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DEEPAK GULATI

v.

STATE OF HARYANA

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SUPREME COURT, INDIA
(2013) 7 SUPREME COURT CASES 675
DR BS CHAUHAN J
DIPAK MISRA J
[CRIMINAL APPEAL NO: 2322 OF 2010†]
20 MAY 2013

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CRIMINAL LAW: Penal Code, 1860 - Sections 375, 376 and 417 r/w s. 90 and s. 365 - Rape or consensual sex - "Consent" - Meaning - Consent under misconception of fact - Sexual indulgence by accused with victim's consent given under misconception of fact, held, falls within ambit of rape - Provided facts concerned have immediate relevance - Consent obtained from victim by making false promise of marriage amounts to cheating or deception which leads to misconception of fact - But distinction should be made between not fulfilling false promise by accused and mere breach of promise occurring due to circumstances beyond his control - Court must be assured that accused from the very beginning acted with mala fide intention of seducing prosecutrix by making false promise of marriage and not keeping his promise - Mere breach of promise without mala fide intention cannot amount to deception - Prosecutrix aged 19 years, gave her consent in lieu of promise made by accused of marrying her and willingly submitted to sexual acts with accused despite being capable of fully understanding significance and morality associated with such acts and being conscious that marriage may not take place for various factors - Hence, held, though there was no evidence showing that accused never intended to marry her, merely because accused could not keep his promise on account of unavoidable circumstances, prosecutrix cannot be said to have given her consent under misconception of fact arising from any false promise of marriage - Hence accused cannot be convicted for committing rape - Words and Phrases - "Consent", "misconception of fact", "fraud"

CRIMINAL LAW: Crimes against Women and Children - Rape - Violates human rights of victim - Causes psychological and physical harm - Degrades and defiles victim's soul, honour and dignity and leaves a

† From the Judgment and Order dated 28-1-2010 of the High Court of Punjab and Haryana at Chandigarh in CRA No. 960-SB of 1998 (O&M)

permanent scar on life - It is a crime against society - Victim cannot be called an accomplice or injured witness - Constitution of India - Art. 21 - Penal Code, 1860, ss. 375 and 376

The undisputed facts of the case were that the prosecutrix was 19 years of age at the time of the incident. She had an inclination towards the appellant. The appellant had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home at Karnal in the State of Haryana voluntarily of her own free will to go to Kurukshetra in the same State with the appellant to get married with the appellant. She called the appellant on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived she went with him to Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at Birla Mandir there. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in court at Ambala. At the bus station the appellant was arrested by the police. The appellant was concurrently convicted under Sections 365 and 376 IPC. He was before the Supreme Court thereagainst by special leave.

Allowing the appellant-accused's appeal, the Supreme Court

Held:

The facts of the instant case do not warrant that the provisions of Section 114-A of the Evidence Act be pressed into service. Hence, the sole question involved herein is whether the prosecutrix's consent had been obtained on the false promise of marriage. Thus, Sections 417, 375 and 376 IPC have to be taken into consideration, along with Section 90 IPC. Section 90 IPC provides that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape. Where the

A prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned. (Paras 18 and 19)

B Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. The court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. (Para 21)

D There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had *mala fide* motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives. (Para 21)

F There is a distinction between the mere breach of a promise, and not fulfilling a false promise. There must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her. (Paras 21 and 24)

Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775, followed A
Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253; relied on
Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557; relied on B
Pradeep Kumar v. State of Bihar, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407, relied on
N. Jaladu, In re, ILR (1913) 36 Mad 453, cited

In the present case, the prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to. The physical relationship between the parties had clearly developed with the consent of the prosecutrix, as there was neither a case of any resistance, nor had she raised any complaint anywhere at any time despite the fact that she had been living with the appellant for several days, and had travelled with him from one place to another. She was conscious of the complications and issues surrounding her marriage to the appellant. It is difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her. There was no evidence to prove conclusively that the appellant had never intended to marry the prosecutrix. Even after leaving the hostel of Kurukshetra University, she agreed and proceeded to go with the appellant to Ambala, to get married to him there. As this fact stands fully established from the evidence on record, it is not clear as to on what basis the allegation of “false promise of marriage” has been raised by the prosecutrix. It is not possible to comprehend the circumstances in which a charge of deceit/rape can be levelled against the appellant, in light of the aforementioned fact situation. (Paras 17.4, 17.5, 26 and 27) C
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Therefore, the appellant, who has already served more than 3 years’ sentence, is entitled to the benefit of doubt. (Para 28) H

Deepak Gulati v. State of Haryana, Criminal Appeal No. 960 of 1998, decided on 28-1-2010 (P&H), reversed

R-D/51836/CR

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A Advocates who appeared in this case:*for the Appellant - Amit Pawan, Advocate**for the Respondent - Kamal Mohan Gupta, Advocate***Chronological list of cases cited on page(s)****B** *Deepak Gulati v. State of Haryana (reversed) Criminal Appeal No. 960 of 1998, decided on 28-1-2010 (P&H)**Pradeep Kumar v. State of Bihar (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407**Yedla Srinivasa Rao v. State of A.P. (2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557***C** *Deelip Singh v. State of Bihar (2005) 1 SCC 88 : 2005 SCC (Cri) 253**Uday v. State of Karnataka (2003) 4 SCC 46 : 2003 SCC (Cri) 775*
*N. Jaladu, In re ILR (1913) 36 Mad 453***D****JUDGMENT****Dr BS Chauhan J:**

E [1] This appeal has been preferred against the impugned judgment and order dated 28-1-2010, passed by the Punjab and Haryana High Court at Chandigarh in *Deepak Gulati v. State of Haryana*¹ by way of which, the High Court has affirmed the judgment and order of the Additional Sessions Judge, Karnal dated

F 13-11-1998 passed in Sessions Case No. 7 of 1995, by way of which the appellant stood convicted for the offences punishable under Sections 365 and 376 of the Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced to undergo rigorous imprisonment for a period of three years, along with a fine of Rs

G 2000 under Section 365 IPC; and rigorous imprisonment for a period of seven years, along with a fine of Rs 5000 under Section 376 IPC. Both the sentences were ordered to run concurrently.

H [2] The facts and circumstances giving rise to this appeal are that: the appellant and Geeta, the prosecutrix, 19 years of age, student of 10+2 in Government Girls Senior Secondary School, Karnal, had known each other for some time. The appellant had been meeting her in front of her school in an attempt to develop

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1. Criminal Appeal No. 960 of 1998, decided on 28-1-2010 (P&H)

intimate relations with her. On 10-5-1995 the appellant induced her to go with him to Kurukshetra to get married and she agreed. En route to Kurukshetra from Karnal, the appellant took her to Karna Lake (Karnal), and had sexual intercourse with her against her wishes, behind the bushes. Thereafter, the appellant took her to Kurukshetra, stayed with his relatives for 3-4 days and committed rape upon her.

[3] The prosecutrix was thrown out after 4 days by the appellant. She then went to one of the hostels in Kurukshetra University, and stayed there for a few days. The warden of the hostel became suspicious and thus, questioned the prosecutrix. The prosecutrix thus narrated the incident to the warden, who informed her father. Meanwhile, the prosecutrix left the hostel and went to a temple, where she once again met the appellant. Here, the appellant convinced her to accompany him to Ambala to get married. When they reached the bus-stand, they found her father present there along with the police. The appellant was apprehended. Baldev Raj Soni, father of the prosecutrix, had lodged a complaint on 16-5-1995 under Sections 365 and 366 IPC, which was later converted to one under Sections 365 and 376 IPC.

[4] The prosecutrix was medically examined on 17-5-1995. Her statement was recorded by the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") on 20-5-1995. After completing the investigation, a charge-sheet was filed against the appellant, and in view of the material on record, charges under Sections 365 and 376 IPC were framed against him by the Sessions Court, *vide* order dated 3-5-1996.

[5] The prosecution examined 13 witnesses in support of its case and in view thereof, the Sessions Court convicted the appellant under Sections 365/376 IPC, *vide* judgment and order dated 13-11-1998 and awarded him the sentence for the said charges as has been referred to hereinabove. Aggrieved, the appellant preferred Criminal Appeal No. 960-SB of 1998 (D&M) in the High Court of Punjab and Haryana at Chandigarh, which stood dismissed by the impugned judgment and order dated 18-11-1998. Hence, this appeal.

- A [6] None present for the appellant. In view thereof, the Court has examined the material on record and gone through both the impugned judgments with the help of Shri Kamal Mohan Gupta, learned counsel appearing on behalf of the State.
- B [7] The statement of the prosecutrix (PW 7) was recorded under Section 164 CrPC on 20-5-1995, wherein she has clearly stated that she had gone along with the appellant to get married and for such purpose, she had also obtained a certificate from her school as proof of her age. On the said date i.e. 10-5-1995, as
- C the appellant had been unable to reach the pre-decided place, the prosecutrix had telephoned him on the number provided by him. She has further deposed that the appellant had asked her to have a physical relationship with him, but that she had not agreed to do so before marriage. When they reached Kurukshetra and
- D stayed with his relatives there, the appellant had sexual intercourse with her for 3 days. On the 4th day, she was thrown out of the house by the appellant and thus, she had gone to the girls' hostel in Kurukshetra University, where she had stayed under the pretext of getting admitted to the University. However, the University
- E personnel became suspicious, and after making enquiries from her, they telephoned her house. She then left the University and had gone to Birla Mandir at Kurukshetra, where she had met the appellant. Here he lured her once again, and thus, she had agreed to accompany him to Ambala to get married in the court there.
- F However, when they reached the Old Bus-Stand Kurukshetra, she had found her father and several police officials present there, and thereafter the appellant had been arrested and the prosecutrix was taken to Karnal.
- G [8] The prosecutrix was examined in the court as PW 7 on 5-7-1996, wherein she deposed that on 10-5-1995, as per the agreed plan, she had left her house to go along with the appellant to Kurukshetra to get married in the court. However, she had not found the appellant at the place decided upon by them, and had thus telephoned him at the number provided to her by him. She
- H was then informed that the appellant had already left for Kurukshetra and hence, waited for him from 12.00 noon till 1.30p.m. When he arrived, she went along with the appellant at 2.30p.m. to Karna Lake (Karnal) by bus. Here, she was taken
- I into some bushes behind the restaurant at Karna Lake, and thereafter raped by the appellant. At the said time, she neither raised any objection, nor any hue and cry. The prosecutrix did

not even mention the said incident to any person, despite going to Kurukshetra and staying there for 3-4 days. She raised no grievance in this regard before any person or authority at the bus-stand. She continued to stay with the appellant in the house of his relatives and was raped there. The appellant continued to postpone their marriage on one pretext or the other. Thereafter, she was thrown out of the house. She thus went and stayed in the university hostel and on being questioned, she disclosed details regarding her treatment to the warden, who informed her family. After this, she went to Birla Mandir at Kurukshetra, and here she met the appellant once again. The appellant made another attempt to convince her to go to Ambala with him to get married in the court there. Upon reaching the old bus-stand, she found her brother Rajinder there along with a police party, who had been accompanying them in a jeep to Karnal.

[9] In his statement, Baldev Raj Soni (PW 8), father of the prosecutrix has deposed that on 10-5-1995, her daughter Geeta did not come home. He thus lodged a complaint and contacted Rajni, a friend of Geeta, who told him that the appellant Deepak had taken her to Kurukshetra. On 17-5-1995 the police had gone along with him to Kurukshetra to locate Geeta, where they had found the prosecutrix and the appellant sitting at the old bus-stand in Kurukshetra. Both of them had been caught hold of by them, and were brought to Karnal.

[10] Smt P. Kant Vashisht (PW 10), Warden of Saraswati Bhawan, Kurukshetra University, though did not support the case of the prosecution, and was declared hostile, has deposed in her examination-in-chief that Geeta, the prosecutrix, had been brought to her office by one person, namely, Shri Ashwini, student of the Engineering College, and that he had left Geeta in her office, stating that he would inform her parents. After some time, her brother had come and taken her away. She was cross-examined by the prosecution, and she has deposed that the prosecutrix had in fact stayed in the hostel without any authority/permission. One Nirmla, the attendant therein had allowed her to stay in the hostel without any such requisite permission.

[11] Smt Krishana Chawla (PW 3), Lecturer of Political Science in Government Senior Secondary School, Karnal, has deposed before the court, and has proved the school register to show that the date of birth of the prosecutrix was 26-6-1976.

- A** [12] Dr (Mrs) Amarjeet Wadhwa (PW 11), Medical Officer, Government Hospital, Karnal, who examined the prosecutrix on 17-5-1995, has deposed that the prosecutrix had indulged in sexual intercourse and was habitual to the same.
- B** [13] Shri Bhagwan Chand (PW 12), ASI, the investigating officer, has deposed that after recording the statement of the father of the prosecutrix on 17-5-1995, he had taken her father to Kurukshetra to search for the prosecutrix along with one constable. At about 12.00 noon, when they reached the old bus-stand at Kurukshetra,
- C** the father of the prosecutrix noticed Geeta, sitting with the appellant Deepak in one corner of the bus-stand, and thereafter, they had apprehended them. He has also deposed that he had recorded the statement of the prosecutrix.
- D** [14] There exist in the statements of the witnesses material contradictions, improvements and embellishments. In the cross-examination, Baldev Raj Soni (PW 8) has deposed that he had gone to Kurukshetra with his relatives i.e. Ashwini Kumar and Surinder, and has stated that his son Rajinder was not with him at such time. He has not deposed that he had received any
- E** telephone call from the warden of any hostel, as has been suggested by the prosecutrix. Furthermore, the prosecutrix in her statement under Section 164 CrPC, has not mentioned the incident involving her indulging in sexual contact with the appellant at Karna Lake at Karnal. Bhagwan Chand (PW 12) has not
- F** mentioned that any relatives of the prosecutrix had accompanied them while they were travelling from Kurukshetra to Karnal.
- [15] The FIR in the present case has been registered under Sections 365 and 366 IPC, by Baldev Raj Soni (PW 8), father of
- G** the prosecutrix, naming several persons, including the appellant, accusing them of enticing his daughter and wrongfully confining her at an unknown place. Thus, he has expressed his apprehension with respect to danger to the life of his daughter.
- H** [16] Admittedly, the prosecutrix has never raised any grievance before any person at any stage. In fact, she seems to have submitted to the will of the appellant, possibly in lieu of his promise to marry her. Thus, a question arises with respect to whether, in light of the facts and circumstances of the present

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case, the appellant had an intention to deceive her from the very beginning when he had asked the prosecutrix to leave for Kurukshetra with him from Karnal. **A**

[17] The undisputed facts of the case are as under:

[17.1] The prosecutrix was 19 years of age at the time of the said incident. **B**

[17.2] She had inclination towards the appellant, and had willingly gone with him to Kurukshetra to get married.

[17.3] The appellant had been giving her assurance of the fact that he would get married to her. **C**

[17.4] The physical relationship between the parties had clearly developed with the consent of the prosecutrix, as there was neither a case of any resistance, nor had she raised any complaint anywhere at any time despite the fact that she had been living with the appellant for several days, and had travelled with him from one place to another. **D**

[17.5] Even after leaving the hostel of Kurukshetra University, she agreed and proceeded to go with the appellant to Ambala, to get married to him there. **E**

[18] Section 114-A of the Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) provides, that if the prosecutrix deposes that she did not give her consent, then the court shall presume that she did not in fact, give such consent. The facts of the instant case do not warrant that the provisions of Section 114-A of the 1872 Act be pressed into service. Hence, the sole question involved herein is whether her consent had been obtained on the false promise of marriage. Thus, the provisions of Sections 417, 375 and 376 IPC have to be taken into consideration, along with the provisions of Section 90 IPC. Section 90 IPC provides that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape. **F**
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A [19] This Court considered the issue involved herein at length in
Uday v. State of Karnataka², Deelip Singh v. State of Bihar³, Yedla
Srinivasa Rao v. State of A.P.⁴ and Pradeep Kumar v. State of Bihar⁵
and came to the conclusion that in the event that the accused's
B promise is not false and has not been made with the sole intention
to seduce the prosecutrix to indulge in sexual acts, such an act(s)
would not amount to rape. Thus, the same would only hold that
where the prosecutrix, under a misconception of fact to the extent
that the accused is likely to marry her, submits to the lust of the
accused, such a fraudulent act cannot be said to be consensual,
C so far as the offence of the accused is concerned.

[20] Rape is the most morally and physically reprehensible crime
in a society, as it is an assault on the body, mind and privacy of
the victim. While a murderer destroys the physical frame of the
victim, a rapist degrades and defiles the soul of a helpless female.
D Rape reduces a woman to an animal, as it shakes the very core
of her life. By no means can a rape victim be called an
accomplice. Rape leaves a permanent scar on the life of the victim,
and therefore a rape victim is placed on a higher pedestal than an
injured witness. Rape is a crime against the entire society and
violates the human rights of the victim. Being the most hated
crime, rape tantamounts to a serious blow to the supreme honour
of a woman, and offends both, her esteem and dignity. It causes
psychological and physical harm to the victim, leaving upon her
indelible marks.
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[21] Consent may be express or implied, coerced or misguided,
obtained willingly or through deceit. Consent is an act of reason,
accompanied by deliberation, the mind weighing, as in a balance,
the good and evil on each side. There is a clear distinction
G between rape and consensual sex and in a case like this, the court
must very carefully examine whether the accused had actually
wanted to marry the victim, or had *mala fide* motives, and had
made a false promise to this effect only to satisfy his lust, as the
latter falls within the ambit of cheating or deception. There is a
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I 2. (2003) 4 SCC 46 : 2003 SCC (Cri) 775 : AIR 2003 SC 1639
3. (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203
4. (2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557
5. (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC 3059

distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was *mala fide*, and that he had clandestine motives.

[22] In *Deelip Singh*³ it has been observed as under: (SCC p. 99, para 19)

“19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.”

3. *Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253

A [23] This Court, while deciding *Pradeep Kumar*⁵, placed reliance upon the judgment of the Madras High Court in *N. Jaladu, In re*⁶, wherein it has been observed: (*Pradeep Kumar* case⁵, SCC pp. 418-19, para 11)

B 11. '26. ... "... We are of opinion that the expression 'under a misconception of fact' is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act

C Illustration (d) [states] that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married. ... 'thus ... if the consent of the

D person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person'. ... Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to

E justify what would otherwise be an offence." (N. Jaladu, In re case⁶, ILR pp. 456-57)' (*Deelip Singh* case³, SCC pp. 101-02, para 26)"

F [24] Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep

G a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be

H called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

I 3. *Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253

5. *Pradeep Kumar v. State of Bihar*, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407

6. ILR (1913) 36 Mad 453

[25] The instant case is factually very similar to *Uday*², wherein the following facts were found to exist: A

[25.1] The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to. B

[25.2] She was conscious of the fact that her marriage may not take place owing to various considerations, including the caste factor.

[25.3] It was difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her. C

[25.4] There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix. D

[26] To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived she went with him to Karna Lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to anyone. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in the court at Ambala. However, here they were apprehended by the police. E
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2. *Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775

- A** [27] If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of “false promise of marriage” has been raised by the prosecutrix. We also fail to comprehend the circumstances in which a charge of deceit/
- B** rape can be levelled against the appellant, in light of the aforementioned fact situation.

- C** [28] In view of the above, we are of the considered opinion that the appellant, who has already served more than 3 years’ sentence, is entitled to the benefit of doubt. Therefore, the appeal succeeds and is allowed. His conviction and sentences awarded by the courts below are set aside. The appellant is on bail. His bail bonds stand discharged.

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