

HIGH COURT ALLAHABAD**Bench: Justices Rahul Chaturvedi and Ms. Nand Prabha Shukla****Date of Decision: 30th May 2024**

CRIMINAL APPEAL No. 4849 of 2024

Informant/VictimAppellant**Versus****State of U.P. and AnotherRespondents****Legislation:**

Sections 323, 504, 506, 376 of the Indian Penal Code (IPC)

Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

Section 14(A)(1) of the SC/ST Act, 1989

Section 372 of the Code of Criminal Procedure (Cr.P.C.), 1973

Subject: Criminal appeal challenging the acquittal of the respondent for the charges under Sections 376, 504, 506 IPC and Section 3(2)(v) of SC/ST Act by the Additional Sessions Judge, SC/ST Act, Court No.14, Prayagraj.**Headnotes:**

Criminal Law – Appeal against Acquittal – The appellant, informant/victim, challenged the acquittal of the respondent by the Additional Sessions Judge, SC/ST Act, for charges under Sections 376, 504, 506 IPC, and Section 3(2)(v) of SC/ST Act, while convicting him only under Section 323 IPC and awarding six months S.I. with a fine of Rs. 1000/- – The High Court re-examined the evidence and found no reason to interfere with the trial court’s judgment – Emphasized the distinction between false promise and breach of promise in the context of consent for sexual relations – Upheld the trial court’s view that the relationship was consensual and the prosecutrix failed to provide medical evidence supporting the allegations of rape [Paras 1-39].

Burden of Proof – Section 90 of IPC – Clarified that the prosecutrix's consent obtained under a misconception of fact must be closely proximate in time to

the occurrence – The long duration of the relationship and lack of immediate complaint indicated that the consent was not obtained under fear or misconception [Paras 17-20, 27].

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act – Applicability – Court noted the prosecutrix initially concealed her caste and projected herself as belonging to the Yadav community – Found no substantial evidence of caste-based atrocities during the course of the relationship [Paras 29-30].

Decision: Appeal dismissed – Conviction and sentence under Section 323 IPC affirmed – Acquittal under Sections 376, 504, 506 IPC and Section 3(2)(v) of SC/ST Act upheld [Para 40].

Referred Cases:

- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681
- State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382
- Anurag Soni v. State of Chhatisgarh, AIR 2019 SC 1857
- Maheshwar Tigga v. State of Jharkhand, 2020 (10) SCC 108
- Bannareddy and others v. State of Karnataka and others, (2018) 5 SCC 790
- Jayamma v. State of Karnataka, 2021 (6) SCC 213
- Virendra Singh v. State of UP and others, 2022 (3) ADJ 354 DB
- Rajesh Prasad v. State of Bihar and another, (2022) 3 SCC 471
- Mallapa and others v. State of Karnataka

Representing Advocates:

Ashutosh Mishra, Kripa Kant Pandey for appellant

G.A. for respondent

JUDGEMENT

1. Heard Sri Ashutosh Mishra, Sri Kripa Kant Pandey, learned counsel for the appellant and Learned AGA for the State.

2. The instant appeal is under Section 14(A)(1) of the SC/ST Act 1989 read with Section 372 Cr.P.C. spear headed against Judgement and Order of

acquittal dated 08.02.2024 passed by Additional Sessions Judge, SC/ST Act, Court No.14, Prayagraj, whereby learned Sessions Judge while deciding SST No. 15(706) of 2020 (State Vs. Madan Yadav) arising out of Case Crime No. 1008 of 2019 under Section 323, 504, 506 and 376 IPC and Section 3(2)(V) of SC/ST Act, P.S. Colonelganj, District Prayagraj have convicted Madan Yadav only under Section 323 IPC and awarding six months S.I. and Rs. 1000/- fine only acquitting him from all the serious charges under Section 376, 504, 506 IPC and Section 3(2)(v) of SC/ST Act.

3. Aggrieved by the aforesaid Judgement and Order the prosecutrix/victim of Case Crime No. 1008 of 2019 is proposing to invoke the powers of this Court under Section 372 Cr.P.C. read with Section 14(A)(1) of SC/ST Act, with the following prayer:-

“It is therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to allow the present criminal appeal against the acquittal of the opposite party no.2 and set aside the judgement and order dated 08.02.2024 passed by the Additional Special Judge (SC/ST Act), Court No.14, Prayagraj in Sessions Trial No. 15(706) of 2020 (State of U.P. Vs. Madan Yadav) arising out of case crime no. 1008 of 2019 under Section 323, 504, 506, 376 IPC and Section 3(2)(v) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Colonelganj, District Prayagraj, whereby the accused/opposite party no.2 has been acquitted for the offence under section 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has only awarded lessor conviction under section 323 of IPC for six months simple imprisonment along with fine of Rs. 1000/- and in default of fine one months additional convict and sentence the opposite party no.2 as according to law.

And/or pass such other and further order as this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.”

4. We have heard Sri Ashutosh Mishra and Sri Kripa Kant Pandey, learned counsel for the appellant to their satisfaction and learned AGA for the State and perused the impugned Judgement and Order.

5. After hearing learned counsel the appellant on the admission, we are proposing to decide the appeal at this stage itself.

6. Before coming to the merit of the case, it is imperative to give a bare skeleton facts of the case, so as to appreciate the controversy in its correct perspective.

7. The accused-respondent Madan Yadav is a charge sheeted accused under Section 323, 504, 506 and 376 IPC and Section 3(2)(V) of SC/ST Act.

8. Vide Ext. (Ka-1) an application was given by the Prosecutrix to SSP, Prayagraj, that during her educational days, she met with Madan Yadav in the year 2014. On the pretext of helping her in her studies and providing notes etc. they developed certain amount of intimacy. During passage of time, this relationship have crossed all the limits of decency and they got involve in pre-marital sex with each other. Not only this, for the purposes of helping her studies, the accused often call her to 'Yadav lodge', Laxmi Chauraha, Allahabad for 2-3 days and thereafter leave her. As per prosecution story, during this time he has extended promise that he would marry her. Meanwhile, for the purposes of education, she left to Lucknow, and has taken admission in some other University. Even then, Madan Yadav came to Lucknow and called her to 'Nayan Atithigrih' and 'Hotel Katiyar International' near PGI, Lucknow and have a sex with her. In the year 2018, Madan Yadav got a service in C.M.P. Degree College, Allahabad. Thereafter, there was a change in his behaviour and attitude qua her. On 17.10.2019, when she reached to C.M.P. Degree College to meet Madan Yadav, then he candidly informed her that he would not marry her. Now, he is a Faculty in the said Degree College and committed *maar-peet* with her. Dr. Prahlad was aware of their relationship. On 05.11.2019 when she visited to Madan's place then Madan and his mother pushed her derogatorily and told her that they are 'Yadav' by caste and you are 'Chamar (Scheduled Caste)' and they would not permit her to even enter in her house. Thereafter she tried to pacify the situation and both of them met in Azad Park for 2-3 hours, where he keep on scolding her and uttered filthy 'caste related abuses' to her.

9. The aforesaid factual story was given by her to SSP, Prayagraj against Madan Yadav and his mother with a prayer to lodge an FIR under the appropriate section of the IPC and SC/ST Act may be ordered. Accordingly in the G.D. Entry no. 35 on 18.11.2019 was registered at 14.29 hours.

10. After registering the case the police investigated the matter and has jotted down her 161 Cr.P.C. and 164 Cr.P.C. statement of the prosecutrix and thereafter holding indepth probe into the matter, charge sheet was submitted

against 'Madan Yadav' only dropping the name of his mother from the charge sheet.

11. Being the cognizable offence specially relates to the SC/ST Act, the case was committed to the Special Judge, SC/ST Act on 28.01.2020 and the learned Trial Judge on 14.02.2020 has framed the charges under Section 376, 504, 506, 323 IPC and Section 3(2)(V) SC/ST Act.

12. In order to substantiate the allegations the prosecution has produced following witnesses whose oral testimonies were recorded supporting the prosecution story. They are :-

- (I) PW-1/The victim/informant herself
- (II) PW-2/Gyan Chandra Maurya witness of fact
- (III) PW-3/Arun Kumar witness of fact
- (IV) PW-4/Dr. Pallavi Pandey, doctor who examined the victim
- (V) PW-5/Head Constable Sharda Prasad, who is witness of Chick and G.D. Entry and lastly
- (VI) PW-6/ACP Satyendra Prasad Tiwari.

13. In addition to this number of documents, original tehrir, 164 statement of the prosecutrix, Ext Ka-3 (Medical Examination Report), Ext. Ka-5 Chick FIR, Ext. Ka-7 Charge sheet etc. etc. are the documents which were produced to support the prosecution case.

14. After the prosecution witnesses were over, the accused was called upon to record his statement under Section 313 Cr.P.C., who broadly denied the prosecution case and have submitted that on the aid and advise of her counsel she has cooked up a false story with malicious intention to rope him in the heinous offence of rape. The entire prosecution story is purposive and in order to blackmail him. He further states in his 313 Cr.P.C. statement that in the year 2016 he was engaged as Lecturer in Economics in Raghuvar Dayal Pathak Inter College and the prosecutrix met her and concealing her caste and projecting herself as 'Yadav' by caste, sought a support and cooperation in her studies. She was having different design in her mind, having a malicious intention and she has made an offer to marry accused-respondent.

In order to establish the defense version the accused-respondents has produced DW-1 Saurabh Singh, DW-2 Bihari, DW-3 Kamlesh Kumar, DW-4 Kamla Chandra Gautam, DW-5 Atul Srivastava, DW-6 Hari Shankar Yadav and DW-7 Manjeet Yadav @ Panna Lal.

In addition to above, number of other documents establishing the real identity and the caste of the prosecutrix were produced to establish the fact that she has conceal her real caste and projected herself that she belongs to the 'Yadav Community' to develop the relationship. The prosecutrix is a notorious lady wants to drag the accused-respondent in a vicious web of sexual offence against the accused-respondent.

15. Thus, the long and short of the prosecution case that on the false pretext of marrying her, a consent was extracted from the victim/prosecutrix by accused-respondent. Since the consent extracted was not a free consent and in fact, it was on false pretext of marrying her. As per prosecutrix, the accused-respondent was not sincere with this relationship and he was using the victim as toy or tool to quench his lust, thus his this action qua her would term as Rape. In addition to above, the prosecutrix was insisting to marry her but the accused respondent hurled the filthy abuses related to her caste in a derogatory way and committed *maar-peeet*, thus it was prayed that accused-respondent should be suitably punished for the offence under Section 376 IPC and section 3(2)(v) of SC/ ST Act.

16. Per contra the defense has submitted that for the first time the incident has taken place in the year 2014 and the FIR was registered after inordinate delay of five years in the year 2019. In fact the accusedrespondent was trapped in a 'Honey-Trap'. In-fact, he was under the constant threat of lodging of false FIR since 2014 itself. The prosecutrix use to blackmail her and demanding illegal money from him. In fact the accused-respondent is a victim of nefarious design of prosecutrix. It is further submitted that the prosecutrix herself projected to be a 'Yadav' by caste and maintain the relationship. Both of them are major started living together in a live-in relationship, but after coming to know her real caste, which is one of the major consideration to marry, he declined to marry her. Then she has woven an imaginary and false story of rape upon her by the accused-respondent. In fact, this relationship is out of sweet & free will which lasted up to 5 good years. As mentioned above, both of them are major and knowing fully well the far-reaching repercussion of premarital sex, they maintain the relationship for five good years without any hesitation, objection or resistance. There is nothing to attract the

provision of SC/ST Act. The prosecutrix herself declined to have an extensive medical test, so as to substantiate the allegation of rape upon her. The charge sheet submitted by the police after holding the superficial and perfunctory investigation without lifting the veil of the prosecutrix and her ulterior motive.

Assessment Of The Allegation In View Of Medical Evidence:-

17. PW-4 Dr. Pallavi Pandey, deposed in her testimony, that on 22.11.2019, she was posted as E.M.O., Women Hospital and the prosecutrix was brought before her around 11.00 in the day by Constable Sunita Pandey. After conducting her primary external examination of the prosecutrix viz: about her identification mark and monthly cycle etc. etc. Not only this the prosecutrix maintain her sexual relationship with accused-respondent after using 'condom', a male contraceptive. Meaning thereby she was conscious of the fact that that she should not conceive and therefore she insisted her male partner to use male contraceptive. She told to the doctor that she maintain the physical relationship with accusedrespondent Madan Yadav at number of occasions as she was having a friendly relationship since 2014 and both of them have decided to marry but when Madan Yadav got a service in the C.M.P. Degree College then there is a change in his attitude and behaviour qua her.

18. Surprisingly, she did not permit her to have an internal pathological examination nor has given any pathological sample. When Dr. Pallavi Pandey was put for cross examination by the defence, then she candidly states that the protectrix has declined to get her internal examination or pathological examination and not even for the x-ray examination. When the doctor have insisted to carry out the aforesaid examination, she has refused to do so after putting her signature and the date over it. Under such circumstances, the doctor is not in a position to give any candid opinion that she was ever subjected to ant sexual offensive against her by the accused-respondent as alleged. It is also suggested that by not permitting her to carry out the aforesaid tests and examination the victim deliberately wants to hide something very substantial which touches the core issue.

To, have internal medical examination is an integral part of investigation and the its absence the prosecution looses its credibility considerably.

The interesting feature, is that the prosecutrix gave a strange explanation that since her brother was kidnapped by the accusedrespondent and he was in the constant threat, that is the reason behind, she has never

admitted herself for any desired medical examination. She further states that accused-respondents have extended threat to her that if she admit herself for the medical examination, her brother would be eliminated. In order to save the life of her brother, she has declined to get herself for any medical examination. She admits that she has never permitted herself for any internal medical examination.

The interesting feature, is that there is nothing on record to establish this flimsy allegation that her brother was kidnapped by the accusedrespondent and on this score she has denied for any medical examination. No complaint, written or oral to the local police official is on record to indicate that she or her brother is under threat, that's reason for avoiding internal medical examination.

In this circumstances, when there is no medical report with regard to the alleged allegation of serious sexual offensive against her by the accused-respondent goes, unsubstantiated in the absence of medical examination report. The explanation is a vain attempt on the part of the victim prosecutrix to cover up and hide something substantial which touches the core issue.

19. In paragraph 16.5 of the impugned judgement attained significant, in which it has been mentioned that both the parties after attaining the age of majority establish a physical relationship among them in the year 2014 which lasted up to 2019. In such type of cases the consent of the prosecutrix attains important and significance. If the relationship is consensual, then the physical relationship would not come within the mischief of rape. But in the instant case, the entire castle of the prosecution case is based upon that on the false pretext of marriage the consent of the prosecution was extracted and after using her and after quenching the sexual lust the accused-respondents started ignoring her. In this regard Section 90 of the IPC which reads thus:-

“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.”*

Thus, no consent is defined in IPC and shall be construed, in common parlance. Consent, given by the person under fear of injury OR misconception of fact is not a valid consent in the eye of law. Then the Court has to gather from the individual's conduct and attending circumstances.

Assuming and admitting for the sake of argument, that accusedrespondent extended a promise that, he would marry her and on this promise she consented to have pre-marital sex. Later on, she wriggled out from his promise then, could it be said, that he extracted her consent under misconception of fact ?

The facts of the present case indicates that this relationship starts from 2014 and lasted upto 2018. Both of them met several times, in hotel, lodges, guest houses at Allahabad or at Lucknow and spent quality time with each other. Is it a normal behaviour of a girl ? She is surrendering her body and soul to a person who allegedly non-serious about their relationship. During this long period of five years, she never insisted to solemnise formal marriage first. Only after her break-up with the accusedrespondent after five years period, she came to know that his partner was non-serious about his commitment. This story is nothing but a cock & bull story, for one's own satisfaction.

20. Learned counsel for the appellant after spelling out the entire factual series of the fact submits that the poor victim is a subject of fraud and misconception by the accused-respondent. The accused-respondent has initially developed a relationship with her, on a pretext of providing the study material and guiding her for her examinations. But lateron, this relationship got serious and has crossed the limit of decency when the girl visited 'Yadav Lodge' near Laxmi Chauraha, Allahabad where they have maintained physical relationship. The girl is not in a position to spell out the date and month of her first sex with accused-respondent. It is alleged that the base of this relationship is a non-serious false pretext of marriage given by the accused-respondent to her and she believed that promise as true and surrender her body and soul before accused-respondent.

In her testimony, she states that he often extend threat to her either 'he will commit suicide or kill' her in the event she does not allow her body. In the testimony is also being surfaced that lateron she joined the Ambedkar University, Lucknow for her further studies but the accusedrespondent reached at Lucknow and call her. Both of them visited number of hotels. As mentioned above, this relationship is lasted for almost 4-1/25 years without any resistance, hesitation or objection. This relationship was maintained at Allahabad, thereafter in different hotels and lodges at Lucknow. Madan used to visit Lucknow and after engaging a hotel on his own I.D., the prosecutrix

also joined him in the hotel. She is unable to give the name, number and dates of the hotels, where both of them spent quality time.

21. On this, learned counsel for the appellant, has relied upon the judgement of Hon'ble Apex Court in the case of **Anurag Soni Vs. State of Chhatisgarh** reported in **AIR 2019 SC 1857** . The relevant extract of the judgement is quoted hereinbelow:-

“12. 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.

15. Now, so far as the submission on behalf of the accused appellant that the accused had marriage with Priyanka Soni on 10.06.2013 and even the prosecutrix has also married and, therefore, the accused may not be convicted is concerned, the same cannot be accepted. The prosecution has been successful by leading cogent evidence that from the very inspection the accused had no intention to marry the victim and that he had mala fide motives and had made false promise only to satisfy the lust. But for the false promise by the accused to marry the prosecutrix, the prosecutrix would not have given the consent to have the physical relationship. It was a clear case of cheating and deception.”

22. The Court has occasion to go through the entire judgement. Facts of the aforesaid case is entirely different from the facts of the present case. In Anurag Soni's case the family of the prosecutrix and the accused were known to each other therefore, even prosecutrix and accused were known to each other. The accused was to marry another girl Priyanka Soni, the accused continue to talk of marriage with the prosecutrix and continued to give the promise that he will marry the prosecutrix. On 28.04.2013, the accused called the prosecutrix telephonically and responding to his call, she came to his place by train on 29.04.2013 and accused took her to the place of residence.

During her stay, in his house during 29.04.2013 and 30.04.2013 they have established physical relationship thrice and thereafter on 20.06.2013 appellant telephonically informed the prosecutrix that now he has already married.

23. On this score Hon'ble Apex Court that the appellant Anurag Soni has already engaged to marry to some other girl, he make a false promise to Priyanka Soni and therefore observed that the appellant was rightly convicted for the offence under Section 376 IPC. Thus, it is clear that the aforesaid judgement is clearly distinguishable on the facts of the case and as such is of no help to the prosecutrix/appellant.

24. So far as the consent part of the prosecutrix in the instant case, there are number of authorities, which is akin to the facts of the present case. The first and foremost is **Dr. Dhruvram Murlidhar Sonar Vs.State of Maharashtra** reported in **2019(18)SCC191**. The brief facts of the case are :-

“In this case, 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 in February, 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even there- after, 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 and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.”

Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. 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 also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

There is no straitjacket formula for determining whether the consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under the misconception of the fact, whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances each case has to be its own peculiar facts, which may have bearing on a question whether the consent was voluntary or was given under the misconception of fact. There is clear distinction between rape and a consensual sex. The Court in such cases carefully examined whether accused actually wanted to marry with victim or had a malafide motive and had made a false promise to this effect to satisfy his lust, as latter false ambit of cheating or deception. There is a distinction between breach of promise or not fulfilling the promise.

25. In yet another judgement in the case of **Naim Ahamed Vs. State (NCT of Delhi)** reported in **2023 LiveLaw (SC) 66**:- Difference between giving a false promise and committing breach of promise by the accused In case of false promise , the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise.

26. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Second of **Section 375** IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry with the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control,

which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

27. In this regard yet another judgement in the case of **Maheshwar Tigga Vs. State of Jharkhand** reported in **2020 (10) SCC 108** in which Hon'ble Apex Court while dealing the question of Section 90 IPC and Section 376 IPC opined that :-

“13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under [Section 375](#) IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under [Section 90](#) IPC a consent given under fear of injury is not a consent in the eyes of law. In the facts of the present case we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury.

14. Under [Section 90](#) IPC, a consent given under a misconception of fact is no consent in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

20. We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct

from an involuntary action or denial and which opportunity was available to her, because of her deepseated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in Uday (supra) are considered relevant:

“25...It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.”

28. In the light of the aforesaid legal pronouncement of Hon'ble Apex Court, it is imperative to bring on record the facts of the present case and test it on the aforesaid parameters with regard to the consensual relationship or the said consent was allegedly extracted by the accused after befooling her or rather on a false promise of marriage ?

29. In paragraph 16.6 of the impugned judgement that the consent was taken from the prosecutrix after playing fraud upon her on the false promise of marriage. It is urged by the counsel for the appellant that relying upon his false word, she has surrender her body and soul before the accused-respondent. However, this argument gets nullify to the extent that the prosecutrix was already married woman with one Om Prakash in the year 2010 and that marriage is still hold good. To establish this fact DW-2 Bihari was examined, who states that the prosecutrix belongs to his family and she

is his niece and who got married in 2010 with one Om Prakash Bantariya. This marriage continued for two years and since then she is residing all alone. He states he has attended the said marriage. DW4 Kamla Chandra Gautam, Gram Panchayat Adhikari have produce the 'Parivar Register' in which column no. 13, the prosecutrix and name of Om Prakash has mentioned. However, the prosecutrix has denied the factum of marriage with Om Prakash and pleaded ignorance as to how her name has mentioned in Parivar Register. On this score, the learned Trial Court has rightly given a finding that under circumstances, it is highly unlikely that the accused-respondent have trapped her in the false pretext of marriage. Secondly, assuming for the sake of argument, that some promise was extended to her but after the emergence of this new fact, that victim is already married to Om Prakash and that marriage still subsist, then any amount of promise to marry would automatically gets evaporated.

30. In paragraph 19 of the impugned judgement, so far as applicability of Section 3(2)(v) of the SC/ST Act, it is stated that the prosecutrix herself has projected that she is belongs to "Yadav Community" and when the accused-respondent came to know about her real caste, then he declined to marry her. In our society, the caste of the parties attains significant, which plays a vital role in giving a permanence to any relationship. It was revealed by prosecutrix herself that village Dharampur Nyay Panchayan Visanpur Block Saidpur, District Ghazipur in the voter list her father's name is Hari Lal Yadav and in her own voter card her father's name is Hari Lal Yadav and the prosecutrix has unable to clarify the situation. Therefore, it can be easily inferred that a lady who is already married and without dissolution of her earlier marriage and concealing her caste has maintained the physical relationship for good 5 years without any objection and hesitation and both of them have visited numbers of hotel, lodges at Allahabad and Lucknow and enjoyed the company of each other. It is difficult to adjudicate who is befooling whom ?

31. No doubt, chapter XVI "Sexual Offences", is a womensentic enactment to protect the dignity and honour of a lady and girl and rightly so, but while assessing the circumstances, it is not the only and every time the male partner is at wrong, the burden is upon both of them. It is unswallowable proposition that a weaker sex is being used by the male partner for five good years and she keep on permitting him on so called false pretext of marriage. Both of them are major and they understand the gravity of the situation and the far reaching repercussion of pre-marital sex and still they maintained this

relationship at different places, different cities, which clearly indicates that this acquisitions that she was subjected to sexual harassment and rape cannot be accepted and learned Trial Judge rightly so have given a benefit of doubt to the accused-respondent and relieved from the major charges pasted against accused-respondent.

32. In the case of **Bannareddy and others vs. State of Karnataka and others, (2018) 5 SCC 790**, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities."

33. In **Jayamma vs. State of Karnataka, 2021 (6) SCC 213**, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court.

34. In a recent judgement of this Court in **Virendra Singh vs. State of UP and others, 2022 (3) ADJ 354 DB**, the law on the issue involved has been considered.

35. Similar view has been reiterated by Hon'ble Apex Court in **Rajesh Prasad vs. State of Bihar and another, (2022) 3 SCC 471**.

36. Since, it is a government appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently, in the case of **Mallapa and others Vs. State of Karnataka**, the Apex Court has held as under :-

"36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as: (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive ? inclusive of all evidence, oral or documentary;

- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;**
- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;**
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;**
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;**
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."**

37. Thus, after thrashing the entire evidences on record and after critically analyzing the submissions advanced and the findings recorded by the learned trial Court, we are of the considered opinion that the judgment of the trial court does not suffer from any illegality or non appreciation of evidence. The reasoning adopted by the learned trial Judge is quite sound and suitable which do not warrant any interference.

38. We, therefore, find that the trial court has taken a plausible and possible view of the matter on appreciation of entire evidence on record, which cannot be substituted by this Court by taking a different view as per the law discussed above. We also do not find that the findings recorded by the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable.

39. We have critically examined the entire judgement given by the learned trial judge and we are in the agreement with the conclusion drawn by the learned trial judge, which deserves no interference from this Court in exercise of power under Section 372 Cr.P.C. The judgement and order is firm footed and this appeal is devoid of merit and liable to be **REJECTED.**

40 Accordingly, the instant appeal lacks merit and is hereby **REJECTED.**

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