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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: April 09, 2025*

+ CRL.L.P. 341/2017

STATE

.....Petitioner

Through: Mr. Yudhvir Singh Chauhan,
Additional Public Prosecutor for State
with SI Mahesh Kumar P.S. Kalkaji

Versus

DEEPAK KUMAR PASWAN

.....Respondent

Through: Mr. Pankaj Srivastav, Advocate

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CRL.L.P. 341/2017 :**

1. Criminal Leave to Appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) has been filed on behalf of the State against the Judgment dated 30.08.2016 whereby Respondent *has been acquitted of the offences* by learned Additional Session Judge in case FIR No.638/2014, under Sections 376/506 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*), Police Station Kalkaji, New Delhi.

2. *Learned Additional Public Prosecutor for State* has submitted that there is cogent evidence of the Prosecutrix which is corroborated by her mother, to prove that sexual relationship was established by the



Respondent/accused under the false promise of marriage, which has not been considered by the learned Trial Court.

3. For the reasons stated, the Petition is allowed. Appeal be registered.

4. The Leave Petition is accordingly disposed of.

CRL.APPL.No. /2025 (To be numbered by the Registry)

5. The present Criminal Appeal under Section 378(1) Cr.P.C has been preferred against the Judgment dated 30.08.2016 *vide* which the Respondent has been acquitted for the offences under Sections 376/506 IPC in FIR No. 638/2014, registered at Police Station Kalkajee, New Delhi.

6. ***Briefly stated***, the case of the Prosecution is that the Prosecutrix gave a Complaint dated 25.07.2014 wherein she stated that she first met the Respondent in March, 2013 at Kalkajee Mandir. They exchanged their numbers and started talking to each other, which continued for one month. They then fell in love with each other and started meeting.

7. On the asking of the Respondent, she went to Tigri, from where the Respondent took her to a Hotel near his house at Khoda Colony, Ghaziabad, where he established physical relations with her. She claimed that thereafter, they had physical relationship a number of times at different places. During this period, she became pregnant twice but the Respondent gave her some medicine for her abortion. Thereafter, when she asked him for marriage, he stated that he would get married after some months. He also told her not to disclose about their relationship to any person or else they would not be able to get married and would be killed. This scenario continued for about one year but thereafter, the Respondent denied to marry her. The Complainant alleged that the last time they had physical relationship was in the month of



March, 2014.

8. On 20.07.2013 at about 02:00 PM, she went to the house of the Respondent where in front of his family members he assaulted, abused and threatened to kill her. He threatened her that he would get her lifted from her house and make her vanish.

9. On her Complaint, FIR No. 638/2014, under Section 376 IPC was registered at Police Station Kalkaji. After due investigation, Charge-Sheet was filed before the Court of learned Metropolitan Magistrate. ***Charge under Sections 376/506 IPC was framed on 15.10.2014, to which the Respondent pleaded not guilty.*** The prosecution examined 10 witnesses. The Complainant was examined as PW-6 and her mother was examined as PW-7.

10. PW-7 mother of the Prosecutrix deposed that on 20.07.2014 her daughter told her about her relationship with the Respondent and that he has refused to marry her. The Prosecutrix also disclosed to PW-7 that she had been given beatings, abuses and threat to be killed by the Respondent.

11. The learned ASJ *vide* detailed Judgment dated 30.08.2016 acquitted the Respondent under all the charges.

12. ***The Order of acquittal dated 30.08.2016 has been challenged by the State on the grounds*** that the Judgment is based on conjectures and surmises. It has not been appreciated that there was no animosity or vengeance against the Respondent and there was no reason for the Prosecutrix to implicate him falsely. There might have been minor contradictions in the testimony of the prosecution witnesses, but they could not a basis for acquittal of the accused. The minor contradictions and



improvements in the testimony, which do not affect the prosecution case, should not be considered as a ground for acquittal, as has been held by a Coordinate Bench of this Court in Mohd. Shahid vs. State, (2002) 7 AD (Delhi) 27.

13. Reliance has also been placed on Apex Court's decisions in State of UP vs. M.K. Anthony, (1985) 1 SCC 505 and Leela Ram vs. State of Haryana, (1999) 9 SCC 525 wherein it had been similarly observed that some minor details which do not otherwise affect the core of the prosecution case, must prompt the Court to reject the evidence of the witnesses.

14. The Complainant has been consistent in claiming that the consent was obtained by deceitful means of promise to marry. The MLC of the Prosecutrix clearly shows alleged history of physical relationship between the accused and the Prosecutrix, and that there was past history of abortion in February, 2014. It is also stated that the history of abortion is corroborated by the testimony of PW-9 Dr. Monika Gupta, Senior Department OBS and Gynaecology, AIIMS hospital.

15. The testimony of the Prosecutrix and other witnesses has not been appreciated in the right perspective. Section 90 IPC provides that there is no consent if the consent is given under fear of injury, misconception of fact and the person doing such act, knows or has reason to believe that the consent was given as a consequence of fear and misconception. It is, therefore, submitted that the impugned Judgment acquitting the Respondent, be set aside.

16. ***The Respondent in his Reply has submitted*** that the Prosecutrix in her Complaint has herself stated that they had been meeting and had



established physical relationship at different places, including a few Hotels, where she had furnished her ID proof, which clearly reflects that the relationship was consensual.

17. It is further contended that the Prosecutrix is absolutely silent as to why she did not stop her relationship with the Respondent after she became pregnant for the first time. Rather, she consented for abortion for the second time which clearly shows that there was no false promise to marry; instead relationship was established with her consent. Furthermore, had there been any promise of marriage, the Prosecutrix would not have got married immediately after registration of the FIR.

18. The Prosecutrix is a fully matured woman and she knew the implications of relationship with the Respondent before marriage and was aware that their relationship may not ultimately materialize into marriage.

19. It is further asserted that according to the Prosecutrix, she went to the house of the Respondent on 20.07.2014 at about 02:00 PM, where she was abused and severely beaten, but there is no explanation as to why she did not file the Complaint on the same day or why there was no other independent witness.

20. It is, therefore, submitted that the relationship between the Complainant and the Respondent was consensual. Reliance has been placed on Uday vs. State of Karnataka, AIR 2003 SC 1639 wherein it was held that if a full grown girl consents to the act of sexual intercourse on a promise to marriage and continues to indulge in such activities until she becomes pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact.



21. Similar observations have been made in the case of *Deepak Gulati vs. State of Haryana*, (2013) 7 SCC 675 that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may be circumstances when a person having the best intention is unable to marry the victim owing to various inevitable circumstances. 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 amount to misconception of fact.

22. Reference has also been made to decision dated 22.05.2013 in *Rohit Chauhan vs. State NCT of Delhi*, Bail Application No.311/2013, wherein it was observed that many times, a woman get into sexual relationship but when the relationship breaks for one reason or the other, she uses law as a weapon for vengeance and personal vendetta and sometimes even to force the boy to get married to her.

23. It is submitted that the learned ASJ has rightly acquitted the Respondent in a well reasoned Judgment and there is no merit in the present Appeal.

24. **Submissions heard and record perused.**

25. The star witness of the prosecution is the *Prosecutrix, who appeared as PW-6*. She herself stated in her testimony that she met the Respondent and became friendly with him; they exchanged mobile numbers and started talking which continued for a month. She has also deposed that thereafter they met in Khoda Colony, Ghaziabad from where they went to a Hotel and they made physical relations. Thereafter, they had many times, at different



places made physical relations. She became pregnant twice and the pregnancy was terminated by taking a medicine given to her by the Respondent. She further deposed that they entered into relationship on account of promise of marriage by the Respondent but after a year, the Respondent refused to marry her.

26. Pertinently, the Prosecutrix has admitted in her cross-examination that she used to talk to the Respondent on mobile phone, but did not produce the mobile on the pretext of her having lost the SIM card. She was also unable to give her mobile number. She was confronted with the mobile number as mentioned in the sheet mark D2 but she avoided answering by saying that she cannot say whose mobile number is mentioned on sheet mark D2. She admitted using WhatsApp and Facebook, which she claimed to have been created by the Respondent.

27. From these admissions of the Prosecutrix, it is evident that she and the Respondent, after becoming familiar with each other for a period of one month, voluntarily got involved in physical relationship. There was no coercion or force by the Respondent, as reflected from own admission regarding furnishing of her ID proof at the hotel on the ground that Respondent was having a Uttar Pradesh ID, which was not acceptable in the hotel.

28. Relevantly, the Prosecutrix herself has admitted that during the courtship period, she got pregnant twice and the Respondent gave her medicine for abortion. Despite this, the Prosecutrix chose to continue her relationship with the Respondent.

29. In the case of Uday, (supra), it has been observed by the Apex Court



that where the Prosecutrix, who is a grown up woman, claims to have a sexual relationship on the promise of marriage and she continues even though she becomes pregnant, it is an act of promiscuity on her part and not an act of inducement by misconception of fact.

30. In the present case as well, her assertion that there was a promise to marry, which prompted her to continue having sexual relationship with the Respondent, is clearly not tenable. Had there been any promise to marry, her first pregnancy could have raised the alarm bells for her to forgo and discontinue their relationship. Even thereafter, she got pregnant for the second time, and it was aborted apparently by taking medicines given to her by the Respondent.

31. These two pregnancies and consequent abortions were sufficient to have put the Prosecutrix to caution before continuing her sexual relationship with the Respondent. Clearly her conduct over a period of about one year, reflects that their relationship was consensual and not under the misconception of marriage.

32. In the case of Sonu @ Subhash Kumar vs. State of Uttar Pradesh, (2021) 18 SCC 517, the Apex Court has observed that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. A person who makes a reasoned choice to act after evaluating various alternative actions or inactions as well as the various possible consequence flowing from such acts, consents to such action. The false promise to marry and the intention of the maker at the time of making such promise with intent to decide the woman to engage her in physical relationship, would be a misconception of



fact that vitiates woman's consent. *However, mere breach of promise cannot be said to be a false promise.* In order to establish the falsity it has to be proved that the accused had no intention to marry since the beginning of the relationship.

33. The consent of a woman under Section 375 IPC is established if she chooses to engage in such acts. *She cannot claim herself to be under misconception of fact unless the evidence establishes that false promise itself bears a direct nexus to the woman's decision to engage in the sexual act.* In the present case, there is no such misconception of the fact as the Prosecutrix continued having physical relationship with the Respondent.

34. In the case of *Mahesh Damu Khare vs. State of Maharashtra*, 2024 SCC OnLine SC 3471 the Apex Court has held that where a person acts with an active understanding of the circumstances, actions and consequences of the fact, it would indicate the presence of consent.

35. In the present case, testimony of the Prosecutrix and her admission in the Complaint and the Cross-examination clearly establish that there was no misconception of fact or that her consent to sexual relationship had been obtained and continued under the false promise to marriage. Moreover, immediately after registration of the FIR, Prosecutrix got married to one, Sh. Nitin Mehra in April, 2014. The entire evidence clearly points out to the consensual relationship and the learned ASJ has rightly acquitted the Respondent of the Charge under Section 376 IPC.

36. The Prosecutrix further went on to state that when she had gone to the house of the Respondent on 20.07.2014 to confront him about the marriage, she was beaten, abused and threatened by the Respondent. Pertinently, the



Complaint for this incident was filed by the Prosecutrix on 25.07.2014 i.e. after five days, for which there is no explanation.

37. It has been rightly contended by the Respondent that neither there is any medical record nor any independent witness, to corroborate her assertions that she was beaten up or threatened by the Respondent. There being no cogent evidence on this aspect as well; the Respondent has been rightly acquitted of the offence under Section 506 IPC.

38. There is no merit in the present Appeal and it is accordingly dismissed.

39. The pending Application(s) are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 9, 2025

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