



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 21.08.2025
Pronounced on : 25.08.2025

+ **CRL.A.120/2017**

ASHOK

.....Appellant

Through: Ms. Geeta Luthra, Senior Advocate
with Mr Rishabh Dahiya and Ms
Ananya Mohant, Advocates

versus

STATE (NCT OF DELHI)Respondent
Through: Mr Pradeep Gahalot, APP for State
Ms Sowjanya, Amicus Curiae

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The appellant stands convicted in the proceedings arising out of FIR No. 316/2011 registered under Sections 376/506 IPC at P.S Vivek Vihar. Sessions Court, vide judgment dated 08.11.2016, convicted the appellant for offences punishable under Sections 376/420 IPC. Vide order on sentence dated 07.12.2016, the appellant was sentenced to undergo RI for 7 years along with fine of Rs.50,000/-, in default whereof he would undergo 6 months RI, for the offence punishable under Section 376 IPC. He was further sentenced to 5 years RI along with fine of Rs.50,000/-, in default whereof he would undergo 6 months RI, for the offence punishable under Section 420 IPC. All the sentences were directed to run concurrently and benefit under Section 428 Cr.P.C. was extended to the appellant.



2. The brief facts of the prosecution in a nutshell noted by the Trial Court are as under:

“1. In brief, the case of prosecution is that on 28.10.2011 a complaint was as made by Ms. 'S' (name withheld), daughter of XXX that she is resident of XXX. She got divorce from her earlier husband and resides alone. She has a shop of garments in XXX since January. One boy in the name of Ashok used to come to her shop for showing clothes and thereafter he came several times at her shop for showing clothes and whenever he came for showing clothes he used to talk with her out of context and during conversation he started increasing closeness with her and started playing drama of love. He told her that he is unmarried and has three swimming pools in Delhi and is resident of Rohtak, Haryana.

In the year 2007, complainant sold her one plot for a sum of Rs.23,50,000/- and amount received in lieu of that plot was deposited in her account at Central Bank of India XXX and she got FDR of that amount. The aforesaid Ashok started taking money from complainant after getting premature withdrawal of the FDR. He won her faith due to his company with her and gave a proposal of marriage to her. He trapped her on giving the assurance of marriage and started making physical relation with her. In May 2011, he told her that he is purchasing a plot of 200 sq. yards in Rohtak for which he has an urgent need of money. On this he took Rs.3,50,000/- from her on 25th May 2011 and thereafter told her that before performing marriage, they would construct the plot and thereupon would reside in the said house. On 25.06.2011 he again took Rs.3 lacs from her. Thereafter, he asked her that he has to purchase something for marriage and by inducing her with his love, he took ATM card of HDFC and Central Bank of India from her and said Ashok withdrew Rs.10,000/- on 16.06.2011, again Rs.10,000/- on 16.06.2011, Rs.10,000/- on 19.06.2011, Rs.10,000/- on 29.06.2011 and Rs.10,000/- on 18.07.2011 from ATM Branch at Rohtak and from other branches and in this manner the said Ashok withdrew Rs.5,50,000/- through the ATM cards of the complainant (statement of account regarding withdrawal is attached).

It was further stated that Ashok played a creepy game with her and he took money from her and also threatened the complainant on telephone to do whatever she can do and further threatened that in case she will make any complaint against him, he would kill her as he has relations with police officials and leaders. He further



threatened the complainant that he only played a drama with her and to see his mind that he made physical relation with her and also took money from her and how innocent she is that she surrendered herself and whenever he demanded money from her, she used to give money with love and affection. Therefore, it was prayed to register a FIR under appropriate section against Ashok for misleading the complainant, deceiving her for marriage and on such deception having sexual relation with complainant....”

3. On conclusion of investigation, a chargesheet was filed, and charges against the appellant were framed under Sections 376/506 IPC. Thereafter, on an application under Section 216 Cr.P.C. being filed, an additional charge under Section 420 IPC was also framed against the appellant.

4. The prosecution, in support of its case, examined 13 witnesses in total. The material witnesses were the prosecutrix, who was examined as PW-10; *Om Prakash*, in whose house the prosecutrix was residing as a tenant, examined as PW-5; and Dr. *Vandana Jain* and Dr. *Reetesh Ranjan*, who had medically examined the prosecutrix, appeared as PW-7 and PW-8 respectively.

The appellant, while claiming innocence, examined three defence witnesses in his support.

5. The appellant has assailed the impugned judgment. The first plank of the appellant's challenge to the impugned judgment is the unreliability of the testimony of the prosecutrix as the same is not only full of material improvements, but also contrary to the testimony of the public witness i.e., *Om Prakash*/PW-5, who was her landlord. In this regard, it is contended that the initial complaint of the prosecutrix is silent on the aspect of forceful sexual intercourse. Similarly, the complaint is also silent on the aspect of cash withdrawals. It is next contented that the prosecutrix, being a divorcee



and in her thirties, could not have been misled by a promise of marriage over a period of several months, as alleged. Lastly, it is contended that the Trial Court failed to appreciate the testimony of defence witnesses, who stand on an equal footing with the prosecution witnesses.

6. The appellant's contentions were vehemently denied by the learned APP for the State as well as the learned counsel appearing for the victim. It is stated that the appellant had no intention to fulfil the promise of marriage from the beginning and established physical relations with the prosecutrix by misleading her. On two occasions, physical relations were forcibly established. Though the appellant got married, he continued to exploit the prosecutrix by withdrawing amounts from her bank. The details of such payments are duly proved through her bank statements placed on record.

7. Before proceeding further, it is deemed apposite to extract the charges framed against the appellant:

"Firstly, That during the period between 20-1-11 to 09.10.2011 at house No. XXX within the jurisdiction of PS Vivek Vihar, you committed sexual intercourse with the prosecutrix XXX many times on the false promise of marriage and thus obtained her consent for sexual intercourse by misrepresentation and thereby committed the offence of rape punishable under Section 376 IPC within the cognizance of this court.

Secondly, that on or before 09.10.2011 and during the period between 25.05.2011 to 09.10.2011, you accused withdrew Rs.5.5 lakhs from the ATM of the prosecutrix and then criminally intimidated her by threatening to kill her in case she made complaint to the police and thereby committed the offence of rape punishable under Section 506 IPC within the cognizance of this court...."

8. As recorded earlier, an additional charge was also framed, which reads as follows:

"That on 25.05.11 and on 26.05.11 at XXX you induced complaint XXX to hand over money on the pretext of purchasing plot at Rohtak



and on false promise of marriage and on both the dates, by above said inducement you received 3 to 3.5 lacs each and her ATM Card from complainant and you also withdrew a total amount of Rs.5.5 lacs from her account on different occasions using her ATM Card and thus thereby you committed and offence punishable under Section 420 IPC and within the cognizance of this court....”

9. The prosecutrix was examined as PW-10. Perusal of her deposition reveals that she stated that she got married in the year 2001 whereafter in the year 2006, she obtained divorce by mutual consent in Ahmedabad. She further claimed that she was running a garment shop in her name in Jagatpuri, Delhi. She stated that, in January 2011, the appellant, who used to visit her shop to show her clothes, became aware that the family of prosecutrix was looking for a suitable match for her marriage, and upon coming to know of this, developed proximity with her and started visiting her house. The deposition further states that the appellant, under the pretext of marrying her, developed physical relations that continued over a period of time. She specifically claimed that the said relations were twice established without her consent. Firstly, on 20.01.2011, after closure of her shop, the appellant accompanied her to her house and, despite her refusal forcefully held her mouth and had sexual intercourse with her. She felt perturbed, whereupon the appellant assured her that he would introduce his mother and sister to her and talk to them about marriage. She also claimed that, at that time, the appellant touched her feet and reassured her about marrying her. Thereafter, for 10-15 days, the appellant visited her home, but no physical relations were established. The appellant's visits were also noted by the landlord, *Om Prakash*, who rebuked the prosecutrix and counseled her to not let the appellant visit till she introduced him to her family. She claimed that



sexual relations were maintained for 4-5 months.

According to her deposition, the second such incident occurred 3-4 months after January 2011, when the appellant came to her house along with 3-4 friends for dinner. They consumed liquor, and the friends also assured her that the appellant intended to marry her. After the friends left, the appellant, despite being stopped by the prosecutrix, forcefully pressed her mouth and had sexual intercourse with her.

The deposition, except for the above two incidents, does not speak of any other instance where physical relations were established forcefully. The prosecutrix has stated that on other occasions, relations were established on the assurance that the appellant would marry her.

Besides above, the prosecutrix also deposed that she had withdrawn amounts from her bank account after encashing her fixed deposit, and the sums thereunder were handed over to the appellant on his demand. The appellant also handed over an affidavit (Ex. PW-10/C) in which he admitted to having established physical relations with the prosecutrix and reiterated his intention to marry her. The affidavit further mentions that the appellant had borrowed sums from the prosecutrix for the purpose of buying a flat, in which he intended to live with her after marriage.

10. The prosecutrix, in support of her deposition that on two occasions she encashed her fixed deposits and paid sums to the appellant for him to purchase a flat, relied upon her bank statements. She further stated that even her ATM card, given to the appellant, was misused by him by withdrawing large sums, and upon coming to know of the same, she requested the bank to block the card. The deposition of the prosecutrix has been doubted by the appellant, as the two specific incidents of forcible sexual relations were not



stated by her in her previous statement (Ex. PW-10/A). A perusal of the deposition shows that she was confronted with her earlier statement where she had not stated either about the incident of 20th January 2011 or about the occasion when the appellant allegedly came with friends and, after the friends had left, committed forcible sexual intercourse.

11. She was also confronted with other portions of her aforesaid statement, where she had not stated about the appellant accompanying her to the bank at the time of encashment of the fixed deposits. She was further confronted with her earlier statement, where she had not stated that she had accompanied the appellant to Rohtak for making payment for the purchase of a plot.

12. Besides the above, a suggestion was given on behalf of the appellant that the prosecutrix had first met the appellant at the house of one *Suresh Kadyan* in Pratap Nagar, where they had established consensual sexual relations. It was suggested that *Suresh Kadyan* was a friend of the appellant, and had a girlfriend named 'S', whom the prosecutrix already knew. On request of 'S', the prosecutrix had come to Pratap Nagar and stayed overnight, where 'S' had also introduced her to the appellant. The witness responded by stating that it was incorrect that she had met the appellant for the first time at the house in Pratap Nagar. She volunteered that after the registration of the case, she had gone to Pratap Nagar and the appellant was not there. The prosecutrix denied the suggestion that she had stayed with the appellant in Pratap Nagar. Further suggestions were also given that the prosecutrix was aware that the appellant had got married and that, for this purpose, she had lent her car to the appellant to go on honeymoon (Ex. PW-10/D1 to D4). Further, a perusal of the deposition reveals that the



prosecutrix had claimed to be a tenant of *Om Prakash*/PW-5 since 2010, stating that she had initially taken one room on the second floor whereafter another room was also taken on rent. Though her deposition does not refer to specific dates, the general point of reference for events is January 2011. Interestingly, however, the deposition of *Om Prakash*/PW-5 reveals that the prosecutrix became his tenant only in the month of May 2011. He claimed that a notarized rent agreement was also signed and a copy of the same was available with him. The rent agreement, however, did not see the light of day in the trial. In his deposition, he claimed to have accompanied the prosecutrix to the bank for encashment of fixed deposits however, he was confronted with his statement made during the investigation where he has not stated so.

13. The appellant, at the time of recording of his statement under Section 313 Cr.P.C., claimed that intimate relations with the prosecutrix had been consensual and denied executing any agreement, further alleging it to be fabricated. In support of his defence, he examined three witnesses. The prosecutrix had claimed that the appellant had got one *Sittu*, who was known to him, employed at her shop. *Sittu* was examined as DW-1. He confirmed the said fact and further stated that he worked at the shop of the prosecutrix for five months during which he used to sleep at her house as he had no other place to stay. He further deposed that on a few occasions, the appellant had given him money to give to the prosecutrix, and the appellant had given his marriage card to him, as well as to the prosecutrix; however, she did not attend.

The appellant further examined one *Vijay Kumar*, a nephew of the appellant, as DW-2. He deposed that the appellant had got married on



17.06.2011 and that he had met the prosecutrix on 12.08.2011 for the purpose of borrowing her car.

The third defence witness, *Suresh Kadyan*, was examined as DW-3. He deposed that in January 2011, he had come to Delhi, along with the appellant, from his village. His friend 'S' knew the prosecutrix, and at her asking, the prosecutrix visited Pratap Nagar and stayed there overnight, where he slept with 'S' while the prosecutrix slept with the appellant. The witness denied the suggestion that the prosecutrix had never visited Pratap Nagar or slept with the appellant at Pratap Nagar.

14. From the above, it is evident that the prosecutrix, who was in her thirties and a divorcee, had lodged a complaint against the appellant via a typed complaint dated 28.10.2011, in which she made no mention of any forcible sexual relations.

A careful perusal of the complaint indicates that the sexual relations were established consensually, albeit on a promise of marriage, and the relations were maintained over a considerable period of time. As per the prosecutrix's own deposition, the relations between her and the appellant continued for about 4-5 months. Concededly, the relations were established at prosecutrix's own home and against the advice of her landlord. The prosecutrix herself claimed that she had doubted the intentions of the appellant, however, continued to maintain relations with him.

15. A sexual relationship sustained over a period of time between two matured individuals raises a presumption that there was valid and informed consent. If, at the time of making a promise of marriage, the promisor has no intention of abiding by it and makes it solely to deceive the woman into engaging in sexual relations with him, there would be a misconception of



fact vitiating the woman's consent; however, a subsequent breach of promise, by itself, does not make the promise a false one. To establish a false promise, the prosecution is required to demonstrate that the maker of the promise had no intention of keeping it at the time of making the promise [Ref: Pramod Suryabhan Pawar Vs. State of Maharashtra, reported as (2019) 9 SCC 608].

While seized of allegations relating to false promise of marriage, the Supreme Court, in Deepak Gulati Vs. State of Haryana, reported as (2013) 7 SCC 675, observed as under:

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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 an accused on account of 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. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

16. In Ravish Singh Rana Vs. State of Uttarakhand, reported as (2025) SCC OnLine SC 1055, the Supreme Court, once again, while taking note of



its earlier decisions, observed that when a relationship is spread over a considerable period of time and includes circumstances of cohabitation as a live-in couple, a presumption arises that such a relationship is consensual. The Court observed as under:

14. In the instant case also, we find that the relationship between the appellant and the second respondent (the informant) was spread over two years. Further, they not only admit of having physical relations with each other but also of living together in a rented accommodation as a live-in couple. In our view, if two able-minded adults reside together as a live-in couple for more than a couple of years and cohabit with each other, a presumption would arise that they voluntarily chose that kind of a relationship fully aware of its consequences. Therefore, the allegation that such relationship was entered because there was a promise of marriage is in the circumstances unworthy of acceptance, particularly, when there is no allegation that such physical relationship would not have been established had there been no promise to marry.

15. Moreover, in a long drawn live-in relationship, occasions may arise where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that expression of desire, or wish, by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships might not have been common. But now more and more women are financially independent and have the capacity to take conscious decision of charting their life on their own terms. This financial freedom, inter alia, has led to proliferation of such live-in relationships. Therefore, when a matter of this nature comes to a court, it must not adopt a pedantic approach rather the Court may, based on the length of such relationship and conduct of the parties, presume implied consent of the parties to be in such a relationship regardless of their desire or a wish to convert it into a marital bond.

16. In that view of the matter, in our considered view, the long-drawn relationship of the appellant and the second respondent including the circumstance of their living together and cohabiting with each other, that too, in a separate rented accommodation,



would give rise to a presumption that their relationship was based on a valid consent.

17. The settlement agreement, dated 19.11.2023, which is not disputed by the second respondent, points out that the parties had been in love. In such circumstances, we are of the view that on ground of refusal to marry, the appellant cannot be subjected to prosecution for the offence of rape. The other allegations of assault and abuse have not been supported by any material particulars. Even the alleged sexual assault on 18.11.2023 is negated by the recital in the settlement agreement that parties love each other.”

17. At this stage, the Court further takes notes of the recent judgment of the Supreme Court in Prashant Vs. State of NCT of Delhi, reported as (2025) 5 SCC 764, where, in a challenge to the High Court’s refusal to quash an FIR registered under Sections 376(2)(n) and 506, the Supreme Court, while taking note of its earlier decision in Pramod Suryabhan Pawar vs. State of Maharashtra (supra), quashed the FIR by observing that a mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stage cannot be given a colour of criminality when it does not fructify into a marital relationship. The Court further noted the fact that though the complainant stated that the accused had a forceful sexual relationship with her, neither did she stop meeting the accused thereafter, nor did she file a criminal complaint during such period. The Court observed that:

“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...”

18. Not only on a careful conspectus of events, but also in light of the



decisions referred hereinabove, this Court is of the conclusive opinion that the prosecutrix's testimony is full of improvements over her previous statements and the same cannot be held to be credible or reliable, especially in the backdrop of her relationship with the appellant having continued for a considerable period of time without the registration of a complaint. It cannot be stated that the prosecutrix's consent was vitiated.

19. Accordingly, the impugned judgment of conviction is set aside, and the appellant is acquitted. His bail bonds are cancelled, and sureties stand discharged.

20. A copy of this decision be communicated to the Trial Court as well as to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 25, 2025
pmc