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

+ CRL.L.P. 512/2018

STATE

.....Petitioner

Through: Mr. Raj Kumar, APP

versus

AAMIR ANSARI

.....Respondent

Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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04.02.2025

1. This is a petition seeking a leave to appeal challenging the judgment dated 26.04.2018 passed by the learned ASJ/Spl. FTC, North-West, Rohini Courts, Delhi in SC No. 225/2015 arising out of FIR No. 354/2015 registered at PS Subhash Place, whereby the respondent was acquitted under Section 376 of Indian Penal Code (“IPC”).

2. The brief facts of the case are that the prosecutrix lives with her family and has completed her education up to the 5th standard. The respondent operates a shop in Veer Bazaar Market, Inderlok where the prosecutrix developed a friendship with him. She claims that he proposed marriage, to which she agreed. However, she alleges that he established physical relations with her against her will. After disclosing this to her mother, in 2012, he assured them that he would marry her, which her family



accepted.

3. Despite this, whenever the prosecutrix brought up the topic of marriage, the respondent avoided the discussion with various excuses. In March, 2015, she confronted him about his promise of marriage made in 2012, demanding a clear answer. He allegedly refused, threatening that if she pressed him, he would harm himself rather than marry her. Following this, she informed her mother, who contacted him on 01.04.2015, but he reiterated that he would not marry her under any circumstances.

4. Despite their efforts, the respondent remained uncooperative regarding marriage. Consequently, the prosecutrix filed a complaint with the police alleging that the respondent had engaged in physical relations with her under the false promise of marriage.

5. On the above stated complaint of the prosecutrix, an FIR dated 06.04.2015 was registered. The prosecutrix was medically examined and her statement under Section 164 of CrPC was recorded. The respondent was also arrested. Thereafter, charge under Section 376 of IPC was framed against the respondent, to which he pleaded not guilty and claimed trial.

6. The prosecution examined a total of 8 witnesses and the statement of the accused under Section 313 of CrPC was recorded, wherein he claimed himself to be innocent and having been falsely implicated in the case. The respondent did not lead any defence evidence.

7. The learned Sessions Court after considering the entire evidence *vide* the impugned judgement, acquitted the respondent under Section 376 of IPC.

8. Aggrieved by the impugned judgment, the State prefers the present appeal.



9. The learned counsel appearing on behalf of the petitioner challenges the impugned judgement and submits that the learned Trial Court has erred in ignoring the vital pieces of evidence emerged during the course of trial and has not properly applied its mind to the facts of the case and erroneously acquitted the respondent under Section 376 of IPC.

10. It is also submitted that the learned Trial Court has failed to appreciate the facts which clearly show that since beginning it was the intention of the respondent to cheat the prosecutrix. The respondent acted deceitfully right from the beginning and his intentions were only to cause deception and drive the prosecutrix to agree for sexual relations with him and thereby her consent was obtained by misconception of facts. Hence the learned Trial Court has erred while acquitting the respondent by giving him the benefit of doubt.

11. The learned counsel appearing on behalf of the respondent supports the impugned judgement and submits that the prosecution has failed to establish and lead clear and cogent evidence. Hence, the prosecution has failed to prove the case beyond reasonable doubt against the respondent.

12. It is also submitted that no proposal or promise of marriage was done by the respondent with the prosecutrix and the prosecutrix herself voluntarily established physical relations with the respondent at her residence.

13. It is further submitted that as of now, the respondent and the prosecutrix are happily married and have two minor children.

14. I have heard learned counsels of both the parties perused the entire material on record.

15. The operative part of the impugned judgement reads as under:



“17. Thus, in Uday's case (supra) and Deepak Gulati's case (supra), the Hon'ble Supreme Court laid down the law that if the prosecutrix is matured to understand the significance and morality associated with the act, she was consenting to and that she was conscious of the fact that her marriage may not take place owing to various factors. In such circumstances, it cannot be stated that consent of prosecutrix was deceitfully obtained.

18. In the facts of the present case, Prosecutrix in her examination-in-chief has admitted that she had performed marriage with the accused, after the registration of FIR. Even in cross-examination, she has admitted that she has sent SMS and Whatsapp messages to the accused relating to her love affair with him. Prosecutrix further admitted that accused had not sent any SMS or Whatsapp messages to her, promising for marriage. Messages were relating to her love affair only. There are certain improvement and contradictions in the evidence of Prosecutrix for which, witness was duly confronted with her previous statements. Thus, entire reading of evidence of Prosecutrix clearly indicates that she had love relationship with the accused and was very much aware about the consequence of her acts and conducts. Admittedly, physical relations were made at the house of the Prosecutrix.

19. In this context it is important to refer here the evidence of PW4-M(mother of the Prosecutrix). PW4 testifies that her daughter / prosecutrix told her that accused had established



physical relations with her on promise of marriage. Upon which, PW4 stated to have made a call to the accused, who told her that his parents would kill him, if he would talk to his parents about his marriage with the prosecutrix. PW4 further says that she later went to the house of accused to discussed about marriage of prosecutrix with the accused. PW4 says that father of the accused called one person from outside, who humiliated her. PW4 further says that thereafter they lodged the complaint, on the basis of which present case was registered. PW4 says that later accused performed marriage with her daughter on 05.06.2015. After marriage, accused however did not take her daughter with him on the pretext that there has been some death in the family. PW4 says that accused has not taken the prosecutrix to her matrimonial home despite marriage. In cross-examination, this witness was duly confronted with her previous statement on all those facts, which she stated for the first time in her evidence.

20. Thus, from the reading of evidence of PW1 / prosecutrix and her mother / PW4, it is evident that there is no element of deceit or fraudulent proved, as such, it can safely be concluded that consent of the prosecutrix being a grown up girl, have not taken deceitfully or fraudulently. Rather she consented for physical relations with the accused having clear understanding of consequences of her conduct. As such, I find that such evidence on record does not establish the offence of rape as defined u/s.375 IPC. More particularly, when it came in



the evidence of prosecutrix as well as her mother that accused had already performed marriage with her. For the reasons stated above, accused to my mind is certainly entitled for benefit of doubt and therefore, stands acquitted. Previous bail bond and surety bond of accused is cancelled. The accused is directed to furnish bail bond and surety bond in sum of Rs. 10,000/- in compliance to Section 437-A Cr.P.C.”

16. The prosecutrix was examined in the court as PW1. The court testimony of the prosecutrix is extracted below:

“I am 26 years old. I am 8th pass. I have one brother. My father is running chicken shop and my mother is a house wife. One day in the month of June 2012, I had gone to Thursday market in Inderlok. Accused Aamir who is present in the Court today (correctly identified) was running a lace stall in Thursday market. I purchased lace from the stall of accused. On that day maternal uncle of accused was also present there and he was also selling laces alongwith the accused. When I was giving money for the lace, accused refused to take it. Maternal uncle of the accused wrote one mobile number on piece of paper and accused handed over that number to me. Accused asked me to make a call to him as he wanted to talk to me. Next day, I made a call on that number and it was attended by accused. I enquired from accused as to why he gave the number to me and accused told me that he liked me very much and wanted to have friendship with me. I told accused that I would answer after giving the thought. Thereafter, I used to make call sometime to



*the accused and sometime accused used to call me. Then our friendship deepened. While talking to me, accused made proposal of marriage to me and I accepted the same. Gradually accused started visiting my house at 1-81, third floor, Shakurpur, JJ Colony, Delhi. At that time my mother was working in a Boutique and it was in the year 2012 when the accused started visiting my house. **In February 2013 accused asked me to make physical relation with him in my house but I refused. Accused told me that why I am afraid when he was going to marry me and then accused forcibly on pretext of marriage without my consent made physical relations with me. Whenever I refused to make physical relation with him, accused used to pressurize me for the same. Whenever I asked the accused to fulfill his promise of marriage he evaded the issue on the one pretext or the other and assured that he would marry me later on. Accused continued physical relation with me till 14/02/2015. Accused finally refused to marry me and when I told my mother in the month of April 2015 that accused has refused to marry me and had developed physical relation with me on the false pretext of marriage. Then, my mother spoke to accused on his mobile number 9999653572 on 01/04/2015 thereby asking him as to why he had cheated her daughter on false pretext of marrying with her and on this accused flatly refused to marry with, me and said that he will commit suicide but will not marry under any circumstances. Thereafter, accused stopped meeting with me. Thereafter***



accused severed all his contact with me. Then, my mother and maternal aunt (khala) went to the house of accused, but the father of accused and other male relatives chacha, mama and friends of accused misbehaved with my mother and maternal aunt. Thereafter, they returned back to our house and finally I made a complaint to the police on 06/04/2015 which is now Ex.PW 1/A which bears my signature at point A. Thereafter I was taken by police official to Bhagwan Mahavir hospital for my medical examination which was carried out by doctor and I agreed for internal examination. MLC Ex.PW 1/B bears my signature at point A and of my mother at point B. On 07/04/2015, was produced before magistrate for recording of my statement u/s. 164 Cr.PC. At this stage one envelope with the seal of Court of Ms. Meenu Kaushik is opened and its found to contain proceedings u/s. 164 Cr.PC. Witness identifies her signature at point A on each page of her statement Ex.PW 1/C.

... ..

*During bail proceedings of this case, accused and his family members agreed to perform marriage of accused with me. **Nikah was performed in presence of parents and relatives of both sides.** I was not taken to my matrimonial house after Nikah with accused on the ground that there was a death in the family of accused and they would take me later on to their house. Next day my mother made a telephone call asking the family member of accused to take me to my matrimonial home but they sought for no time and lastly the father of the accused after one month*



straight away refused to take me their house saying that they had succeeded in getting bail from the Court and under no circumstances I was acceptable to them as the wife of accused.”

17. It is important to note that in cases involving allegations of false promises of marriage, the court must examine the facts, circumstances, and evidence to determine whether the consent of the prosecutrix was obtained fraudulently. The court must consider if the prosecutrix, being an adult, was aware of her actions and whether she consented to the relationship, understanding that the accused/respondent might not fulfill his promise of marriage. Non-fulfillment of a promise of marriage alone does not constitute rape; the prosecution must prove that the accused/respondent acted deceitfully from the beginning, intending to deceive her into consenting to sexual relations.

18. From the examination of the testimony of the prosecutrix, it is clear that she developed a friendship with the respondent. She called him after he provided his number and they communicated regularly. The respondent proposed marriage, which she accepted and they engaged in physical relations based on this assurance. The evidence indicates that the prosecutrix willingly entered into a relationship with the respondent and this does not suggest any deceit on his part.

19. In the present case, I am of the view that the judgment of the Hon’ble Supreme Court in the case of ***Deepak Gulati v. State of Haryana, (2013) 7 SCC 675*** can be relied upon, the Apex Court has held that:

“14. The undisputed facts of the case are as under:

I. The prosecutrix was 19 years of age at the time



of the said incident.

II. She had inclination towards the appellant, and had willingly gone with him to Kurukshetra to get married.

III. The appellant had been giving her assurance of the fact that he would get married to her.

IV. The physical relationship between the parties had clearly developed with the consent of the prosecutrix, as there was neither a case of any resistance, nor had she raised any complaint anywhere at any time despite the fact that she had been living with the appellant for several days, and had travelled with him from one place to another.

V. Even after leaving the hostel of Kurukshetra University, she agreed and proceeded to go with the appellant to Ambala, to get married to him there.

... ..

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the



evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

... ..

24. If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of “false promise of marriage” has been raised by the prosecutrix. We also fail to comprehend the circumstances in which a charge of deceit/rape can be leveled against the appellant, in light of the afore-mentioned fact situation.”

20. Thus, in **Deepak Gulati’s case (supra)**, the Hon’ble Supreme Court laid down the law that if the prosecutrix is mature to understand the significance and morality associated with the act, she was consenting to and that she was conscious of the fact that her marriage may not take place owing to various factors. In such circumstances, it cannot be stated that consent of the prosecutrix was deceitfully obtained.

21. Thus, from the reading of evidence of PW1/prosecutrix, it is evident that there is no element of deceit or fraud proved, as such, it can safely be concluded that consent of the prosecutrix, being a grown up girl, has not taken deceitfully or fraudulently. The prosecutrix consented for physical



relations with the respondent having clear understanding of consequences of her conduct. More particularly, the respondent has already performed marriage with her.

22. Lastly and most importantly, the respondent and the prosecutrix are present in Court today and state that they are happily married and have two minor children.

23. In this view of the matter, in my considered opinion, the learned Sessions Court has correctly come to the finding that the prosecution has failed to prove the case beyond reasonable doubt and hence, it was right in acquitting the respondent.

24. For the said reasons, I am of the view that the impugned judgment dated 26.04.2018 passed by the learned ASJ/Spl. FTC, North-West, Rohini Courts, Delhi in SC No. 225/2015 arising out of FIR No. 354/2015 registered at PS Subhash Place, whereby the respondent was acquitted under Section 376 of IPC, is well reasoned and does not require any interference.

25. For the said reasons, the leave to appeal is dismissed.

26. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

FEBRUARY 4, 2025/KG

Click here to check corrigendum, if any