



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Criminal Appeal No. 765 of 2022

[XYZ (Victim in Crime No. 244/2019 registered by P.S.O., P.S. Borgaon Manju, Tah. and District Akola) **vs.** State of Maharashtra through P.S.O., P.S. Borgaon Manju, Tah. and Distt. Akola and anr.]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Smt. S. P. Giratkar, Advocate for the appellant – victim
Ms. R. V. Sharma, A.P.P. for the State/respondent no. 1
Mr. N. D. Dawda, Advocate instructed by Mr. A. M. Jaltare,
Advocate for respondent no. 2

CORAM: **ANIL L. PANSARE AND**
NIVEDITA P. MEHTA, JJ.

DATE : **05-01-2026.**

Heard.

2. The appellant, who is victim of the crime, has filed appeal under Section 372 of the Code of Criminal Procedure, 1973. While issuing notice on 11-11-2022, this Court (Coram : Vinay Joshi and Mrs. Vrushali V. Joshi, JJ.) was pleased to pass following order.

“This is an appeal of the victim challenging order of acquittal dated 02/09/2022 passed in Sessions Case No. 15 of 2020 by which the respondent No.2 has been acquitted for commission of offence punishable under Section 376(2)(n), 417 and 506 of the Indian Penal Code.

2. *The learned counsel for the appellant victim took me through the evidence of prosecutrix to impress that the accused has sexually exploited her under the false promise to marry.*

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3. *It reveals that the victim was well educated, major lady aged 27 years old. Having regard to the said fact, we find it appropriate to hear the respondents before grant of leave.*

4. *Issue notice to the respondents, returnable on 12/12/2022. Learned APP waives notice on behalf of respondent No.1 State.”*

3. Thus the argument of appellant/prosecutrix is that respondent no. 2 – accused has sexually exploited her under the false promise to marry. The Court has noted that the victim was well educated, major lady aged 27 years old and, therefore, it was necessary to have a detail hearing before granting leave to file appeal.

4. Accordingly, we have heard both sides and have gone through the relevant material.

5. Evidence of appellant – victim indicates that she met respondent no. 2 in May, 2016. They were in relationship. In Diwali Festival, 2016, they indulged into sexual activity. The victim deposed that she denied to have sexual intercourse but respondent no. 2 proceeded forcibly. She was intending to lodge reporting but respondent no. 2 said that they are going to marry each other. Thereafter both indulged into repetitive sexual intercourse. Later on, appellant came to know that respondent no. 2 got engaged with another girl. Thereafter she lodged report.

6. In the cross-examination, she deposed that prior to lodging report against respondent no. 2, she

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had earlier lodged report against him, his father, his two sisters and their husbands. She further deposed that after lodging earlier report, she continued to talk to respondent no. 2. It is then brought on record that while opposing the application filed by respondent no. 2 seeking anticipatory bail, she had not alleged in the earlier report that respondent no. 2 has committed sexual intercourse. She admitted that in the conversation on mobile, respondent no. 2 informed her that he never promised to marry her. She further admitted that respondent said that he had never committed sexual intercourse with her. She admitted said fact in the conversation also.

7. Thus, it appears that there was consensual relationship. The evidence is, otherwise short of ingredients of forcible sexual intercourse.

8. The trial Court has considered the evidence in detail and rendered following findings.

“8 It reveals from the allegations of the FIR Exh.19 that the victim-prosecutrix is well qualified young lady of 24 years old during the relevant period. She obtained her Engineering Degree in the faculty of Computer Science and got job in Municipal Council office, Pen, District Raigad. It was happened somewhere in 2016. Simultaneously she came into contact with accused through her Facebook account and through mobile chatting. They developed their friendship which resulted into their love affair. It is her case that during Deewali festival 2016 accused visited her when she was alone in the

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house he obtained her consent for sex saying that they are going to marry in short future. These allegations of the FIR leads me to pose a question to see as to whether it was consensual sex between the parties or on the pretext of false promise of marriage or whether he has committed forceful intercourse with the victim in spite of her protest. The prosecution came with two fold story through the evidence of victim-prosecutrix. No doubt, she has stated depicted version of her allegations made in the FIR dated 19.7.2019. It is pertinent to note that said couple developed their love affair somewhere during 2016, it was continued upto lodging of report in the month of July-2019. In other words it can be said that the entire love story was long lasted upto more than three years. The accused succeeded in getting her favour for sexual intercourse repeatedly. She has admitted in her cross-examination that she did not oppose. strongly, as he used to give marriage promise in every visit.

9 *The learned counsel Mr. Ashish Deshmukh on behalf of defence denied the allegations of rape. To substantiate his defence of denial, he has placed reliance on the script of mobile chatting between the accused and the victim. The learned counsel succeeded in bringing on record that there was no sex between accused and the victim during the said period as per the admissions given by the victim in respect of her mobile chatting script. Moreover the earlier police report lodged with Murtizapur police station admitted by the victim-prosecutrix is another fatal blow to the story of forceful intercourse. The learned counsel rightly pointed out the allegations made in that earlier report in which there is not even any whisper regarding the alleged sexual intercourse committed by the accused. Moreover,*

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she has admitted this fact during her cross-examination before the Court. All these material admissions given by the victim herself leads me to draw an inference that this afterthought prosecution is launched belatedly after around three years, when the victim learnt that accused is going to marry with another girl.

10 *The father of the victim though supported the oral evidence of his victim-daughter, but he failed to explain as to why he has not reported the matter promptly on the same day evening when he learnt about the forceful intercourse committed with his daughter when she was alone in the house. This conduct of the father of victim appears to be unnatural. No doubt, he tried to explain that accused requested him not to report with police giving assurance of marriage. However, this fact has come on record by way of improvement. The learned defence counsel has rightly brought it on record by way of omission. Thus, the material evidence adduced by victim-prosecutrix and her father is suffering from reasonable doubts on point of implication of accused.*

11 *The medical evidence suggest nothing to establish sexual violence alleged to be committed on the victim. It is pertinent to note that the victim was examined after 478 days of the alleged last sexual intercourse. Therefore the concerned Medical Officer could not find any link to prove the forceful intercourse with the victim. It is true the old heeled hymen rupture at 6 'O' clock position is only the thing which can be linked with sexual violence. However, there are so many reasons behind rupture of hymen and this well settled fact is duly admitted by PW-4 Dr. Madhuri Dhakane. Therefore there is nothing on record to substantiate the bare words of forceful*

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intercourse. The C.A. report has also negated the prosecution story. Thus the evidence of Investigating Officer and the Panch witness on point of procedural investigation cannot be used as supporting corroborative evidence, when the evidence of victim herself is inconsistent and untrustworthy.

12 *It is admitted position that the victim was aging about 24 years old and the accused was more than that. Even if it is considered that there were incidents of sexual intercourse between them, then it can be labelled as consensual sex between two major persons. The learned counsel Mr. Deshmukh submitted that there was no question of marriage promise. On the contrary, the chatting script proves that no such promise was given by the accused. Even if it is considered, then every breach of promise to marry cannot be said to be either a cheating or rape. The relationship between victim and the accused appears to be of consensual sex. It can be derived from the facts and circumstances of this case. Our Hon'ble High Court dealt with such scenario in the case of **Mahesh Balkrishna Dandane Vs. The State of Maharashtra** reported in 2015 ALL MR(Cri)2805. Similarly, in the case of **Mandar Deepak Pawar Vs. The State of Maharashtra and Another in Criminal Appeal No(s). 442/2022**, it is held by Hon'ble Supreme Court that if the parties choose to have physical relations without marriage for considerable period and then the alleged marriage promise could not be materialized, then accused cannot be held for cheating to commit rape. The distinction was made between false promise to marriage which is given on understanding by the maker that it will be broken, whereas a breach of promise which is made in good faith but subsequently not fulfilled. This*

ratio is laid down in the context of section 375 Explanation II and section 90 of The I.P.C.

13 *In the case in hand, the relationship between accused and the victim was for more than three years. When accused engaged with another girl, then the prosecution is launched. Thus considering their sexual relations based on promise of marriage, it reveals that the victim-prosecutrix failed to prove that the intention of accused was bad to cheat her since inception of their relations. The prosecution failed to prove this two fold story either of forceful intercourse or the intercourse on the pretext of false promise. The required ingredients of alleged offence are not proved at all. The victim has tried to say that she could not file prompt report due to the threats given by the accused. However, it is surprising to note that while deposing before the Court, she has not even whispered about the specific threats given by the accused or the effect of his threats on her mind. The required ingredients of criminal intimidation are also not proved at all. Hence I have no hesitation to held that the charge levelled against the accused is not proved at all. With this conclusion I answer point nos. 1,2 and 3 in negative.”*

9. Thus, the trial Court has considered the evidence in detail and held that prosecution failed to establish the charge of rape, sexual intercourse on false promise of marriage or criminal intimidation. The trial Court also observed that the relationship between the accused and the victim was a long standing consensual relationship, lasting for more than three years. The evidence led before the trial Court showed that the victim, a major, had repeatedly consented to sexual

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relations and admitted in cross-examination that she did not strongly resist, as the accused allegedly assured marriage during visits. The victim's earlier police complaint did not contain any allegation of forceful sexual intercourse, which she admitted during cross-examination. The trial Court concluded that the first information report lodged after about three years appeared to be an after thought, filed only after the victim came to know that the accused was going to marry another woman. The Chemical Analyzer report and procedural evidence also did not corroborate the prosecution's case. Relying on precedents including ***Mahesh Balkrishna Dandane Vs. The State of Maharashtra reported in 2015 ALL MR(Cri)2805*** and ***Mandar Deepak Pawar Vs. The State of Maharashtra and Another in Criminal Appeal No(s). 442/2022***, the trial Court held that consensual sexual relations between adults, even if, based on promise of marriage that later fails, do not constitute rape, unless it is proved that the promise was false from the inception. The prosecution failed to prove such dishonest intention. Accordingly, the trial Court held that neither forcible intercourse nor intercourse on false promise of marriage was proved and the ingredients of criminal intimidation were also not established.

10. In our considered opinion, the view taken by the trial Court is a possible view and, therefore, no interference is called for in the impugned judgment. In other words, leave to file appeal is not warranted.

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Leave is accordingly refused. Appeal is disposed of.

(JUDGE)

(JUDGE.)

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