A DEEPAK GULATI

v.

STATE OF HARYANA

(Criminal Appeal No. 2322 of 2010)

MAY 20, 2013

B

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Penal Code, 1860 - ss. 376, 365 and 90 - Rape and consensual sex - Distinction between - Allegation that C *appellant enticed the prosecutrix, wrongfully confined her and had sexual intercourse with her in lieu of his promise to marry her - Conviction of appellant by Courts below u/ss. 365 & 376 - Challenge to - Held: In a case like this, the court must very carefully examine whether the accused had actually wanted* D *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 - Distinction between mere breach of a promise, and not fulfilling a false promise - An accused can be convicted for rape only if his* E *intention was mala fide, and he had clandestine motives -s.90 IPC cannot be called into aid to pardon the act of the girl in entirety, and fasten criminal liability on the accused, unless the court is assured that from the very beginning, the accused had never really intended to marry her - In the instant case,* F *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 - Prosecutrix voluntarily became intimate with the* G *appellant on a number of occasions and made no complaints to anyone - In fact, while she was proceeding with the appellant so that the two of them could get married in the court, they were apprehended by the police - Allegation of "false promise of marriage" raised by the prosecutrix, thus, has no basis -*

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Charge of deceit/rape cannot be leveled against the appellant - Appellant entitled to benefit of doubt - His conviction set aside - Evidence Act, 1872 - s. 114-A.

The prosecution case was that the appellant enticed the 19 year old daughter of PW8, wrongfully confined her and had sexual intercourse with her in lieu of his promise to marry her. The trial court convicted the appellant under Sections 365 and 376 IPC and sentenced him to undergo rigorous imprisonment for three years under Section 365 IPC; and rigorous imprisonment for seven years under Section 376 IPC. Both the sentences were ordered to run concurrently. The conviction and sentence was affirmed by the High Court, and therefore the instant appeal.

The question which arose for consideration in the present appeal was whether the appellant had an intention to deceive the prosecutrix from the very beginning and the consent of the prosecutrix had been obtained on the false promise of marriage.

Allowing the appeal, the Court

HELD: 1.1. Section 114-A of the Indian Evidence Act, 1872 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 Act 1872 be pressed into service. [Para 15] [554-G-H; 555-A]

1.2. However, consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had

A 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 B 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 C 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 mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have D 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. [Para 18] [556- E A-F]

1.3. There must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to F marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are G 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 H 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. [Para 21] [558-A-D]

Uday v. State of Karnataka **AIR 2003 SC 1639: 2003 (2) SCR 231;** *Deelip Singh @ Dilip Kumar v. State of Bihar* **AIR 2005 SC 203: 2004 (5) Suppl. SCR 909;** *Yedla Srinivasa Rao v. State of A.P.* **(2006) 11 SCC 615: 2006 (6) Suppl. SCR 760;** *Pradeep Kumar Verma v. State of Bihar & Anr.* **AIR 2007 SC 3059: 2007 (9) SCR 58 and** *N. Jaladu, Re ILR* **(1913) 36 Mad 453 - referred to.**

2. In the instant case, 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 the Karna lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to any one. 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 the 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 court at Ambala. However, here they were apprehended by the police. If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, one fails to understand on what basis the

A **allegation of "false promise of marriage" has been raised by the prosecutrix. One also fails to comprehend the circumstances in which a charge of deceit/rape can be leveled against the appellant, in light of the afore-mentioned fact situation. [Paras 23, 24] [559-A-F]**

B **3. The appellant, who has already served more than 3 years sentence, is entitled to the benefit of doubt. His conviction and sentences awarded by the courts below are set aside. [Para 25] [559-G-H]**

C **Case Law Reference:**

2003 (2) SCR 231	**referred to**	**Para 16**
2004 (5) Suppl. SCR 909	**referred to**	**Para 16, 19**
D **2006 (6) Suppl. SCR 760**	**referred to**	**Para 16**
2007 (9) SCR 58	**referred to**	**Para 16, 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2322 of 2010.

E From the Judgment and order dated 28.01.2010 of the High Court of Punjab & Haryana at Chandigarh in CRA No. 960-SB of 1998 (O&M).

Amit Pawan for the Appellant.

F Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by.

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred G against the impugned judgment and order dated 28.1.2010, passed by the Punjab & Haryana High Court at Chandigarh in CRA No. 960-SB of 1998 by way of which, the High Court has affirmed the judgment and order of the Additional Sessions Judge, Karnal dated 13.11.1998 passed in Sessions Case No. H 7 of 1995, by way of which the appellant stood convicted for

the offences punishable under Sections 365 and 376 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and sentenced to undergo rigorous imprisonment for a period of three years, alongwith a fine of Rs.2,000/- under Section 365 IPC; and rigorous imprisonment for a period of seven years, alongwith a fine of Rs.5,000/- under Section 376 IPC. Both the sentences were ordered to run concurrently.

2. Facts and circumstances giving rise to this appeal are that:

A. The appellant and Geeta, prosecutrix, 19 years of age, student of 10+2 in Government Girls Senior Secondary School, Karnal, had known each other for some time. Appellant had been meeting her in front of her school in an attempt to develop 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 Kurukshetra from Karnal, the appellant took her to Karna lake (Karnal), and had sexual intercourse with her against her wishes, behind bushes. Thereafter, the appellant took her to Kurukshetra, stayed with his relatives for 3-4 days and committed rape upon her.

B. 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 alongwith the police. The appellant was apprehended.

C. Baldev Raj Soni, father of the prosecutrix, had lodged a complaint on 16.5.1995 under Sections 365 and 366 IPC,

A which was later converted to one under Sections 365 and 376 IPC.

D. 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 B referred to as the 'Cr.P.C.') on 20.5.1995. After completing the investigation, a chargesheet 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. C

E. 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 D said charges as has been referred to hereinabove.

F. 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 E impugned judgment and order dated 18.11.1998.

Hence, this appeal.

3. None present for the appellant. In view thereof, the Court has examined the material on record and gone through both F the impugned judgments with the help of Shri Kamal Mohan Gupta, learned counsel appearing on behalf of the State.

4. The statement of the prosecutrix (PW.7) was recorded under Section 164 Cr.P.C. on 20.5.1995, wherein she has clearly stated that she had gone alongwith the appellant to get G 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 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 H 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 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 personnel became suspicious, and after making enquiries from her, they telephoned her house. She then left the university and had gone to the Birla Mandir at Kurukshetra, where she had met appellant. Here he lured her once again, and thus, she had agreed to accompany him to Ambala to get married in court there. 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.

5. The prosecutrix was examined in 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 alongwith the appellant to Kurukshetra to get married in 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 was then informed that the appellant had already left for Kurukshetra and hence, waited for him from 12.00 noon till 1.30 p.m. When he arrived, she went alongwith the appellant at 2.30 p.m. to Karna lake (Karnal) by bus. Here, she was taken 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

A 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 the Birla Mandir at Kurukshetra, and here she met the appellant once again. The appellant made another attempt to convince her to go to
B Ambala with him to get married in court there. Upon reaching the old Bus Stand, she found her brother Rajinder there alongwith a police party, who had been accompanying them in a jeep to Karnal.

6. In his statement, Baldev Raj Soni (PW.8), father of the
C 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 alongwith him to Kurukshetra to locate Geeta, where they
D 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.

7. Smt. P. Kant Vashisht (PW.10), Warden of Saraswati
E 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, prosecutrix, had been brought to her office by one person, namely, Shri Ashwini, student of the engineering college, and that he had left Geeta
F in her office, stating that he would inform her parents. After sometime, 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, attendant therein had allowed
G her to stay in the hostel without any such requisite permission.

8. Smt. Krishana Chawla (PW.3), Lecturer of Political Science in Government Senior Secondary School, Karnal, has deposed before court, and has proved the school register to show that the date of birth of the prosecutrix was 26.6.1976.

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9. 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. A

10. 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 alongwith one constable. At about 12.00 noon, when they reached the old bus stand at Kurukshetra, 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 disposed that he had recorded the statement of the prosecutrix. B C

11. 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 telephone call from the warden of any hostel, as has been suggested by the prosecutrix. Furthermore, the prosecutrix in her statement under Section 164 Cr.P.C., has not mentioned the incident involving her indulging in sexual contact with the appellant at the Karna lake at Karnal. Bhagwan Chand (PW.12) has not mentioned that any relatives of the prosecutrix had accompanied them while they were traveling from Kurukshetra to Karnal. D E F

12. The FIR in the present case has been registered under Sections 365 and 366 IPC, by Baldev Raj Soni (PW.8), father of 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. G H

A 13. 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
B 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.

14. The undisputed facts of the case are as under:

C I. The prosecutrix was 19 years of age at the time of the said incident.

II. She had inclination towards the appellant, and had willingly gone with him to Kurukshetra to get married.
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III. The appellant had been giving her assurance of the fact that he would get married to her.

IV. The physical relationship between the parties had
E 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
F had travelled with him from one place to another.

V. 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.

G 15. Section 114-A of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Act 1872') 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
H provisions of Section 114-A of the Act 1872 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, alongwith the provisions of Section 90 of the Act 1872. Section 90 of the Act 1872 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.

16. This Court considered the issue involved herein at length in the case of *Uday v. State of Karnataka,* AIR 2003 SC 1639; *Deelip Singh* @ Dilip Kumar *v. State of Bihar,* AIR 2005 SC 203; *Yedla Srinivasa Rao v. State of A.P.,* (2006) 11 SCC 615; and *Pradeep Kumar Verma v. State of Bihar & Anr.,* AIR 2007 SC 3059, and came to the conclusion that in the event that the accused's 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, so far as the offence of the accused is concerned.

17. 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. 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

A esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation 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.

19. In *Deelip Singh* (supra), it has been observed as under:

> "20. 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."

20. This Court, while deciding *Pradeep Kumar Verma* (Supra), placed reliance upon the judgment of the Madras High Court delivered in *N. Jaladu, Re* ILR (1913) 36 Mad 453, wherein it has been observed:

"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 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 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 justify what would otherwise be an offence."

A 21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at 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 B unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning C 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.*

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22. The instant case is factually very similar to the case of *Uday* (Supra), wherein the following facts were found to exist:

I. The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand E the significance and morality associated with the act she was consenting to.

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

III. 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 G arisen from his promise to marry her.

IV. There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix.

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23. 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 the Karna lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to any one. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here to, 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 the 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 court at Ambala. However, here they were apprehended by the police.

24. 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/rape can be leveled against the appellant, in light of the afore-mentioned fact situation.

25. 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.

B.B.B. Appeal allowed.