

(2017) 03 MP CK 0179

MADHYA PRADESH HIGH COURT**Case No:** 2939 of 2016

Lalu @ Vinay Jain

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: March 17, 2017**Acts Referred:**

- Code of Criminal Procedure, 1973, Section 161, Section 164 - Examination of witnesses by police - Recording of confessions and statements
- Indian Penal Code, 1860, <a hr

Citation: (2017) 03 MP CK 0179**Hon'ble Judges:** C.V. Sirpurkar**Bench:** Single Bench**Advocate:** P.C. Paliwal, S.P. Chadhar

Judgement

1. This criminal revision is directed against the order dated 08.11.2016 passed by the Court of Second Additional Sessions Judge, Sihora, District-Jabalpur in S.T.No.579/2016, whereby a charge under Sections 306 and 376 of the IPC was framed against the petitioner/accused Lalu @ Vinay Jain.

2. The prosecution case before the trial Court was that the deceased Seema Kushwaha was a 32 years old widow, having a 10 years old son. Her husband had died in a car accident about 10 years ago. She lived with her son and her brother Rakesh Kumar. Petitioner Lalu ran a Dhaba in front of her house, where the deceased and her brother worked. About 2 years before the date of the incident, the petitioner established physical relations with the deceased on the false promise of marriage. As a result of aforesaid liaison, the deceased was in the 8th month of pregnancy on the date of the incident. When the deceased approached the petitioner for help in treatment and for honouring his promise of marriage, the petitioner refused to marry her and help her in any manner. Dejected and left with no option, the deceased committed suicide by consuming rat poison.

3. The order framing charge has been assailed on behalf of the petitioner mainly on the ground that the prosecutrix was a mature, married women having a son. Even if it is assumed for the sake of the arguments that she became pregnant as a result of relationship with the petitioner, it was clearly a consensual relationship between two adults for mutual sexual gratification. There was no false promise or misrepresentation involved in the relationship; as such, no case of rape is made out. The petitioner never instigated the deceased to commit suicide. Thus, even if all allegations made against the petitioner are taken at their face value and presume it to be true, no case of abetment of suicide would be made out against the petitioner. As such, both the charges i.e. the one under Section 376 and the other under Section 306 of the IPC are liable to be quashed.

4. Learned panel lawyer for the respondent State has opposed the revision petition.

5. A perusal of the record reveals that the case against the petitioner is based mainly upon the oral dying declaration made by deceased Seema Kushwaha to her brother Rakesh Kushwaha, her son Chintu @ Santosh and her neighbour Shila Bai. The statements of aforesaid witnesses under Section 161 and 164 of the Cr.P.C. as well as the statements of other prosecution witnesses under Section 161 of the Cr.P.C. reveal that the deceased had disclosed to them that the petitioner had been sexually exploiting the deceased on the false promise of marriage for a period of about two year before the date of incident. As a result, she had become pregnant; however, when the deceased approached the petitioner for help and for honouring his pledge, he declined to do so; therefore, deceased was terribly depressed. Shila Bai has stated under Section 161 of the Cr.P.C. that the deceased had told her that because of the conduct of the petitioner, she was unable to show her face to anyone; therefore, she had kept rat poison with her and would commit suicide by consuming the same; however, Shila Bai had advised her against any such extreme step but later the deceased died vomiting and complaining of stomach-ache and giddiness.

6. The first question that is to be considered in the case is whether there are sufficient grounds on record for framing a charge under section 376 of the Indian Penal Code against petitioner Lalu @ Vinay Jain. It has been held by the Supreme Court in the case of Deepak Gulati vs. State of Haryana, AIR 2013 SC 2071 that there is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the Court must, very carefully, examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise.

7. In the case at hand, keeping in view the statements of witnesses the probability that a false promise was made merely to satisfy his lust by the petitioner is manifest because when confronted with the fact that the deceased had become pregnant as a result of the relationship, he declined to entertain her in any manner. Thus, at least at the stage of charge, it cannot be said that the trial Court erred in framing charge under section 376 of

the Indian Penal Code.

8. Coming to the charge under section 306 of the Indian Penal Code, it may be noted that there is nothing on record to suggest that the petitioner explicitly incited or goaded the deceased to commit suicide; however, it is obvious that the prosecutrix was a widow having a 10 years old son to look after. Her husband had died in a road accident. As such, she was in dire need of support. She came from a respectable background. In these circumstances, the petitioner promised marriage and physically exploited her for a period of over 2 years. As a result, she became pregnant and was in eighth months of pregnancy. She had trusted the accused to take her under his wings in such circumstances. However, he totally rejected her. He not only exploited her but also declined to offer any help in this regard. Consequently, she felt that she had no option but to commit suicide. In the case of *Milind Bhagwanrao Godse Vs. State of Maharashtra and another*, (2009) 3 SCC 699, the Supreme Court has held that where the accused created such circumstances which left no option for the deceased but to take extreme step of putting end to her life, the offence punishable under section 306 of the Indian Penal Code was proved and the conviction was upheld. As such, the trial Court committed no error in framing a charge under section 306 of the Indian Penal Code either.

9. In aforesaid view of the matter, it is clear that the impugned order dated 08-11-2016 passed by the Court of II Additional Sessions Judge, Sihora, District Jabalpur in S.T.No.579/2016 whereby the charge under sections 306 and 376 of the Indian Penal Code was framed against petitioner Lalu @ Vinay Jain, suffers from no illegality, irregularity or infirmity warranting interference under revisionary jurisdiction of the High Court.

10. Consequently, this criminal revision deserves to be and is accordingly dismissed.