

MHCC050011272013



Presented on : 02-08-2013
Registered on : 02-08-2013
Decided on : 25-10-2021
Duration : 8years, 2months, 23days
Exhibit- 111

**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

**SESSIONS CASE NO. 142 OF 2013
(C.R.NO. 86 OF 2010, C.C.NO.2400402/PW/2011)
(CNR NO.MHCC05-001127-2013)
(Presided over by D. D. Khoche)**

Bar & Bench (www.barandbench.com)

The State of Maharashtra)
(at the instance of Charkop Police Station,)
C.R. No.86/2010)) **..Prosecution**

Versus

1. Jignesh Chandulal Vyas)
Age: 36 Years, Occupation : Service,)
Residing at C-603, Anand Van Bldg,)
Nityanand Shrushti, Mira Road, Thane.)

2. Chandulal Laxmishankar Vyas (Abated))

3. Leelavati Chandulal Vyas)
Age: 55 Years, Occupation : Nil,)
Residing at C-603, Anand Van Bldg,)
Nityanand Shrushti, Mira Road, Thane.) **..Accused**

**CHARGES : FOR THE OFFENCES PUNISHABLE UNDER SECTIONS
420, 376, 509 r/w 34 OF THE INDIAN PENAL CODE, 1860.**

Ld. APP R. S. Kanojia for the State/Prosecution.

Ld. Advocate Mr. Shaikh for the Accused.

Coram: His Honour Addl. Sessions Judge,
Shri D. D. Khoche.
(C.R.No.13)

Date : 25th October, 2021

J U D G M E N T

(Delivered on this 25th day of October, 2021)

Accused Nos. 1 & 3 Jignesh Chandulal Vyas and Smt. Leelavati Chandulal Vyas went through the trial for the offences punishable under Sections 376, 509, 420, read with 34 of Indian Penal Code 1860 (hereinafter called as 'IPC').

Bar & Bench (www.barandbench.com)

2. Brief facts of the case are as follows.

On 11/3/2010, one Miss KHP (her name is not disclosed in view of the guidelines in the Judgment of *Nipun Saxena and another Vs. Union of India & Others, reported in (2019) 2 SCC 703*) had moved an application before the Deputy Commissioner of Police, Zone-XI, Borivali (west), Mumbai. It was referred to the Charkop Police Station of 12/3/2010. Miss KHP also had moved an application to the Police Station Charkop, Mumbai on 16/3/2010. In consequence to it, she was called at the Police Station on 25/3/2010 and her Report was taken.

3. She informed in said report that she was residing with her parents at Charkop, Mumbai and was doing her post graduation. She had registered her name on a website 'Bharatmatrimony.com' for her marriage. On 25/6/2007 she received an email of Jignesh Vyas

providing his information and mobile number to contact. They and their parents met and her and Jignesh's horoscopes were exchanged. Jignesh's mother denied her proposal. However, Jignesh was intending to marry her. Hence, she and Jignesh were talking on phone calls. On their being in contacts, quarrels started between Jignesh's parents. On 4/12/2007, on the occasion of her birthday, Jignesh came at her home, informed her father his wish to marry her. He assured her father that after marriage, everything would be alright and he would keep Miss KHP separate from his parents, at their room at Chakala, Andheri (East), Mumbai. Thereafter, they had taken a rented premises at Poonam Nagar, Andheri, for which she born expenses on the say of Jignesh. However, after two months, Jignesh disclosed Miss KHP that he could not afford rent of said room, therefore, he would repair his father's room at Chakala, Andheri, but disclosed about scarcity of money for repair of said room and requested her for money. On his request, Miss KHP paid Rs. 45,000/- (Rs. Fourty Five Thousand only) to the contractor, who renovated said room.

4. Miss KHP informed that in June 2009 Jignesh and his father Chandulal came to her house. Chandulal asked her and her father to bear the expenses of marriage of his daughter Chitra and to pay for purchase of new room for Jignesh and Miss KHP. It was rejected by her and her father showing financial incapacity. Jignesh's mother also had made such demand to her. However, Jignesh assured her that they were not going to perform Chitra's marriage immediately and not to take tension of it.

5. Miss KHP informed that as agreed upon, Jignesh booked an Aarya Samaj Hall at Goregaon (west), Mumbai by depositing Rs. 10,000/- (Rs. Ten Thousand only) for their scheduled marriage on

14/12/2009. On that day, Jignesh came in said hall with a 'Mangalsutra'. However, he quarrelled with her there, saying that she would require to stay with him and his parents, at their flat at Mira Road, Thane. They had quarrel on said ground and he went away getting angry. However, in the same month, he met her and sought apology. He assured her that they would fix new date for marriage at the earliest, also talked with her father on phone call. Therefore, Miss KHP and Jignesh were in contact with one another on phone calls. In the meantime, on 4/2/2010, Jignesh had sent her some obscene messages, which Miss KHP described in her report. Informant Miss. KHP contended that thereafter Jignesh asked her to pay balance Rs. 2,500/- (Rs. Two Thousand Five Hundred only) to the Aarya Samaj Hall towards booking it for their marriage. Accordingly, she booked said hall for marriage to be performed on 12/2/2010. However, just prior a day of it, Jignesh and his father Chandulal called her at their house at Mira Road and told that she would require to bear all expenses of Jignesh's sister's marriage and to pay the EMI of their flat of Mira Road, Thane. This again turned in to a quarrel between them, during which Jignesh abused her and quarrelled with her. Consequently, their marriage could not take place on the scheduled date. Thereafter, though she tried to call on Jignesh's mobile phone, his office phone, to take final decision, he kept his phone turned off and was conveying her through others that he was not in the office. Consequently, Miss KHP felt that he deceived her. She had given its application to the Police Station, which was not entertained. She moved to the Deputy Commissioner of Police, Zone XI, Borivali (west), Mumbai and again to Charkop Police Station. Thereafter, the then Poilce Sub Inspector (hereinafter called as 'PSI') Mr. R.M. Ranshevre called her and she lodged this report.

6. On her such Report, PSI Mr. Ranshevre registered Crime No. 86/2010 for the offences punishable under Sections 509, 34 of IPC and Section 4 of Dowry Prohibition Act 1961. He recorded statement of Jignesh Vyas. Thereafter, investigation was handed over to PSI Mr. C.M. Suryavanshi. He collected print outs of obscene messages sent by accused Jignesh to informant Miss KHP, from her, under a panchanama and recorded her supplementary statement. He recorded statements of other various witnesses & arrested Jignesh and his parents under the panchanama. Accused were released on bail by the learned Metropolitan Magistrate. Thereafter, since PSI Mr. Suryanvanshi felt that it was also a case of following practice deception, he added Section 420 of IPC. He collected CDRs of mobile phones of informant Miss KHP and Jignesh. He got transferred during investigation.

7. Therefore, Asstt. Police Inspector (hereinafter called as 'API') Mr. M.A. Goud was appointed as third Investigating Officer (hereinafter called as 'IO'). He observed all the documents, felt that sufficient investigation was done. Consequently, he filed the Charge sheet against the accused for the offences punishable under Sections 420, 509 r/w. 34 of IPC and Section 4 of The Dowry Prohibition Act 1961, under Section 173 of Code of Criminal Procedure 1973 (Hereinafter called as 'Cr.P.C.').

8. Before framing charge, accused No. 2 Chandulal L. Vyas expired. Hence, case is abated against him.

9. Learned Additional Chief Metropolitan Magistrate, (hereinafter called as 'Ld. ACMM') 24th Court, Borivali, Mumbai, framed the charges for the offences punishable under Sections 509, 420 r/w 34 of IPC, read over and explained to the accused Nos. 1 & 3 respectively

Jignesh Vyas and Smt. Leelavati Vyas, who pleaded not guilty and claimed trial.

10. Consequent to it, Pw 1 Miss KHP entered in to witness box and led evidence. She also faced the cross examination taken on behalf of the accused. However, thereafter, Prosecution moved an application Exh. 18 before the Ld. ACMM under Section 323 of Cr.P.C. stating that during evidence of Pw No.1 Miss KHP, it was revealed that the accused No.1 Jignesh had kept physical relations with her under the false assurances and thereby committed an offence of rape punishable under Section 376 of IPC and to add said charge. Said application was allowed on 19/7/2013 by the Ld. ACMM. Consequently, further investigation was ordered and undertaken. On its basis, case is committed to this Court under Section 209 of Cr.P.C. for the offence punishable under Section 376 of IPC.

11. Learned Predecessor of this Court framed the charge of Section 376 IPC, read over and explained it to both the accused who pleaded not guilty and claimed trial. Consequently, Prosecution again examined informant Miss KHP as Pw No.1. It then examined 8 witnesses, over all 9 in numbers. They were cross examined. Prosecution closed its evidence by pursis at Exh. No. 97.

12. This Court recorded statement of accused under Section 313 of Cr.P.C. at Exh. 102. Accused took defence of innocence and false implication. They never preferred to lead defence evidence. Court heard the Written submissions of learned APP Smt. R.S. Kanojia for the State and Ld. Advocate Mr. Shaikh for the accused. It also went through the case laws cited. Accused filed Written Notes of Arguments at Exh. 105

while the Prosecution filed Written Notes of Arguments at Exh. 107. This Court went through the same.

13. Following Points arise for determination of this Court. Court records its findings thereon for reasons to be recorded below.

SERIAL NO.	POINTS	FINDINGS
1.	Whether Prosecution proves that the accused no. 1 & 3 respectively Jignesh Chandulal Vyas and Leelavati Chandulal Vyas, in furtherance of their common intention, and with the deceased accused no. 2 Chandulal L. Vyas, cheated the informant Ms. KHP by dishonestly inducing her to deliver Rs. 45,000/- or 50,000/- to them, which was her property and/or even made her to allow Jignesh to have physical relations with her under his false promise to marry her and thereby the accused nos. 1 &/or 3 committed offences punishable under sections 420 r/w 34 of The IPC, 1860?	No.
2.	Whether Prosecution proves that the accused no. 1 Jignesh Chandulal Vyas committed rape on the informant Ms. KHP under the false promise of marriage and thereby committed an offence punishable under section 376 of IPC, 1860?	No.
3.	Whether Prosecution proves that the accused no. 1 Jignesh Chandulal Vyas intending to insult modesty of informant Ms. KHP, sent obscene SMSs on her mobile intending that same shall be seen by her and thereby committed an offence punishable under section 509 of the IPC, 1860?	No.

4.	What order?	As per final order.
----	-------------	---------------------

INGREDIENTS

14. To bring home guilt of the accused, Prosecution overall examined nine witnesses as follows :-

Witness No.	Exh. No.	Name of the Witness	Relation of the witness	Documents referred/exhibited in his/her evidence
1	P-9 & 38	Miss KHP	Informant cum victim	FIR Ex. P10, (Exh.40 in Sessions Court,) Two receipts Exhs. Nos. 12 colly. (Exhs. No. 50 & 51 in Sessions Court.) Passbook Exh. P13, Notice issued by her to accused and its reply Exh. P16 and P17. Her affidavit Exh. No. 41. Her complaint to DCP Zone-11, Exh. No. 45. Order of Hon'ble High Court in Writ Petition No. 378/2015 Exh. 46. Bill of S. S. Enterprises (Article – E), Horoscope of Accused.
2	47	Mr. HJP	Father of victim	Nil.
3	49	Mr. Rajkumar U. Tripathi	Priest	Exhs. 50 & 51.
4		Mr. Sanjay M. Pardeshi	Contractor	Nil.
5		Mr. Sanjay Dhondu Jadhav	Bank witness	Exh. 67 computerized bank statement of account of Miss. KHP, the informant.
6	68	Mr. R. M. Ranshehare	First IO	FIR Exh. P10, (Exh. 40)
7	75	Mr. C. M. Suryavanshi	2 nd IO	Exh. 76 panchnama of

				seizure of obscene SMSs from informant.
8	85	Mr. C. H. Godse	Nodal Officer, Vodafone company	Exh. 33 & 86/112 CDR & SDR reports (later taken this Judgment at Exh. 11)
9	93	Mr. M. A. Gaud	3 rd IO	Exh. 94 & 95 IO's report. Ld. ACMM

INGREDIENTS

15. In this case, to prove the offence punishable under section 376 of IPC, Prosecution has to establish following ingredients -

1. The applicant/ accused Jignesh,

a. penetrated his penis, to any extent, into the vagina, mouth urethra or anus of the informant Miss. KHP;

b. Against her will; or

c. Without her consent; or

d. With her consent, obtained by putting her or any person in whom she was interested, in fear of death or of hurt; or with her consent, when he was knowing that he was not her husband and that her consent was given because she is believing that he was the her husband with whom she was or was to be lawfully married;

16. In this case, to prove the offence punishable under section 509 of IPC, Prosecution has to establish following ingredients -

a. The accused Jignesh was intending to insult the modesty of the informant;

b. Therefore, he sent obscene messages to her;

c. Intending that she would see those words; or

d. He intruded upon her privacy.

17. In this case, to prove the offence punishable under section 420 of IPC, Prosecution has to establish following ingredients -

a. The accused Jignesh and Leelavati deceived the informant;

b. Fraudulently or dishonestly induced her;

c. To deliver any property to them or to any other person or to consent them to retain her money or other property; or

d. the accused Jignesh made her to allow to have sexual intercourse with him under the false promise of marriage;

e. which was likely to cause damage or harm to her body, mind, reputation or property;

f. Accused had did it intentionally.

EVIDENCE

18. To understand the nature of the case, it is necessary to see in short, what is the evidence led by the concerned Prosecution witnesses.

19. Perusal of the entire chief examination of Miss. KHP shows that her and accused Jignesh's parents had a meeting to consider the marriage proposal between her and Jignesh and they had exchanged the horoscopes of proposed bride and groom. As per the informant Miss. KHP and her father PW-2 Mr. HJP, the horoscopes were matched. Though it was so, the accused No.3 Smt. Leelavati, the mother of accused No.1 Jignesh had opposed said proposal of informant Miss. KHP and even had not come for further meetings of said marriage. Still

the accused No.1 Jignesh was intending to marry with her and he had disclosed the same to PW No.2 Mr. HJP. Miss. KHP and Mr. HJP both deposed that thereafter, father of the accused Jignesh had come to their house and had disclosed that he was ready for said marriage, but his wife was not ready and there happened to be quarrels between them on said ground and that the Jignesh and informant Miss. KHP may perform Court marriage and go for separate accommodation. Accordingly, informant and Jignesh had taken a room at Poonam Nagar, Andheri (East) on rent and she had paid the amount to the agent. PW No.2 Mr. HJP also deposed that he had paid the deposit amount of Rs.40,000/- for said room. It is deposed by PW Nos.1 and 2 Miss. KHP and Mr. HJP that the couple stayed over there for two months. However, PW No.1 Miss. KHP additionally stated to have stayed over there from 02/05/2009 to December-2009. It has come in their evidence that thereafter, the father of accused Jignesh suggested if they were unable to afford said room, they may shift to his room at Andheri after getting renovated it. Accused Jignesh told the informant to see the contractor. Accordingly, her father Mr. HJP found out the contractor Subash Sonawane and Sanjay who gave the estimate of Rs.1,00,000/- for repairing. As per both the witnesses, they had born expenses of Rs.50,000/- and the accused Jignesh had paid equal amount and said room was repaired.

20. As per the evidence of PW No.1 in August-2009, renovation of said room at Chakala, Andheri was completed. PW No.2 Mr. JHP deposed that at the time of repairing said room, Chandulal Vyas and accused No.3 Leelavati Vyas had come to see said room. PW No.1 Miss. KHP deposed that thereafter, Chadulal Vyas raised quarrel with her and Jignesh and told that he and his wife would not allow them i.e. Jignesh

and informant Miss KHP, to stay at said Chakala house. Same is deposed by PW No.2 Mr. HJP that after repairing work of the room, Chandulal Vyas and Leelavati Vyas went back from their words and told that they would not allow to stay this couple in said flat. PW No.1 Miss. KHP deposed that the Jignesh told her that his mother Leelavati always used to quarrel with his father Chandulal and had also told that she would not allow to them to stay in Chakala house. Informant Pw No.1 Miss KHP deposed that even the accused No.3 Leelavati Vyas abused her in filthy language and told that she would not allow her i.e. Miss. KHP to stay in the Chakala house or in Mira Road House. Rather, Leelavati threatened her to kill and set on fire. She told Jignesh that after seeing behaviour of his parents, she would not stay with his parents after the marriage and he had agreed for it. PW No.2 Mr. HJP deposed that when Chandulal and Leelavati changed their words, Jignesh told him and his daughter that he was not requiring their flat but he would take flat on loan, perform marriage of his sister Chitra and promised him that he i.e. Jignesh would not trouble his daughter.

21. Both the PW Nos.1 and 2 deposed that thereafter, accused Jignesh and Miss. KHP had fixed date of marriage in Arya Samaj Hall as 14/12/2009. Accused Jignesh had deposited Rs.10,000/- with Arya Samaj Hall and also had brought and Mangalsutra with him. PW No.1 Miss KHP deposed that accused Jignesh told her that his parents frequently raised the quarrel with him and never allowed for marriage. He then told her that they i.e he and Miss KHP, would require to stay at Mira Road house with his parents. He raised quarrel with her and told her that if she would not be ready to stay at Mira Road house, then she should go for divorce. At that time, her father was with her. She deposed that she felt that yet the marriage was to be performed, but

Jignesh was giving threat of divorce. Therefore, there was quarrel between them and marriage could not be performed. Her father PW No.2 Mr. HJP deposed that the accused Jignesh had come alone for marriage. He asked Jignesh where he would stay after the marriage. Jignesh answered that they would stay at their house at Mira Road. He asked Jignesh, then why he had repaired the house at Andheri and Poonam Nagar. At that time, Jignesh told him that Miss. KHP would stay with him at Mira Road House even though his mother would treat her in any way, would burn her, would beat her, but still she would require to stay. PW No.2 deposed that after hearing this, he left the place with his daughter.

22. PW No.1 Miss. KHP deposed that thereafter, she had not contacted accused Jignesh. However, within 2-3 days, he contacted her and her father, asked for apology, told that he would fix the date of marriage. Therefore, on his say, she paid balance amount of Rs.2,500/- in Arya Samaj Hall, Goregaon on 07/02/2010. She and accused Jignesh had fixed the marriage on 12/02/2010. However, she came to know that Jignesh's mother accused No.3 left for village as she had oppose to said marriage. She deposed that on 11/02/2010, accused Jignesh had called her and her father to his house. Accused Jignesh and his father raised quarrel with them. Accused Jignesh's father Chandulal stated that they had taken Mira Road house on loan and who would pay its EMI. He told that Chitra's marriage was yet to be performed and abused her i.e. informant Miss. KHP in filthy language. She deposed that accused Jignesh told her in Gujrati language, to take the flat first and then marriage would be performed. Therefore, there was quarrel between them. Jignesh never married her nor was ready for registered marriage and thus cheated them. Similarly, PW No.2 Mr. HJP deposed

that after the incident of 14/12/2009, accused Jignesh had called him on phone for 2-3 times, but he never received call. Then accused Jignesh came to his house and asked apology saying that he would take another date in Arya Samaj Hall. Jignesh had taken 12/02/2010 in Arya Samaj Hall. However, on 11/02/2010 Jignesh had called Miss. KHP at his house at Mira Road along with him. Before he reached at said house, Jignesh had assaulted his daughter, broken her phone and twisted her hand. When he reached, Jignesh spoke rudely with him. Jignesh told him to take a flat first.

23. Informant cum PW No.1 Miss KHP deposed that thereafter, accused Jignesh avoided her contacts. So, she felt cheated and filed police report. Similar is deposed by PW No.2. Informant Miss. KHP identified her various reports filed with the Deputy Commissioner of Police; to the Police Station, Charkop and her report taken later on. She had referred those reports in her evidence before the Ld. Metropolitan Magistrate as well as before this Court. The report is at Exh.40. Her affidavit is at Exh.41. Her further report by police is at Exh.45. Not only this, but she also referred two receipts, she also referred the horoscope of the accused Jignesh, his passbook, the two receipts of the Arya Samaj hall in her evidence.

24. In respect of an offence punishable under Section 509 of IPC, Informant Miss KHP deposed before the Ld. ACMM at the end of page number 2 that after first date of their schedule marriage, and between that period, accused Jignesh had sent her so many obscene SMSs on her mobile.

25. In respect of the offence punishable under Section 376 of IPC, she deposed before the learned ACMM and even before this Court

that in the rented room at Poonam Nagar, Andheri East, she and accused Jignesh used to visit from May 2009 to December 2009 and they had sexual relationship and he sexually abused her during said period. She deposed on page number 7 that though she had insisted Jignesh to perform marriage, he told her that as the marriage was fixed, so she was his official wife and even if she becomes pregnant, there would be no problem as they would perform marriage. There is no more material evidence to note here.

26. Evidence of PW No.4 Sanjay Mulchand Pardeshi corroborates her evidence stating that he had completed the work of tiles etc. at the house of Andheri; he had repaired the toilet, bathroom and made construction work of kitchen. He is cross examined only in two lines. Those are not able to destroy his chief examination. Therefore, his evidence is worth to be believed and it has to be held as proved that he had worked for Miss. KHP, to repair and renovate the room of Chakala, Andheri of the accused Jignesh. In fact, Prosecution was expected to show him the Article-E i.e. the bill in the name of S.S. Enterprises, but it appears to have failed in doing so. Similarly, though the informant Miss. KHP deposed about her passbook at Exh.P-13 before the Ld. ACMM, she never pointed out particular entry of payment for said renovation. Therefore, same cannot be considered. Though it is so, regarding this, the accused Jignesh answered while replying the question No.32 in his statement recorded under Section 313 of Cr.P.C. that Suhash Sonawane, the contractor, had repaired his room. While answering question No.33, he stated that for renovation of Chakala house, he had paid Rs.36,000/- to Miss. KHP. As per Section 313(4) of Cr.P.C., his such answers can be taken into consideration. Thus, above evidence of Pw Nos. 1,2 & 4 proves that the renovation of

Chakala house of accused Jignesh was undertaken, and he had born some Rs.36,000/- for it, while as per the informant Miss. KHP and her father Mr. HJP, they had spent Rs.50,000/- for it. This gets proved. In such circumstances, the contents of notice by Informant Miss KHP to the accused Jignesh at P-16 would be prevailed and contents of his reply at P-17, both exhibited before The Ld. ACMM, denying Informant's bearing costs of Rs. 45,000/- for such renovation work, will not be helpful to accused.

27. PW No.3 R. U. Tripathi is the priest from Arya Samaj Mandir, Goregaon. He corroborated the evidence of PW Nos.1 and 2 that the PW No.1 Miss. KHP and the accused Jignesh had been to Arya Samaj hall on 12/12/2009; they were to perform the marriage. They had filled in the form. Accused Jignesh had filed his school leaving certificate, receipt of society maintenance and four photographs. Their marriage was scheduled on 14/12/2009 but they changed the time of marriage. Again they told that they would confirm the marriage time but they never phoned. He deposed that on 07/02/2010 PW No.1 Miss. KHP came to Arya Samaj Hall, deposited Rs.2500/- stating that they would perform marriage on 10/02/2010 but they never turned up later on. He identified the application form (Exh.15) and original marriage form Exh.51.

28. His cross-examination shows that though he admitted that those documents (Exh.50 and 51) (original Exh.P-12 collectively, those) do not bear the signature of accused and that he never made entry of Rs.12,500/- received in the register of Arya Samaj Hall, still he admitted the suggestion that the informant Miss. KHP and the accused Jignesh had come to his office at Arya Samaj Hall to book the marriage date.

29. This proves that the accused Jignesh and Miss. KHP had been to Arya Samaj hall to book the hall for marriage and their marriage was scheduled to be performed. Not only this, but this PW No.3 Mr. Tripathi brought on record Exh.51 i.e. the application for marriage purpose, along with the photocopies of accused Jignesh Vyas, the photocopy of maintenance bill of Jignesh Society, allegedly filed by the accused Jignesh Vyas. Therefore, it has to be reasonably believed that the accused Jignesh had been there to book said hall for his marriage and the marriage of the informant and had provided those documents. Otherwise, no one could have provided such private documents of the accused Jignesh to said person. Thus, it proves that the informant Miss KHP and accused Jignesh had booked Aarya Samaj Hall for their marriage initially for the scheduled marriage date on 14/12/2009 and then on 12/2/2010.

30. PW No.5 Mr. Sanjay Jadhav is the officer of Dena Bank who produced the statement of account of informant cum PW No.1 Miss. KHP. Though his cross-examination shows that he was not in said branch in relevant time, his evidence is of independent person and he produced the exhibit No.67. Therefore, it is worth to be believed. Said statement is for the period of 1/5/2009 to 8/8/2009 of the bank account of informant Miss KHP. It shows multiple withdrawals of amount from her account. First document with it is the cheque dated 2/5/2009 for Rs. 20,000/- issued in the name of accused Jignesh Vyas. Second document with it shows that Rs. 30,000/- were paid by way of cheque on 6/8/2009 to the Contractor Subhash Sonawane by the informant Miss KHP. This shows that informant had born over all Rs. 20,000/- from said account for the deposit or rent of Poonam Nagar

house and at least Rs. 30,000/- for the renovation of Jignesh's room at Chakala, Andheri (east), Mumbai.

31. PW No.6 is the First investigating officer Mr. R. M. Ranshevare. He deposed that on 25/03/2010, he was on general duty at Police Station Kandivali. He recorded the report of informant Miss. KHP as narrated by her and registered the offence punishable under section 509, 34 of IPC and Section 4 of Dowry Prohibition Act. He also recorded statement of accused Jignesh but investigation was handed over to PSI Mr. Suryavanshi. He was cross-examined. Court will take its reference later on wherever needed. Suffice it to note that he only performed aforesaid job.

32. PW No.7 Mr. C. M. Suryavanshi deposed that since July-2006 to July-2010, he was posted with Charkop Police Station as PSI. Investigation of FIR No.86/2010 was received to him. He recorded statements of four witnesses and arrested three accused; during investigation, he had found that accused persons had committed offence punishable under section 420 of IPC. Hence, he added said section; he recorded supplementary statement of the informant and got print out of the SMS from the mobile set of the informant and prepared panchanama accordingly. He identified said panchanama at Exh. No.76. He deposed that he issued a letter for collecting CDR for mobile phone of informant and accused and collected the same. Unfortunately, Prosecution never referred his letter issued for collection of CDR etc to him in chief examination and never brought it on record.

33. In cross-examination, accused got proved various omissions from the evidence of PW No.2 through him. Court will come said discussion later on.

34. PW No.8 was Mr. C. H. Godse, the Nodal officer working with Vodaphone company. He deposed that in the year-2011, he had received an E-mail from Deputy Commissioner of Police, Zone-XI, Mumbai, regarding providing call data record of Mobile 9930065081 for the period of 04/02/2010 to 10/02/2010. As per said requirement, the details were provided to Deputy commissioner of police, he identified said E-mail Exh.33 received by his company from the Deputy Commissioner of police. He identified the pages No.65 and 66 in red ink of said CDR provided by his company to Deputy Commissioner of Police by E-mail on 05/04/2010. He deposed that as per said data, name of the person holding said mobile phone 9930065081 was Jignesh Vyas. He was cross-examined but in the opinion of the Court, the cross-examination was not that much helpful to the accused. Said CDR was mistakenly not given the exhibit number in his evidence. However, now this Court takes it at Exh. No. 112 with the certificate under section 65B of The Evidence Act, during this Judgment.

35. PW No.9 is Mr. M. A. Goud, the API. He deposed that on 15/12/2012, an investigation of Crime No.86/2010 had come to him when he was posted at Charkop Police Station. Since he found that the material was sufficient, he had filed the charge-sheet. He deposed that thereafter, in July-2011, he was called at the Court of Ld. Metropolitan Magistrate. He found that the informant Miss. KHP had given another application to the Ld. Metropolitan Magistrate for further investigation. He was directed to make further investigation. Accordingly, he had called the informant at Police Station, recorded her statement and statements of other witnesses. He found that the informant and the accused No.1 Jignesh had taken a room No.41 in building No.3-A, MMRDA Complex, Poonam Nagar on rent and stayed over there for two

months. He recorded statements of Kapish Pandey, Arvind Mishra. It was revealed from their statements that the informant had paid them i.e. brokers and landlord more than Rs.46,000/-. However, there was no document prepared for said transaction but he had obtained photocopy of the cheque issued to those persons on behalf of the informant, drawn on Dena Bank. He deposed that he went to the room at Chakala, Andheri (East) and recorded statements of Landlord Mustaffa Abbas Hussain and neighbours Shobha Thakur, Devendra Thakur. It had come to his notice that the informant and the accused resided in said room for some period and room repairing was also done through contractors Subhash Sonawane and Sanjay Pardeshi. He deposed that he recorded statement of Subhash Sonawane. He then went to Arya Samaj Hall, Goregaon and recorded the statement of priest Rajkumar Tripathi. He deposed that after such investigation, he could found that accused had promised her the informant to marry her, stayed with her at MMRDA complex and at the room at Chakala Andheri and had established physical relations with her. He deposed that he had told the informant Miss. KHP, the necessity of medical examination. However, she had stated that since much more period was passed, it was not necessary and useful to go for medical examination. He prepared such report and submitted it to the Ld. Metropolitan Magistrate. He then filed report of further investigation to the Magistrate.

36. In cross-examination, he admitted that, he had filed two reports dtd. 21/08/2011 and 30/09/2011 on the directions of further investigation by the Ld. Metropolitan Magistrate. Those reports are taken at Exh. Nos.94 and 95 in his cross-examination as per the request of Ld. Advocate for accused. He admitted that he never recorded statement of any of the person at Poonam Nagar; he had not done

panchanama of Chakala room since said room was closed. There is no more evidence.

APPRECIATION OF EVIDENCE

37. After considering above evidence of the informant Miss KHP and her father Mr. HJP and the answers given by the accused in their statement under Section 313 of Cr.P.C. which can be taken into consideration under Section 313 (4) of Cr.P.C., this Court finds following admitted things.

a. Informant Miss. KHP and accused No.1 Jignesh, both had registered their names in Bharatmartimoney for marriage purpose in the year-2007.

b. Informant Miss. KHP and accused No.1 Jignesh had exchanged their respective profiles with one another and contacted on mobile phones on one another.

c. They were met in Reghuleela Mall, Borivali on 29/06/2007.

d. Accused No.1 Jignesh had invited her to meet his parents at his house at Mira-Road and introduced her to his parents and sister. Thereafter, they both had arranged meeting of their parents. In said meeting, they had exchanged their respective Horoscopes.

e. Accused No.1 Jignesh had told the informant Miss. KHP that he and his father were ready for her marriage proposal, but his mother accused No.3 Leelavati was not ready.

f. Accused No.1 Jignesh had assured informant Miss. KHP's father, that he liked the informant, wanted to marry with her and would perform marriage with her on his own.

- g. There was room at Chakala without toilet and bathroom.
- h. The said room of the father of accused Jignesh was repaired through Subhash Sonawane Contractor.
- i. On 14/12/2009, accused No.1 Jignesh came in Arya Samaj Hall with "Mangalsutra". He had told informant Miss. KHP that his parents Chandulal and accused No.3 Leelavati had frequent quarrels with him and they had never allowed for marriage.
- j. Accused Jignesh had told informant Miss. KHP that though his parents objected for his marriage with her, she would require to stay at his Mira-Road flat with his parents.
- k. Accused No.1 Jignesh had not come with the informant Miss. KHP for fixing the date of marriage showing that he was busy.
- l. Lastly quarrel had taken place on 11/2/2010 at the house of accused No.1 Jignesh at Mira Road, Thane between the parties.

38. On aforesaid admitted grounds, let this Court to proceed to decide whether the Prosecution proves the ingredients of the offences of charge.

39. Aforesaid discussion satisfactorily proves that the marriage between the informant Miss. KHP and the accused Jignesh was agreed upon to be performed from both the sides of Jignesh and the informant Miss. KHP, but it was against the wish of accused no. 3 Leelavati, the mother of accused no. 1 Jignesh. Their relations were proceeded ahead even to the extent that when accused no. 3 Leelavati had opposed said marriage, the Jignesh and Miss. KHP had even taken the room on rent at Poonam Nagar and even they used to visit over there.

40. This fact of taking a room on rent at Poonam Nagar gets proved by the evidence of Pw Nos. 1 & 2 which is referred in above paragraph No. 19 and by the evidence of Pw No. 5 Sanjay Jadhav along with statement of account of Miss KHP which shows the payment of Rs. 20,000/- to accused Jignesh, which is referred in above paragraph No. 30. Therefore, taking said room at rental gets proved. As per the informant Miss. KHP, they even had sexual relations over there.

41. Thereafter, it was the deceased accused Chandulal, who had suggested them to repair his room at Chakala and to stay over there after the marriage. Aforesaid evidence of informant, her father and PW No. 4 Mr. Sanjay Pardeshi brought on record that even they had renovated said room. However, evidence of Miss KHP and her father Mr. HJP also brought on record that thereafter Chandulal and accused Leelavati refused them to stay in said house and therefore, they were required to wait.

42. Though it was so, evidence on record shows that the accused no. 1 Jignesh and probably Miss. KHP had been to Aarya Samaj Hall and had met PW No. 3 R. M. Tripathi, the priest, filled in the application form for the purpose of marriage and even had fixed the date as 14.12.2009. Unfortunately, on the ground of the place of stay after the marriage, a quarrel had taken place between the duo and said programme of marriage was cancelled. However, it is evidence of PW No. 1 & 2 Miss. KHP and Mr. HJP, which is not denied strictly by accused Jignesh that the accused Jignesh again had contacted the PW Nos. 1 & 2, sought their apology and had then requested the PW No. 1 Miss. KHP to deposit Rs. 2500/- with Aarya Samaj Hall and accordingly next date was fixed for the marriage as 12.02.2010. This evidence specifically shows that it was not only the informant Miss. KHP but

accused Jignesh also had an intention to perform the marriage till 11.02.2010.

43. Now let this Court deal with the merits of alleged offences. First one is the accusation under Section 420 of The Indian Penal Code, which is needed to be discussed in detail. Ingredients of Sec. 420 of the IPC are *'deceiving any person either fraudulently or dishonestly and to induce him/her to deliver the property to the accused or consent to retain a property and that deception should be intentional'*.

44. In this respect, let this Court first mention that original accusation is against all the accused Nos. 1 to 3. However, the accused no. 2 Chandulal expired long back and case is abated against him. Consequently, no purpose would be served by discussing the evidence regarding him. Therefore, initially Court prefers to discuss the role of accused no. 3 Smt. Leelavati in this case.

45. Entire evidence of PW No. 1 Miss. KHP shows that she deposed in paragraph no. 4, page no. 3 before this Court that,

- a) *Jignesh told her that her mother was not ready for their proposal;*
- b) *Jignesh's father Chandulal told that his wife was not agreed for his say;*
- c) *Jignesh's father also had told that there were frequent quarrels in their house on the subject of marriage.*

In paragraph no. 5, page no. 5, Miss. KHP deposed that

- d) *In the year 2007, mother of Jignesh told that she did not like me i.e. "Pasant Nahi". Jignesh told me said fact;*

e) *Jignesh told my father that his mother was not agreed for marriage; he also told that as there were always dispute between his parents, so he would stay separate after the marriage;*

f) *In the year 2009, Jignesh's mother told me that "Agar Mein Jignesh ke Sath Shadi Karoongi, Toh Mujhe Mira Road pe Ghar pe rehene nahi degi, or Chitra ki shadi jaldi karo";*

g) *Jignesh's father told to take house and Jignesh's mother would not allow to stay in the house at Mira Road.*

In paragraph no. 5, page no. 6 informant Miss. KHP deposed that,

h) *his father advised to take room on rent as there was strong objection of Jignesh's mother.*

Bar & Bench
In paragraph no. 6, page no. 7 informant Miss. KHP deposed that

i) *Jignesh told me that his mother always quarrel with his father and also told that she would not allow me to stay at Chakala house;*

j) *I frequently used to go in the house of Jignesh, at that time, his parents Chandulal and Leelavati told me that they would not allow me to stay at Chakala house or Mira Road house;*

k) *Leelavati Vyas abused me in filthy language and told me that she would not allow me to stay at Chakala house or Mira Road house;*

l) *Leelavati threatened me to kill and set on fire;*

m) *He (Jignesh) told me that his parents frequently raised quarrel with him and not allowed for marriage.*

In paragraph no. 10, page no. 10, informant Miss. KHP deposed that n) *thereafter I came to know that accused no. 3 mother of Jignesh went to Village, as she opposed said marriage.*

In paragraph no. 11, page no. 11, informant deposed that,

o) *we went to Mira Road house of accused, his mother assaulted me.*

46. Each of aforesaid sentences deposed by informant Miss. KHP in evidence shows that Leelavati was not preferring the informant Miss. KHP to be married with her son Jignesh. She was not ready for the marriage of informant with her son Jignesh. There is no evidence to gather that even for single time Leelavati spoke in proper manner with the informant Miss. KHP. Rather, the last evidence of Miss. KHP shows that when her marriage was going to be happened on 12.02.2010 in Aarya Samaj Hall with Jignesh, Leelavati had left the flat and had been to native place just because she had opposed said marriage. If this was so, then there is no clue to gather as to how the Leelavati had an intention to cheat the informant Miss. KHP or her father and to make them to deliver some property to Jignesh or to her or to her family or to consent handover any such property to them.

47. In this respect, intervenor's Written Submissions mention that Leelavati had plan with Jignesh to get repair their room at Chakala from the informant and informant's money and then to break the marriage between Jignesh and informant. However, there are two things to consider. First one is that the Leelavati had opposed the marriage just after getting the horoscope of the informant and after their first meeting. It is not the case that Leelavati had appreciated the informant for initial days, got renovated their house at Chakala from the money of informant and then started opposing said marriage.

Secondly, there is no express evidence or implied material on record to infer that Leelavati had suggested to anyone of her family members or Miss KHP or her father to renovate said room at Chakala, though it came on record through Pw No.2 HJP that she had visited said room when the renovation was going on and then refused to give said room for accused Jignesh and Miss KHP. Thus, there is nothing to infer and hold that Leelavati had intention to cheat and that she cheated the informant or her father, dishonestly or fraudulently and induced them to deliver their property either to her or her family members, either by spending for room at Chakala or in some other way. Consequently, Prosecution failed to prove offence punishable under section 420 of The IPC against Leelavati. Court records its negative finding to that extent to said point.

48. Proceeding to find out whether the accused Jignesh committed the offence punishable under section 420 of the IPC, it is a long discussion of certain points. At the inception, after the exchange of horoscopes, though as per the informant Miss. KHP and her father, horoscopes of Jignesh and informant Miss. KHP were matched, same is denied by the accused. Unfortunately, none of the parties brought on record the evidence of the astrologer or otherwise to show whether the horoscopes were matched or not.

49. Though it is so, it is the fact which came on record that irrespective of the same, Jignesh's mother Leelavati had oppose to said marriage. However, the Jignesh wanted to marry with the informant. There is specific evidence on record of the informant though they had initially met in July, 2007, the Jignesh had been to informant's house on the occasion of her birthday on 04.12.2007 and had expressed his wish to marry with informant, assuring her father that he would keep

informant happy. Thereafter, again a meeting had taken place and Jignesh's father Chandulal had approached to Mr. HJP and had expressed him that though he was ready for the marriage of Jignesh with informant, Jignesh's mother was opposing for the same. Thus, from December, 2007 itself, it was known to the informant and her father that the mother of Jignesh was opposing said marriage, but that Jignesh was intending to go with the marriage.

50. It is usual practice in Hindu tradition that all members in family reside together. Even the new bride, who comes after the marriage at her in-laws house, does not start to stay separately with her husband, immediately, but follows the tradition as far as possible or at least for year or some months to stay together with in-laws. Therefore, it is also a tradition in Hindu families that while fixing the marriage, the groom and bride seek consent of their relatives or at least family members. However, in present case, the Jignesh and his mother appear to have had separate opinions. This is though rare, may exceptionally happen in a family. A mother may not prefer the proposed bride for her son while the son may have some different opinion. However, in such case, the son being a young person, is not ready to leave the bride, to whom he feels to marry, but at the same time, he gets in clutches of the mother's consent. It is because he is being grown up and maintained by mother at least for 20-25 years of age and therefore, he has always love, affection and bonding with her. He cannot deny her wish at once, nor can oppose strongly. In such circumstances, in some families such kind of issue may arise and therefore, the family of bride-groom may go with such differences but under the hope that some way out would be found out.

51. In present case, it appears that initially the Chandulal tried to find out a way by suggesting the Jignesh and informant to go for rental house at Poonam Nagar. It appears from the evidence of informant and her father that said suggestion was acted upon and even for said purpose, the informant and her father appear to have paid some amount as deposed by informant in her evidence to Om Associates, the Estate Agent thorough Jignesh, which can be found out from transfer of Rs. 20,000/- (Rs. Twenty Thousand only) from the account of informant Miss KHP. Though it is so, informant's evidence shows that the accused Jignesh had showed her his incapacity to bear the rental amount. Consequently, Chandulal had given another suggestion to renovate the room in his name at Chakala and to stay over there. Parties went for it. It gets proved from the evidence of informant Miss. KHP, her father, PW No. 4 Mr. Sanjay Pardeshi that the informant had born at least Rs. 45000/- to Rs.50000/- for the same. Even the accused Jignesh admitted in his statement under section 313 of Cr.P.C. that expenses were made for renovation of said house and that he paid Rs.36,000/- to the informant for said purpose. Pw No. 5 Sanjay Jadhav's evidence also shows transfer of Rs. 30,000/- from the account of Miss KHP. This proves that informant Miss. KHP had taken the initiative to renovate said room at Chakala and had got it renovated.

52. Though it is so, it is material to see that Jignesh's parents had a flat at Mira Road, Thane and this room at Chakala, Andheri, Mumbai. Therefore, it can be observed that they were comparatively in sound financial position. However, it appears that only due to Jignesh's mother's opposition to his marriage with informant, she was not willing to cooperate the couple in any way and therefore, even his father Chandulal was not willing to spend for renovation. However, there is no

evidence nor other clue to gather that he was wanting to get renovated his room at the cost of informant. Rather, from the evidence, it appears that he was expecting that there should be some arrangement for residence of Jignesh and informant after their marriage and he himself could have suggested for the renovation of the room at Chakala.

53. It finds from the evidence of PW No. 2 Mr. HJP that Chandulal Vyas and Leelavati Vyas had come to see the work of renovation of said room at Chakala and thereafter the Chandulal had changed the words saying that they would not allow the couple to stay in said room. However, for said purpose, evidence of Informant Miss KHP is material. She deposed on page No. 7 that,

“In August-2009 renovation of Chakala house was completed. Thereafter, his father raised quarrel with her and Jignesh and told that they would not allow them to stay in Chakala house. She told this fact to Jignesh and asked as to why his father asked to renovate said house, if he did not want to allow them to stay in that house; Jignesh told her that his mother always quarrel with his father and also told that she would not allow her i.e. informant to stay in Chakala house. She frequently used to go in the house of Jignesh, at that time, his parents Chandulal and Leelavati Vyas told her that they would not allow her to stay at Chakala house or Mira Road House”.

This evidence of informant Miss. KHP itself shows that it was not basically the accused Jignesh nor even Chandulal who had initially himself offered said room of Chakala for renovation, but it was the Leelavati, who after observing the possibility that informant was going to be married with her son and they may stay in Chakala room even after her opposition, pressurized her husband, quarrelled with son and made the husband to take back his words. It being the family of only four persons and the Jignesh being their only son, had bonding with mother Leelavati and Chandulal, could not oppose them seriously or failed in doing so. However, this discussion does not show the Jignesh's

intention to cheat and induce the informant to spend for his room at Chakala.

54. It also must be noted that, initially the Jignesh had found out the way to spend for rental room of Poonam Nagar. Thereafter, when Chandulal had taken a subject of marriage of Chitra and a flat, which was denied by the informant and her father, it was the Jignesh who had told them that **a)** marriage of Chitra was not an urgency; **b)** he would see for it and they i.e. informant and her father should not take tension of it and; **c)** he would see to get loan for buying the flat. This shows that he was trying to do such possible things for his marriage with the informant.

55. Next material thing is that though informant obviously spent considerable amount for the renovation of the Chakala room, the Jignesh also stated to have spent Rs. 36,000/- for the same. Prosecution had no opportunity to deny it and even the Jignesh never led evidence in support of his such contention that he spent Rs. 36,000/- for the same, but it is a natural thing that when his father's house was going to be renovated, he would certainly spend for it. If he had no such intention, he could not have spent for it, but could have made the informant to bear all the expenses. Here it is not the case of Prosecution that the informant or her father born all the expenses of renovation of said room of Chakala. Therefore, it has to be reasonably held that even the Jignesh or his father could have spent for renovation of said room. Thus, the renovation was not completely made at the cost of informant and her father.

56. Another material thing is that even thereafter, the Jignesh had paid Rs.10,000/- on 12/12/2009 to Arya Samaj Hall for marriage

purpose. Not only this, but he had also brought the 'Mangalsutra' for the marriage purpose on 14/12/2009. This shows that he was ready for marriage. However, a quarrel had taken place over there and therefore, he had gone back. Though it was so, if he was not intending to marry, he could not have again tried to contact with informant or her father but he did so. It reflects from the evidence of informant thereafter, she had not contacted with Jignesh but within 2-3 days, he had contacted her, her father and sought apology telling that he would fix the date of marriage. Not only this, PW No.2 Mr. HJP deposed in paragraph No.2 that,

“thereafter, for 2-3 times, accused i.e. Jignesh phoned him. He did not receive it. Then accused came to his house, asked apology and told that he would take another date in Arya Samaj Hall. He had taken 12/02/2010 in Arya Samaj Hall”.

These wordings of informant and informant's father show that though a quarrel had taken place between Jignesh and informant on 14/12/2009, still he himself had contacted them. He had sought their apology and he was ready for fixing next date for marriage. This shows that Jignesh had tried at his level best to go with the marriage, but it was his mother Leelavati who was not allowing the informant to stay either in her Mira Road House or in the Chakala Room.

57. It finds that though the Jignesh had told the informant and her father that he would seek a loan for the flat, informant's evidence itself shows that the Jignesh had expressed his inability to pay the rent amount of the Poonam Nagar room. This shows that Jignesh was not in a position to raise funds for separate house, but at the same time, he was in clutches of mother who was not allowing his proposed wife to come in her house at Mira Road or even to allow them to stay in Chakala Room. Not only this, but he was found in another clutch that

frequently he had disclosed informant and her father that his mother was not ready to allow the informant to stay at both those places. This had made the informant Miss KHP to make up her mind to stay separately and, in any case, not with the Leelavati at Mira Road house. Therefore, though the Jignesh was later on 14/12/2009 asking the informant that she would require to come to Co-habit at his Chakala house, probably she was not ready.

58. This reflects from the evidence of the informant Miss. KHP on page No.7 in following words,

“he told me that his parents frequently raised quarrel with him and not allowed for marriage. He told me that I have to stay at Mira Road house with his parents. He raised quarrel with me and told me that if I will not ready to stay at Mira Road house, then he asked me to take divorce. At that time, my father was with me. ---- There was quarrel with myself and Jignesh and therefore, marriage could not perform”.

This incidence dtd.14/12/2009 is also reflected on page No.3 in the evidence of Pw. No.2 HJP in following words,

“He came alone for marriage. I asked him whether his friend and father is not coming from his side for marriage. I asked Jignesh that where he will stay after the marriage. Jignesh told me that they will stay at their house at Mira Road. I asked him why he had repaired the house at Andheri and Poonam Nagar. Jignesh told me that KHP mere ghar pe Mira Road mein Rahegi, meri maa usko jo bhi karegi, jala degi, maregi, usko wahi rehna padega. Maine usko bola, tum jo tarike se bolta hai mujhe pasand nahi. Then I left the place with my daughter”.

59. This evidence clearly shows that the Jignesh had come for marriage with the ‘Mangalsutra’. However, he was alone. When was asked for, he had clarified the informant Miss. KHP that his parents were quarreling with him and not allowing for marriage. However, it must be noted that still he had come over there, but at the same time,

probably since he had fought with his parents and especially mother who was not ready to keep the informant KHP at her Mira Road house, he had no way out where to take the informant Miss KHP after marriage. When it was specifically asked for, he was of opinion to take her to his Mira Road house because he had no other alternate arrangement. However, at the same time, since he had already disclosed the informant and her father that his mother was not ready to keep informant in any of his house, obviously the informant was not ready to go to Mira Road for co-habitation and this made them to quarrel and the marriage could not be performed, but the aforesaid incidence shows that the Jignesh had tried at his best to perform the marriage but he was found between the different opinions of two ladies and he was unable to say 'no' to any of them.

60. Still, thereafter, he had sought apology of the informant and her father and had booked the Arya Samaj Hall again with assistance of informant. However, again the evidence about incidence dtd.11/02/2010 shows that till that day, the Jignesh was failed in convincing his mother. Consequently, she had left the Mira Road house and gone to village. It was her love, affection and bonding with him which was unable to make him to bring the informant at Mira Road house against the wish of mother. Therefore, he had only one alternate probably to ask the informant to arrange some flat, for which the informant was not ready.

61. Here it is necessary to note that it was not at all the fault of the informant Miss. KHP. Rather, she had helped the accused Jignesh in various ways. Initially, she was ready to marry with him, even though his mother was not appreciating her. Secondly, she had made the arrangement of rental house at Poonam Nagar or at least helped in

getting it. Thirdly she helped very much the Jignesh to renovate his room at Chakala by spending her money and even fourthly she had deposited Rs.2,500/- with Arya Samaj Hall and was ready to marry with Jignesh. This shows that she was much more cooperative and wherever possible, helped the Jignesh. Though it is so, she had also a limitation and it was beyond her financial capacity, beyond her bearing capacity to surrender the Jignesh after a particular limit.

62. In fact, it was for the Jignesh to be firm and to take appropriate decision in time where he failed. Rather, though it is sorry state of affair to say, but it was his mother Leelavati who never allowed him to marry with a girl which was his appreciation and compelled him to bow before her wish, taking wrong advantage of his love, affection and bonding towards her. Thus, it was unfortunate incident. Though it is so, after considering all aforesaid evidence, this Court is of humble opinion that accused Jignesh failed in taking proper steps at proper time, in taking the firm decision against the wish of his mother and to arrange for alternate house and thereby could not succeed to marry with informant Miss. KHP. However, his such failure does not show that he had an intention to deceive the informant Miss. KHP since inception and to dishonestly and fraudulently induce her to pay the deposit, rent of the Poonam Nagar house and to bear the expenses of renovation of his father's Chakala house. Therefore, though he or his father may be the illegal beneficiary of said amount of renovation of his father's Chakala Room, to partial extent, still there is absence of the practice deception by way of cheating. Therefore, this Court is of humble opinion that the Prosecution failed to prove the offence punishable under section 420 of IPC against the accused Jignesh. Court records its such finding to said point.

63. Coming to the case of rape, as held above, the marriage between the parties was proposed. Had this not been disturbed by the Jignesh's mother Leelavati, there was no other obstruction in the marriage which was scheduled to be performed between them. In fact, from the chronology of the incident, it finds that if the Leelavati could have consented for said marriage, it could have been performed even before 04/12/2007, but it was delayed by more than two years and the reason was only Leelavati. However, still it was the accused Jignesh and Miss. KHP who were confirm on their opinion that they would go for marriage.

64. Though it was so, they had taken a room at Poonam Nagar on rent prior to the marriage. In fact, when the marriage was not performed, it was a hurried decision and step on their behalf, rather on behalf of the informant, to reside together and to take the room on rent for said purpose. Once such a young couple gets such an opportunity, there is much more possibility of their getting privacy and to come close intimately. Consequently, they may decide to experience a sex. Same is alleged to have happened over here between May-2009 to December-2009. Miss. KHP deposed that during said period, the accused Jignesh assured her for marriage and sexually assaulted. This has been denied by the accused in her cross-examination.

65. Not only this, but it has come in her cross-examination on page No.14, paragraph No.15 that she had not mentioned physical relations with the accused during said period in her report (Exh.45). She also admitted in para no. 15 that there is no reference of rape and sexual abuse by accused in her FIR. In the next sentence in para no. 16, she admitted that she had knowledge about physical relation, rape, while writing to DCP Exh. 43. This shows that though she was aware of

the alleged sexual abuse by Jignesh against her, she had not mentioned in her first report to the DCP Exh. 45, dated 11.03.2010. It is also not in FIR Exh. 40. Rather, it appears for the first time in her affidavit at Exh. 41, dated 28.01.2011. Not only this, but she admitted in paragraph No. 16 on same page that her medical examination was not conducted. She also added there that nobody had asked her for that purpose and had denied the suggestion that police officer had sent her for medical examination but she refused.

66. Though it is so, the PW No.9 API Mr. M. A. Gaud specifically stated in his evidence paragraph No.4 on page No.3 that he had told the informant, the necessity of her medical examination. However, she stated that since much more period was passed, it was not necessary and useful to go through medical examination. He deposed that he prepared such report and submitted it to the Magistrate. In his cross-examination, Ld. Advocate for accused brought said report before this Court at Exh. Nos. 94 and 95. Perusal of the reports (Exhs. No.94 and 95) both show that the investigating officer Mr. Gaud had mentioned in the words inferring that,

'the informant herself had mentioned in the application to make her medical examination for the purpose to find out that the accused had kept physical relations with her. However, when he recorded her statement, she mentioned that she had told about it in March-2010 to the then investigating officer PSI Mr. Ranshevare, then to PSI Mr. Suryavanshi but at that time, they had not noted her such complaint in the FIR, much time was passed in between and therefore, she refused for medical examination.'

Thus, the report is also on record. In such circumstances, record shows that informant Miss. KHP on the ground of delay never preferred to go for medical examination. This shatters the Prosecution case.

67. Presuming for a while only for discussion, that there is no such report, but still her words can be relied upon and it can be held that the accused Jignesh had committed sexual intercourse with her, still the next question arises whether it amounts to rape or not.

68. Regarding this, Prosecution and in particularly the informant relied on two cases. One is *Dr. Anurag Soni v/s State of Chattisgarh, Criminal Appeal No.629/2019, arising out of SLP (Criminal) No.618/2019* and second, *Yedla Srinivasa Rao v/s State of Andhra Pradesh, (2006) 11 SCC 615*. This court went through both those case laws. *Per contra*, Ld. Advocate for the accused relied on the case law of *Deepak Gulathi v/s State of Haryana (2013) 7 SCC 675*. This Court went through all those case laws.

69. Court observes that in the case of *Anurag Soni v/s State of Chattisgarh* (*supra*), the Anurag Soni was following a study of medicines while the prosecutrix was taking education at different station. However, they both were from the same native place and were acquainted with one another since prior. They were intending to marry and even their parents had consent for the same. One day Anurag Soni called her at his station and she came by train. He met her, told her that they would marry and forcibly kept sexual relations with her. He then told her not to disclose it to anybody and he would convey about their marriage shortly. He then sent her at her place of study. After 2-3 days, she contacted with him for the decision of marriage, but he avoided. She immediately contacted her family members and disclosed the fact. They approached to the house of the accused. Both families had meeting. It was agreed upon that the Anurag had no alternate but to marry with her. He also consented for it but sought some time. In the

meantime, he got married with other girl. Therefore, she had lodged report and he was convicted. Honourable Supreme Court was pleased to observe that it was revealed from various witnesses and particularly the lady with whom the Anurag had married subsequently, that their marriage was fixed prior. Honourable Supreme Court found that the accused had falsely promised the informant to marry and had kept sexual relations with her, though he had no intention to marry with her.

70. In the case of Yedla Shrinivasa Rao Vs. State of A.P. (*supra*), the prosecutrix was residing at her sister's house. Accused used to visit her sister's house daily. Her sister used to go for agricultural work and prosecutrix happened to be alone in home. Accused used to ask her for sexual favour. She had refused. One day, accused came in her house, closed the doors and had sexual intercourse forcibly without her consent and against her will. When she had asked as to why he had spoiled her life, he had assured her for marriage. Consequently, their such relations continued. When she became pregnant, he provided some tablets to her but those never worked and she insisted for marriage for which his parents were not agreed. A panchayat was called and the accused admitted about his illegal relations with prosecutrix, her pregnancy due to him and sought time of two days for marriage. Thereafter, he absconded from the village and ultimately prosecuted and convicted.

71. However, in present case, it is not the thing that the accused was intending to give false promise to the informant. Rather, he was in relation for about more than 2 years with her, he had followed his words to marry with her as far as possible. He had taken the room on rent at Poonam Nagar, renovated the room at Chakala, had

been to Arya Samaj Hall with *Mangalsutra* but it was the quarrel on the ground of stay after marriage and thereafter, by getting tired of his indecisiveness and getting surrendered before his mother's wish and failing to handle and tackle the problem stood before him in proper manner, he came back. However, it is certainly not the case of false promise of marriage. Rather it is the case of his failure to make substantial efforts.

72. In addition to this, in the humble opinion of this court, it was not the forcible sexual relationship, but it was the sexual relationship which had taken place by both the major parties at their own wish to experience the sex prior to the marriage. In such circumstances, it cannot be held that it was only the Jignesh in fault, but it was also the informant who had consciously consented for the same on her own wish. In fact, it was not necessary for her to allow him to have such sexual relations prior to the marriage, but she opted for the same, believing blindly that she would be married with him, even though she was well aware that her mother was against it and a moment may come that the marriage may be broken due to such oppose by his mother. In such circumstances, in the humble opinion of this Court, it was the self decision of the informant to go for such sexual intercourse but it was not the case of that promise of marriage was false. As guided in aforesaid case laws, breach of the promise is a different thing and false promise of a marriage also a different thing. In such circumstances, the case law cited of *Deepak Gulati Vs. State of Haryana* (*supra*), on behalf of accused, even being different on facts, applies over here.

73. Not only this, but as guided in the paragraph no. 8 & 9 of the case of *Mahesh Balkrishna Dandane V/s. The State of*

Maharashtra, in Criminal ABA No. 27 of 2014 by the Hon'ble Bombay High Court (Hon'ble Justice Mrs. Mridula Bhatkar, J.) dated 12.03.2014, this Court feels that it may be at the most the case of breach of promise but not the false promise. In such circumstances, it is settled law that every breach of promise to marry cannot be said either a cheating or rape, alike in this case. Therefore, even after respecting the emotions of the informant, respecting her fighting for justice for long period of near about 11 years or more, this Court is of humble opinion that this is not the case which would show that the offence of rape has been committed by accused Jignesh. Court records its negative finding to this extent.

74. Next one is in respect of the offence punishable under Section 509 of IPC. In this respect, PW No.1 Miss KHP deposed that on various dates and particularly in the night of 04.02.2010, accused Jignesh had sent her various obscene SMSs. Though she deposed it, unfortunately Prosecution failed to show her such SMSs in her evidence and even to refer her mobile phone to her, on which she had got those obscene SMSs from the accused Jignesh.

75. Evidence of PW No. 7 API Mr. Suryavanshi brought on record that he had recorded the supplementary statement of informant cum PW No. 1 Miss. KHP and had received the details of such alleged obscene SMSs sent to her by the accused. He even deposed that he had drawn the panchnama Exh. 76 in that respect. Prosecution brought said panchnama Exh. 76 before the Court. Accused though denied said panchnama, still Court observes that the PW No. 9 API is an independent witness and had no reason to create false record against accused Jignesh. Therefore, his drawing such panchnama Exh. 76 has to be held as proved. Certainly, there is a *lacuna* in investigation and it

has come on record in his cross-examination that he had never taken the custody of the mobile phone of Miss. KHP. Though, it is so, still he further deposed that he had asked for the call data record (CDR) of the phone of accused and that he had received the same.

76. In this respect, the evidence of PW No. 8 Nodal Officer is important. As discussed above, his evidence brings on record that the Deputy Commissioner of Police, Zone XI had asked his Vodafone Company for the SDR & CDR of the Phone Number 9830065081 and he had provided it to the said Authority. He brought on record Exh. 33 and said SDR and CDR. Said SDR proved to be of the accused Jignesh and the CDR Exh. 112 of said phone Number 9830065081 shows that accused Jignesh had sent various SMSs to the phone number 09833232951 of the informant. Though it is so, it finds that Prosecution failed to show those SMSs to the informant Miss. KHP and to bring the same on record. Consequently, Prosecution failed to prove through Miss. KHP that the accused Jignesh had sent those particular SMSs to her.

77. Proceeding ahead and presuming for a while, though not proved, that those SMSs were sent by the accused Jignesh to the Miss. KHP, and that she had received the same, still as observed above, the marriage between accused Jignesh and informant Miss. KHP was fixed and was scheduled to be performed within next 8 days. In aforesaid circumstances, the couple who were intended to be married had some personal feelings and sentiments which they or any of them may express to the other side. Sending such messages in such a premarital period, may delight the other one. It may give the happiness, may give the feeling that someone is closer to him or her, to understand his/her emotions. In such circumstances, usually the other side enjoys such

messages. If at all those are not liked by the other side, it has discretion with it to convey its displeasure to the other side and the other side generally avoids to repeat such mistake. In present case, when the relations of the accused Jignesh and informant Miss. KHP were going to be converted into matrimonial relations, it could have been a natural phenomenon for him to forward some obscene SMSs, to his counter part. The purpose of it, was to put up his expectation before her, to arouse her with similar feeling of sex, which may give the happiness even to her etc. However, in no way those such SMSs can be said as were sent to insult her modesty. There does not find such intention in sending such SMSs. Had there been such intention, the words could have reflected the same. Even otherwise, the informant Miss. KHP could have opposed the same by her SMSs to the accused Jignesh, but the Prosecution never brought before Court any such messages sent by Miss. KHP opposing such sending of his obscene SMSs to her. This shows that at relevant time, informant Miss. KHP was enjoying those messages or at the most though she could not have been enjoying the same, she was not feeling anything offending in sending those messages. She was not feeling that those SMSs were sent to her with an intention to insult her modesty. Not only this, but since the messages sent by the accused Jignesh, who was going to be married with her, it was their private talk through electronic media and it being most private between the couple itself, it cannot be held that his sending such alleged obscene SMSs to her was intruding upon her privacy. In such circumstances, in no way the Prosecution could prove that accused Jignesh committed the offence punishable under section 509 of The Indian Penal Code, 1860. Court records its such finding to such point. Thus, after considering all aforesaid points in detail and minutely, this Court holds that Prosecution failed to prove all the

offences punishable under sections 420 r/w 34, 376 and 509 of The Indian Penal Code, 1860. Court records its negative findings to the point Nos. 1 to 3.

78. Certainly, the informant had the right to recover her amount spent on the Chakala room of the father of accused and even to seek the compensation, but it is the separate matter under civil litigation. Therefore, this Court cannot go in said aspect. Thus, after considering all aforesaid points, Court passes following order.

ORDER

1. Accused Nos. 1 to 3 respectively, Jignesh Chandulal Vyas and Leelavati Chandulal Vyas stand acquitted of the offences punishable under sections 420 r/w 34, 376, 509 of The Indian Penal Code, 1860 as per Section 235(1) of The Code of Criminal Procedure, 1973.
2. Their bail bonds stand cancelled.
3. Muddemal property, black colour mobile memory card, though not exhibited in the evidence, and not concerned with the accused, be preserved till next six months or till the appeal period is over, whichever is longer. Thereafter, if it is not claimed by informant or anybody, be destroyed.
4. Accused shall execute the bail bond of Rs. 15,000/- (Rupees Fifteen Thousand) each with one or more solvent sureties, to appear before the Hon'ble High Court as and when such Court issued notice in respect of any appeal or petition filed against this Judgment under section 437-A of The Code of Criminal

Procedure, 1973 and such bail bond shall be in-force for six months from today.

5. Copy of this Judgment be forwarded to the District Magistrate, Mumbai Suburban, under section 365 of The Criminal Procedure Code, 1973.

(Dictated & Pronounced in open Court)

Sd/-

Date : 25.10.2021

(D. D. Khoche)
Additional Sessions Judge,
City Civil & Sessions Court,
Borivali Division, Dindoshi,
Goregaon, Mumbai

Bar & Bench (www.barandbench.com)

Dictation given directly on computer on : 23.10.21 & 25.10.2021
Transcribed on : 26.10.2021 & 27.10.21
Checked & corrected on : 15.11.2021
Signed on : 15.11.2021
Sent to Dept. on :

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 15/11/2021

Time : 6.04 P.M.

UPLOAD DATE AND TIME

Ms. Tejal C. Rane

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

**HHJ D.D.KHOICHE
(Court Room No.13)**

Date of Pronouncement of JUDGMENT/ORDER

25.10.2021

JUDGMENT/ORDER signed by P.O. on

15.11.2021

JUDGMENT/ORDER uploaded on

15.11.2021