



2025.03.2016

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CRL.A NO. 378 OF 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

CRL.A NO. 378 OF 2019

AGAINST THE JUDGMENT DATED 22.02.2019 IN SC NO.541 OF 2016

OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI

APPELLANT/ACCUSED:

SHAHUL AMEER

AGED 36 YEARS

S/O. MUSTHAF A, AGED 36 YEARS, IRAHIKKAL HOUSE,
CHATHAMUNDA, POTHUKAL AMSOM, MALAPPURAM DISTRICT

BY ADV K.RAKESH

RESPONDENT/STATE:

THE STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031

BY ADV SMT.NEEMA K.V., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON
11.03.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“CR”

J U D G M E N T

Raja Vijayaraghavan, J.

The appellant is the accused in S.C. No. 541 of 2016 on the file of the Special Court for SC/ST (Prevention of Atrocities) Act Cases, Manjeri. In the said case, he faced indictment for having committed offences punishable under Sections 363 and 376 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. By the impugned judgment, he was found guilty and sentenced to undergo rigorous imprisonment for five years and ordered to pay a fine of ₹10,000/-, in default of which, he was to undergo rigorous imprisonment for three months for the offence punishable under Section 366 of the IPC. He was also sentenced to imprisonment for life and directed to pay a fine of ₹10,000/-, in default of which, he was to undergo rigorous imprisonment for three months for the offences punishable under Section 376 of the IPC r/w. Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act.

3. The prosecutrix, a 25-year-old woman, belongs to a Scheduled Caste community. She had completed her Hotel Management course. The accused is a



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Muslim by faith. As per the charge, the accused, despite not being a member of a Scheduled Caste or Scheduled Tribe, made acquaintance with PW1, fully aware that she was a member of a Scheduled Caste. He allegedly promised to marry her and, on the basis of such false promise, abducted her on 09.06.2015, instructing her to meet him at the Nilambur Bus Stand. From there, the prosecutrix was taken to a rented building in Chenakkal, where, without her consent, the accused subjected her to sexual intercourse from 10.06.2015 to 13.06.2015. By his acts, the accused is alleged to have committed offences punishable under Sections 363 and 376 of the IPC, along with Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. On receipt of information from PW1, the prosecutrix, Crime No. 455 of 2015 was registered at the Pookkottumpadam Police Station. The investigation was conducted by the Deputy Superintendent of Police, Malappuram and on completion of the same, the final report was submitted before the jurisdictional Magistrate.

5. Committal proceedings were initiated, and the case was committed to the Court of Session. Later, it was made over to the Special Court for SC/ST (POA) Act Cases, Manjeri for trial and disposal.

6. After following the procedure, charges were framed under Sections 363 and 376 IPC and Sections 3(1)(w)(i) and 3(2)(v) of the Scheduled Caste and



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Scheduled Tribe (Prevention of Atrocities) Act, 1989. When the same was read over, the accused pleaded not guilty and prayed that he be tried in accordance with the law. Later, the charge under Section 363 of the IPC was altered to Section 366 of the IPC, and the same was read over and explained to the accused, to which he pleaded not guilty. Additionally, the charge under Section 3(1)(w)(i) of the SC/ST (Prevention of Atrocities) Amendment Act was deleted, as the said offence had come into force only on 26.01.2016.

7. To prove its case, 18 witnesses were examined as PWs 1 to 18 and through them Exts. P1 to P40 were exhibited and marked. MOs 1 to 3 were produced and identified. After the close of prosecution evidence, the accused were questioned under Section 313(1)(b) of Cr.P.C. He denied all the incriminating circumstances and maintained that he was innocent. On the side of the defence, Exts. D1 to D3 were marked.

8. The learned Sessions Judge, after evaluation of the entire evidence, came to the conclusion that there was no reason to doubt the credible evidence tendered by the prosecutrix. It was also held that the consent given by PW1 for sexual intercourse was under a misconception of fact and therefore vitiated. The court also held that the appellant had abducted PW1 with the knowledge that she would be seduced to illicit intercourse thereby attracting Section 366 of the IPC and



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on its basis committed rape on her thereby inviting punishment under Section 376 of the IPC and Section 3(2) (v) of the SC/ST (PoA) Act.

9. Sri. Rakesh, the learned counsel appearing for the appellant, submitted that the learned Sessions Judge had failed to properly evaluate the evidence let in by the prosecution in a proper manner and arrived at the finding of guilt, on erroneous factual and legal conclusions. He urged that the prosecutrix in her evidence had deposed that she was aware of the fact that the appellant was a Muslim and that he was married. It had also come out in evidence that her marriage with one Santhosh had been fixed when her father was alive and the marriage was scheduled to be held on 10.06.2015. On the eve of the marriage, PW1 eloped with the appellant. Ext.D1 FIR in Crime No. 440 of 2015 of Pookkottumpadam Police Station was registered under Section 57 of the Kerala Police Act, 2011 and PW1 was traced out and produced before the learned Magistrate. Before the learned Magistrate, PW1 stated that she had eloped with the appellant on her own accord and that she intended to live with him. She was accordingly permitted to go with the appellant. It is urged by the learned counsel that the appellant could not have married PW1 under the Special Marriage Act, 1954, as the said enactment will not permit the solemnisation of marriage with an individual who has a living spouse. The only way out was for PW1 to convert to Islam and this fact was mentioned to her. PW1 refused to convert and



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immediately thereafter lodged a false complaint before the police. It is submitted that PW1 has no case that the appellant had told her that he would divorce his wife and join PW1 but, on the other hand, he had always been stating that polygamy being permitted in his religion, the only way for them to stay together as husband and wife was for PW1 to convert. It is further submitted that PW1 is admittedly an educated person who was pursuing a course in Hotel Management and was 25 years old when she eloped with the appellant. A purely consensual relationship has been given the colour of rape to ensure that the appellant is put behind bars for an offence that he had not committed. He submitted that neither the offence under Section 366 or Section 376 of the IPC r/w. Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act would be attracted in the facts of the instant case.

10. The learned Public Prosecutor submitted that PW1 in her evidence has clearly stated that she was abducted by the appellant to satisfy his sexual pleasures by giving a false promise of marriage. Her version is corroborated by medical evidence as well. It is submitted that the learned Sessions Judge has arrived at the finding of guilt on the basis of convincing evidence and no interference is warranted.

11. We have carefully evaluated the evidence. We find that the entire case revolves around the evidence tendered by PW1. We shall notice the evidence tendered before the learned Sessions Judge, before considering the submissions



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advanced by both sides.

12. PW1, the prosecutrix, submitted that she is a member of the Scheduled Tribe Community. She became acquainted with the appellant while her father was undergoing treatment at the Government Hospital in Nilambur. Her father died on 27.03.2015. While her father was alive, her marriage with one Santhosh was fixed and the same was scheduled to be held on 10.06.2015. According to her, while her father was in the hospital, she used to seek help from the appellant. He told her that he was residing with his wife and children at Edakkara. They exchanged phone numbers and the appellant used to call her. He informed her that he liked her and expressed his desire to marry her. She responded by saying that she would consider his request. He assured her that he could take care of both his wife and PW1. On 7.6.2015, the appellant asked her to get her clothes ready. On the next day, he insisted that she meet him at Nilambur Bus Stand with her belongings, and under the belief that the appellant would marry her, she took her clothes and went to the stand in an autorickshaw. This was the day before her proposed marriage. She left home at about 7:00 a.m. after informing her mother and sister that she was going out to buy medicine for a headache. The appellant took her to Randathani in a private bus and reached the house of PW5. There, the appellant introduced her as "Sabitha," and asked her to wear a headscarf. He told everyone that PW1 was his wife. They spent



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the night at PW5's house. The next day, they moved to a rented quarters in Chenakkal belonging to PW9. She stated that on the following day, the accused had a physical relationship with her. However, it was not with her consent. When she insisted that they could have a sexual relationship only after marriage, the appellant reassured her that he would marry her. On 13.6.2015, she again had sexual relations with him without her consent, as demanded by him. On 14.6.2015, the appellant asked her to get dressed as the police were searching for them. They travelled to Manjeri by bus but on reaching Manjeri, the appellant was nowhere to be found. She went to the house of PW7, her father's younger brother. Later, the police arrived and took her to the Pokkottumpadam Police Station. On 15.6.2015, she was produced before the Judicial First Class Magistrate, Nilambur, and before the Magistrate she disclosed her intention to go with the appellant and left the court with the appellant, who was also present in court. While returning with the appellant, he told her that if she wanted to get married, she may have to convert to Islam and follow the tenets of Islam. It was then that PW1 realised that she had been deceived by the appellant. She approached the police and furnished the statement on 16.6.2015 leading to the registration of the crime. During cross-examination, she admitted that she got married to the same person with whom she got engaged when her father was alive. She admitted that before the Magistrate she had stated that the appellant had not committed any illegal act upon her. She stated that when she eloped on the day



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before her marriage, she took her bags with her. She admitted that the appellant had told her that he would support his wife as well as PW1. She stated that she used to have happy conversations with her fiance even on the day of elopement. She stated that she had pursued a Hotel Management course at Thiruvananthapuram. She further stated that she had a physical relationship with the appellant even before the incident. She admitted that the appellant had told her about his employment and his wife and children. She said that she had also asked the appellant to convert. She admitted that she had stated to the Magistrate that it was only on 13.06.2015 that she realised that the accused was having a wife and children. In re-examination, she stated that she was having a sexual relationship with the appellant even before the incident in this case.

13. PW2, the sister of PW1, deposed that PW1 left home on 09.06.2015, the day before her arranged marriage. She did not return until 14.06.2015.

14. PW3 testified that he was residing at the rented quarters of Moideenkutty Haji (PW9) in Chenakkal and he confirmed that on 10.06.2015, the appellant had come there accompanied by a woman wearing a headscarf.

15. PW4, the wife of PW3, also confirmed seeing the appellant with a woman wearing a headscarf while residing in Chenakkal.



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16. PW5 stated that while living in quarters at Randathani, the appellant approached him seeking work on daily wages. He, however, did not support the prosecution case.

17. PW6, the wife of PW5, stated that she knew the appellant but was unaware of whether he had come with a woman.

18. PW7 stated that PW1 left her home on 9.06.2015, before her marriage which was scheduled to be held on 10.06.2015. Her mother and younger sister informed him of her disappearance. On the fifth day after her proposed marriage, PW1 arrived at his house around 8 p.m. and told him that she had eloped with the appellant.

19. PW8, stated that the accused stayed in a quarters at Randathani. He once came to her house for water and told her that he was with his wife.

20. PW9, the owner of the family quarters, confirmed renting the premises to the accused for ₹1000 per month but stated that he did not see the woman.

21. PW10, a Junior Consultant at District Hospital, Nilambur, examined PW1 on 16.06.2015 and issued Ext.P28 report. She stated that PW1 told her that she had sexual intercourse three times with the appellant without her consent. However, she noted that the hymen was torn and old but did not note any indications of a recent



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sexual act.

22. PW11, an Assistant Surgeon at District Hospital, Nilambur, examined the accused on 19.06.2015 and issued Ext.P29 certificate confirming that he was capable of performing sexual acts.

23. PW12, the Village Officer, Pothukal, issued Ext.P30 community certificate identifying him as a member of the Islam-Mappila community. PW13, the Special Village Officer prepared Ext.P31 rough sketch of the location.

24. PW14, Tahsildar at Nilambur, issued Ext.P32, confirming that PW1 belongs to the Hindu-Kattunaikka Scheduled Tribe.

25. We have considered the submissions advanced and carefully reviewed the records. Before we consider the merits of the matter, we shall note the law involved.

26. Though the appellant has raised a contention that he has no emotional or physical connection with the prosecutrix, we are of the view that it has come out in evidence that the appellant and PW1 were in a relationship. The specific contention of the appellant is that he did not suppress any material facts from the prosecutrix to obtain her consent. His contention is that it was legally impossible for him to invoke the provisions of the Special Marriage Act, 1954, and solemnize a



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marriage with the prosecutrix, as he already had a living spouse. After securing her release from the Magistrate's custody, and with the intention of continuing the relationship, the appellant made it clear that the only viable option was for the prosecutrix to convert to Islam, as this would allow him to continue supporting his wife, children, and PW1. His willingness to enter into such an arrangement stemmed from the fact that polygamy was not prohibited in his faith, and therefore, he was prepared to take responsibility for the prosecutrix as well. However, the prosecutrix was not agreeable to this condition and subsequently approached the police, and lodged the complaint.

27. The only question is whether the offence of rape has been established in the instant case. The incidental question would be whether the consent given by the prosecutrix to the appellant for sexual intercourse is vitiated by a misconception of facts. For ease and clarity, the facts established by evidence can be summarised as under :

- a) The prosecutrix is a member of the Scheduled Tribe and the appellant is a Muslim.
- b) They fell in love despite the awareness of the prosecutrix of the religion and whereabouts of the appellant and also of the fact that he had a wife and child.



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- d) At the time of the alleged offence, the prosecutrix was 25 years old and had pursued Hotel Management course in Thiruvananthapuram.
- e) Her marriage to one Santhosh had been arranged and was scheduled to be solemnized on 10.06.2015.
- e) On the night before her arranged marriage, she left her house after packing her bags, and after convincing her family members that she needed to purchase medicines.
- f) Even prior to her elopement, she had sexual intercourse with the appellant.
- g) The assurance given by the appellant to PW1 was that he would continue to support both his legally wedded wife and children as well as the prosecutrix. PW1 had no objection to this arrangement.
- h) The prosecutrix was produced before the Magistrate in connection with a crime registered under Section 57 of the Police Act, 2011. On production, she stated that she desired to go with the appellant, and accordingly, the court permitted her to do so.
- i) The appellant insisted that the prosecutrix convert to Islam if he were to marry her. She also demanded that the appellant convert to her community.



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28. Now we shall refer to the provisions and the law relating to consent in such cases. Section 375 of the IPC defines Rape. It reads as under.

375. Rape.—A man is said to commit “rape” if he—

(a) xxxxx

(b) xxxx

(c) xxxxxx; or

(d) xxxxxxxxx,

under the circumstances falling under any of the following seven descriptions—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any



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stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—xxxxxxx

Explanation 2.—Consent means 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:

Provided 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.

29. As is evident from the provisions, Section 375 defines the offence of rape and enumerates six descriptions of the offence. The first clause operates where the woman is in possession of her senses and, therefore, capable of consenting but the act is done against her will and the second where it is done without her consent; the third, fourth and fifth when there is consent but it is not such a consent as excuses the offender, because it is obtained by putting her, or any person in whom she is interested, in fear of death or of hurt. The expression "against her 'will'" means that the act must have been done in spite of the opposition of the woman. An



inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of the act complained of.

30. Section 90 of the IPC defines "consent" as known to be given under fear or misconception:

"Section 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"

31. Thus, Section 90 of the IPC 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 of the IPC 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



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of all relevant circumstances. (See: **Dr. Dhruvaram Murlidhar Sonar v. State Of Maharashtra And Others**¹)

32. In **Deepak Gulati v. State Of Haryana**², the Apex Court had observed as under:

21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the

¹ [2018 SCC ONLINE SC 3100]

² [(2013) 7 SCC 675]



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court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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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.

33. In **Kaini Rajan v. State Of Kerala**³, the Apex Court had explained the essentials and parameters of the offence of rape. It was observed in paragraph 12 of the judgment as under:

"12. Section 375 IPC defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the

³ [(2013) 9 SCC 113]



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third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in fear of death or of hurt. The expression "against her will" means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression "consent". Section 90, though, does not define "consent", but describes what is not consent. "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. (See State Of H.P v. Mango Ram . (2000) 7 SCC 224.)"

34. In **Deelip Singh v. State of Bihar**⁴, the principles of consent vis a vis the offence under Section 376 of the IPC was further explained as under:

19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted

⁴ (2005) 1 SCC 88



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consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.

35. In **Uday v. State Of Karnataka**⁵, while holding on the basis of facts presented in the said case that consent cannot be said to be given under a misconception of fact. It was held thus:—

21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary,

⁵ (2003) 4 SCC 46



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or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

36. In **Dr. Dhruvaram** (supra) while summarising the principles, it was observed as under:

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.

37. In **State of Kerala v Vinod Kumar**⁶, the facts were that telephonic

⁶ [(2014) 5 SCC 678



friendship between the prosecutrix and the accused strengthened into a close acquaintance and then love eventually leading them to escape. He proposed marriage to her and they were in each other's company. As the prosecutrix was a Muslim, the appellant was ready for conversion but the Imam of the Mosque told him that conversion was not possible just for marriage and conversion was possible only after registering the marriage. The appellant and the prosecutrix registered a document believing it to be a marriage certificate. Later, it came to know that the appellant was already married and hence a criminal complaint was filed alleging rape and cheating. While dealing with the facts and law, it was observed as under by the Apex Court.

14. We are in no manner of doubt that in the conspectus that unfolds itself in the present case, the prosecutrix was aware that the appellant was already married but, possibly because a polygamous relationship was not anathema to her because of the faith which she adheres to, the prosecutrix was willing to start a home with the appellant. In these premises, it cannot be concluded beyond reasonable doubt that the appellant is culpable for the offence of rape; nay, reason relentlessly points to the commission of consensual sexual relationship, which was brought to an abrupt end by the appearance on the scene of the uncle of the prosecutrix. Rape is indeed a reprehensible act and every perpetrator should be punished expeditiously, severally and strictly. However, this is only possible when guilt has been proved beyond reasonable doubt. In our deduction there was no seduction; just two persons fatally in love, their youth blinding them to the futility of their relationship.



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38. The evidence discloses that the prosecutrix was fully aware that the appellant was already married with children. She has never claimed that she expected or wanted the appellant to divorce his wife in order to marry her. Her evidence is that the appellant assured her that he would support his wife and child and PW1 at the same time. The prosecutrix was more than willing to have such an arrangement. Furthermore, this is not a case where the appellant misrepresented himself as an unmarried man to secure the prosecutrix's consent. The evidence does not support the case of the prosecution that the appellant made false promises, nor does it suggest that he misstated any fact. He did not fabricate a deceptive scenario that could have misled the prosecutrix into committing any act under a mistaken belief. Admittedly, even prior to the incident, PW1 had been maintaining a sexual relationship with the appellant. It cannot be lost sight that the prosecutrix—a 25-year-old adult, capable of making independent decisions—knowingly left her home on the eve of her proposed marriage and eloped with the appellant. She packed her bags and departed after misleading her family members about the true reason for her departure. As noticed in **Deepak Gulati** (supra), the facts presented in the instant case reveal that the prosecutrix agreed to have sexual intercourse on account of her love and passion for the accused, and not on account of any misrepresentation made to her. An accused can be convicted of rape only if there are materials to suggest that the intention of the accused was mala fide and that he had



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clandestine motives. If for one reason or the other, the relationship between two persons could not be crystallised into a marriage, for reasons beyond the control of one person, or due to an act or omission from the other party, it may not come within the ambit of rape.

39. In light of the discussion above, we hold that the prosecution has failed to establish that, from the very outset, the accused never intended to marry the prosecutrix or that he induced her into a relationship based on false promises of marriage. Furthermore, the consent of the prosecutrix to engage in sexual relations cannot be deemed vitiated by a misconception of fact under Section 90 of the Indian Penal Code. The evidence does not indicate that the appellant lured or coerced the prosecutrix by means of deception, nor does it demonstrate that her consent was obtained through fraud or misrepresentation. In that view of the matter, the offence under Section 376 of the IPC is not made out in the instant case. There is also no material to suggest that he entered into a relationship with PW1 to exploit or denigrate PW1 on the basis of her caste or tribe. In that view of the matter, Section 3(2)(v) of Act 33 of 1989 may not have any application. Insofar as Section 366 of the IPC is concerned, the prosecution has to establish that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced



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to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. (See: **Kavita Chandrakant Lakhani v. State of Maharashtra**⁷). In the instant case, there is no evidence to establish the ingredients of the offence under Section 366 of the IPC as well. In that view of the matter, we are unable to uphold the judgment passed by the learned Sessions Judge finding the appellant guilty for the offence under Section 376 of the IPC r/w. Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 366 of the IPC.

This appeal is allowed. The finding of guilt, conviction and sentence passed against the appellant in S.C. No. 541 of 2016 on the file of the Special Court for SC/ST (Prevention of Atrocities) Act Cases, Manjeri will stand set aside and the appellant/accused is acquitted of all charges. The appellant/accused be set at liberty forthwith if his continued incarceration is not required in connection with any other case.

sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-
**VIJU ABRAHAM,
JUDGE**

PS/9/03/25

⁷ (2018) 6 SCC 664