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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 10th September, 2025**Date of Decision: 19th September, 2025*

+ CRL.A. 190/2008

CHHOTAY LAL

.....Appellant

Through: Ms. Stuti Gujral, Amicus with Mr. Miran Ahmad and Mr. Vipin Kumar, Advocates along with Appellant in person.

versus

THE STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for the State with Mr. Sunpreet Singh, Advocate.
SI Keshav Dalal, P.S. K. Khas.
Ms. Sana Juneja, Mr. Faraz Maqbool, Mr. A. Sahitya Veena and Mr. Deepshikha, Advocates for R-2.

CORAM:**HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA****JUDGMENT****RAJNEESH KUMAR GUPTA, J.**

1. The present appeal is filed on behalf of the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “*CrPC*”) against the judgment dated 09th January, 2008 (hereinafter referred to as the “*impugned judgement*”) and against the Order-on-Sentence dated 10th January, 2009 (hereinafter referred to as the



“impugned order on sentence”) passed by the court of Additional Sessions Judge, Karkardooma Courts, Delhi (hereinafter referred to as the **“Trial Court”**) in Sessions Case bearing No. 118/2005 arising out of the FIR bearing No. 361/2004 registered at Police Station - Khajuri Khas.

2. The appellant *vide* the impugned judgement was held guilty for committing the offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as the **“IPC”**). The appellant *vide* the impugned order on sentence dated 10th January, 2008 was sentenced to undergo Rigorous Imprisonment for a period of 7 years along with a fine of ₹1,000/-, and in default of payment of fine, convict was sentenced to undergo Simple Imprisonment for a period of ten days.

3. Briefly stated, the prosecution’s case as reflected from the chargesheet is that the prosecutrix, aged about 18-19 years, was residing with her parents at Sadat Pur Extension, Delhi, where her father, Shyam Bihari Pandey (PW4), was running an STD booth. The prosecutrix used to sit at the shop and was acquainted with the appellant - Chhotey Lal, who lived in the same locality and frequently visited the booth. On 2nd September 2004, at about 10:40 PM, the prosecutrix left her house and did not return. Simultaneously, the appellant was also found missing from his residence. On 11th September, 2004, PW-4 lodged a complaint with the police naming the appellant, pursuant to which the FIR was registered at Police Station, Khajuri Khas under Sections 366 and 376 of IPC. The prosecution case is that the appellant enticed the prosecutrix and took her to various places including Balaji, Jaipur, Sonapat, Chandigarh and Kangra (Himachal Pradesh), where he established sexual relations with her repeatedly. It is alleged that the prosecutrix accompanied him under fear, as



he threatened to kill her brother, in case she raised an alarm and also on the false promise of marriage. The prosecutrix remained with the appellant for nearly six months and assisted him in his cane furniture work at Kangra. Later, she discovered that the appellant was already married with six children. On 5th March, 2005, the appellant along with the prosecutrix was apprehended at Sarai Kale Khan ISBT, Delhi by the police at the instance of PW-2, Satya Prakash, uncle of the prosecutrix. During the course of investigation, the prosecutrix had been medically examined. Her statement under Section 164 of CrPC which is Ex PW-3/A, has been recorded before the learned Magistrate. The appellant was thereafter arrested and examined medically.

4. After completion of investigation, the chargesheet was filed under Sections 365/366/376 IPC in the court. Charge under Sections 366/376 IPC was framed against the appellant on the allegations that on 02nd September, 2004, the appellant kidnapped the prosecutrix for the purpose of illicit intercourse with her and on and after 02nd September, 2004, the appellant had committed rape with the prosecutrix at different places, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case, examined 11 witnesses. The statement of the appellant was recorded under Section 313 of the CrPC, wherein the appellant had denied incriminating evidences and pleaded innocence and claimed false implication. The trial court, after appreciating the evidence, acquitted the appellant of the charge under Section 366 IPC but convicted him under Section 376 IPC. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

5. Learned *Amicus Curiae* for the appellant has argued that the Trial



Court has passed the impugned judgement on the basis of surmises and conjectures, contrary to the facts and evidence on record. There are material contradictions in the testimony of the prosecutrix which render the prosecution case doubtful. The prosecutrix was major at the time of alleged incident and has accompanied the appellant with free consent. The prosecutrix was well aware that the appellant was a married man and therefore the allegation of physical relations on the basis of a false promise to marry cannot be sustained in law, as it does not amount to a misconception of fact within the meaning of Section 90 IPC. The physical relations between the parties were consensual. The prosecution has failed to prove its case beyond reasonable doubt. On these grounds, it is prayed that the impugned judgment be set aside and the appellant be acquitted.

6. The learned APP for the State and the learned Counsel for the prosecutrix have argued that the trial court has passed the impugned judgment after considering the evidences on record. The evidences produced on behalf of the prosecution have proved the case beyond reasonable doubt. The arguments of the appellant are without any merits. The appeal is liable to be dismissed.

7. I have heard the learned Counsels for the parties and have examined the record.

8. The prosecutrix has been examined as PW-3 and she has deposed that her mother has been running shop of STD for the last about 1 ½ -2 years at the above said house where they used to reside. She also used to sit at that STD shop. She knows appellant and he used to visit her STD shop for making telephone calls. On 2nd September, 2004, the appellant had taken her forcibly to Balaji. On her refusal to go with him, he threatened her



to kill her brother. Due to this fear, she went with him. From Balaji, he had taken her to Jaipur, Sonapat, Chandigarh and thereafter Kangra in Himachal Pradesh. The appellant used to work in Kangra as he was manufacturing cane chairs. The appellant had taken a room in an Ashram at Balaji and he made physical relationship like husband and wife with her without her consent. In Jaipur also, in a hotel, he made physical relationship like husband and wife with her without her consent. The appellant put her in fear by saying that if she raised an alarm or called anybody or told anything regarding her coming forcibly with him, he would kill her brother. The appellant had taken a room on rent in Kangra and started living there. She along with the appellant remained in Kangra for about six months and he used to make physical relations like husband and wife with her forcibly against her consent. The appellant had promised to marry her. She came to know later on, that the appellant was already married and had six children. She has proved her statement recorded under Section 164 CrPC as Ex. PW3/A.

In cross-examination on behalf of the appellant, PW-3 has deposed that she knew the appellant one year back of the incident. He used to talk with her oftenly for 1-2 hours. The wife of appellant had come one week before her going away with the appellant. She had not met with the wife and children of the appellant. She came to know about the coming of wife and children of appellant before going away with appellant. The wife of appellant had also visited the shop as she had come for making a call. The wife of the appellant had also no objection on their talking. The appellant took her everywhere with her consent. The appellant used to take her with him when he used to for his work in Kangra. One more person was working



with the appellant of manufacturing cane chairs. She also used to assist the appellant in manufacturing cane chairs. She used to assist the appellant for more earning for living happily. The appellant was working under one person, who used to supply the chairs to shopkeepers. She never tried to run from the custody of appellant not she requested any co-workers of appellant or any local people.

Mr. Shyam Bihari Pandey, father of the prosecutrix, has been examined as PW-4 and has deposed that on 2nd September, 2004, at about 10.40 PM, the prosecutrix left the house but she did not come back. On 11th September, 2004, he got registered the FIR regarding taking away her daughter by deceitful means by the appellant. The copy of FIR is Ex. PW4/A. The prosecutrix was aged around 18-19 years as on the date of the incident and her date of birth was 2nd August, 1985.

9. The Trial Court, in the impugned judgment, concluded that since the prosecutrix had consented to physical relations on the basis of a false promise of marriage, such consent would not fall within the ambit of 'consent' as envisaged under Section 375 IPC, having regard to Section 90 IPC.

10. The prosecutrix was examined before the court on 21st October, 2005, wherein she deposed her age to be 20 years. In her statement, Ex. PW3/A, she further stated that she was educated up to the 9th standard. PW-4 deposed that the date of birth of the prosecutrix was 2nd August, 1985. It is clear from these testimonies that the prosecutrix was aged more than 18 years at the time of the alleged incident.

11. From the evidence on record, the issue that arises for consideration is whether the consent of the prosecutrix was voluntary or was obtained under



a misconception of fact, i.e. false promise of marriage. In this regard, it is relevant herein to mention the observations of the Hon'ble Supreme Court in ***Naim Ahamed v. State (NCT of Delhi)***, (2023) 15 SCC 385 which are as follows:

“21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently, he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.”

It has further been observed by the Hon'ble Supreme Court in ***Uday v. State of Karnataka*** (2003) 4 SCC 46 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 later 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 prosecutrix 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.”

12. PW-3, who is the prosecutrix, is the material witness of the case. A perusal of her testimony shows that she has made material contradictory statements, which are as follows:

a. In her examination-in-chief, PW-3 deposed that the appellant had taken her forcibly and had threatened to kill her brother if she refused to accompany him. However, in her cross-examination, PW-3 admitted that the appellant took her everywhere with her consent.

b. In her examination-in-chief, PW-3 deposed that she came to know later on that the appellant was already married and had six children. However, in her cross-examination, PW-3 has deposed that the wife of appellant had come about one week prior to her going away with the appellant, and that she had not met the wife and children of the appellant and that she had come to know of their presence before going away with him. This clearly shows that PW-3 was aware of the fact that the appellant was already married prior to the alleged incident.



These material contradictions show that PW-3 has not spoken the exact truth regarding the alleged incident and it affects the case of the prosecution on merits.

13. The cross-examination of PW-3 further shows that the prosecutrix has gone with the appellant with her own consent, despite being aware that he was married and had children. PW-3 knew the appellant since one year prior to the incident and used to talk with her oftenly for one to two hours.

14. PW-3 also deposed that they stayed together in Kangra for about six months, during which period, she used to assist the appellant in manufacturing cane chairs for living happily.

The fact that the prosecutrix continued to live with the appellant for a period of six months, during which the physical relations were maintained and no alarm was raised during that period, and further that she assisted him in his work to earn more for living happily, clearly demonstrates that she was fully aware of the consequences of her acts, particularly when she was conscious of the fact that the marriage with the appellant was not possible. Thus, the alleged element of inducement on the pretext of marriage by the appellant is manifestly absent.

15. In view of the aforesaid facts and circumstances proved on record, it is evident that the prosecutrix had consciously consented for having physical relations with the appellant and her consent was not in consequence of any misconception of fact, i.e. on account of false promise of marriage. Consequently, the prosecution has failed to prove the charge under Section 376 IPC against the appellant beyond reasonable doubt. Accordingly, the impugned judgment and impugned order on sentence cannot be sustained and are set aside. The Appellant is acquitted of the



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charge under Section 376 IPC. His bail bond stands cancelled and the surety is discharged.

16. The present appeal is allowed and all the pending applications, if any, also stands disposed of.

17. Copy of this judgment be sent to the trial court as well as to the concerned Jail Superintendent for necessary information and compliance.

RAJNEESH KUMAR GUPTA
JUDGE

SEPTEMBER 19, 2025/MR/TP