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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Reserved on: 02.09.2025

Pronounced on:- 08.10.2025

Kalidas

....Appellant

Versus

State of Haryana

....Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Randeep S.Dhull, Advocate and
Mr. Navdeep Singh, Advocate for the appellant.

Mr. Ved Parkash, Senior DAG, Haryana.

Mr. Rahul Dhanda, Legal Aid Counsel for the complainant.

AMARJOT BHATTI, J.

1. Appellant/convict Kalidas has filed instant appeal against judgment of conviction dated 20.07.2023 and order on quantum of sentence dated 09.08.2023 passed by learned Additional Sessions Judge, Gurugram, in Session Case bearing No. 240 of 2022, titled as "State of Haryana Vs. Kalidas" in FIR No.135 dated 09.11.2019, under Sections 376 (2)(n), 506 of IPC, Police Station Women, Sector-51 Gurugram vide which appellant is sentenced as under :-

Name of Convict	Offence U/s	Sentence
Kalidas	Under Section 376(2)(n) of Indian Penal Code	To undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 20,000/-. In default of payment of fine, to further undergo imprisonment for a period of 6 months.



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	Under Section 506 of Indian Penal Code	To undergo rigorous imprisonment for 01 year and to pay a fine of Rs.5,000/-. In default of payment of fine, to further undergo imprisonment for a period of 2 months.
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Both the sentences were ordered to run concurrently

2. As per the facts of case, the prosecutrix/complainant filed written complaint bearing No.1036-5P dated 08.11.2019 alleging that she was a permanent resident of District Mewat and previously she was residing in Badshahpur, Gurugram. About one year ago, she came in contact with Kalidas in Raheja Mall near Subhash Chowk and they became friendly. He introduced her with his mother Geeta Devi and had sent her photographs to his sisters through WhatsApp. He and his family convinced her that they will perform their marriage. On this assurance, she became physically intimate with Kalidas at OYO Hotel near Omax Mall and their relationship continued for a period of about one year. During this period, she conceived, but Kalidas gave her abortion pills, as a result her pregnancy was terminated. He even used to visit her room at Badshahpur to maintain physical relations with her. On 22/23.10.2019, after having sexual intercourse, he suddenly changed his mind and refused to marry her. He further stated that his parents had fixed his marriage with another girl and he was going back to his native village in Bihar. He gave her beatings and left. He also threatened to kill her, in case she complained to anyone. Kalidas sexually exploited her for about one year on the pretext of false promise of marriage. With these allegations present, FIR was registered and the investigation started.

3. During the course of investigation, the prosecutrix was taken to General Hospital, Sector 10, Gurugram for her medical examination. Her



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statement was recorded under Section 164 Cr.P.C. before learned Judicial Magistrate Ist Class, Gurugram. On the identification of spot by the prosecutrix, rough site plan was prepared. The CCTV footage and other records of OYO Hotel were collected. On 09.06.2021, the prosecutrix handed over marriage certificate and photographs of marriage of accused with his first wife as well as her own marriage photographs, which were taken into police possession. Accused was arrested on 22.03.2022. After completion of investigation, report/challan under Section 173 Cr.P.C. was presented in Court under Section 376(2)(n) and 506 of IPC

4. Finding a prima facie case under Section 376 (2)(n) and 506 of IPC, accused Kalidas was charge sheeted accordingly, to which he pleaded not guilty and claimed trial.

5. In order to prove the facts of case, prosecution examined Dr. Harish Kumar, MO, PHC, Palra, District Gurugram as PW-1, Constable Ajit Singh as PW-2, Lady/Constable Sweety as PW-3, Kanchan @ Karan as PW-4, EHC Rajshree as PW-5, ASI Dharampal Draftsman CP Office, Gurugram as PW-6, Dr. Upsana Dahiya, Medical Officer, General Hospital, Sector 10, District Gurugram as PW-7, prosecutrix/complainant as PW-8. Lady/ASI Chanderkanta as PW-9, L/ASI Vijeta as PW-10, L/SI Mukesh as PW-11, L/SI Meena as PW-12. Thereafter, PWs Constable Pawan, Rajbala, L/ASI Sunita have been given up being unnecessary by learned Public Prosecutor for the State. Thereafter, prosecution evidence was closed by order vide order dated 02.01.2023.

6. Statement of accused was recorded under Section 313 Cr.P.C. by the trial Court to which he pleaded innocence and false implication. Accused



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opted to lead evidence in defence. He examined L/HC Manju as DW-1, Sumer Singh, Advocate/Notary, District Court Gurugram as DW-2 and tendered marriage certificate as Exhibit D-3, marriage photographs with his first wife as Exhibit D-4, copy of divorce petition filed under Section 13-B of Hindu Marriage Act as Exhibit D-5, photocopy of complaint dated 08.11.2025 as Exhibit D-6, photographs of marriage with prosecutrix/complainant as Exhibit D-7.

7. After hearing arguments advanced by learned Public Prosecutor for the State assisted by learned counsel for the prosecutrix and learned counsel representing accused person, accused Kalidas was held guilty and convicted under Section 376(2)(n) and 506 of IPC vide judgment of conviction dated 20.07.2023 and order on quantum of sentence dated 09.08.2023 passed by learned Additional Sessions Judge, Gurugram.

Feeling aggrieved of this judgment of conviction and order of sentence, appellant/convict Kalidas filed present appeal.

8. Learned counsel for appellant/convict argued that allegations levelled against the appellant/convict are false and without any basis. In fact, the prosecutrix and accused were having a consensual relationship, which is evident from the testimony of the prosecutrix as PW-8. Prosecutrix knew that appellant/convict got married. Thereafter, under the pressure of prosecutrix, he performed marriage with her. The matter was compromised. Said compromise Mark-E and affidavit of prosecutrix Mark-F were proved on record by examining Shri Sumer Singh, Advocate as DW-2. The prosecutrix has manipulated all the facts. The consensual relationship between them has been given the colour of rape. To support his arguments, learned counsel for



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appellant/convict has put reliance on the judgment of Supreme Court of India in Criminal Appeal No.257 of 2023 decided on 30.01.2023, cited in (2023) 15 SCC 385 case titled “Naim Ahamed Versus State (NCT of Delhi)”, whereby in para No.17 reference was made to the judgment in case titled “Deepak Gulati Versus State of Haryana”, para No.21of which runs as under :-

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



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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.”

8.1. Learned counsel representing appellant/convict further made reference to another judgment of Supreme Court of India in Criminal Appeal No.336 of 1996 decided on 19.02.2003 case titled **“Uday Versus State of Karnataka”** cited in **2003(2) RCR (Criminal) 99** referring to para No.21 of the judgment which runs as under:-

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



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

8.2. It is argued that there was no question of any false promise of marriage. Their relationship was consensual, which is clear from the CCTV footage and record collected by the investigating agency from OYO Hotel. The prosecution has failed to lead any convincing evidence on record that at any stage her pregnancy was terminated. The prosecutrix entered into this relationship knowing fully well about his antecedents. The learned trial Court has failed to consider the aforesaid factual position and has wrongly convicted the appellant/convict for the offense under Section 376(2)(n) and 506 of IPC. It is submitted that appeal preferred by the appellant/convict may be accepted by setting aside the judgment of conviction and order of sentence and he may be acquitted of the charges framed against him.

9. On the other hand, learned counsel representing State assisted by learned counsel representing the prosecutrix vehemently argued that facts of the case and the charges framed against the appellant/convict are duly proved on record from the testimony of prosecutrix examined as PW-8, as well as the record which was collected during investigation of the case. Firstly, the appellant/convict made false promise of marriage to the prosecutrix, and under that misconception, she developed physical relations with him. After a period of one year, one fine day, he declared that his marriage had been fixed by his family and he was leaving her and going to his native place in Bihar



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for his marriage. At this stage, the prosecutrix filed a written complaint (Exhibit P-13), on the basis of which present FIR No.135 dated 09.11.2019 (Exhibit P-16) was registered at Women Police Station, Sector 51, Gurugram. The testimony of the prosecutrix remained consistent on all the material points. It is pointed out that during the pendency of bail petition, matter was referred to Mediation and Conciliation Centre to settle their dispute. No compromise could be effected and finally, his anticipatory bail petition was declined. In the intervening period, the appellant/convict performed marriage with prosecutrix by concealing the fact that he had already performed marriage with another lady and he further filed divorce petition under Section 13-B of Hindu Marriage Act. The said record was handed over by the prosecutrix, which was taken into police possession vide recovery memo (Exhibit P-6). Therefore, the appellant/convict committed fraud with the prosecutrix twice. He even concealed his first marriage when his anticipatory bail petition was filed in the High Court and the matter was being referred to Mediation and Conciliation Centre. In fact, the appellant/convict had no intention to marry the prosecutrix right from the very beginning. He obtained her consent with misconception that he will perform marriage with her. Facts of the case and evidence on record were rightly considered by learned trial Court. Appellant was rightly convicted and sentenced by the trial Court. It is submitted that appeal preferred by the appellant/convict deserves dismissal.

10. I have considered the arguments advanced before me and have gone through the trial Court record with their able assistance. In the case in hand, the appellant/convict has been charged for the offence under Section 376(2)(n) and 506 of IPC. In order to prove the charges, testimony of



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prosecutrix examined as PW-8 is material. She is the star witness to prove the charges framed against the appellant/convict. As per the version of prosecutrix, she came in contact with the appellant/convict in the year 2018 in Raheja Mall near Subhash Chowk, Gurugram. They got friendly with each other and their relationship grew. He introduced her with his mother and also sent her photograph to his sisters on WhatsApp. The family had agreed to perform her marriage with the appellant/convict. Till date, both the prosecutrix and the appellant/convict were unmarried and of marriageable age. As per evidence on record during this period no ceremony took place in the direction of their marriage. The appellant/convict developed physical relations with the prosecutrix in the year 2019 on the pretext of performing marriage in future. Even though there is no medical record, but the prosecutrix claimed that during this period, she got pregnant and she was given abortion pills by the appellant/convict, as a result she suffered miscarriage. As per the version of prosecutrix, lastly, they had physical relations on 22/23.10.2019 and on this, the appellant/convict declared that he was going to his native village in Bihar to perform marriage with another girl of his parents' choice. Immediately thereafter, the prosecutrix filed complaint No.1036-SP dated 08.11.2019 (Exhibit P-13), on the basis of which present FIR (Exhibit P-16) has been registered. Therefore, as per the sequence of events referred above, there is no inordinate delay in lodging the report with the police.

11. I have considered the testimony of prosecutrix examined as PW-8, her version in complaint (Exhibit P-13), her statement recorded under Section 164 Cr.P.C (Exhibit P-14), as well as her testimony recorded in the



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Court as PW-8 remained consistent on all the material points regarding facts of the case and commission of said offence. Gainful reference can be made to the judgment of Supreme Court of India in Criminal Appeal No.1520 of 2021 decided on 01.12.2021 case titled "*Phool Singh versus State of Madhya Pradesh*" where it was observed that where prosecutrix fully supported the case of prosecution, she consistently supported the allegations, then there is no reason why the sole testimony of the prosecutrix should not be believed. Reference was made to the judgment of "*Ganesan v. State, (2020) 10 SCC 573*" where again it was observed that 'there can be conviction on the sole testimony of the victim/prosecutrix when deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality'. The learned trial Court, while dealing with the testimony of prosecutrix, rightly concluded that testimony of victim of sexual assault is similar to the testimony of injured person and she cannot be treated like an accomplice to crime. In the case in hand, testimony of victim is consistent, reliable and there is no reason to disbelieve the same. The appellant/convict has not denied the relationship, rather he claimed that their relationship was consensual. In order to appreciate the facts of the case, the version of prosecutrix and the stand taken by the appellant/convict have to be considered carefully. As per the version of prosecutrix, the appellant/convict maintained physical relations with a false promise of marriage. On the other hand, this fact is denied by the appellant/convict who claimed that it was a consensual relationship. The testimony of prosecutrix as PW-8 clearly shows that their relationship continued for a period of about one year and during this period no ceremony took place towards the direction of performing their marriage. In



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case the appellant/convict had genuine intention to marry the prosecutrix, some ceremony could have taken place during this long period of one year. This fact clearly indicates that the appellant/convict right from the very beginning had no intention to marry the prosecutrix. He was maintaining physical relations with the prosecutrix by giving allurements that they will marry in future. The learned trial Court while dealing with this aspect of the case has dealt with the definition of rape as well as the manner in which the appellant/convict managed to obtain the consent of the prosecutrix. It is rightly concluded by the learned trial Court that the appellant/convict managed to obtain the consent of the prosecutrix for maintaining physical relationship with misconception that he would marry her in future when actually there was no genuine intention on his part to marry her.

12. Apart from the aforesaid factual position, the conduct of appellant/convict is also material. After the registration of present FIR, the appellant/convict filed anticipatory bail petition on 15.11.2019 and the matter was referred to Mediation and conciliation Centre by the Coordinate Bench to explore the possibility of compromise, vide order dated 14.01.2020. No compromise could be effected and finally, his anticipatory bail petition was declined by the Coordinate Bench vide order dated 31.01.2022. However, during this period, a new development took place. The appellant/convict performed marriage with prosecutrix in Arya Samaj Mandir on 15.03.2021. Certificate of Marriage is Exhibit D-3 and the photograph of their marriage is Exhibit D-7. The prosecutrix as PW-8 categorically stated that when she started residing with the appellant/convict, from his mobile phone she came to know that he had already performed marriage with another lady namely Priya



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Kumari on 16.02.2020. The photographs of his first marriage are Exhibit D-4. He along with Priya Kumari further filed divorce petition under Section 13-B of Hindu Marriage Act. Copy of petition is Exhibit D-5. The aforesaid documents were taken into police possession vide recovery memo Exhibit P-6, which are duly proved on record in the testimony of L/ASI Chandrakanta as PW-9 and L/Constable Sweety as PW-3. Therefore, during the pendency of his anticipatory bail petition, he performed first marriage with Priya Kumari and also filed joint petition seeking divorce and furthermore, performed marriage with the prosecutrix during the subsistence of his first marriage.

13. Considering the aforesaid factual position, the stand taken by the appellant/convict does not hold any ground. The judgment of conviction passed by learned trial Court is well reasoned and all aspects of the case have been duly considered. Therefore, I do not find any reason to interfere in the judgment of conviction dated 20.07.2023. Considering the gravity of offence, quantum of sentence imposed by learned trial Court vide order dated 09.08.2023 does not require any interference. Finding no merits in the present appeal, the same is accordingly declined.

14. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

08.10.2025

Sunil Devi

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No