



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1552 OF 2023

SHIV PRATAP SINGH RANA

APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ANR.

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

This criminal appeal by special leave is directed against the judgment and order dated 03.10.2019 passed by the High Court of Madhya Pradesh at Gwalior (the 'High Court' hereinafter) dismissing Criminal Revision No. 2288 of 2019 filed by the appellant. The aforesaid criminal revision petition was filed by the appellant before the High Court assailing the order dated 24.04.2019 passed by the Xth Additional Sessions Judge, Gwalior ('Sessions Judge' hereinafter) in Sessions Trial No. 505 of 2018 whereby charges under Section 376(2)(n) and 506 of the Indian Penal

Code, 1860 (IPC) were framed against the appellant and the application for discharge filed by the appellant was rejected.

2. The case of the prosecution is that the prosecutrix had lodged a first information report (FIR) on 06.09.2018 alleging that in the year 2016, the accused (appellant herein) used to show photographs of hers and telling her to come to Gwalior with him otherwise her photographs would be uploaded on Whatsapp. It was due to fear that she came to Gwalior alongwith the appellant by train from Dabra. One boy from Anupam Nagar came to the railway station to receive her. On his motorbike, the prosecutrix and the appellant went to Anupam Nagar city centre where the appellant was living in rented premises. There, the appellant forcefully committed wrongful act on her. Thereafter, the appellant forcefully took the signature of the prosecutrix on an affidavit. It was mentioned in the affidavit that the prosecutrix would live with the appellant for life. After that she came to Dabra with the appellant and went home. Appellant used to tell her again and again about having a relationship. He told her that he would

marry her after the marriage of his brother. But after the marriage of his brother when the prosecutrix broached the topic of marriage, the appellant told her that his brother had received Rs. 15 lakhs in marriage; if her family would give Rs. 15 lakhs then only he would marry her, otherwise not. Her parents went to the residence of the appellant with a marriage proposal but his family members turned out the proposal. In the FIR, it was alleged that the appellant while having relationship with the prosecutrix took money from her on various occasions totalling Rs. 90,000/-; besides jewellery were also taken. When the appellant started threatening the prosecutrix, she filed the FIR before the Vishwavidhyalaya Police Station, District Gwalior.

3. The FIR was registered as Crime No. 401 of 2018 under Sections 376 and 506 IPC.

4. Police carried out the investigation during the course of which statement of the prosecutrix under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was recorded on 11.09.2018. That apart, statement of the

prosecutrix was also recorded on 12.09.2018 under Section 164 Cr.P.C. On completion of the investigation, chargesheet was filed against the appellant under Sections 376 and 506 of IPC.

5. Appellant filed an application under Section 227 Cr.P.C. before the Sessions Judge seeking his discharge. By the order dated 24.04.2019, the Sessions Judge took the view that *prima-facie* the chargesheet discloses sufficient evidence to frame charge against the appellant. In such circumstances, the accused (appellant) could not be discharged from the trial for the offences under Sections 376 and 506 of IPC. Consequently, the application filed by the appellant under Section 227 Cr.P.C. was dismissed.

6. Aggrieved by the aforesaid order of the Sessions Judge, appellant filed a criminal revision petition under Section 397 Cr.P.C. The said petition was registered as Criminal Revision No. 2288 of 2019. By the judgment and order dated 03.10.2019, the High Court took the view that trial needs to be conducted for unearthing the truth and that

no case for interference was made out. Consequently, the criminal revision petition was dismissed.

7. Assailing the aforesaid decision of the High Court, appellant preferred Special Leave Petition (Criminal) No. 11671 of 2019 before this Court. By order dated 07.01.2020, this Court issued notice and passed an interim order staying further proceedings in Sessions Trial No. 505 of 2018 pending before the Sessions Judge. Subsequently by order dated 12.05.2023, this Court granted leave and directed continuance of the interim order during the pendency of the criminal appeal, which came to be registered as Criminal Appeal No. 1552 of 2023.

8. Learned counsel for the appellant submits that the relationship between the appellant and the prosecutrix was purely consensual. Therefore, there is no question of any offence committed by the appellant either under Section 376 IPC or under Section 506 IPC. A bare reading of the FIR and the chargesheet would go to show that there is no criminal element involved in the case. Therefore, it would be contrary

to the principles of justice if the appellant is made to suffer the ordeal of a long-drawn criminal trial and in the process suffer ignominy which would have irreparable consequences. This aspect of the matter was overlooked by the Sessions Judge as well as by the High Court. He, therefore, seeks quashing of the orders passed by the Sessions Judge and the High Court and further to quash the proceedings in Sessions Trial No. 505 of 2018 pending before the Sessions Judge.

9. Learned counsel for respondent No. 1 on the other hand submits that on the information of the prosecutrix, police registered FIR under Sections 376 and 506 IPC against the accused (appellant). Police investigated the case and collected materials. Having considered the medical records, statement of the prosecutrix under Section 164 Cr.P.C. and other corroborating materials, a report under Section 173 Cr.P.C. was filed to prosecute the accused (appellant) under the aforesaid provisions of IPC.

9.1. Learned counsel further submitted that there were sufficient materials for the learned Sessions Judge to frame

charges against the appellant. It is trite law that at the stage of framing charge, a full-fledged trial is not required. The court is required to take a *prima-facie* view based on the materials available on record as to whether the case is fit to stand trial. Trial court found sufficient material to frame charge against the appellant. The High Court while exercising revisional jurisdiction, examined the case in detail and found no merit in the application of the appellant. Appellant had committed rape on the prosecutrix on the false promise of marriage and threatening to make public her photographs. Thus, it is a fit case which comes within the ambit of the definition of rape under Section 375 IPC. Inducing a woman to have a sexual relationship on the basis of false promise of marriage would be rape within the meaning of Section 375 IPC. At this stage, the prosecution case is supported by the statement of the prosecutrix recorded under Section 164 Cr.PC. and other corroborating material. It is not a case where the trial should be nipped in the bud. At least a triable case is made out where the appellant would have all the opportunity

to defend himself to prove his innocence. He, therefore, submits that no case is made out for interference by this Court in the impugned order of the High Court and the appeal is liable to be dismissed.

10. After narrating the factual matrix, learned counsel for respondent No. 2 (prosecutrix) submits that appellant took advantage of the friendly nature of the prosecutrix in the context of appellant being the friend of her younger brother. Taking advantage of her vulnerability, appellant took private photographs of hers when she was changing her clothes after taking bath near a temple compound which they had visited together. Appellant later on showed such pictures to the prosecutrix and blackmailed her to indulge in a physical relationship with him. He threatened her that if she refused his demand, he would upload her private pictures on social media and also show them to her father. It is under such circumstances that the prosecutrix travelled with the appellant to Gwalior where he forced himself upon her in his tenanted premises. He asserts that compelling the prosecutrix

to have intercourse with the appellant under the fear that he would leak her photographs would be in essence a consent vitiated by coercion. Such a consent is no consent at all. It is a clear case which would come within the ambit of the definition of rape.

10.1. To pacify the prosecutrix and to keep on exploiting her physically and mentally, appellant swore an affidavit on 28.09.2016 stating therein that he loved the prosecutrix and would take care of her under all circumstances. According to learned counsel, the physical relationship between the two was on the basis of consent of the prosecutrix which was obtained under 'misconception of fact' on the false promise of marriage. Intention of the appellant was quite clear. He deceived the prosecutrix on the pretext of marriage to have and maintain a physical relationship.

10.2. He submitted that appellant had obtained a stamp paper dated 07.07.2017 wherein he expressed his desire to marry the prosecutrix. According to learned counsel for respondent No. 2 i.e. the prosecutrix, that was done with the

malafide intention of procuring financial support for his 'purported' business investment from her because of which respondent No. 2 had handed over various articles to the appellant amounting to Rs. 90,000/-.

10.3. Though respondent No. 2 continuously requested the appellant to solemnize their marriage but on one pretext or the other, the appellant evaded the same. At the same time he continued to physically exploit her. Initially, he had assured the prosecutrix that he would marry her after the marriage of his elder brother. But his *malafide* intention became obvious when he raised a demand of Rs. 15 lakhs saying that such amount was received by his elder brother in marriage.

10.4. In the course of his submissions, learned counsel also relied upon Section 90 IPC to buttress the point that consent of the prosecutrix was obtained on a 'misconception of fact'.

11. In response to a query of the Court, learned counsel for the State, i.e., respondent No. 1 submitted on

instructions that neither the photographs nor the mobile phone of the appellant have been seized. He also admits that the affidavit dated 28.09.2016 and the stamp paper dated 07.07.2017 have also not been seized. No jewellery as alleged by the prosecutrix to have been given to the appellant by her has been recovered or seized from the appellant.

12. Submissions made by learned counsel for the parties have received the due consideration of the Court.

13. At the outset, let us examine the statement of the prosecutrix made before the police. In her statement under Section 161 Cr.P.C., the prosecutrix stated that appellant was not only a friend of her younger brother Mukul Rana but also a distant brother of her brother-in-law Shailendra Rana. Appellant used to run a competition coaching centre at Dabra, which the prosecutrix used to attend alongwith her brother Mukul during the years 2015 and 2016. On the recommendation of the appellant, prosecutrix got a job of receptionist in a company. In the year 2016, appellant disclosed his affection towards the prosecutrix which was

turned down by her on the ground that he was not only younger to her but also friend of her younger brother Mukul. However, they became friends. She stated that on one Monday in the month of Savan of that year, appellant took her to a forest outside Kitore village ahead of Gijorra where there was a temple of Doodhkho Shankar Ji. There she took bath in the waterfall. Later on, appellant showed her the photographs which he had taken while she was changing her clothes in the temple. Though the prosecutrix told the appellant to delete the photographs, he did not do so. Thereafter, he started blackmailing her by showing her the photographs because of which the prosecutrix stated that she had left the coaching centre and the job. Notwithstanding the same, appellant continued to threaten her by saying that the photographs would be made viral and that those would be shown to her father. It was because of such threatening that she went with the appellant by train from Dabra to Gwalior. On reaching Gwalior, he took her to one place at Anoopam Nagar where he forcefully made physical relationship with her. The place was

taken on rent by a friend of the appellant Nitin Nagariya. On 28.09.2016, appellant obtained a stamp paper where he put his as well as the signature of the prosecutrix. It was mentioned in the stamp paper that he would support her throughout her life. According to the prosecutrix, she told the appellant many a times to marry her but on one pretext or the other, he evaded the proposal. Later on, he said that he would marry her after the marriage of his brother Jaideep. Prosecutrix stated that she had given the appellant money on several occasions after withdrawing from bank. On 16.06.2017, prosecutrix gave the appellant a cheque of Rs. 10,000/- of her mother. Appellant also stated that he had left the coaching centre and wanted to do business of his own and then his family members would be ready for marriage. On 07.07.2018, appellant had given the prosecutrix one e-stamp in his name wherein it was mentioned that he would marry her and on his assurance on 22.11.2017, prosecutrix took the pendant of the *mangalsootra* of her sister and gave it to the appellant. She went with the appellant to the bank where he

mortgaged the pendant of the *mangalsootra* and took loan of Rs. 8,000/-. She further helped him in obtaining loan of Rs. 5,000/-. Later on, when she broached the topic of marriage since marriage of his brother had taken place on 18.04.2018, appellant told the prosecutrix that his brother had received Rs. 15 lacs in marriage; therefore, if she paid Rs. 15 lacs, he would marry her. However, when her family members talked with the family members of the appellant at his house, they refused. Though in the meeting of relatives, appellant was ordered to return the jewellery and money to the prosecutrix and also to marry her, he refused to do so. It was thereafter that she lodged the FIR on 05.09.2018.

14. Let us now examine the statement of the prosecutrix dated 12.09.2018 made under Section 164 Cr.P.C.

15. In her statement recorded under Section 164 Cr.P.C., prosecutrix stated that the incident was of the year 2016, in the month of Savan. However, as two years had elapsed, she could not remember the date. She used to go to coaching class along with the appellant, who was a distant

brother of her *jijaji*. The coaching class used to be held in the house of cousin brother of the appellant. One day, the appellant told the prosecutrix that a post of receptionist was vacant in the office in which she could work. Thereafter, he expressed his affection towards her which she turned down on the ground that the appellant was the friend of her younger brother and was also younger to her. After a few days, in the month of Savan, appellant took the prosecutrix to a temple near his village where she took bath under a water fall. Appellant took her photographs while prosecutrix was bathing. After 5/6 days, when she went to the coaching class, appellant showed her the photographs. He also expressed his desire of marrying her but the prosecutrix refused such proposal of the appellant. At that time, the appellant told her that if she continued to refuse his proposal, he would send the photographs to her father.

15.1. After a few days, appellant took her to Anupam Nagar of Gwalior, where his friend Nitin was residing in a rented premise. There the appellant forced himself upon the

prosecutrix and when she refused, then he made physical relation with her without her consent. On her request to delete the photographs, the appellant told her that he would do so only if she agreed to marry him. Thereafter, he dropped the prosecutrix at Dabra and continued with the physical relationship with her. On 28.09.2016, appellant gave a stamp paper to the prosecutrix stating that he would support her throughout her life. On 16.06.2017, appellant demanded money from the prosecutrix, pursuant to which she gave him a cheque of her mother amounting to Rs.10,000/-. Again on 07.07.2017, appellant gave a stamp paper to the prosecutrix seeking her consent for marriage. Next when he asked for more money, prosecutrix gave him jewellery of her mother and sister as she was not having any money. Appellant mortgaged the jewellery in a bank against which he withdrew some money. Thereafter, she stated that when she withdrew money from the bank to meet the demands of the appellant, her family members came to know about the relationship.

15.2. Appellant told her before the marriage of his elder brother in April, 2018, that her family members should not come to his place till the marriage of his brother was over. After the marriage was over, he told her that his brother had received Rs.15 lacs in marriage and asked her whether her family members would be in a position to furnish such an amount. After the marriage of his brother, family members of the prosecutrix went to the house of the appellant in the month of June, 2018 but found his family members to be evasive on the question of marriage. Though people of the community told the appellant and his family members to return the jewellery and also to marry the prosecutrix, they did not do so. Thereafter, appellant switched off his mobile phone and disappeared from Dabra. Brother of the appellant told the prosecutrix that if she complained before the police, she would be killed and that her brother would be implicated in a false case. It was thereafter that she lodged the FIR on 05.09.2018.

16. From a perusal and comparison of the two statements of the prosecutrix, one before the police under Section 161 Cr.P.C. and the other under Section 164 Cr.P.C., that too recorded within a span of 24 hours, what is noticeable is that not only are the statements contradictory in themselves, those are contradictory to each other as well. The fact that the appellant had lodged the FIR two years after the alleged incident is itself suggestive of the consensual nature of the relationship which had gone sour. It is inconceivable that the prosecutrix, who was about 22 years of age at the time of the alleged incident, would accompany the appellant to a temple if she was being threatened by the appellant. She was a major and, therefore, fully conscious of the consequences of her own actions. It is not the case of the prosecutrix that the appellant had forced her to have bath under the waterfall and thereafter took her photographs. The act of the prosecutrix having bath under the waterfall and changing her clothes thereafter in the company of the appellant virtually rules out any threat or coercion by the appellant on the prosecutrix.

17. In the course of the hearing, the Bench had put a pointed query to learned counsel for the State as to whether the mobile phone of the appellant or the photographs allegedly taken by the appellant of the prosecutrix while she was bathing and changing clothes were recovered to which the reply on instructions was that those were neither recovered nor seized. Further, the stamp paper dated 28.09.2016 as well as the cheque dated 16.06.2017 have not been seized. The jewellery allegedly given by the prosecutrix to the appellant has also not been seized. The stamp paper dated 07.07.2017 has not been seized. In the absence of such materials, it would be virtually impossible for the prosecution to prove the charges of rape and intimidation against the appellant.

18. We have carefully gone through the definition of rape provided under Section 375 IPC. We have also gone through the provisions of Section 376(2)(n) IPC, which deals with the offence of rape committed repeatedly on the same woman. Section 375 IPC defines 'rape' by a man if he does

any of the acts in terms of clauses (a) to (d) under the seven descriptions mentioned therein. As per the second description, a man commits rape if he does any of the acts as mentioned in clauses (a) to (d) without the consent of the woman. Consent has been defined in Explanation 2 to mean an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. However, the proviso thereto clarifies that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

19. Having regard to the above and in the overall conspectus of the case, we are of the view that the physical relationship between the prosecutrix and the appellant cannot be said to be against her will and without her consent. On the basis of the available materials, no case of rape or of criminal intimidation is made out.

20. Learned counsel for the respondents had placed considerable reliance on the provisions of Section 90 IPC, particularly on the expression “under a misconception of fact”. Section 90 IPC reads thus:

“90. Consent known to be given under fear or misconception.—

A consent is not such a consent as it 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.”

21. Section 90 IPC says that a consent is not such a consent as it is intended by any section of IPC, if the consent is given by a person under the fear of injury or under a misconception of fact.

22. In *Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra*, (2019) 18 SCC 191, this Court after examining Section 90 of the IPC held as follows:

“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.”

23. This Court also examined the interplay between Section 375 IPC and Section 90 IPC in the context of consent in the case of *Pramod Suryabhan Pawar Vs. State of Maharashtra*, (2019) 9 SCC 608, and held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action (or inaction), consents to such action. After deliberating upon the various case laws, this Court summed up the legal position as under:

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375

must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

24. Learned counsel for respondents had relied heavily on the expression “misconception of fact”. However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting on having a relationship with the prosecutrix, the later had turned down the same on the ground that appellant was the friend of her younger brother and a distant relative of her *jijaji*. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that appellant had surreptitiously taken

photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra alongwith the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged. As already pointed out

above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The alleged cheque of the prosecutrix's mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire sub-stratum of the prosecutrix's case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, Court is of the view that compelling the appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the Court, result of the trial being a foregone conclusion.

25. From the factual matrix of the case, the following relevant features can be culled out:

- (i) the relationship between the appellant and the prosecutrix was of a consensual nature;
- (ii) the parties were in a relationship for a period of almost two years; and

(iii) though there were talks between the parties and their family members regarding marriage, the same did not fructify leading to lodging of FIR.

26. That being the position and having regard to the facts and circumstances of the case, we are of the view that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, impugned order of the High Court dated 03.10.2019 and the order of the Sessions Judge dated 24.04.2019 are hereby set aside and quashed.

27. Resultantly, proceedings in Sessions Trial No. 505/2018, pending before the 10th Additional Sessions Judge, Gwalior, are hereby quashed.

28. Consequently, the appeal is allowed.

.....J
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
JULY 08, 2024.**