



2026:AHC:6419

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 10170 of 2025

Abhinash Sharma Alias Avinash Sharma

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	: Prashant Singh, Santosh Kumar Pandey, Sharad Kumar Srivastava
Counsel for Respondent(s)	: G.A., Jyoti Bhushan

Court No. - 51

HON'BLE ANIL KUMAR-X, J.

1. Heard Shri Prashant Singh and Shri Santosh Kumar Pandey, learned counsels for the appellant, Shri Jyoti Bhushan, learned counsel for the respondent/informant and Shri K.K. Gupta, learned AGA for the State-respondent.

2. This criminal appeal under Section 14-A(1)) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 seeks quashing of the entire criminal proceeding in Sessions Case No.291 of 2024 (State Vs. Abhinash Sharma @ Avinash Sharma), under Section 376, 504, 506 I.P.C. & Section 3(1)Da, 3(1)Dha, 3(2)5 of Prevention of Schedule Caste/Schedule Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), Police Station Bilariyaganj, District Azamgarh (arising out of Case Crime No.135 of 2024), pending before the Special Judge (S.C./S.T.) Act, Azamgarh including the summoning order 13.09.2024 passed by learned Special Judge (S.C./S.T.) Act, Azamgarh.

3. Briefly stated, the facts are that an FIR was lodged by the informant, Smt. Geeta w/o Bhola, resident of Village Tohfapur, District Azamgarh, against the appellant on 4.5.2024. She alleged that her daughter (the victim) was trapped by the appellant in a love relationship, and that the appellant had established a physical relationship with her on the pretext of marriage. When pressed to solemnize the marriage with the victim, he refused and threatened to kill the informant or her family members if they

ever demanded marriage. She further alleged that the appellant used casteist slurs.

4. The case was investigated, and a charge-sheet was submitted against the appellant for offences under Sections 376, 504, and 506 IPC, as well as Sections 3(1)(da), 3(1)(dha), and 3(2)(va) of the SC/ST Act. The learned court took cognizance of the offences against the appellant vide order dated 13.9.2024.

5. Learned counsel for the appellant submits that a bare perusal of the FIR shows no allegations constituting the offences under the SC/ST Act against the appellant. No incriminating evidence was produced before the Investigating Officer to substantiate the claim that the victim was exploited by the appellant on a false promise of marriage. Notably, neither the FIR nor the victim's statement under Section 161 Cr.P.C. discloses the duration of the relationship between the appellant and the victim. It merely levels a bald allegation of exploitation on the pretext of false marriage. In her statement to the Investigating Officer, the victim stated that she was sexually exploited by the appellant, who had falsely promised marriage. She alleged that when she asked the appellant to solemnize the marriage, he refused, stating it was not possible due to their different castes, and also abused and threatened her.

6. Learned counsel for the appellant further submits that in her statement under Section 164 Cr.P.C., the victim admitted for the first time that she had been in contact with the appellant for the past four months. She stated that the appellant promised to marry her and thereafter established physical relations with her on two occasions—specifically on 20.4.2024 and 30.5.2024. She candidly stated that she was not raped by the appellant. Moreover, the victim stated in her statement under Section 164 Cr.P.C. that if the appellant marries her, she will not prosecute him. She also affirmed being about 20 years old, establishing that she is a major capable of understanding the consequences of her actions. The contents of the FIR, read with the victim's statements under Sections 161 and 164 Cr.P.C., clearly indicate that even assuming the prosecution's allegations to be true, the relationship was consensual. The omission to specify particulars of any promise of marriage by the appellant gives rise to a

presumption that no such promise was made. Mere allegation of rape based on a pretext of marriage is insufficient unless the prosecution proves that the victim consented to the sexual relationship relying on such a promise. Absent substantiation of this material fact,, the allegation of rape cannot stand. Thus, the entire proceedings against the appellant are liable to be quashed.

7. Learned AGA and counsel for the informant submit that the victim's statement clearly shows that she was deceived by the appellant, who promised marriage to satisfy his lust. She stated that when she pressed for marriage, the appellant refused, citing their different castes as the reason. The appellant established physical relations with her twice on the pretext of marriage but later refused to marry. The victim's statement is cogent, clear, and consistent, establishing the accused's guilt. Hence, this criminal appeal lacks merit and is liable to be dismissed.

8. I have considered the submissions advanced by the learned counsel for the parties and perused the record.

9. Before entering into the facts of this case, it would be proper to examine the difference between false promise of marriage to induce a woman to obtain her consent for physical relationship and breach of promise to marry. Sexual relationship amounts to rape if it is obtained without consent of women. What amounts to "consent" as mentioned in Section 375 IPC is defined in Section 90 IPC.

Section 90 of I.P.C. defines consent known to be given under fear or misconception:-

"90. Consent known to be given under fear or misconception.- A consent is not such a consent as 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 of the 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 12 years of age."

Reading the definition of "consent" (Section 90 IPC) with the definition of "rape" (Section 375), it becomes manifest consent of women is vitiated if she is convinced to engage in sexual relationship with accused who induces her with false promise to marry.

10. The Supreme Court in **Pramod Suryabhan Pawar vs The State Of Maharashtra, AIR 2019 S C 4010**, while dealing with a similar situation, enunciated principles of law by following observations:-

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it..."

The Supreme Court was further observed:

"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."

11. Hence, it becomes evident that a man can be held criminally liable for having a sexual relationship on the basis of a false promise of marriage only if the sexual relationship happened solely because of that false promise. If the relationship occurred due to other reasons, the offence is not made out. A woman may choose to enter into a physical relationship for reasons other than a promise of marriage, such as mutual affection or

personal choice, even without insisting on marriage.

12. Now, the next significant question arises as to when and how an accused can be held guilty for inducing a woman to engage in sexual relationships by making false promise of marriage?

13 It is trite that in criminal cases, where accused is alleged to have committed rape, testimony of victim becomes significant and if her statement is of sterling quality, it does not even require corroboration. However, converse is also true because law regarding appreciation of evidence does not distinguish between different categories of witnesses and no privilege has been extended to victim of rape. There is no universal law to treat statement of victim as gospel truth. The Supreme Court in **Abbas Ahmed Choudhury v. State of Assam (2010) 12 SCC 115** held that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully.

14. The proposition as discussed in preceding paragraph applies equally in cases where the allegation against accused is of inducing the victim to engage in sexual relationship by making false promise to marry. In order to fasten an accused of such criminal liability, it is necessary for prosecution to come up with adequate evidence to show that at relevant time, i.e, at the initial stage itself, the accused had no intention of keeping his promise to marry the victim. The Supreme Court in **Deepak Gulati v. State of Haryana**", AIR 2013 SC 2071, held as follows:

"24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured

of the fact that from the very beginning, the accused had never really intended to marry her."

15. Hence, it evident that before an accused can be held liable, it is necessary that (a) the accused never intended to marry the victim from the beginning. A mere failure to marry, due to later circumstances, does not amount to deception. Section 90 IPC applies only when dishonest intention existed at the outset and, (b) same has to be proved by adequate evidence.

16. From the foregoing discussions, it is apparent that establishing physical relationships with a woman by making false promise of marriage is an offence which vitiates her consent and it attracts offence under Section 376 IPC. Breach of promise is generally defined as the failure of one party to fulfill a mutual agreement or commitment to marry another and it is viewed as a civil wrong. In order to hold an accused criminally liable for committing rape on pretext of false promise of marriage, it is necessary that prosecution must establish that accused right from the beginning cheated victim without any intention to marry with an intent to satisfy his lust. Hence, the essential ingredients of the offence are:

- (a) the accused made a promise to marry the victim;
- (b) the promise was false and not intended to be fulfilled;
- (c) the promise was made with the intention of deceiving the victim and inducing her to consent to a sexual relationship;
- (d) the dishonest intention to deceive and cheat existed from the very inception of the promise; and
- (e) the victim's consent for the sexual relationship was obtained solely on the basis of such false promise.
- (f) for consent to be vitiated by a false promise, the promise must have immediate relevance to the woman's decision to engage in intercourse.
- (g) there must be adequate evidence to show that promise made by accused from its inception was made without any intention to fulfill.

17. In light of the aforesaid legal principles, a careful scrutiny of the FIR and the victim's statements under Sections 161 and 164 Cr.P.C. reveals only bald allegations of exploitation on the pretext of marriage without disclosing the duration of the relationship or any contemporaneous promise. The victim's statement under Section 161 Cr.P.C. also lacks particulars of any specific promise of marriage. She did not say when and where the said promise was made, but has only alleged that her proposal to marriage was refused by appellant. It is significant to note that victim in her statement under Section 164 Cr.P.C. admits to a four-month consensual relationship, specifies physical relations on two occasions post-promise, candidly denies rape, affirms her majority (about 20 years), and expressly states willingness to withdraw prosecution upon marriage.

18. The absence of proof that the essential ingredient of a "promise to marry" is specifically that the promise was made without any intention of fulfilling it from the beginning—does not invalidate consent of victim for sexual relations under Section 90 read with Section 375 of the Indian Penal Code, 1860. A consensual sexual relationship followed by a subsequent refusal to marry does not render the accused liable for rape. This position finds consistent support in the jurisprudence of the Supreme Court, as laid down in **Deepak Gulati v. State of Haryana (2013) 7 SCC 675** and **Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608**, wherein it has been emphatically held that mere breach of promise to marry, in absence of initial dishonest intent, cannot convert consensual physical relations into rape. Treating every such refusal to marriage as vitiated consent would dilute the sanctity of Section 375 IPC and overburden the criminal justice system with cases arising from soured relationships rather than genuine sexual offences.

19. These materials, even if assumed true, fail to establish the essential ingredients: (a) no adequate evidence shows the promise, if any, was false from inception with dishonest intent to deceive solely for lust; (b) the relationship appears driven by mutual affection over four months rather than immediate reliance on a false promise; and (c) subsequent refusal citing caste difference suggests breach of promise at best, not deception ab initio. Mere failure to marry due to later circumstances does not vitiate consent under Section 90 IPC, as held in **Pramod Suryabhan Pawar**

(supra) and **Deepak Gulati** (supra).

20. For charges under Sections 504 and 506 IPC, the claims of abuse and threats are too vague and general. No specific details appear in the FIR or statements, so no initial case is made out.

21 No offences under Sections 3(1)(da), 3(1)(dha), or 3(2)(va) of the SC/ST Act are made out either. The FIR and victim's statements lack any specific caste slurs aimed at her SC/ST status, said in public to humiliate her. Just mentioning caste differences in refusing marriage does not meet the legal requirements, so Section 14-A(1) of the SC/ST Act does not apply.

22. Hence, this Court is of view that allowing the criminal proceeding against the appellant in the facts and circumstances to continue, where no criminal liability can be attached, would amount to abuse of the process of court. Therefore, appellant is entitled to the relief claimed for quashing the complaint/ FIR.

23. In view of the aforesaid, entire criminal proceeding in Sessions Case No.291 of 2024 (State Vs. Abhinash Sharma @ Avinash Sharma), under Section 376, 504, 506 I.P.C. & Section 3(1)Da, 3(1)Dha, 3(2)5 of SC/ST Act, arising out of Case Crime No.135 of 2024 as well as the summoning order 13.09.2024 passed by learned Special Judge (S.C./S.T.) Act, Azamgarh are quashed.

24. This criminal appeal is, accordingly, **allowed**.

(Anil Kumar-X,J.)

January 8, 2026
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