

IN THE HIGH COURT AT CALCUTTA

[Circuit Bench at Port Blair]

CRA (DB)/6/2024

The State (UT of Andaman and Nicobar Islands)

Vs.

Shri Mukesh Kumar Yadav

With

CRA (DB)/4/2024

Ms. X (Victim Lady)

Vs.

The State (UT of Andaman and Nicobar Islands) & Anr.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the State in CRA(DB) 6 of 2024 : Mr. Sumit Kumar Karmakar, Adv.

For the respondent in CRA(DB) 6 of 2024 : Mr. Mohammed Tabraiz, Adv.

For the appellant in CRA(DB) 4 of 2024 : Mr. Deep Chaim Kabir, Sr. Adv.
Mr. S. Ajith Prasad, Adv.

For the respondent no. 2 in CRA(DB) 4 of 2024 : Mr. Mohammed Tabraiz, Adv.

For the State in CRA(DB) 4 of 2024 : Mr. Sumit Kumar Karmakar, Adv.

Reserved on : 10.02.2026

Judgment on : 23.04.2026

Chapter-I ***The offence vis-à-vis the defence***

1. The case in hand is stuck somewhere between two proverbs: Love is blind, and all is fair in love and war. Ms. X, a lady police constable alleged that Mukesh in CRA (DB) 4 of 2024, a male police constable (hereinafter referred to as Mukesh) committed rape upon her forcibly and also on the false promise of marriage and consequently she got pregnant. When the matter was brought to his notice and he was requested to marry her, he compelled her to consume pills for termination of her pregnancy twice on the pretext that if the matter of pregnancy was known to the society, the marriage of his sister would not take place. Consequences of consuming termination pills on Ms. X commenced at the very police station where both of them were posted and ultimately bleeding started and Ms. X was taken to G.B. Pant Hospital by the lady staff of the police station with blood stained police uniform after wrapping parts of the victim's body in a curtain/table cloth of the station. It is alleged that Mukesh took discharge of Ms. X from the Government Hospital after taking all the medical papers from the said Hospital and admitted her in a private Nursing Home posing to be the husband of Ms. X. After termination of pregnancy, Mukesh disowned her and as a result the appellant in CRA (DB) 4 of 2024

(hereinafter referred to as the “VL”) filed a criminal case which ultimately gave rise to Sessions Trial under Sections 376/312/417 IPC against Mukesh who claimed to be innocent of all charges since, according to the defence, as Mukesh refused to accept the de-facto-complainant’s proposal of marrying her, she filed this concocted criminal case against him. As they were colleagues and were on talking terms, the VL misunderstood the same as a love affair.

2. Being aggrieved with the judgment of acquittal dated 24.04.2024 passed by the learned Sessions Judge Andaman and Nicobar Islands at Port Blair in connection with Sessions case no.32 of 2015 corresponding to Sessions Trial No. 16 of October 2015, the VL has brought the appeal being no. CRA (DB) 4 of 2024 and the State has also filed a separate appeal no. CRA (DB) 6 of 2024 contending that the learned trial judge did not consider the evidence brought on record and the present law of land in its proper perspective and as a result of which the Mukesh was able to secure a verdict of acquittal from the learned trial Court. Both the appeals are hereby disposed of by this common judgment for the sake of convenience and brevity.

3. Mr. Kabir, learned senior advocate has submitted that the prosecution case rests in three parts. Firstly, the allegation of inducement to enter into sexual relation with the appearance of the very inception that he would marry the appellant. Secondly, assurance of marriage during the continuation of appellant's pregnancy and thirdly, getting pills by the accused to cause her miscarriage and abortion on the promise of marriage to induce her consent.
4. Mr. Kabir, learned senior advocate appearing for VL has drawn our attention to the statement of the de-facto complainant recorded on 16.01.2014 under Section 164 Cr.P.C. and also to the fact that medical examination was done on 09.01.2014 at 9.20 a.m. at G.B. Pant Hospital.
5. Mr. Kabir has also drawn our attention to the certificate issued by Dr. Arun Kumar Unnithan dated 28.01.2014 which was marked as Exhibit 7, stating that the VL came to the hospital with her husband on 24.10.2013 at about 18.30 hrs. with complaint of profuse bleeding as she had allegedly undergone abortion elsewhere and she was given treatment to save her life due to profuse bleeding. The Register of patients at Dr. Arun's Hospital has been marked as Exhibit 8. Further, one certificate dated 10.02.2014 and entry in the register were marked as Exhibit A collectively. The certified copies of the complaint of the VL to the State Social Welfare Board and the enquiry report in this regard

were forwarded to the police by the Chairperson of the Board under cover of letter dated 20.02.2014 which was exhibited as Exhibit-13. The duty register entries of Aberdeen PS for 22.10.2013 and 24.10.2013 were exhibited as Exhibit 14 collectively and they would show that the VL, accused and various witnesses were very much on duty on those dates corroborating the VL's version.

- 6.** Learned Counsel also pointed out that call detail records of the VL, accused and Shiva Kumar demonstrated the calls between the VL and the accused at the relevant points of time, the location of the accused at G.B. Pant Hospital on 24.10.2013 while she was taken there initially and then removed to Arun's Hospital which corroborates the narration by the VL and other witnesses as to time of different events on that day which were marked for identification as 'X' and 'X1', both of which constitute substantive evidence.
- 7.** Mr. Kabir further submitted that there is clinching evidence to show that the accused promised to marry the VL and obtained consent to fraudulent promise leading to sexual relations. The PW 1 being the VL fully supported and corroborated her story in the complaint and in the statement recorded under Section 164 Cr.P.C and also before learned Trial court. PW 1 specifically described that she attempted to restrain the accused from making physical intercourse with her but the accused assured her of marriage and inspite of such protest on several occasions the accused established physical relation with the VL including sexual intercourse on the promise to marry her. According to

learned counsel the VL clearly demonstrated how deeply she was induced as she had wanted to marry the accused. The learned Counsel has also submitted that the administration of pills to her by the accused caused the miscarriage/abortion at the G.B. Pant Hospital and although the defence was attempting to make out a case that there was no document at G.B. Pant Hospital, the evidence of Police Personnel, VL victim's family members and even the Government doctor had clearly stated that the VL was taken and treated at G.B. Pant Hospital. The offence of causing miscarriage has been made out not only under Section 312 but also under Section 313 since the consent was obtained under fraudulent promises of marriage, so even this consent to taking the pills was no consent at all. No prejudice is caused to the accused by framing of charge only under Section 312 and not under Section 313, as he was fully aware of the nature of the case and accusation and charges of miscarriage without her consent and therefore, he should actually be convicted under the graver offence of under Section 313 rather than 312 of IPC.

- 8.** Mr. Kabir then submitted that the accused posed himself to be the husband of the de-facto complainant and took her to private clinics for her treatment. There are supporting evidences from the depositions of PW 1, PW 2, PW 14 and PW 15 in that regard.
- 9.** There is a complete absence of explanation by the accused and his sole attempt was to deny the pregnancy at the entire stage rather than stating that there was a consensual love affair and hence it was not

rape, or that he did not administer pills to her for abortion to her causing a miscarriage on the promise of marriage.

10. Mr. Kabir has stated that the judgment of the learned Sessions Judge is perverse and illegal on the following grounds.

- I. Two young persons fall in love, make promises as convenient being overcome with passion or lust - this does not dilute an offence under Section 376 read with 417 of the Code.
- II. Continuing relationship where she knows that marriage is not possible, i.e. he is already married, etc. - she knew no such thing until 01.01.2014 when his family refused the marriage, till then he was leading her on as the evidence shows corroborated by independent witnesses and CDR details whereby it is clear that she still believed he would marry her.
- III. Differing communities where there is a prohibition or difficulty in marriage the accused was equally aware of this situation, from the very intention he had no intention to marry her.
- IV. Breach of promise vs a false promise of marriage - this squarely is addressed by the Hon'ble Supreme Court and in the facts was a false promise of marriage from the very inception as he had no intention to marry her.
- V. Inconceivable that in given circumstances they were maintaining a prolonged physical relationship in the absence of consent on her part - complete misreading. After initially

resisting she consented, but that consent was obtained under fraud and hence was no consent.

VI. Absence of medical documentation - explained by the evidence itself as no circumstance to disbelieve the VL especially when corroborated by the other documents, witnesses and contemporaneous materials.

VII. Delay in lodging FIR on the part of the VL- no delay existed, as the cause of action arose when she was rebuffed regarding marriage on or about 01.01.2014, after which she went to the authorities resulting in the FIR ultimately being lodged on 09.01.2014.

11. Mr. Kabir relied on the following judgments.

- i) **Ajit Savant Majagavi** reported in **AIR 1997 SC 3255** - principles of appeal against acquittal
- ii) **Siju Kurian** reported in **AIR 2023 SC 2239**- perversity by trial court justifies interference by the High Court in appeal.
- iii) **Yedla Srinivasa Rao**, reported in **(2006) 11 SCC 615**-element of consent when under misconception or fraud in terms of Section 90.
- iv) **Karthi v. State**, reported in **AIR 2013 SC 2645** - long relationship with assurance of marriage, and cause of action came after the refusal to marry, no delay can be said to have occurred, offence of rape is constituted.
- v) **Anurag Soni**, reported in **AIR 2019 SC 1857** - cogent evidence that there was no intention to marry and Section 90 would vitiate consent as obtained under misconception

- vi) **Willie Slaney**, reported in **AIR 1956 SC 116** - if no prejudice caused and accused was not misled, then omission in charges can be rectified in the appeal with a conviction under the appropriate provision of law.
- vii) **Mohan Singh**, reported in **AIR 2011 SC 3534** - appellate court can convict even if charge not framed if accused was aware of the nature of allegations, unless accused can show a failure of justice thereby
- viii) **Baljinder Singh**, reported in **AIR 2024 SC 4810** - Law is well-settled that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the Accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.

12. Mr. Sumit Karmakar, learned Public Prosecutor appearing for the appellant in CRA (DB) 6 of 2025 submitted that he has nothing to add to the submission of learned senior advocate Mr. Kabir. He adopted the submission of Mr. Kabir and submitted that the impugned judgment is required to be set aside.

13. Learned Senior Counsel Mr. Mohammed Tabraiz appearing for Mukesh in both the appeals argued that the de-facto complainant had alleged that there was a love affair between herself and Mukesh and in the month of June, 2013, Mukesh took her near the Science Centre and made physical relationship with the assurance that he would marry her. The Hon'ble Supreme Court in **Uday vs. State of Karnataka** reported in **AIR (SC) 2003-0-1639** has been pleased to hold

that the failure to keep promise on a future uncertain date due to reasons not very clear on evidence may not amount to misconception of fact from the very beginning. The relevant observation in this regard is:

"The failure to keep promise at a future uncertain date due to reasons not very clear on evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry, we do not know when. If a full-grown girl consents to the act of sexual intercourse on a promise of marriage and continuous to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. Section 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the court can be assured that from the very inception the accused never really intended to marry her."

14. Mr. Tabraiz has further submitted that the de-facto complainant in his examination-in-chief has admitted that she is a post graduate in commerce and has the capacity to judge a fact to be right or wrong. She further deposed that she basically wanted to marry Mukesh. In his cross-examination the de-facto complainant stated that the site plan

was not prepared in her presence. It is not understood as to how the aforesaid site plan was conceived when the de-facto complainant had no involvement in preparing the same. It is also not known as to how the Investigating Officer identified the alleged place of occurrence. According to the learned Counsel, the only conclusion that can be drawn is that the investigating officer was colluding with the complainant.

- 15.** The mother of the complainant (PW 2), Mangayn Devi, had no personal and direct knowledge about the allegation.
- 16.** PW 3, M. Murugan was a seizure list witness in connection with the car bearing no.AN-01- H-3131.
- 17.** The PW 4, J. Dhanlaxmi also has no direct knowledge in relation to the incident except to the extent that the de-facto complainant told her that she was having a love affair with Mukesh and due to such there was physical relation between them.
- 18.** PW 5 Ignacius Kullu has no personal knowledge about the incident of rape.
- 19.** The evidence of PW 6, Solomie cannot be relied upon since the complainant herself admitted that she had no idea regarding site plan prepared by the I.O.
- 20.** The deposition of PW 7, Leela Devi is identical with the deposition of PW 6.
- 21.** PW 8, Sunita Lakra was tendered by the prosecution. Although the PW 9, Jeevan Lall deposed that she dropped two ladies to G.B. Pant

Hospital but failed to indicate the names and details of the said two ladies. The aforesaid witness was unable to produce the log book in relation to the said vehicle which allegedly was used by him.

22. PW 10, Pawan Kumar Yadav being a witness to the search conducted at the residence of the respondent has stated that no incriminating material was recovered from the residence of the respondent.

23. PW 11, Rajesh Kumar deposed that he was at the Police Station when the complainant was taken to Hospital and he had witnessed blood stains in the trousers of the complainant.

24. The learned Counsel has further submitted that no medical evidence was brought on record to demonstrate that the complainant was treated at G.B. Pant Hospital or that the blood stain was a result of an abortion. The blood stain could have been for various reasons and the medical experts were the best persons who could have confirmed the same, on the contrary PW 20, Dr. M.K. Saha had confirmed on record that he did not find any evidence of abortion.

25. PW 12, Halima Bibi deposed nothing excepting that his car bearing registration no. 3131 was seized by the police.

26. PW 13, Javed Hasmat did not support the case of the prosecution. On the contrary the said witness denied the fact of having given the car to the respondent.

27. PW 14, J. Kumari and PW 15, Sudha Singh are hearsay witnesses and they have no direct knowledge in relation to the present case.

28. PW 16, Shiva Kumar did not support the prosecution case.

- 29.** PW 17, Shanti Seema Lakra has deposed that the complainant was taken to G.B. Pant Hospital but the said witness did not speak about any blood stain rather stated that the trouser was stained with urine. During her cross examination the aforesaid witness admitted that in the court room she was sitting beside the complainant thereby giving an indication that the complainant was bent upon to implicate the respondent and was available at the Court during the recording of the evidence and was in contact with the said witness.
- 30.** PW 18, Charan Uraon is a brother of the complainant and is an interested witness. He had no direct knowledge about the allegations.
- 31.** Although PW 19, Chandan Sen had stated that the police staff prepared the medical slip at G.B. Pant Hospital and took the VL to the doctor, no medical slip was produced during trial to indicate the nature of the treatment, if any, that was allegedly administered to the complainant.
- 32.** Learned Counsel for Mukesh has further submitted that PW 20, Dr. M. K. Saha a Gynaecologist from G.B. Pant Hospital did not support the prosecution case. His deposition was as follows.

"The patient was already examined by the general duty medical officer Dr. J. Hema Bindu and only opinion as expert was sought on a particular point i.e. point No. 3 namely whether any sign of abortion in the past could be noticed on examination of the hymen of victim.

Accordingly, after examination I found that the hymen was ruptured and vagina was admitting two fingers

suggesting previous sexual exposure. My opinion was there was no obvious evidence of any recent abortion at that point of time."

33. PW 21 Dr. Arun Kumar Unnithan, the proprietor of Arun Hospital identified and exhibited the OPD register of his clinic for the date 24.10.2014 which was marked as Exhibit 8. On perusal of said exhibit it is evident that the name of the complainant was inserted at serial No. 26 after renumbering the said serial no. 26 for the second time and by striking out the name of Miss Rita Haider whose name had been inserted at serial no. 26 before the inserted name of the complainant. The age of the complainant was missing in the aforesaid register. If the insertion had been in the middle of the register even by duplicating the serial number, then the register could have been relied upon. The insertion of the name of the complainant by duplicating the serial no. 26 at the last bottom of the page creates heavy doubt regarding fabrication of the said register. The said Dr. Arun issued a letter on 28.01.2014 which was marked as Exhibit 7 indicating that he had treated the complainant at his clinic on 24.10.2013. It is interesting to note that during his cross-examination he admitted that he had no records available with him on 28.01.2014 when he had issued the said letter. It is surprising that a doctor could remember the nature of treatment administered three months before without even seeing the individual and just by seeing an inserted name in the fabricated/manipulated register. The aforesaid witness also admitted

about the duplication at serial no. 26 but could not offer any clarification for the same.

34. PW 22, Dr. Ganesh Samaddar from G.B. Pant Hospital deposed after about 6 years of having administered certain treatment in the absence of any document or without identifying the person to whom the treatment was administered. In his cross-examination he stated that if a person who has been issued the OPD slips and if she loses the same, the same will be available in the computer.

35. It is further contended by Mr. Tabraiz that no document was seized either from the complainant or from the computer of the G.B. Pant Hospital to prove that the complainant had gone to G.B. Pant Hospital for some treatment or that she was treated. The said doctor in his examination-in-chief stated that the complainant came to OPD for bleeding per vagina but the said witness did not depose that it was a case of abortion.

36. PWs 23 and 25 Mariam are one and the same witness. The aforesaid witness did not have any direct knowledge. She did not collect any blood sample either from the cloth or from the clothes of the complainant for any medical examination.

37. PW 26, Mithun Kirtania admitted that he did not speak to the complainant at G.B. Pant Hospital nor did he meet the doctor nor did he derive any information directly from the hospital regarding the illness of the complainant.

38. PW 27, Rangaswamy was the Investigating Officer of the case and during his cross examination he admitted that no document was recovered from the house of the respondent and further that serial No. 26 at Exhibit 8 has been inserted twice. He did not record the statement of Dr. Hema Bindu, Dr. Kodanda Ram and Dr. M.K. Saha.

39. PW 28, Inspector Rasheeda did not depose anything material in relation to the case. During his cross-examination the aforesaid witness admitted that the enclosures of Exhibit-13 were not produced. The aforesaid enclosures of Exhibit-13 were the complaint made by the complainant to the Social Welfare Board and the enquiry conducted by the board. It is not understood as to why the initial complaint and the enquiry were not brought on record. The aforesaid witness also admitted that Exhibit-14, the duty deployment register, does not contain the seal of the Police station.

40. Mr. Tabraiz has submitted that the allegation that the respondent on an undated day took the de-facto complainant in a car bearing registration No. AN-01- H-3131 in an isolated place and made physical relationship inside the car remains unsupported since the PW 13 being the son of the owner of the car denied the allegation that he allowed the respondent to use his said car. Although the allegation pertains to the period from June 2013 to September 2013 and no complaint was ever made by the de-facto complainant as against the respondent.

41. So far as the allegation that the de-facto complainant conducted a pregnancy test at Shyamla Clinic, no document was produced in support of such allegation. It is also true that the allegation of the de-facto complainant having visited Astha Clinic was also not proved. The letter from the said Astha Clinic certified that there were no records of the clinic during the period of June 2013 to October 2013.

42. Mr. Tabraiz has vehemently argued that there was an allegation from the side of the de-facto complainant that on 22.10.2013 the respondent gave some medicines to the de-facto complainant while she was at her duty. Subsequently, she had a bleeding and she was taken to G.B. Pant Hospital and was treated there. It is contended on behalf of respondent that there is no evidence on record to demonstrate that the respondent procured and or purchased any medicine from any pharmacy nor was there any witness to support the statement of the de-facto complainant to the effect that the respondent had ever given any medicine to the de-facto complainant. It is also not the case that the respondent had forcibly or by manipulating the de-facto complainant administered any medicine so as to cause abortion. The fact of abortion could have been proved only by medical documents and in the present case no medical record was brought on record to prove that the de-facto complainant ever had any abortion.

43. The allegation is that on 24.10.2013 the de-facto complainant was taken to G. B. Pant Hospital and she was kept at the casualty ward and treated there. No records, prescription and or documents were produced to demonstrate and or prove that the de-facto complainant was treated for abortion. Therefore, the visit of the de-facto complainant for any treatment is doubtful. Even if the prescription was lost or misplaced the visit of the de-facto complainant could have been proved by the OPD slip which ought to have been available in the computer of G. B. Pant Hospital. The medical evidence does not support the prosecution case.

44. The prosecution has tried to rely upon the call details record appearing from page 117 to 152 of the paper book in an attempt to demonstrate that the respondent was at G. B. Pant Hospital. The aforesaid CDR was not marked as an exhibit and was only marked x for the purpose of identification. The author of the CDR, Divisional Engineer BSNL was also not examined to prove the aforesaid CDR. More interestingly no certificate under section 65 B of the Evidence Act was brought on record to prove the authenticity of the aforesaid CDR. Section 65 B of the Evidence Act mandates that any information contained in an electronic record which is printed on a paper shall be deemed to be a document and the conditions mentioned in the section are to be satisfied in relation to the information and computer in

question. Admittedly there has been no compliance of section 65 B of the Evidence Act.

45. The defence was not given opportunity to cross-examination the relevant witness in support of such call details record. The allegation that the de-facto complainant was taken to Arun's Hospital by the accused was also not proved in view of the deposition of PW 21 Dr. Arun Kumar Unnithan. It is clear for the materials on record that the de-facto complainant was in love with the respondent and wanted to marry him. It was only after the refusal by the parents of the respondent, the de-facto complainant became enlightened about the alleged misdeed of the respondent. Therefore, the admitted position on record that transpires is that till 31.12.2013 the VL had no grievance against the respondent and it was only when the foreseen dream of marriage did not materialize as conceived by the de-facto complainant, the VL turned around and raised allegations which are matters of record. No witness was called on dock to prove as to what transpired on 03.01.2014 at the Social Welfare Board and deliberately the complaint made therein was not brought on record. It is evident from the conduct of the de-facto complainant that she never intended to lodge an FIR against the respondent but only sought to marry the respondent which proposal was not acceptable to the parents of the respondent.

Chapter III:

Analysis

A. Distressing factual matrix

B. Observations of the learned Trial Judge

C. Evidence: Substantive & corroborative

D. Precedents

-relevance of sole testimony of victim

-Consent or no consent

-Promise to marry: Misconception of fact

E. A quick glance on factual matrix

F. Further factual analysis :

-No document regarding Pregnancy and abortion

-No medico legal case: Why?

-Doctor's opinion: No abortion in recent times

-Site plan: not prepared in presence of the victim.

-Exhibit 8: Manipulated or not?

-Call Details records: Certificate under Section 65 B of

Evidence Act

-Memory test for doctors: Availability of OPD slip in computer

-Blood stained uniform- not due to abortion?

- No document of complaint to Social Welfare Board

46. Whether a conviction or an acquittal is ultimately secured remains a separate matter. However, ***the present case is uniquely distressing.*** While the police uniform has often been stained with blood in the line of duty—symbolizing gallantry and bravery that makes the nation proud—this case brings collective shame to the Police Administration of the Andaman and Nicobar Islands. Here, a lady police constable was hospitalized with a blood-stained uniform, not because of a battle with criminals, but due to an alleged incident entirely foreign to the values of the force. It is alleged that she suffered an abortion within the police station itself, after being coerced by a male colleague into consuming pills to terminate a pregnancy for which he was responsible.
47. Mukesh/accused has denied the charges of the VL. According to him, as the victim lady wanted to marry him, she brought this false concocted criminal case against him only when her proposal was refused by Mukesh and his relatives. There is no evidence to the effect that the de-facto complainant and Mukesh were in love. Nobody witnessed that they were in the process of love making. There is no evidence to the effect that the petitioner was sexually assaulted by Mukesh. There is no evidence that he made promises to marry her. There was not a single witness who saw Mukesh to give pills for termination of her alleged pregnancy. No document was produced to show that it was Mukesh who procured termination pills from any medical shop. No documents were produced to show that the petitioner suffered an abortion at the relevant point of time. Prosecution has

failed to bring home that the de-facto complainant was sexually exploited in the car as referred to in the evidence. The defence has also pointed out that there are materials on record which reveal that the de-facto complainant colluded with the Investigating Officer and other witnesses to frame him. To achieve her goal, the de-facto complainant through the IO has produced a concocted and manufactured document from Doctor Arun's Clinic which has been marked as Exhibit-8. There is no explanation as to why the de-facto complainant did not lodge the complaint soon after the incident when she was sexually abused for the first time. It is only when the de-facto complainant came to know that her proposal of marrying Mukesh will not fructify, the complaint was lodged from her side. The medical evidence does not support the prosecution case nor the deposition of PW 1 and other vital witnesses are reliable since there are inherent infirmities in the said depositions. The learned Trial Judge has carefully considered the evidence of the de-facto complainant and other witnesses along with documents which were produced in evidence and thereafter passed the considered judgment showing how Mukesh was falsely implicated at the instance of the de-facto complainant.

48. From the above it transpires that the defence has throughout the proceedings denied the existence of any love affair between Mukesh and the VL. He has also denied that any sexual act took place between them. He has further denied administering pills for termination of the alleged pregnancy of the VL. He has categorically stated that as the de-

facto complainant's proposal for marrying her was turned down by Mukesh and his relatives, the VL filed the false criminal case. During cross-examination of the VL it was suggested from the side of Mukesh that Mukesh and the VL being colleagues were on talking terms but the same was misunderstood by the defacto complainant to be a love affair.

Observations of the Learned Trial Judge

49. Therefore, according to the defence, the allegation of love affair as made out in the prosecution case is a false one. Let us see what the learned Trial Judge had recorded in this regard in his judgment. At page 19 of the said judgment the observations of the learned Trial Judge have been recorded which are quoted herein below:-

“When I considered this evidence of PW 1, I find that in the initial stage, she had love affairs with the accused and when this love affairs was there at that time, there was no promise of marriage. I also find that after the said love affairs she went inside the jungle near Science Centre where they had physical relation. It is the allegation of the VLgirl that she was forcibly raped in the said jungle against her will and without her consent. If that be so then why she did not report this matter to police at PS or to any of her colleague/parents or her family members as because she stated that after the incident in question accused asked her

he will marry her. If that be so, then it can be said that the consent of VL for the said physical relation was not obtained after giving promise to marry her. When I perused the judgment referred from the side of defence reported in (2003) 4 SCC 46, I find that the ingredient of promise to marry must be since its inception of physical intercourse inception and the consent of VL girl must be obtained after giving such promise of marriage from the beginning. But in this case, I find that they had one love affair. I also know that both VL as well as accused were major, colleague of the same batch and were working in the same police station and due to that reason, the said love affair started. Accordingly, they went in the jungle and as per version of the VL girl, forcible sexual intercourse was done by accused with her. If that be so, then strictly it does not come under the purview of section 417/376 of Indian Penal Code. Rather it could have come the definition under section 376 of Indian Penal Code if the same could have reported at Police Station just after the incident.

In this case, I find that even after the said first incident of intercourse, the VL voluntarily entered into further physical relationship with the accused several times and now she is saying that her consent was obtained all the time with a

promise to marry by the accused person.

When I perused the cited judgment reported in (2003) 4 SCC 46, I find that the Hon'ble Court has held that if promise to marry is lacking since its inception then it cannot be said that the consent of VL was given under misconception defined under section 90 of Indian Penal Code.”

50. The above observations of the learned trial judge are vital on two counts. Firstly, the learned Trial Judge has observed that there was a love affair with the accused from the very beginning. It appears that such observation or finding of the learned trial judge was not challenged by the present respondent by filing an appeal or counter appeal. Therefore, the learned trial judge has held against Mukesh's plea that there was no love affair between him and the VL, and by not challenging the same the defence accepted the finding of the learned trial court to the effect that there was a love affair between them. Moreover, PW 14 J. Kumari has deposed that the VL and the respondent are batch mates and there was a love affair between them. The said deposition was not challenged. She has also deposed that in September 2013 the VL told her that due to physical relation with the accused she was pregnant. The defence challenged such testimony in her cross. Pw15 Sudha Singh has also hinted that the relation between the VL and the respondent was not a normal relation like colleagues

and in April 2013, she had doubts that there was a love affair between them. PW 25 Mariam saw the VL perplexed on 23.10.2013, that is, just one day before her alleged abortion, and she also saw the accused talking with the VL and doing something on the phone of the victim. Sometime thereafter both of them left the room of PW 25 mistakenly leaving the phone of the VL on her table. Subsequently PW 25 found from the screen of the mobile of the VL that the accused was continuously calling her over phone. She also hinted that there was some sort of relation between them. Therefore, the learned Trial Judge has rightly decided that there was a love affair between the VL and the accused, and such finding was not challenged. Secondly, the learned Trial Judge has categorically stated that although the de-facto complainant and Mukesh were in love affair, there was no promise to marry on the part of Mukesh from the very inception.

51. I have no hesitation to say at this stage that the learned trial Judge's observation so far as regards the fact that there was no promise to marry from the side of Mukesh at the very inception of the relationship, is perverse and beyond records.

Evidence: Substantive & Corroborative

52. If we peruse the FIR we shall find that the de-facto complainant has made the following allegation against Mukesh:-

“I am a LPC presently posted at PS Aberdeen. I was appointed in the year 2011 and since my appointment I am posted at PS Aberdeen. Along with me Mukesh Kumar Yadav was also posted at PS Aberdeen and due to the reason that we are of the same batch and working together we developed intimacy towards each other. That in the month of April 2013 Mukesh Kumar has proposed me and I too have given my consent due to the fact that he had promised me that he will marry me. Thereafter he started luring me for having sexual relationship with him for which I have always resisted but he started saying that as we are going to marry each other, what is the harm in having physical relation prior to marriage and if anything goes wrong he is there to marry. Thereafter in the month of June 2013 he took me for a ride and at the time when we were sitting in an isolated place near science center he started pressuring me to involve in physical relation and there after even after my protest he overpowered me had made physical relation with me. I thereafter told him that I will commit suicide if I will conceive, at that time also he assured me not to be afraid as he is always there with me and will marry me.....”

53. In the VL’s statement recorded under Section 164 Cr.P.C by the learned Judicial Magistrate we shall find the following excerpts.....

“Main P.C 2603 (Ms. X), Main Aberdeen P.S. main ek sall se hoon. Mere Batch ka P.c 2717 Mukesh Kumar Yadav bhi Aberdeen P.S mein hai. Mukesh mere ko shadi ka proposal diya. Main proposal accept kiya. In the month of June, 2013 mera duty khatam hone ke baad Mukesh ek safed ambassador car leke aya jis ko number hay AN-01-H-3131 aur ghar chor dunga bolke science centre ke samne leke gaya. “car se utro kuch baat karna hai” bolke mere ko jungle mein ley gaya. Uno ne jabardasti mere se physical relation kiya. Uno ne apna ling jabardasti mere private part mein ghusaya. Mero dard hua main rone lage tab Mukesh bola ki “Main to bol diya tumse shadi karega.”Yeh baat kisi ko batane se mana kiya. Thora din baad duty khatam hone se Mukesh phir wo same car leke aya aur mere se shadi ki bari main kuch baat karke bolke car leke wha gari main humko rape kiya andhakar mein. Wo humko damki diya kisi se batane se wo hum ko shadi nahi karega. Aur do bar Mukesh Shadi karke bolkar mere ko rape kiya aur dhamki diya.”

(Translated)

"I, P.C. 2603 (Ms. X), have been posted at the Aberdeen Police Station for one year. P.C. 2717 Mukesh Kumar Yadav, who is from my batch, is also posted at the Aberdeen Police Station. Mukesh gave me a marriage proposal, which I accepted.

In the month of June 2013, after my duty was over, Mukesh arrived in a white Ambassador car with registration number AN-01-H-3131. Saying that he would drop me home, he took me to the front of the Science Centre and then he took me to the Jungle and told me “get out of the car- I need to talk to you.” There, he forced himself upon me and had physical relations against my will. He forcibly

inserted his penis into my private parts. I was in pain and began to cry; at that moment, Mukesh said, 'I have already told you that I will marry you.' He forbade me from telling anyone about this.

A few days later, after duty hours, Mukesh again brought the same car. Under the pretext of discussing our marriage, he took me in the vehicle and raped me in the dark. He threatened me, saying that if I told anyone, he would not marry me. On two further occasions, Mukesh raped me under the pretence of marriage and issued threats against me."

- 54.** She was also examined as PW 1 wherein she has stated as follows:

"I was appointed in the police department in the 2011 and my first posting was at PS Aberdeen in the year 2012. I know the accused Mukesh Kumar Yadav as we were of the same batch and we both posted in the same PS. He is present in the court (identified the accused on dock).

In April, 2013 the love affairs between myself and the accused was started. Thereafter, in June, 2013 after completion of my duty, the accused taken me at Science Centre near Carbyn's Cove. He told me that he has some discussion to be made. Then he took me to the hilly jungle area opposite to Science Centre and intend to make physical relationship with me. I wanted to restrain him but he assured me that he will marry me. Then he started to make physical relation with me forcibly in the Jungle. I then also restrained him. He put his private part into my private part and committed intercourse. Thereafter, he left me at Carbyn's Junction. Thereafter, proceeded towards my home

and he also left the place. After some day, after my duty was over, he again met me and told me that he wanted to have some discussion about marriage and then he took me by a White Colour Car bearing registration No. H-3131 near Carbyn's Cove in an isolated place and made physical relationship with me inside the Car. Thereafter, he also made physical relationship with for other two times and he told me not to disclose the same to any other and also promised to marry me. ”

55. Therefore, from the above three materials on record it is found that before starting the physical relationship, Mukesh had meted out a promise to marry the VL. It was not that there was a mere love affair and the couple sexually enjoyed each other. From the very beginning of the physical relationship, there was a promise to marry VL from the side of Mukesh and that was the consistent allegation in the FIR, in the statement under Section 164 Cr.P.C of the VL and also in her deposition. I do not see how the learned Trial Judge come to the finding that from the very inception of their physical relationship there was no promise to marry from the side of Mukesh.

56. Therefore, this observation, as we have already recorded, is perverse and an instance of non-application of mind to the materials on record.

57. The learned trial judge has relied upon the decision of **Uday vs. State of Karnataka** reported in **(2003) 4 SCC 46** wherein the Hon'ble Supreme Court held that the failure to keep the promise to marry at a future uncertain date, due to reasons not very clear on the evidence, does not always amount to a misconception of fact at the inception of

the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case, the consent could be said to result from a misconception of fact. But when the fact alleged is a promise to marry it is very difficult to know when such promise will be fructified. It is also laid down in the said decision that benefit as envisaged under Section 90 of the Indian Penal Code cannot be called in aid in such a case to pardon the act of the girl who allowed his partner to perform sexual act and fasten criminal liability on him alone unless the Court can be assured that from the very inception the accused never really intended to marry her.

58. Therefore, we find that the above case law has dealt with certain issues including the fact that there might have been a promise to marry but due to certain reasons such promise could not be fulfilled. In that event it cannot be said that the promise to marry the girl was false from the very inception. So, the above case law suggests that the prosecution has to show that the accused actually had no intention to marry the girl from the very inception, but to obtain sexual favour, he made false promise to the girl concerned.

59. In this case, we find that Mukesh did not accept that there was any love affair between the de-facto complainant and himself nor was there any sexual intimacy or sexual act between them. Therefore, the Court has to look into the evidence whether there was any sexual act

performed by the respondent with the de-facto complainant with false promise to marry her.

60. We have already discussed the portion of the deposition of PW 1 wherein she has narrated how she was induced to perform sexual acts with Mukesh on the promise to marry. It is also alleged by the PW 1 in her deposition that due to sexual acts she became pregnant and after having positive pregnancy test at Shyamla Clinic, the matter was brought to notice of Mukesh who took her to Astha Clinic for her medical check-up and on examination the baby in the womb was found healthy. The prescriptions of the doctor given to her were kept by the accused who told her that if the matter of pregnancy was disclosed there would be much difficulty in arranging marriages of his sisters. On 22nd October, 2013 when she was on duty, she felt unwell and the matter was brought to the notice of the accused who had given some medicines to her and after taking those medicines she felt abdomen pain. On 24.10.2013, she also informed the same to the accused, then at about 1.30 p.m he gave her some medicines but her pain started increasing and became severe. She went inside a room to rest there and then bleeding started. She informed the said fact to the lady staff of the police station who then took her to GB Pant hospital and she was kept at casualty ward and was treated there. Thereafter, in the evening the accused came there and took her to Arun's Hospital. She was detained in Arun's Hospital for two hours and thereafter, was released. The accused thereafter dropped her at New Pahargaon wherefrom she went

to her house in an auto. She was on leave for three days and she reported for her duty on 28.10.2013. He even talked with the accused and he assured her that he will marry her.

61. It is also alleged by the PW 1 that thereafter, the accused started ignoring her and on 01.01.2014 her mother and her maternal grandmother went to the house of the accused for negotiation of marriage, but the mother of the accused denied such proposal and stated that her son could not do such a thing. She also stated that one alliance from the mainland has been fixed for the accused for marriage. On 02.01.2014, she went to the Social Welfare Board to make a complaint against the accused. The Chairperson of the Social Welfare Board called both of them on 03.01.2014 and they had been there on 03.01.2014 wherein the accused denied the allegation and fact as stated by her. Thereafter, she told the matter to the PS and on 08.01.2014 she lodged the FIR against the accused in writing. Her statement was recorded by the learned Magistrate under Section 164 Cr.P.C.

62. In her cross examination, she has stated that she basically wanted to marry Mukesh. He denied the suggestion that while Mukesh was in custody she went to jail and pressurised him for marrying her with assurance that if he would marry her she would not proceed with the case. She has further stated that the site plan was not prepared in her presence. She had no documents to show that she had a medical examination at Shyamla Clinic. She has also denied the suggestion the

accused did not give her any medicine while she was feeling unwell or that he did not give her any medicine on 24.10.2013. She has further stated that she had handed over the medical document of the G.B. Pant Hospital to the IO during investigation. She has admitted that it is true that the procedure of medico-legal cases would have been started when she was taken to G.B. Pant Hospital on 24.10.2013 but the medico legal case was not done in her case. She has denied the suggestion that on that date the accused did not take her out from G.B. Pant Hospital in the evening or that he did not take her to Arun's Hospital. She had no document at present regarding her treatment at Arun's Hospital and no such document was handed over to her on that date. She has further denied the suggestion that the accused never assured her to marry. She has also denied the suggestion that he refused to marry her and for that reason she had pressurised him to marry her. For that reason she lodged a complaint against the accused at the Social Welfare Board.

63. The contention of the defence is that the deposition of the pw1 is not believable since no witness was produced to support such allegation.

64. Truly no witness was produced from the side of the prosecution. But needless to mention, even in the admitted, sacred relationship of husband and wife, the sexual activities are performed not in the public glare but beyond the closed doors or at least not before the eyes of another. So it is almost certain that if there were any such sexual activities between the de-facto complainant and the accused that took

place not in front of any witness and therefore, the prosecution case cannot fail merely because no witness was produced to support PW 1's version. It is now well settled that in a case of sexual offence, the VL is the best witness for the prosecution. If the evidence of the VL inspires confidence, the accused can be convicted on the sole testimony of the VL provided it is free from blemishes and infirmities.

Precedents: Relevance of sole testimony of VL in sexual abuse

65. In **Phool Singh vs. State of Madhya Pradesh** reported in **(2022) 2 SCC 74**, the Hon'ble Supreme Court has discussed the law as laid down in **State of Punjab vs. Gurmit Singh** reported in **(1996) 2 SCC 384**. The relevant **paragraph 8** is quoted herein below:

"11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience.

The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof.

The Court observed as under:

(SCC pp. 394-96 & 403, paras 8 & 21)

"8. The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on

her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

21.... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The

testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

66. In State of Himachal Pradesh vs. Hukum Chand @ Monu reported in **2026 SCC Online SC 462**, the Hon’ble Apex Court came to the conclusion that the evidence of the prosecutrix alone is sufficient to convict the accused. *“As such, on PW-1’s evidence alone the offence stands established. The evidence of others only adds further credence to the statement of the victim. We may add that animosity is a double-edged sword and if given undue weight, may lead to injustice, in view of the uncontroverted testimony of the victim.”*

67. In Rajinder @ Raju vs. State of Himachal Pradesh reported in **(2009) 16 SCC 69**, the Hon’ble Supreme Court has been pleased to hold as follows:

“19. In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore,

ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the VL can be construed as evidence of consent.

20. Insofar as the present case is concerned, the circumstances referred to and pointed out by the learned counsel are neither sufficient nor do they justify discarding the evidence of the prosecutrix. There is nothing on record that creates any doubt/disbelief or a suspicion about the evidence of the prosecutrix. In a case, such as this, where the prosecutrix was misrepresented by the accused that he would show her to his cousin (a doctor) as she was suffering from some throat pain and she accompanied him but the accused took her to other places and when it became dark, took her to a lonely place and committed sexual intercourse, the prosecutrix was not expected to put any resistance lest her life would have been in danger. In the facts and circumstances, the

absence of injuries on the person of the prosecutrix does not lead to an inference that she consented for sexual intercourse with the accused. The young girl became VL of lust of the accused who was more than double her age and yielded to sexual intercourse against her will.

21. In all, we find that the judgment of the High Court affirming the judgment of the trial court convicting the accused under Sections 366 and 376 IPC does not suffer from any legal flaw. The sentence awarded to the appellant does not call for any interference by this Court. The appeal having no merit must fail and is dismissed. The appellant will surrender to his bail bond and will be taken into custody to serve out the sentence as awarded.”

68. In State of Himachal Pradesh vs. Manga Singh reported in **(2019)**

16 SCC 759, the Hon’ble Supreme Court has been pleased to hold that,

“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and

circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the VL does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court."

69. Recently the Hon'ble Supreme Court in **Deepak Kumar Sahu vs. State of Chhattisgarh** reported in **2025 SCC Online SC 1610** has discussed the relevant case laws and has also observed that if the victim's evidence was probable, natural and trustworthy, there is no reason to disbelieve such evidence. In the said case law the Hon'ble Supreme Court has also discussed the judgment of **State of Maharashtra vs. Chandraprakash Kewalchand Jain** reported in **(1990) 1 SCC 550** wherein the Court observed that,

*“16. A prosecutrix of a sex offence cannot be put on a par with the accomplice, it was further observed that she is a victim of crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. It was further observed that evidence of a rape VL must receive the same weight as is attached to an injured in cases of physical violence. It was stated that there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 of the Evidence Act which may require it to look for corroboration.....
.....”*

Consent or no consent:

70. In **State of Punjab vs. Gurmit Singh** reported in **(1996) 2 SCC 384** the Hon’ble Supreme Court has laid down the law in **Para 8** of the said decision. However, the observation of the Hon’ble Court may be summarised as herein under:-

“The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where

her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law

but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

71. In the case at hand, it appears that the VL from the very beginning has been claiming that she and the respondent were in love and agreed to marry each other. Subsequently, the accused asked for sexual favour but she refused to accept such a proposal by saying that after marriage it will be done. The accused on the other hand told her when he agreed to marry her what was the harm in doing pre-marital sex. Even after her resistance, she was overpowered and raped. Again to console her, he assured that he was always with her, even if she conceived. But at the same time he cautioned her not to disclose the same to anybody; otherwise he will not marry her. Yes, it is true that she could have

lodged the criminal complaint soon after the incident but she did not. Can this omission on the part of the VL give a fatal blow to the prosecution case? Was there any reasonable ground for the VL to foresee that the accused will not marry her? If she could have understood that the accused will not marry her after such sexual acts, she could have filed the criminal complaint. It was on record that before and after such sexual intercourse the accused promised the VL to marry her, and not only that he also threatened her that if she dared to disclose anybody regarding their sexual intimacy, he would not marry her. Now it is not understood if he is so open minded to have sex before marriage with a lady whom he promised to marry, and if such a fact is disclosed to anybody by any chance, then why will he not marry her? Why will he forget his so much love towards the de-facto complainant, if anybody comes to know about their intimacy? This attitude clearly shows that the accused was from the very inception not eager to marry her but he gave false promises of marriage to secure sexual favour from the victim. By such false promises and assurances he not only enjoyed the VL sexually but also designedly prevailed upon her not to lodge any complaint against him. All the time, as it appears from the evidence of PW 1, the accused came to the VL and told her that he had something to say about their proposed marriage, and she came out with him, and he committed sexual intercourse after taking her to secluded places or inside a car. To fall in love with somebody is not a sin, but to take advantage of such mental condition of such person and to have sex

with her under promise to marry knowing fully well from the very inception that such promise is false, is not protected under the judgment in the case of **Uday vs. State of Karnataka** reported in **AIR (SC) 2003-0-1639/(2003) 4 SCC 46**.

Promise to marry: Misconception of fact

72. In **Yedla Srinivasa Rao vs. State of A.P.** reported in **(2006) 11 SCC 615** the Hon'ble Supreme Court has been pleased to hold that a consent obtained by misconception while playing a fraud is not a consent if it is proved that sexual intercourse had been committed by the accused without the consent of the prosecutor, and she stated in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. The said judgment has discussed Sections 375, 90 of the Indian Penal Code and also Section 114 A of the Indian Evidence Act. To understand the relevant issue paragraphs 9 and 11 are quoted herein below:-

“9.. The question in the present case is whether this conduct of the accused apparently falls under any of the six descriptions of Section 375 of IPC as mentioned above. It is clear that the prosecutor had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused. Had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse. Therefore, whether this amounts

to a consent or the accused obtained a consent by playing fraud on her. Section 90 of the Indian Penal Code says that if the consent has been given under fear of injury or a misconception of fact, such consent obtained, cannot be construed to be valid consent. Section 90 reads as under:

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 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.

10.....

11. In this connection reference may be made to the amendment made in the Indian Evidence Act. Section 114A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114A reads as under:

Section 114A- Presumption as to the absence of consent in certain prosecutions for rape.- in a prosecution for rape under Clause (a) or Clause(b) or Clause(c) or Clause (d) or Clause (e) or Clause (g) of Sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual

Intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.

If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutor and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW, she resisted and she did not give consent to the accused at the first instance and he committed rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.

73. In Karthi vs. State Represented by Inspector of Police, Tamil Nadu reported in **(2013) 1 SCC 710** the Hon'ble Supreme Court has been pleased to deal with the allegation of rape after procuring of consent for sexual intercourse by deceit. The Hon'ble Court has been pleased to hold that the accused-appellant and prosecutrix repeatedly engaged in consensual sex and during the entire interregnum, the accused-appellant promised that he would marry her. As long as commitment of marriage subsisted relationship between the parties could not be described as constituting offence of rape under Section

376. It is only after accused-appellant declined to marry prosecutrix that a different dimension came to be attached to physical relationship, which had legitimately continued over past six months, and only on refusal of the accused-appellant to marry the prosecutrix, the question of making criminal complaint arose. After scrutinising the version of prosecution case and evidence the Hon'ble Supreme Court was pleased to hold that merely on account of delay in registration of FIR, the prosecution case should not be dismissed and accordingly, the conviction and sentence of the accused was upheld by the Hon'ble Supreme Court.

A quick glance on the factual matrix:

74. The deposition of witnesses and the prosecution case in hand show that the instant case was based on certain factual matrix:

Firstly, Love affair between the VL and the accused;

Secondly, both of them agreed to marry each other;

Thirdly, the insistence of the accused to have sexual favour before marriage;

Fourthly, refusal of the VL to have sex prior to marriage;

Fifthly; further insistence from the accused to the effect that when he promised her to marry her, then what was the harm in having pre-marital sex;

Sixthly, the VL further refused the request;

Seventhly, she was overpowered and raped;

Eighthly, after the incident, finding her perturbed, she was assured that the accused would marry her and he would be by her side if she conceived;

Ninthly, the accused time and again took her to several places on the pretext of discussing the matter of marriage and committed sexual intercourse with the victim;

Tenthly, the VL became pregnant and reported the matter to the accused;

Eleventhly, the accused took the VL to Astha Clinic where pregnancy was confirmed and the accused kept all the documents.

Twelfthly, although the VL was not willing to abort, on 22/10/2015 the accused manipulated her decision by pleading that if she did not abort, the marriage of his sister would be in jeopardy and thereafter administered pills on her, again assuring that he would marry her.

Thirteenthly, on 24/10/2015 the accused again administered pill for termination of pregnancy upon her and after some time bleeding started in the police station

Fourteenthly, due to serious bleeding and vomiting, the VL was taken to GB Pant Hospital for treatment by lady staff of the Police Station

Fifteenthly, the accused came to the Hospital and took discharge of the VL and took her to a private nursing home under the name and style Dr. Arun's Hospital

Sixteenthly, after completion of the process she was discharged

Seventeenthly, after three days of rest the VL joined her duty

Eighteenthly, the accused started ignoring her and did not keep contact with her

Nineteenthly, the parents of the accused refused to agree to marriage of the accused with the VL on two counts: first their son could not do so as alleged by the VL and secondly marriage of the accused had already been fixed with a girl of mainland

Twentiethly, a complaint was lodged to the Social Welfare Board by the VL and at the time of hearing the accused denied all allegations.

Twenty-firstly, FIR was lodged on 08/01/2014 and medical examination of the VL was done on 09/01/2014.

Resumption of further analysis:

75. The above factual matrix points to one obvious angle of the case, that is, **was the VL a dramatist or was she a script -writer** ? How did she dare to disclose every minute detail of her ordeal exposing her case to be tested by the evidence of various persons, authorities. Had it been a false allegation, she, in all probability, might not have included so many detailed facts. **Now to satisfy our judicial conscience**, let us examine one by one the allegation and the defence as made out in this case.

76. Without repeating further, I would like to say that we have already discussed that as the sexual intercourse usually takes place

beyond the public glare, there is least possibility of having any eye witness to such an incident. The accused has also taken the plea that there was nobody to see that he administered termination pills on the VL and further there was no document nor any prescription nor any other piece of evidence to show that the accused procured termination pills for the use of the victim.

77. From the record it appears that the accused wanted to keep their sexual relation secret. He even threatened the VL that if she dared to disclose their physical relation to anybody he would not marry her. He wanted complete secrecy, and if that be so, it is obvious that he would not administer such pills after keeping a witness. Another interesting argument was made from the side of the defence to the effect that no document/prescription is produced to show that the accused procured the termination pills. But, needless to mention, termination pills are sold in the open market, and to purchase the same neither any medical prescription nor any other document is required.

78. The VL has deposed that she was raped in the jungle near the Science centre and also in a white car bearing no. AN-01-H-3131 brought by the accused. The defence denied such allegation by suggesting that there was no such car with such number in Andaman and Nicobar Islands. PW 13 Javed Hasmat deposed that after hearing that the accused was arrested in connection with the case, he came to the police station with his car bearing no. AN-01-H-3131 to meet the accused. Although he did not accept that he gave the car to the

accused, but his deposition strengthens the prosecution case on many counts, firstly, there was a car with no. *AN-01-H-3131* in Andaman and Nicobar islands. Secondly, the car belongs to the PW 13. Thirdly, PW 13 was a very close and intimate friend of the accused and the friendship was so much so that after hearing the news of his arrest PW 13 came to see the accused in the Police station with the said car and the same was then and there identified by the de-facto complainant and the car was seized in the Police Station. In this regard the deposition of PW 5 is relevant. Fourthly, it is very common and usual that good friends always provide various supports to each other.

79. Therefore, there is every possibility that the VL was not telling lies that she was raped in a car bearing no. *AN-01-H-3131* which was brought by Mukesh.

No document regarding pregnancy and abortion

80. It is alleged that no document is produced by the prosecution that the VL was pregnant at the relevant point of time and further no document is produced in support of the alleged abortion of the victim.

81. Needless to mention, the accused wanted to keep the relationship secret and for that reason he was very much conscious and that is why he even threatened the VL not to disclose about their relation to anybody otherwise he would not marry her. However, after the VL

became pregnant the scenario changed. The pregnancy of the VL had the possibility to disclose the physical relationship between the VL and Mukesh and for the purpose of keeping the same in secret, Mukesh kept all the medical documents/prescription in his custody. If we see the deposition of PW 1, she has categorically stated that the accused took her to Astha Clinic on the plea of her further medical check-up and the prescriptions of the Doctor were kept by the accused. The said deposition was not specifically challenged in her cross-examination. Similarly, it is found from the deposition of PW 4, J. Dhanalaxmi that on 24.10.2013 she along with Sunita Devi took the VL having abdominal pain and bleeding to G.B. Pant Hospital. She was admitted to the casualty ward by a doctor. Mukesh was calling the VL on her mobile frequently and the VL showed her mobile to PW 4 when Mukesh was calling her. PW 19 Chandan Sen has stated that on 24.10.2013, he being police constable was on duty at G.B. Pant Hospital as medico legal case duty. On that day at about 3.30 pm, one Santi Lakra and one Dhanalaxmi of Aberdeen P.S. brought the VL to G.B. Pant Hospital for treatment. Seeing the police women, he enquired the matter but they stated it was a female related case and they prepared the medical slip and took her to the doctor. The VL was detained in the casualty ward in the hospital. On the same day after one and 1½ hours to 2 hours, Mukesh came to the hospital and took back the VL taking discharge from the hospital. He identified Mukesh in the Court. He denied the

suggestion that the VL was not brought to the hospital on 24.10.2013 nor was she treated in the hospital.

82. When a Government servant is admitted in the Government hospital like G.B. Pant Hospital, in all probability, he or she shall be treated there and, it is wholly unlikely, unnatural and unconscionable that such a Government servant will be taken to a private nursing home unless there is something required to be hidden. There were chances of disclosure of all the misdeeds if the VL was treated in G.B. Pant Hospital. Moreover, there were chances of initiating medico-legal cases against Mukesh. There was no denial of the specific statement of PW 19 that on the same day Mukesh came to the hospital and took back the VL after taking discharge from the hospital. The said specific statement was not denied nor challenged in his cross-examination. PW 21 Dr. Arun Kumar Unnithan has also confirmed in the month of October, 2013 the VL came to his clinic with profuse bleeding with a history of having an abortion somewhere else. As there was profuse bleeding, she was immediately taken to minor OT and the blood clots were removed and the bleeding was controlled with medicines and injections and she was detained for about two hours and was advised to discharge and to come after three days for review. In his cross-examination he has specifically stated that for out-patients they do not retain the paper related to the treatment given to the patient. We shall also scan and discuss the evidence of PW 21 in subsequent pages but so far as the

present issue is concerned we have found that there are sufficient materials to show that all medical documents were kept by Mukesh for maintaining complete secrecy about their relationship including the incident of abortion of the victim. As the vital documents were kept by Mukesh himself there was sufficient reason for non-production of medical documents from the side of the prosecution.

No medico legal case- Why?

83. It is also rightly argued that no medico legal case was started. If we peruse the deposition of PW 19 Chandan Sen we shall find that on arrival at the G.B. Pant Hospital, the lady police constables/staff accompanying the VL to the Hospital for treatment were asked by PW 19 about the reasons for being in the Hospital, as he was in-charge of medico legal case duty, but the said lady police constables refused to answer the specific query of PW 19 on the ground that as the matter was related to a lady constable they were not willing to divulge the same to the said Police constable being PW 19. It is further found from the deposition of PW 19 that the said two lady constables prepared the medical slip themselves and took the VL to the doctor. Therefore, as the lady constables for protecting the reputation and dignity of police force, themselves prepared the medical slip and took the VL to the doctor, there is sufficient explanation from the side of the prosecution for not registering the medico legal case and non-production of documents. Firstly, the medical slip was prepared by the lady police constables

themselves refusing to divulge anything before the medico legal case duty officer and took the VL straight to the doctor. Secondly, discharge of the VL was taken by Mukesh from the said Hospital, as per unchallenged testimony of PW 19.

- 84.** Dr. Arun Kumar Unnithan by producing Exhibit 7 has deposed that the VL came to his Nursing Home accompanied by her husband and the same also supports the prosecution case and the deposition of PW 1 and PW 19 to a great extent.

Doctor's Opinion: No abortion in recent time

- 85.** The learned Counsel for Mukesh has time and again drawn the attention of this Court to the deposition of Dr. M.K. Saha, PW 20 to the effect the doctor disclosed that after examination he did not find any recent history of abortion in respect of the victim. If we go through the deposition of PW 20 we shall find that said doctor was asked to opine on a particular point that is “whether any sign of abortion in the past could be noticed on examination of the hymen of the victim.” PW 20 has disclosed that on 09.01.2014 after examination of the VL he found that the hymen of the VL was ruptured. His opinion was that there was no obvious evidence of any recent abortion. The said written opinion was marked as Exhibit 6. After evaluating the said deposition of PW 20 we have found that the said opinion of the doctor cannot prove that the VL did not suffer abortion on 24.10.2013. It is astonishing that the

opinion of the doctor was sought on a specific point “whether any sign of abortion in the past could be noticed on examination of the hymen of the victim”. Needless to mention, apart from examining the hymen of the VL, Dr. M.K. Saha did not conduct any test of the VL to ascertain whether or not there was any abortion, and he opined only after examining the hymen of the victim. The medical science does not support that by examining only the hymen of the VL it can be ascertained whether or not there was any abortion more than two months prior to such examination. In other words, it is not at all acceptable. Diagnosing a past or complete abortion requires clinical tools such as USG to confirm an empty uterus or blood test to track the declining pregnancy hormone. Physical inspection of vaginal opening including the hymen provides no diagnostic information regarding pregnancy status or medical history. Therefore, although the defence was very much vociferous in contending that in view of the deposition of Dr. M.K. Saha, the prosecution case suffers a death blow, but, in fact, it does not sound good. We are very much shocked to observe that PW 20 was asked on a very specific and restricted point from the side of the concerned Investigating Officer for the reasons best known to him and we shall deal with the matter in another section of the present discussion.

Site plan:- Not prepared in presence of the victim

86. It is true that PW 1 had deposed that the site plan was not prepared in her presence, but that does not mean that she did not identify the place of occurrence. There is no hard and fast rule that the site plan or the rough sketch map of the place of occurrence is to be prepared in presence of the victim. The only relevant point is whether the VL was able to identify the place where she was ravished, and in this case, there are sufficient evidences to show that the VL identified the place of occurrence in presence of the Investigating Officer and his team. There was no suggestion to the PW 1 in her cross-examination that she did not identify the place of occurrence. Moreover, PW 6 Solomie being a police constable has deposed that on 08.01.2014, the PW 6 along with home guard Lila, the VL and the Investigating Officer went to the spot i.e. the Science Centre and the VL showed the place where she was raped. It was a bush near the Science Centre. The site map was prepared by the Investigating Officer. In her cross-examination, there was no challenge that the VL did not show them the place of occurrence where she was raped. The PW 7 Lila has also stated that on 08.01.2014 she along with lady police constable Solomie, the VL went to Science centre and the VL showed that a place at a distance of 10 meters from Science Centre and told them that she was raped at that place by the appellant. The Investigating Officer, PW 27 Rangaswamy has stated that the site plan was prepared and signed by him. In view of the above although the site plan was not prepared in presence of the VL she had

categorically identified the place where she was raped near Science Centre. From the site plan which was marked as Exhibit 10, it appears that the place of occurrence was shown to be near the Science Centre and inside a bush. Hence there is no reason to disbelieve the prosecution case in this regard.

Exhibit 8: Manipulated or not:

87. The defence has also brought to the notice of this Court Exhibit-8, which was claimed to be a manipulated and manufactured document produced from the side of the prosecution. Let us examine Ext-8 which is the register of Dr. Arun's Clinic wherein it is found that on 24.10.2013 in the evening shift of the patient's register at serial no. 26 one Mrs. Rita Haidar was shown to be a patient and it is further found that again the de-facto complainant's name has been recorded as patient no. 26. A question was raised from the side of the defence that the said document was false and fabricated since it appears that there were double entries. In the first serial no. 26, the name of the patient was Mrs. Rita Haidar and in the second entry, that is also under serial no. 26 again, the de-facto complainant's name appeared.

88. It transpires from the original Exhibit-A, produced by DW1 Inspector Augustine, that the name of the patient in Serial no. 26 Mrs. Rita Haidar was penned through. Therefore, in fact, the name of Mrs. Rita

Haidar was deleted and after deletion of Mrs. Rita Haidar's name from the register, obviously for the next patient the serial number would be 26 and accordingly, the same was written. Therefore, there is no incongruity. As the said document clearly shows that the name of Mrs. Rita Haidar was deleted, the serial no. 26 was given to the de-facto complainant. It is also found from the said register that the said register has 35 lines and 6 columns in every page. It appears that Mrs. Rita Haidar's name was recorded in 32nd line and de-facto complainant's name was recorded in 34th line of the relevant page of the register. It is not that the name of the VL was inserted in serial no. 26 in a constricted manner. Soon after the name and particulars of Mrs. Rita Haidar having recorded in the 32nd line of the said register, at least three empty lines were available for the entry of next patient's particulars. It is found that in the next page another patient's name Mrs. Sita Laxmi under Serial no. 27 was recorded. Therefore, if there was any manipulation in serial no. 26 the serial no. 27 on the next page could have been affected. It appears that there is no incongruity since the name of Mrs. Rita Haidar at serial no. 26 was deleted by pen and the said serial number was assigned to the de-facto complainant whose name was recorded in the 34th line of the relevant page of the said register and in the next page after serial no. 26, the serial no. 27 was registered against another patient. Therefore, in my view, there is no incongruity in Ext. -8.

Call Details Records: Certificate under Section 65 B of the Evidence Act

89. It is argued by Mr. Kabir, learned counsel of the de-facto complainant that Mukesh was all along present in the G.B. Pant Hospital and he was also present at Dr. Arun's Clinic since he had taken the VL to the said clinic after taking discharge from G.B. Pant Hospital. There were numerous calls from the phone number of Mukesh to the phone number of the victim. The Call detail records would show the location of Mukesh was at G.B. Pant Hospital and the CDR also shows that he was also present at Dr. Arun's Clinic at the relevant point of time. This locational evidence is sufficient to show that Mukesh was very much anxious about the abortion and also the existence of medical documents of such abortion of the victim. The locational evidence in this regard would show the complicity of Mukesh in committing the offence and such evidence has ensured that the relation between the de-facto complainant/private respondent was not of a normal relation of two colleagues. Mr. Tabraiz, the learned senior counsel of Mukesh has objected to such submission of the learned counsel of the de-facto complainant since, according to him neither the CDR was brought on evidence nor a certificate under Section 65 B of the Indian Evidence Act was produced to prove the authenticity of such CDR. Therefore, according to him the CDRs marked x and x1 for identification cannot be read into evidence.

90. It is true that although the de-facto complainant's counsel argued that the CDR will show that Mukesh was very much present at G.B. Pant Hospital and at Dr. Arun's Clinic and there were numerous calls between private respondent and de-facto complainant, this Court cannot take into consideration such CDR particularly when the relevant certificate under Section 65 B of the Evidence Act was not produced and proved. It is also found that no competent official from the service provider was examined in support of the said CDR and therefore, we are unable to read the said CDR into evidence of this case.

Memory test for doctors: Availability of OPD slip in Computer:

91. PW 22 Dr. Ganesh Samaddar has deposed that on 24.10.2013, he was the Chief Medical Officer at G.B. Pant Hospital, Port Blair and on that day he examined the VL who came to OPD casualty with bleeding per vagina. He had given the emergency treatment and initiated the procedure for admission and called the duty constable for medico legal case. Thereafter, while preparing the same, the patient and the attender left the hospital as they were not willing for admission. In his cross-examination, he stated that he was not shown any paper in the Court on the day of his deposition to show that he treated the VL on 24.10.2013. He further stated that the OPD slips issued by the G.B. Pant Hospital are computerised. If a person who has been issued the

OPD slip and the same is lost, the same will be available in the computer. He denied the suggestion that he did not examine the VL on the relevant date.

92. The aforesaid deposition of PW 22 was severely criticized by the learned Counsel of Mukesh on the ground that it is not possible for anybody to recollect the factum of examination of any person after 6 years. According to the defence, the said deposition of Dr. Ganesh Samaddar was not at all reliable. However, the defence has tried to take the benefit of his cross-examination where he has stated that if a person who is issued with an OPD slip, particulars of such OPD slip can be traced out from the computer of the G.B. Pant Hospital.

93. Similarly, the deposition of Dr. Arun (PW21) was also challenged by the defence that if at the time of issuing Ext 7 admittedly no document was available to him, then, how could he give such a certificate without even seeing the VL at the time of issuing such certificate which was at least after a few months of the alleged examination of the VL in his clinic.

94. Needless to mention, there are several professionals like Doctors, Academicians, Advocates, Judges etc. whose memories are sharper than any normal person. All those professionals can recollect not only the case history but they can remember the particulars of the books,

treatise wherefrom they derive their knowledge. Such professionals are trained how to remember cases and case history in their memory. Therefore, it is not unusual or unnatural that PW 22 being the Chief Medical Officer could remember the incident of the VL particularly when it was found to be unusual that a patient who had been suffering profuse bleeding per vagina was brought to emergency casualty department for treatment but suddenly she and her attender disappeared from such emergency room without getting the full treatment and further, without the initiation of medico legal case, although medico-legal duty constable was called by him to initiate such case.

95. This is perhaps one of the rare cases where the doctor faced such a situation and therefore, the deposition of PW 22 cannot be doubted. It is true that the OPD slip which is issued by the hospital, the same can be retrieved from the computer but in this case, non-availability of OPD slip might be due to two reasons. Firstly, the OPD slip was prepared by the lady constables accompanying the VL and they refused to allow the medico legal duty constable to take up the issue and secondly, this is a fault on the part of the concerned IO for not collecting the OPD slip from the computer of the hospital. But in view of the deposition of PW 22 we cannot hold that the petitioner was not taken to G.B. Pant Hospital on the relevant date and time.

96. Similar conclusion can be drawn to the deposition of PW21. However, he had the opportunity to refresh his memory by perusing Exts. 7 & 8 at the time of his examination-in-chief. His memory can retain such incident since soon after the incident on 24.10.2013 the police came to his clinic for investigation for collecting papers. This also gives him a clue to remember this unusual incident. But neither PW 21 nor PW 22 was asked how he could remember the incident. Without asking such question in their cross, the defence cannot be allowed to agitate this issue only on the basis of oral and written argument from the Bar.

Blood stained uniform- not due to abortion?

97. The learned Counsel for Mukesh argued that the blood stains found on the Police uniform of the VL may not be due to abortion but it may be due to several other reasons. He has further argued that no effort was taken to examine whether the said uniform got blood stained actually due to abortion or not.

98. From the materials on record including the deposition of PW 1 and other witnesses like PW 21, PW 22 and PW 4 we cannot say that the police uniform of PW 1 got blood-stained due to reasons other than abortion. Moreover, the deposition of PW 11, Rajesh Kumar, PW 14 J. Kumari, PW 15 Sudha Singh, and PW 17 Shanti Seema Lakra are also supportive of the prosecution case. There is no reason to disbelieve their deposition, and in view of the subsequent events that took place after the VL was sent to G.B.Pant Hospital.

No document of Social Welfare Board:

99. It is found from the materials on record that before lodging the FIR on 08.01.2014 a complaint was lodged before the Social Welfare Board at the instance of the VL against Mukesh and apart from the letter of complaint addressed to Social Welfare Board, no annexures were brought on evidence. According to Mukesh the said complaint was required to be perused but as the annexures were not filed, the court did not get the opportunity to find the substance of the complaint and therefore prosecution had deliberately prevented vital evidence from coming into the records of the Court.

100. PW 1 has specifically stated in her deposition that she made all the allegations against Mukesh on 02.01.2014 to the Board and the Chairperson of the Social Welfare Board called both of them on 03.01.2014 and both of them appeared before the Board on 03.01.2014 wherein the accused denied all the allegations and facts as stated by her. The said statements on oath were not denied in her cross-examination by Mukesh. Therefore, from the above it appears that the PW 1 had made all the allegations and facts as stated by her in deposition to the Chairperson of the Social Welfare Board by making a written complaint and during hearing, the same were denied by Mukesh. Therefore, as the said complaint to the Social Welfare Board appears to have contained the same allegations against Mukesh, non-

production of the said complaint before the Trial Court cannot be said to be a vital omission on the part of the prosecution.

Chapter IV: Role of the I.O : ‘Brotherhood in uniform’

101. The phrase “Brotherhood in Uniform” was probably first used by Hon’ble Justice Dipankar Datta in the Rizwanur case [(2008) SCC Online Cal 564]. It goes to show that the brotherhood in police uniform has become so strong for brother police officers or constables that there may be attempts to shield the misdeeds of such police officials by other fellow police officers. In this case also we have found that the syndrome ‘brotherhood in uniform’ is apparent. It appears from the materials on record that the role of the investigating Officer, S.I. Rangaswamy is questionable since he has consciously omitted to bring on record certain evidence which is very vital for the prosecution of a police constable. In this case it is found that the locational evidence as disclosed in the CDR of the de-facto complainant and Mukesh was of enormous importance. Although the IO has collected the CDR, which is alleged to have sufficient evidence to prove the exchange of numerous phone calls between the VL and Mukesh on the relevant dates and time including their locational evidence on 24.10.2013, the IO did not collect the certificate under Section 65 B of Indian Evidence Act intentionally and as a result of which the prosecution lost a very vital evidence to

strengthen its case against Mukesh who was a police constable working with the concerned IO.

102. It is also found that the said Investigating Officer, S.I. Rangaswamy has sought an expert opinion of the doctor on a very specific point that is whether “*there was any sign of abortion in the past could be noticed on examination of the hymen of the victim.*” Needless to mention, it is very much difficult to ascertain the sign of abortion only by examining the hymen of the victim. It is not understood as to why he has made such specific and restricted query from the concerned doctor and we have already discussed that without clinical tools and other necessary tests it is not possible to say clinically whether there was any past abortion in respect of the VL by examining her hymen only. Further, he could have collected OPD slip from the computer of the Hospital which could have cascading effect on the defence case. It prima facie appears that the IO had designedly paved the smooth way for his fellow brother officer, totally ignoring the fate of his sister. The attitude and the manner of proceeding with the investigation raise a serious doubt about the truthfulness and integrity of the IO in respect of the causes of the VL who was also a lady constable of his police station. However, it is trite law that the fault of an Investigating Officer, which he has made knowingly or unknowingly, cannot cost the prosecution case and its witnesses. In this regard I may quote, even at

the cost of repetition, the relevant observation in **State of Punjab vs Gurmit Singh (Supra) :**

“..... Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the

*prosecutrix is not a requirement of law but a guidance of
prudence under given circumstances.*

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103. It is also found that the Investigating Officer did not cite as witness the Divisional Engineer BSNL, who issued the CDR as a chargesheet witness. Although it is true that in 2014 production of certificate under Section 65 B of Indian Evidence Act to prove electronic evidence was not mandatory, the same was directed to be produced mandatorily after pronouncement of the judgment in **Arjun Pandit Rao Khotkar vs. Kailash Kushanrao Gorantyal and Ors.** reported in **(2020) 7 SCC 1**. By the said judgment the earlier observation of the Hon’ble Supreme Court in **Anwar P.V. vs. P.K. Basheer** reported in **(2014) 10 SCC 473** was overruled. However, the IO could have cited the Divisional Engineer BSNL as a prosecution witness but the same was not done raising questions about the honest intention of the I.O. in pursuing the investigation neutrally. Then how could he prove such CDR in the court of law and by what means? It appears that his action had given the accused undue advantage, and, therefore we are shocked to say that the IO had taken a partisan view in dealing with the investigation, which is not approved in law.

Chapter V: Need for re-framing Charges ?

104. The Learned Counsel for the State as well as the de-facto complainant have argued that the charge should have been framed against Mukesh under Section 313 IPC and not under Section 312 of IPC since it transpires that the de-facto complainant was compelled to consume termination pills without her consent and therefore, ingredients of Section 313 IPC were available and the charge should have been framed under Section 313 IPC instead of Section 312 of the code. The learned senior counsel Mr. Kabir has further cited several judgments including **AIR 1956 SC116 (Willie Slaney vs. The State of Madhya Pradesh), AIR 2011 SC 3534 (Mohan Singh vs. State of Bihar), AIR 2024 SC 4810 (Baljinder Singh vs. The State of Punjab)** in respect of his contention that the Appellate Court can convict an accused even if charges were not framed under the proper section if it is shown that the accused was aware of the nature of the allegations and there would be no injury to him if such conviction is pronounced under law. He has further submitted that law is well settled that in order to know whether there would be a failure of justice or not, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. Mr. Tabraiz, learned senior counsel of Mukesh has

disputed such submission. According to him law does not support the power of the Appellate Court in convicting a person in respect of an offence higher than the offence he is charged with, without giving him an opportunity to defend.

105. Section 312 of IPC reads as follows:

“SECTION 312 CAUSING MISCARRIAGE

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

106. Section 313 of IPC deals with the following offence.

“SECTION 313 CAUSING MISCARRIAGE WITHOUT WOMAN'S CONSENT

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

107. From the discussion of evidence we have found that although Mukesh persuaded and manipulated the VL to consume the termination pills for terminating her pregnancy in an emotive way, there is no evidence at all that Mukesh used force to compel the VL to consume such pills, and as such evidence is not available, framing of charge under section 312 IPC was proper and there is no need for re-framing a charge under Section 313 IPC or to convict him under section 313 of IPC.

Chapter VI: The Closing chapter: Results

108. In view of the discussion above, we have come to the conclusion on the basis of testimony of the VL in the relevant sessions trial along with the evidence of supporting vital witnesses, that VL was sexually abused on the pretext of marriage at the instance of Mukesh knowing fully well that such promise to marry was false from the very beginning of the relevant relationship between him and the victim. The alleged consent of the VL was procured on her misconception of the fact that Mukesh had the intention to marry her. There is also evidence to the effect that to shield the pregnancy of the VL, Mukesh persuaded her to consume pills for terminating her pregnancy, being fully aware that his promise to marry the VL was false, and as such we have found that Mukesh is guilty of the offence punishable under Section 376 and also under Section 312 IPC. The learned Trial Judge did not analyse the

evidence on record in its proper perspective. The impugned judgment has occasioned failure of justice and in view of such palpable error, irregularity and illegality in the judgment, we are inclined to set aside the said judgment of acquittal and accordingly we do so. As there was a clear failure of justice, we pronounce the judgment of conviction against Mukesh Kumar Yadav and accordingly, we find that Mukesh Kumar Yadav is guilty of offences punishable under Section 376/312 IPC and he is, thus convicted for the offences under section 376/312 IPC. The convict Mukesh is directed to surrender before the learned Trial Judge by 22nd May, 2026 and on his surrender the learned trial judge shall take him into custody and shall pronounce and impose the proper sentence under Sections 376/312 IPC after hearing on the point of sentence in accordance with law. If the convict fails to surrender on or before the appointed day the learned Trial Judge shall issue warrant of arrest against him. However, we make it clear that within 7 days of his surrender or production in execution of warrant of arrest, as the case may be, the learned Trial Judge shall pronounce the sentence after complying with all the legal formalities. The appeals being **CRA (DB) 6 of 2024 and CRA (DB) 4 of 2024** are **allowed**. The judgment of acquittal dated 24.04.2024 passed by the learned Sessions Judge Andaman and Nicobar Islands at Port Blair in connection with Sessions case no. 32 of 2015 corresponding to Sessions Trial No. 16 of October 2015 is hereby set aside.

109. Before parting with this matter, we are constrained to observe that if a lady police constable—a member of the force itself—is subjected to such humiliation at the hands of the appellant and in view of the systemic failures of the police administration, the plight of an ordinary woman in the Andaman and Nicobar Islands becomes a matter of grave concern. For the common woman, the right to justice will remain elusive unless the administration rises to the occasion and demonstrates a policy of zero tolerance for offenses against women.

110. The question of conviction aside, this case remains singularly distressing. While the nation takes pride in the blood shed by officers in the line of duty—symbolizing a gallantry that earns our highest respect—the blood-stained uniform in this case marks a moment of collective shame for the Andaman and Nicobar Police. It signifies not a heroic struggle against crime, but a tragic violation occurring within the force itself.

111. Accordingly, we expect the Director General of Police (DGP), Andaman and Nicobar Islands, to take an exemplary stand. The DGP shall ensure that the appellant, being a serving officer under his command, surrenders before the learned Trial Judge to serve the sentence to be imposed upon him. Furthermore, having found serious dereliction of duty on the part of the Investigating Officer, SI Rangaswamy, as discussed in paragraphs [101 to 103], we direct the DGP to initiate necessary disciplinary proceedings against him, in accordance with the law, if he is still in service.

112. Let a copy of this judgment be sent to the Director General of Police of Andaman and Nicobar Islands for his information and necessary action.

113. In view of the above discussion, we request the Learned Registrar General, High Court at Calcutta to send a copy of the judgment along with Trial Court Record to the learned Sessions Judge, Andaman and Nicobar Islands, at Port Blair at once. She is also requested to send a copy of this judgment to the DGP, Andaman and Nicobar Islands immediately.

114. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)