appears to have been mutual affectionate and voluntary and not one found upon coercion or deception.

- 46.** In the present case, there is no evidence to show that the appellant never intended to marry the complainant from the beginning; rather the facts suggest that both the parties genuinely desired marriage, but due to certain circumstances, the plan could not be carried through. Therefore, the complainant's conduct in continuing to meet and maintain a relationship with the appellant, coupled with her silence and inaction for a prolonged period, renders her allegation of forcible sexual intercourse highly doubtful.
- 47.** PW5, Binoda Singh who happens to be the sister of the victim has stated that the victim told her that the accused married her by the garland and committed intercourse with her and the accused Mudi

Singh wanted to marry her socially but subsequently the accused took time from various pleas and avoided the marriage. It is said by this witness that their brother Umesh Singh called a village 'salish' and she was present in the said 'salish' and in the 'salish' this appellant along other accused person demanded Rs. 12,000/- as dowry.

- 48.** In view of the above circumstances, it can reasonably be inferred that the relationship between the appellant and the complainant was consensual and based on mutual affection, and the subsequent non-fulfillment of their intention to marry does not transform the consensual acts into a criminal offence. The evidence thus does not inspire confidence to hold that the appellant committed rape upon the complainant; rather, it reflects a case of a failed love affair, which unfortunately culminated in allegations driven more by disappointment and emotional distress than by any act of coercion or deceit.
- 49.** In the case of **Deepak Gulati (supra)** the Hon'ble Apex Court held that there is a distinction between the mere breach of promise and not fulfilling a false promise and the Court must examine whether at any early stage a false promise of marriage by the accused was made and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. It is held by the Apex Court further that 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 the accused on account of the 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 and as such, cases must be treated differently and an accused can be convicted for rape only if the Court reaches a conclusion that the intention of the accused was malafide and that he had clandestine motives.

- 50.** In the present case, it clearly emerges from the evidence that the victim had willingly and voluntarily maintained a physical relationship with the accused over a considerable span of time. In the absence of credible and cogent evidence to the contrary, it cannot be readily inferred that such intimacy was the outcome of a false promise of marriage. When the association between two individuals continues for a prolonged period and reflects emotional involvement and sustained contact, the element of free will and voluntary participation assumes paramount significance. The very continuity and nature of such a relationship tend to indicate mutual consent rather than coercion, force, or deceit. The victim herself deposed that she had requested the accused to marry her in a socially recognized manner, and in response, the accused assured her that he would do so in the following month. This statement, when read in its natural context, conveys that the relationship between them

was consensual and founded upon mutual understanding, nurtured over time.

51. Moreover, the victim was aged above twenty years, fully conscious and aware of the implications of her conduct. Her continued participation in the relationship, therefore, appears to have been a voluntary act inspired by personal affection and the expectation of eventual marriage, which, unfortunately, did not materialize. However, such disappointment or breach of expectation, by itself, cannot be construed to mean that the accused had committed the offence of rape, in the absence of any material to establish that the promise of marriage was made deceitfully or with mala fide intent from the inception.
52. In view of the above circumstances and discussion I find that the learned Trial Court committed error and illegality in convicting the accused in connection with this case. As such, the impugned judgment and order of conviction do not stand under the eye of law and is liable to be set aside.
53. Accordingly, the instant appeal be and the same is hereby **allowed**.
54. The impugned judgment and order of conviction passed by the learned Trial Court dated 07.07.2000 in connection with Sessions Case No. 37/98 corresponding to Sessions Trial No. 13/99 is hereby set aside.
55. The appellant is on bail. He is to be discharged from his respective bail bonds and be set at liberty if, he is not wanted in any other cases.

- 56.** In conformity with the statutory requirement embodied under Section 437A of the Code of Criminal Procedure (corresponding to Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), it is obligatory for the appellant to execute bail bonds with adequate sureties to the satisfaction of the concerned court. The said bonds, once furnished, shall remain operative and binding for a duration of six months, thereby ensuring the appellant's availability before the court whenever required and upholding the continuity and integrity of the judicial process. Such compliance serves as a safeguard for the due administration of justice and reinforces the accountability of the appellant even after the conclusion of the proceedings.
- 57.** Any pending applications, if existing, are hereby disposed of.
- 58.** Let a copy of this order along with T.C.R. being sent down to the Trial Court immediately.
- 59.** Urgent Photostat Certified Copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)