

Neutral Citation No. - 2024:AHC:146503

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Judgement Reserved on 08.08.2024

Judgement Delivered on 10.09.2024

Court No. - 79

Case :- APPLICATION U/S 482 No. - 9501 of 2019

Applicant :- Raghav Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Gaurav Kakkar

Counsel for Opposite Party :- G.A.,Rajesh Kumar

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Gaurav Kakkar, learned counsel for the applicant and Sri Pankaj Srivastava, learned A.G.A. for the State. None appears on behalf of the opposite party no.2 even in the revised call to press the instant application.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 13.12.2018 in Case No. 6910204 of 2018 arising out of Case Crime No. 211 of 2018 u/S 504, 506, 376 I.P.C., Police Station- Mahila Thana, District- Agra, pending in the court of learned District and Sessions Judge, Agra.

FACTS

3. The facts in brief are that the opposite party no.2 herein initially submitted a complaint dated 12.11.2018 before the Additional Director General of Police, Agra Zone, Agra, seeking registration of the F.I.R. and strict action against the applicant herein. On the aforesaid complaint, as per the direction of the Additional Director General of Police, the instant F.I.R. has been registered at Women Police Station, Agra, on 15.11.2018, whereby the Case Crime No. 211 of 2018 was registered for the offences under Sections 504, 506, 328, 34, 376 I.P.C. against the applicant and the entire family members of the applicant.

4. As per the F.I.R., both the applicant as well as the opposite party no.2 are highly educated persons and belong to a higher social status. Both of them were studying together in Agra and used to meet each other. The allegation in the F.I.R. is that once in the year, 2016, the entire family members of the applicant came to the house of the opposite party no.2 and proposed the marriage of applicant with the opposite party no.2. The aforesaid proposal was rejected by the opposite party no.2. Therefore, all the family members of the applicant have returned back. However, the said applicant continued to talk with the applicant herein. The opposite party no.2 herein went to Delhi for her studies. Subsequently, after about a year on 16.10.2017, in the morning at 10:00 A.M. the applicant went to the house of the opposite party no.2 and informed her about the illness and hospitalization of his mother and asked the opposite party no.2 to donate the blood. In view thereof, the opposite party no.2 accompanied the applicant herein, however, instead of taking her to the hospital the applicant took her to his house, where, except the mother all other family members met and welcomed her in the house. The sisters-in-law (bhabhis) of the applicant herein went in the kitchen to bring tea for her. Subsequently, applicant's elder brother Ashish brought tea and brothers- Ketan Kumar and

Atul brought biscuits and namkeen etc. After consuming the tea, she became unconscious. When she regained her consciousness, she found herself without clothes and she realized that she has been raped. Then, the aforesaid sisters-in-law of the applicant brought clothes of the opposite party no.2, then, she wore the said clothes. Then, the opposite party no.2 told them that she will complain about this incident to the police. Then, the applicant putting the revolver on his head told her that he loves her and wanted to marry her, if she refused, he will commit suicide right then. Then, all the family members came inside the room and called her a bride and at the same time all the persons shown the nude pictures of the opposite party no.2, which they have taken during the aforesaid incident. Thereby, the opposite party no.2 got frightened. Thereafter, on the basis of the aforesaid nude pictures taken by the applicant and other family members, they started blackmailing the opposite party no.2. In such a compelling circumstances, the opposite party no.2 agreed to marry the applicant herein. Thereafter, after sometime all the family members except the father of the applicant herein came to the house of the opposite party no.2 and a golden ring was given to the opposite party no.2. Thereafter, under the pretext of marriage the applicant started physical exploitation of the opposite party no.2 by taking her at different places and hotels and on one occasion he has filled vermilion (सिंदूर) in parting of her hair (सांग). Thereafter, the family members of the applicant took the opposite party no.2 in various relations and introduced her as the wife of the applicant and started exchanging gifts. Subsequently, the parents of the opposite party no.2 also agreed to marry the opposite party no.2 with the applicant herein. Subsequently, the opposite party no.2 went to Delhi for preparation of IAS Exams and also started doing private job there. The applicant also came there and continued to exploit the opposite party no.2 physically. Thereupon, after physical

exploitation he used to take all the salary of the opposite party no.2 forcibly. Fed up with all this, the opposite party no.2 left the job and came back to her house and the last time the applicant herein established physical relationship with the opposite party no.2 at the house of the opposite party no.2. Subsequently thereto, when the opposite party no.2 pressurized the applicant to marry the opposite party no.2, then, he started avoiding the same and told the opposite party no.2 that once they had gone with a proposal to marry the opposite party no.2, then, she has rejected the proposal of marriage and thereby she has insulted him and his family members, therefore, by doing the aforesaid incidents as narrated hereinabove, they have taken a revenge of that insult committed by the opposite party no.2. Now, they will not marry the applicant with the opposite party no.2. The applicant also threatened her of dire consequences and told that she should commit suicide. Thereafter, he switched off his phone. When she called the mother of the applicant she also threatened her that if she will make any complaint, poster of her nude pictures shall be placed in the entire locality of the opposite party no.2. On the basis of the aforesaid narration of the facts in the F.I.R. she has asked for a strict action against the applicant and the entire family members of the applicant.

5. In view of the aforesaid F.I.R., a detailed investigation was carried out by the Investigation Agency. During the investigation, the statements under Sections 161 and 164 Cr.P.C. of the opposite party no.2 was recorded and the medical examination of the opposite party no.2 was also conducted. In the medical examination no forcible act of rape was found to be committed on the opposite party no.2 and no injury of any sort was found on the body of the opposite party no.2. In her 164 Cr.P.C. statement, she has tried to improve the case by adding the allegation of insertion of a bottle in her private part. However, the same was

disbelieved by the Investigation Agency and the offence under Section 377 I.P.C. was not added in the charge-sheet, specifically relying upon the F.I.R. and 161 Cr.P.C. statement, which was recorded under the videography. During the investigation, except the victim even the parents of the opposite party no.2 have not supported any allegation of rape, however, the parents of the opposite party no.2 have admitted that there was a continuous relationship between the applicant and the opposite party no.2. The mother of the opposite party no.2 has categorically admitted that the applicant and the opposite party no.2 both were in very deep relationship with one another and the applicant as well as the opposite party no.2 used to frequently move together at any place of their choice as per the averments made in the F.I.R. as well as 161 Cr.P.C. statement. She has categorically admitted that the applicant used to take her to various hotels and they used to stay there and the applicant also used to get decorations to celebrate the memorable moments. On the request of the opposite party no.2 the Investigation Officer has also visited the hotels concerned where the receptionist has identified her and has told that the opposite party no.2 and the applicant used to stay there in the hotel and the record was also produced by the receptionist of the hotel. The doctor was also examined during the investigation, who has examined the victim/opposite party no.2 and he has also stated that no element of forcible sexual activity was found on the body of the opposite party no.2.

6. After due investigation, the charge-sheet was filed on 13.12.2018 only against the applicant herein for the offences under Sections 376, 504, 506 I.P.C. and the names of all other accused in the F.I.R. were dropped by the Investigation Officer. Various witnesses during the investigation have deposed that the opposite party no.2 used to visit the house of the applicant, when the other family members were not present in the house.

7. Therefore, from the entire material available on record, the sum and substance of the allegations made by the opposite party no.2 is that the applicant and the opposite party no.2 both were adults and highly educated persons. The applicant used to study together. The applicant has developed liking towards the opposite party no.2, which was intimated by him to the other female friends of both the parties and as per the allegation the applicant alongwith other family members have visited the house of the opposite party no.2, with a proposal to marry the opposite party no.2, however, the aforesaid proposal was rejected by the opposite party no.2, thereupon, the applicant and his family members felt insulted and thereupon after about one year of the said rejection by the opposite party no.2, the applicant has taken her to his house on the pretext of the illness of his mother. Thereupon, in the house in presence and in collusion with the other family members she was given an intoxicated tea which was consumed by the opposite party no.2, whereupon, she became unconscious and when she regained her consciousness she found herself without clothes and the clothes were given by the sisters-in-law of the applicant and she was shown her nude pictures and thereafter, the applicant on the basis of the said nude pictures, continued to have physical relationship with the opposite party no.2 by blackmailing her and subsequently, the opposite party no.2 has also accepted the relationship and she was in intimate relationship with the applicant herein continuously for a long period of time and she has never raised any objection to such relationship and it is only when the applicant and his family members had refused to marry her, the instant complaint has been filed by the opposite party no.2.

SUBMISSION BY APPLICANT

8. Learned counsel applicant submits that applicant and the opposite party no.2 were known to each other and were studying

together and both were preparing for the Civil Services Examination. They developed a consensual physical relationship and such relationship continued for a long period of time. Even as per allegations in the F.I.R. such relationship continued for more than a year.

9. Learned counsel for the applicant has also relied upon the averments in the F.I.R. as well as 164 Cr.P.C. statement and also the statement of the parent of the opposite party no.2, to suggest that both the applicant and the opposite party no.2 were in consensual physical relationship with one another. Therefore, learned counsel for the applicant submits that since it was a longstanding continuous consensual physical relationship between the parties, therefore, no offence whatsoever under Section 376 I.P.C. can be said to have been made out against the applicant herein.

10. Learned counsel for applicant has also relied upon the judgements of the Apex Court in ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra : (2019) 18 SCC 191, Shivashankar vs. State of Karnataka and Ors. (2019) 18 SCC 204, Pramod Suryabhan Pawar vs. the State of Maharashtra and Another : (2019) 9 SCC 608*** and the judgement of this Court in ***Jiyullah vs. State of U.P. and Another (Application u/S 482 No. 5419 of 2021)***.

SUBMISSION BY A.G.A.

11. *Per contra*, learned A.G.A. submits that the inception of the relationship between the parties is based on cheating and it was a forcible act on the part of the applicant herein, for which no consent was there on the part of the opposite party no.2. Therefore, *prima facie* an offence under Section 376 I.P.C. is made out. However, the subsequent relationship between the parties was due to the threat perception created by the applicant

and his family members. Therefore, even if there was subsequent relationship between the parties and the same cannot be said to be a consensual relationship but was a relationship under threat perception created by the applicant and his family members.

ANALYSIS

12. Having heard the submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case.

13. Learned counsel for the applicant has submitted that since it was a longstanding continuous consensual relationship between the parties, no offence whatsoever under Section 376 I.P.C. can be said to have been made out against the applicant herein. In support of his submissions learned counsel for the applicant has relied upon the judgements of Apex Court in ***Dhruvaram Murlidhar Sonar (supra)***, ***Shivashankar (supra)***, ***Pramod Suryabhan Pawar (supra)*** and the judgement of this Court in ***Jiyaullah (supra)***.

14. Before proceeding further, it would be relevant to note the provisions of Section 375 I.P.C. as relevant to the instant case, which reads as under:

"375. Rape.- A man is said to commit "rape" if he—

1. *penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
2. *inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
3. *manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
4. *applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:-*

Firstly- against her will.

Secondly- Without her consent.

Thirdly-.....

Fourthly-.....

Fifthly-.....

Sixthly-.....

Seventhly-....."

15. It would be further relevant to note provisions of Section 90 of I.P.C., which deals with the consent given under fear or misconception, which reads as under:

"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."*

16. Therefore, a man establishes a sexual relationship with a woman against her will and without her consent is said to have committed rape on the woman. However, if a man establishes sexual relationship with a women with her consent, then, such sexual activity would not amounts to rape. However, if such consent was given by the woman under fear or misconception, such sexual activity with such tainted consent would amounts to rape.

17. In *Kaini Rajan v. State of Kerala, (2013) 9 SCC 113*, the Apex Court has held that the consent for the purpose of Section 375 I.P.C. requires voluntary participation not only after the exercise of intelligence based on the knowledge of the

significance of the morality, quality of the act but after fully exercising the choice between the resistance and assent whether there was consent or not is to be ascertained only after careful study of the relevant circumstances.

18. In *Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1*, the Apex Court has held as under:

"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 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 IPC and can be convicted for the offence under Section 376 IPC."

19. In *Deepak Gulati v. State of Haryana, (2013) 7 SCC 675*, the Apex Court while dealing with the consent for the offence under Section 375 I.P.C. has held that the Court must examine whether the consent involved was given after wholly understanding the nature and consequence 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.

20. In *Pramod Suryabhan Pawar (supra)*, while dealing with the consent for the offence under Sections 375, 376 I.P.C. the Apex Court has observed as under:

"18. 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."

21. It was further held that misconception of fact must be a fact which had an immediate relevance to the consent given by the prosecutrix.

22. Thus, in the light of the judgements of the aforesaid position of law, if the facts of the instant case are examined, we will find that though the applicant and the opposite party no.2 were friends, the opposite party no.2 had never agreed for any relationship with the applicant other than the friendship and that is apparent from the fact that initially the opposite party no.2 has rejected the proposal of marriage with the applicant. However, she was continuously in talking terms with the applicant. As per the allegations in the F.I.R., which are supported in her 161 Cr.P.C. statement as well as in her 164 Cr.P.C. statement, the applicant herein has taken opposite party no.2 to his house on the pretext of illness and hospitalization of his mother where she has been given tea which was intoxicated and after consuming the said tea the opposite party no.2 became unconscious and she was sexually assaulted without her consent and nude pictures of the opposite party no.2 were taken, thereafter, she was blackmailed to give consent to the relationship. Therefore, for the initial incident as alleged in the F.I.R. there was no consent on the part of the opposite party no.2 herein. Therefore, the offence of rape is *prima facie* constituted against the applicant, however, the subsequent relationship of the applicant with the opposite party no.2 was initially under threat perception created by the applicant and his family members and subsequently a promise of marriage was also stated to have been given by the applicant, which was accepted by the opposite party no.2 under the threat perceptions created by the applicant and his family members. However subsequently, they are stated to have been in consensual relationship for sufficiently a long period of time and applicant and his family member have refused to marry the opposite party

no.2, the instant F.I.R. has been lodged and the fact that they were in continuous physical relationship is sufficiently established during the investigation and even by the photographs annexed as Annexure '21' in the instant application, which has also been found established during the investigation from the examination of the hotel staff where they used to stay.

CONCLUSION

23. Therefore, in the considered opinion of this Court since the initial relationship was established by the applicant with an element of cheating, threat etc., against the will of the opposite party no.2, *prima facie* an offence under Section 376 I.P.C. is made out against the applicant. Though, the subsequent relationship, which appears to be a consensual relationship under the promise of marriage, however, such consent is also stated to be given by the opposite party no.2 initially under the threat perception created by the applicant herein. Therefore, in the considered opinion of this Court the judgements relied upon by the applicant in *Shivashankar (supra)*, *Pramod Suryabhan Pawar (supra)* and *Jiyaullah (supra)* are of no help to the applicant, in view of the initial act committed against the will of the opposite party no.2. Therefore, this Court does not find any good reason to quash the proceedings as prayed by the applicant, in view thereof, the instant application is accordingly ***dismissed***.

24. However, the observation made hereinabove are made only for the purpose of deciding the instant application and the trial court shall not be influenced by any of the observations made hereinabove and shall proceed in accordance with law.

Order Date :- 10.9.2024

Shubham Arya

(Anish Kumar Gupta, J.)