

Reserved

AFR

Court No. - 74

Case :- CRIMINAL APPEAL No. - 1382 of 2021

Appellant :- Harshvardhan Yadav

Respondent :- State Of UP And Another

Counsel for Appellant :- Vishal Jaiswal, Prem Narayan Singh

Counsel for Respondent :- GA, Avanish Kumar Srivastava

Hon'ble Pradeep Kumar Srivastava, J.

1. Heard learned counsel for the appellant, learned counsel for the respondent no.2 and learned AGA for the State and perused the record.

2. This criminal appeal has been filed by appellant **Harshvardhan Yadav** against the impugned order dated 25.02.2021 of learned Special Judge, SC/ST Act, Kanpur Nagar, passed in Bail Application No. 729 of 2021 (Harshvardhan Yadav vs State of UP), arising out of Case Crime No. 136 of 2020, under Section 376 IPC and Section 3(2)5 of SC/ST Act, P.S. Collectorganj, District-Kanpur Nagar by which bail application of appellant has been rejected.

3. Aggrieved by the impugned bail rejection order, the appeal has been filed under section 14 of the SC/ST Act. Impugned order has been challenged on the ground that the appellant is in jail since 26.11.2020 and there is no criminal history of the appellant. He has academic career and he was preparing for competition. On the basis of absolutely false allegation, the FIR has been lodged against him. No sign of rape has been found in the medical examination of the victim. During the investigation, the manager and waiter of the hotel gave statements to the Investigating Officer under Section 161 Cr.P.C. and have denied the alleged incident. They have stated that on that date in the morning at 7:30 both appellant and victim came in

the hotel and disclosed their identity as husband and wife and demanded a room and the same was entered in the hotel register. They stayed there for about two and half hours. They had given their adhar card. From CCTV camera a pen drive was also prepared and was handed over to the Investigating Officer. The victim is educated lady and she is working as police constable in the UP Police and she was knowing the appellant since she was studying in a coaching with the appellant. The FIR has been lodged for the purpose of blackmailing and forcing the appellant for marriage. There is delay of about 17 hours in lodging the FIR. There is no eye witness of the alleged incident while the hotel is a public place. In the hotel, they have mentioned themselves as husband and wife. There is no question of rape committed by the appellant and there is all possibility in the circumstances of the case that she voluntarily consented for the relationship and there was no misconception of fact to her. Therefore, no case of rape is made out against the appellant and without proper investigation, IO has submitted charge sheet against him. The appellant and opposite party no.2 developed their relationship with the consent of each other and he never committed rape. Learned Session Judge has rejected the bail application and the impugned order is illegal, arbitrary and passed without applying judicial mind. He has not properly considered the material evidence available on record. In such circumstances, the learned Special Judge has committed error and illegality in rejecting the bail application and impugned order is liable to be set aside.

4. Counter Affidavit has been filed by the state and it has been submitted that the learned special judge has after considering all the material on record has passed a legal order and there is no infirmity in the impugned order. After investigation, charge-sheet has been filed against him. The victim is a police constable and belongs to scheduled caste. The appellant-accused himself called her in the hotel to finalize marriage talk and in the hotel-room committed rape on

her. On the same day she lodged the FIR. She has supported the FIR version both in her statements given to IO under section 161 and to the magistrate under section 164 Cr.P.C. Therefore, the fact of rape committed by the appellant is fully corroborated. There is no defect or illegality in the impugned order and the appeal is liable to be dismissed.

5. The learned counsel for the appellant-accused has argued that the victim is a matured lady, a constable, and she willingly went to the hotel to meet the appellant. They knew each other from their coaching time and had friendly relationship. No rape was committed on her and it was a consensual act. It is why nothing has been found in the medical. She did not raise alarm nor she anyway made any resistance. It has been also contended that both went to hotel and it was a consented sex on the part of the respondent as she was in love with the appellant.

6. In the support of his contentions, the learned counsel himself referred to the decision in **Dhruvram Murlidhar Sonar v State of Maharashtra, AIR 2019 SC 327** and has also laid emphasis on the judgments on the point such as **Uday v State of Karnataka, (2003) 4 SCC 46**, **Dilip Singh alias Dilip Kumar, (2005) 1 SCC 88**, **Deepak Gulati v State of Haryana, (2013) 7 SCC 675**, a reference of which has been made by the Supreme Court.

7. In **Uday (supra)**, the victim was aged about 19 years and had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The relation continued and she became pregnant. A complaint was lodged on failure of the accused to marry her. The Court found on record that the victim was a grown-up girl studying in a college; she was deeply in love with the accused; she knew the fact that since they belonged to different castes, marriage was not possible and was bound to be seriously opposed by their family members; she had

sufficient intelligence to understand the significance and moral quality of the act she was consenting to; she kept it a secret as long as she could unless she got pregnant and she did not resist the overtures of the accused. The Court was of the view that she freely exercised a choice between resistance and assent and she must have known the consequences of the act and therefore, it was held that consent cannot be said to be given under a misconception of fact and that she freely, voluntarily and consciously consented to having sexual intercourse and her consent was not in consequence of any misconception of fact.

8. In **Deelip Singh alias Dilip Kumar (supra)**, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day, the accused forcibly raped her and later consoled her by saying that he would marry her. She, on account of the promise made by him to marry her, continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her. The Court held that the girl had taken a conscious decision to continue in relationship after active application of mind. There is no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. But, there was no evidence to give rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. The Court took the view that it was a case of breach of promise to marry rather than a case of false promise to marry and suitable action is claim for damages.

9. In **Dhruvram Murlidhar Sonar (supra)** the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health

centre and was a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belonged to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. The Court, on fact, did not find any force in the plea of rape and observed:

“It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape.....”

10. I have deeply gone through the aforesaid judgments as referred by the learned counsel for the accused-appellant. It is pertinent to mention that the facts in all the above cases are similar to the extent that there continued prolonged relationship between both sides and it was one of the prominent reason that the plea of rape was not accepted. Needless to mention that the case in hand pertains to single act of sexual intercourse and the FIR has been lodged on the same day. The fact that the informant and the accused stayed as husband wife as stated by the hotel staff is meaningless as the informant had stated to the magistrate in her statement under section 164 and also

the IO and in the FIR itself that when she reached there, the accused was already present who took her in the hotel and committed rape on her. The fact of rape has been stated by her to the doctor who conducted medical. In the situation, there appears to be hardly any delay as the FIR has been lodged on the same day and it is natural that after the incident, as the rape was committed by a person who had promised to marry her and creating emotional pressure committed rape on her. The delay of 17 hours in lodging FIR is insignificant as this much of time is natural to take a decision to lodge FIR against a person with whom she was planning to marry. The argument that in the medical, no sign of rape was found is meaningless in such kind of cases.

11. It has been argued by the learned counsel for the appellant that it was an act for which the informant had given consent and there was no occasion for misconception of fact. Section 90 IPC defines consent known to be given under “fear or misconception” and it says that if the consent has been given under fear of injury or a misconception of fact, such consent obtained, cannot be construed to be a valid consent. Section 90 of the Indian Penal Code reads as under:

“90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or [Consent of insane person] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or [Consent of child] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

12. I have also found that the Supreme Court has also considered several times, in several judgments, the amendment made in the

Indian Evidence Act by adding Section 114-A in the Evidence Act. Section 114-A of the Evidence Act provides as follows:

“Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

13. In **Yedla Srinivasa Rao v. State of A.P. (2006) 11 SCC 615**, as per the prosecutrix, the accused used to come to her sister's house in between noon daily and asked her for sexual intercourse with him. She always refused to participate in the said act but the accused kept on persisting and persuading her. She resisted for about 3 months. On one day, the accused came to her sister's house at about 12 noon and closed the doors and had sexual intercourse forcibly, without her consent and against her will. When she asked the accused as to why he spoiled her life, he gave assurance that, though his parents were not agreeing for the marriage, he would marry her and asked her not to cry. It was found that on the basis of his assurance, sexual intercourse between them continued and he kept on assuring that he would marry her. When she became pregnant, she informed about the pregnancy to the accused. He got certain tablets for abortion but they did not work. When she was in the third month of pregnancy, she again insisted for the marriage and the accused answered that his parents are not agreeing to it. Panchayat of elders took place and they both and their family members were present. The accused admitted about his contacts with the prosecutrix causing pregnancy. The accused asked for two days time for marrying the prosecutrix and the Panchayat accordingly granted time. But after the Panchayat meeting the accused absconded from the village and when the accused did not fulfill his promise which was made before the Panchayat, the

prosecutrix lodged the complaint.

14. Considering the aforesaid facts and after taking into account Section 90 of the IPC, the Court convicted the accused for the offence under Section 376 of the IPC. While convicting the accused, the Supreme Court remarked that *“the prosecutrix had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused. Had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse.”* The Court, therefore, observed:

“It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent.”

15. In reaching to the above conclusion, a reference was also taken by the Court to the addition of new section by way of amendment in the Evidence Act in the form of Section 314-A by which the presumption has been raised as to the absence of consent in certain prosecutions for rape. Thereafter, the Supreme Court held:

“If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women”

16. The Supreme Court, in **Deepak Gulati Vs State of Haryana**, (2013) 7 SCC 675, considered the meaning and scope of consent and promise to marry and observed as under:

“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.”

17. Thus, the law has been settled that if consent is given by the prosecutrix under a misconception of fact, it is vitiated. In **Kaini**

Rajan v State of Kerala, (2013) 9 SCC 113, explaining the essentials and parameters of the offence of rape, the Supreme Court observed:

“Section 375 IPC defines the expression “rape”, which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

18. In **State of UP v Naushad, (2013) 16 SCC 651**, the Supreme Court reversed the acquittal by the High Court and convicted the accused for the offence under section 376 of the IPC. In this case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, the Court took the view that it was evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as

he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 IPC. Thus, the alleged consent said to have been obtained by the accused was not voluntary consent and the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It was remarked by the Court that, apparently, the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. Therefore, the Supreme Court held:

“In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 IPC. Thus, the alleged consent said to have been obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix.”

19. The Court pointed out that Section 376 IPC prescribes the punishment for the offence of rape. Section 375 IPC defines the offence of rape, and enumerates six descriptions of the offence. The description “secondly” speaks of rape “without her consent”. Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape. Therefore, it was held:

“If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW 1, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.”

20. Even in the case of **Dr. Dhruvaram Murlidhar Sonar (supra)**, upon which reliance has been placed by the learned counsel appearing on behalf of the accused-appellant, the Supteme Court has observed that there is a clear distinction between rape and consensual sex and, in such cases, it must be very carefully examined whether the complainant 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 later falls within the ambit of cheating or deception. The Supreme Court after referring to various decisions has observed as follows:

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The

acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.”

21. It has been settled view that the question whether consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under "misconception of fact" depends on the facts of each case. While considering the question of consent, the Court must consider the evidence before it and the surrounding circumstances before reaching a conclusion. Evidence adduced by the prosecution has to be weighed keeping in mind that the burden is on the prosecution to prove each and every ingredient of the offence. Prosecution must lead positive evidence to give rise to inference beyond reasonable doubt that accused had no intention to marry prosecutrix at all from inception and that promise made was false to his knowledge.

22. In **Anurag Soni v State of Chhattisgarh, AIR 2019 SC 1857**, the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had physical relationship with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady, she and her family members would continue to pressurize the accused to marry and the prosecutrix will give the consent for physical relation. Even considering Section 114A of the Evidence Act which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. From the very inception, the promise given by the accused to marry the prosecutrix was a false promise

and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship.

23. The Supreme Court after having discussed the law on the point held as follows:

“The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.”

24. In this instant case before this Court, the FIR has been lodged by the victim herself and she had admitted that she and appellant both were acquainted with each other since they were attending a coaching class in Kanpur. The appellant-accused got a job in SSGCGL and from last one month he was regularly talking to her on phone promising her to marry. On the date of incident, while she was going to Kanpur on casual leave, he called her in Krishna Galaxy Hotel to talk to her about documents with regards to court marriage. She reached there where the accused was already present. There, in the hotel room after talking sometimes about court marriage, he tried to have physical relationship with her, and on her resistance, forcibly committed rape on her. When she shouted, he started abusing and humiliating her by using caste related words. She lodged FIR on the same day. She has supported her version in her statement under section 161 and 164 Cr.PC.

25. It appears to have been admitted by the accused-appellant in the memo of appeal, particularly in para 20, that the sexual intercourse took place between them on that day in the hotel-room and the respondent no. 2 was a consented party. Para 20 reads as follows:

“.....it is a case of consent and the opposite party no. 2 never resist the overtures of the appellant and they both were known to each other since long. Hence all these circumstances leads conclusion that the opposite party no 2 freely, voluntarily and consciously consented to having sexual intercourse with the applicant”

26. According to accused-appellant, the victim was in love with him. Both belong to different caste and the victim was fully aware that their marriage was not possible and in any event marriage proposal would be seriously opposed by family members. He has been falsely implicated to blackmail and create pressure on him for marriage.

27. In the above context the matter needs to be examined. It has been clearly mentioned in the FIR that the accused had called her for talking in relation to preparation of document for court marriage. She was not staying in the hotel and she reached there in the morning after overnight journey. The timing is also significant. It has been nowhere stated by the appellant that they both had sexual intercourse earlier also. This shows that this was the first and single act of sex. This cannot be said that after overnight journey, she reached in the morning in the hotel for this purpose or having any such impression. She was in love and there was family hurdle in their marriage as mentioned by the appellant-accused, and therefore, it looks natural that she went to hotel as the appellant wanted her to come for a talk for preparation of document for court marriage. Nowhere, it has been said by the appellant that he is still willing to marry with the respondent no. 2. This shows that he was making false promise of marriage and on the pretense of preparation of document for court

marriage, he called her in the hotel. Needless to mention that false marriage promise is and always, in the major part of our society, has been an effective tool of mischievous males for creating emotional pressure on a woman for doing sex. There is a clear distinction between rape and consensual sex and in a case like this it is apparent from the facts and circumstances that the accused had actually never wanted to marry the victim and had mala fide motives, and had made a false promise to marry only to satisfy his lust, and this certainly falls within the ambit of cheating and playing deception to obtain consent for sex. Therefore, the argument of the learned counsel for the appellant that the respondent was a consented party in the incident has no legal or factual base.

28. In **Anurag Soni (supra)**, the Supreme Court, has also expressed its concern on such tendency increasing in the society in following words:

“Such incidents are on increase nowadays. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity.”

29. Rape is considered as the most physically and morally reprehensible crime in a society and has a long life effect on the mind of victims. The victim has to go through a serious emotional trauma and physical suffering. Sexual intercourse with the victim on the pretext of false promise to marry is, and ought to be a an offence of rape under the penal provisions. It is becoming a phenomenon that

the accused makes a false promise of marriage with the mala fide intention to deceive the victim. For the major women population in our society, promise of marriage is a great allurements and they are trapped in a situation which results in their sexual abuse and exploitation. These cases are increasing day by day as the accused person believes that they will escape from the criminal liability and punishment taking advantage of law.

30. Therefore, in the light of above discussion, it is necessary for the legislature to provide a clear and specific legal framework to deal with the cases where the accused obtained consent for sexual intercourse on the false promise of marriage. But till such law is enacted, the court should take into consideration the social reality and reality of human life and continue giving protection to such women who have suffered on account of false promise of marriage. Unless there is prolonged relationship which raises a strong inference of consensual sex, in other cases, particularly, in cases of single act of sexual intercourse as is the case in the present case, or relationship for a short time, persuaded by false promise of marriage or where circumstances show that the accused never intended to fulfill the promise or he could not be able to fulfill the promise on account of factors such as the accused was already married, he disclosed wrong identity, name, religion and other details to play deception to obtain consent for sexual intercourse, or the like. Obtaining consent for sexual relationship by false promise of marriage should be termed as consent given under misconception of fact and must amount to rape. The court cannot become a silent spectator and give license to those who are trying to exploit the innocent girls and have sexual intercourse with them on the pretext of a false promise of marriage. This feudal mind set and male 'chauhanism' that women are nothing but an object of enjoyment is required to be rigorously addressed and strictly dealt with in order to create a healthier society and to increase a sense of security and protection in the mind of women. And, this is

emphasized that this is the responsibility of all the democratic institutions in the country, more so because, all the women protective laws against all forms of sexual exploitation and abuse have been enacted to make the constitutional goal of gender justice a social reality.

31. Certain facts emerging from the record, in this instant case, are relevant and required to be considered and they are that the prosecutrix and the accused were known to each other; the accused promised to marry her; he continued to talk for marriage with the prosecutrix and continued to make promise of marriage to her; that while the informant was going by train to Kanpur on leave the appellant expressed his wish telephonically to meet with her for preparing documents for court marriage and responding to that she went to the hotel where the accused was staying; that during her stay in hotel room, the accused made sexual relation despite her resistance preventing him and saying that don't do before marriage, he forcibly made sexual relation; there was promise to marry, and admitted fact is that the appellant did sexual intercourse; it was first and last and single act of intercourse between them and the FIR version is and as per statement given by the informant/victim that immediately after the accused did so, he refused to marry, humiliated and abused her by caste related words saying that she is of SC community, nobody will marry her nor she has status to marry him; there is no mention in bail application or memo of appeal that he is still willing to marry with her. All these facts and circumstances go to show that the appellant made a false promise of marriage to the victim and the same was false from very inception and he never intended to fulfill his promise of marriage and the same was with mala fide and with motive to allure and emotionally pressurize her for sex. Once he succeeded in his object, he humiliated the victim, abused her by caste related words as she belonged to SC community, broke the relationship and signified his intention by his conduct and

words that he never intended to marry her and subsequently also, he never conveyed her that he is willing to marry her. Therefore, I am firmly of the view that the appellant-accused does not deserve any sympathy.

32. In view of above discussion, I find that the learned Special Judge (SC/ST Act) has considered every aspect of the matter and rejected the bail application of the appellant-accused. There is no illegality in the impugned order. Therefore, the criminal appeal is liable to be dismissed.

33. The Criminal Appeal is **dismissed**.

Order Date :- 03.08.2021

Mini

(Justice Pradeep Kumar Srivastava)