

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.85 of 2014

Arising Out of PS. Case No.-5 Year-2009 Thana- SIMRA District- West Champaran

Munna Chaurasiya Son of Lalan Chaurasiya Resident of Village - Imali Dad-
hiya, P.S. - Semra, Distt. - West Champaran...

... Appellant/s

Versus

The State Of Bihar ...

... Respondent/s

Appearance :

For the Appellant/s : Mr.Ravindra Kumar, *Amicus Curiae*

For the Respondent/s : Mr.S.N.Prasad, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

CAV JUDGMENT

Date : 23-06-2026

Heard Mr. Ravindra Kumar, learned *Amicus Curiae* and Mr. S.N. Prasad, learned APP for the State.

2. The present criminal appeal has been preferred against the judgment of conviction dated 19.12.2013 and order of sentence dated 20.12.2013 passed in Sessions Trial No. 371 of 2009/373 of 2013, arising out of Semara P.S. Case No. 05 of 2009, G.R. No.83 of 2009 by the Adhoc Additional Sessions Judge IIIrd, Bagaha, District West Champaran, whereby the learned trial court convicted the appellant under Section 376 (I)



of the Indian Penal Code and sentenced him to undergo seven years R.I. and to pay a fine of Rs.20,000/- and in default of payment of fine, to further undergo R.I. for one year.

BRIEF FACTS OF THE CASE

3. The prosecution story, in brief, is that the father of the victim girl is a poor labourer, who used to earn his livelihood by doing manual work in other States and the mother of the victim also used to go to work in fields and at the houses of others for their livelihood. During the absence of parents of the victim, the victim girl would remain alone at home. It is alleged that during such periods, the appellant, who is a co-villager, used to visit her house and establish physical relations with her and upon her protest, the appellant allegedly assured that he would solemnize marriage with her. It is further alleged that such physical relationship continued for about one year, as a result of which, the victim became pregnant and she insisted upon the appellant to marry but he refused and solemnized marriage with another girl. Thereafter, the victim submitted a written complaint regarding the aforesaid incident before the local police on 15.01.2009 and on the basis of the aforesaid written application of the victim girl, Semra P.S. Case No.05 of 2009 was registered under Section 376 of Indian Penal Code



and Section 3 (x) of SC and ST (Prevention of Atrocities) Act against the appellant. The charge-sheet was submitted under Section 376 of IPC and the learned ACJM, Bagaha took cognizance under Section 376(I) IPC on 29.05.2009 and committed the case to the court of the learned Sessions on 16.06.2009. The learned trial court court convicted the appellant under Section 376 (I) of IPC.

ARGUMENT ON BEHALF OF THE APPELLANT

4. Learned *Amicus Curiae* appearing on behalf of the appellant submitted that the impugned judgment of conviction dated 19.12.2013 and the order of sentence dated 20.12.2013 passed by the learned Adhoc Additional Sessions Judge-III, Bagaha, West Champaran in Sessions Trial No. 371 of 2009/373 of 2013 arising out of Semra P.S. Case No. 05 of 2009, are illegal, perverse and unsustainable in the eyes of law. It was submitted that the learned Trial Court failed to properly appreciate the evidence available on record and recorded the conviction without considering the material circumstances emerging from the prosecution evidence itself. Learned counsel submitted that the victim was admittedly a major at the time of the alleged occurrence and was fully competent to understand the nature and consequences of her actions. According to the



evidence on record, the relationship between the parties continued for about one year, during which physical relations were established. It was, therefore, contended that the relationship was consensual in nature and not the result of any force, coercion or misconception of fact.

5. Learned counsel further submitted that the conduct of the victim, as alleged by the prosecution, does not inspire confidence and is inconsistent with the allegation of forcible sexual intercourse. Despite claiming that the appellant established physical relations with her on the assurance of marriage, she continued to remain in the relationship for a considerable period without making any complaint to her family members, the village elders or the authorities concerned. Learned counsel argued that such conduct clearly indicates that the relationship was voluntary and consensual. It is further contended that the prosecution has failed to establish that the appellant had made a false promise of marriage from the very inception with no intention of fulfilling the same. In the absence of any evidence demonstrating that the promise was fraudulent at its inception, a subsequent refusal to marry cannot, by itself, give rise to criminal liability. It is, therefore, submitted that the impugned judgment of conviction and order of sentence are



liable to be set aside and the appellant deserves to be acquitted of the charges levelled against him.

ARGUMENT ON BEHALF OF THE STATE

6. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellant for said offences as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

7. Heard the parties.

8. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

9. During the trial, the prosecution has examined altogether eight witnesses, namely:

- i. P.W.-1 Parmeshwar Gupta
- ii. P.W.-2 Salim Miyan
- iii. P.W.-3 Deva Munda
- iv. P.W.-4 Raj Kumar Munda (father of the victim)
- v. P.W.-5 Shyam Pari Devi (Mother of the victim)



- vi. P.W.-6 Victim girl
- vii. P.W.-7 Sakhi Chand Sah (I.O.)
- viii. P.W.-8 Dr. Manju Jaiswal (Medical Officer)

10. The prosecution has also relied upon following documents exhibited during the course of trial:-

- (i) Ext.1 – Signature on the written report
- (ii) Ext.2 & 3 – Formal F.I.R.
- (iii) Ext.4 – Medical examination report of the victim girl.

11. It would be apposite to discuss the oral/documentary evidences. The evidence of the prosecution witnesses (PWs) can be summarized as follows:

(i) P.W.1 – Parmeshwar Gupta: This witness has deposed that he has seen the victim girl when she was going with the accused on his bicycle in Bagaha.

(ii) P.W.2 – Salim Miyan: This witness has deposed that two years prior, a *panchayati* was held in village to resolve the issue that the victim has become pregnant from the above accused. *Panches* told that the marriage of both is to be solemnized but the above accused refused to marry with the victim girl. On cross examination, P.W.2 has deposed that he



knows nothing besides talk of *panchayati*.

(iii) P.W.3 – Deva Munda : This witness has stated that he was also present in *panchayati* and people were talking that the victim has been pregnant from the above accused. Father of the accused was ready to accept the victim girl as his daughter in law.

(iv) P.W.4 – Raj Kumar Munda (father of the victim): This witness has deposed that he was in Bombay for earning his livelihood when the above accused committed rape on her daughter. On getting information, he returned to his home and a *panchayati* was held. A proposal was given to him to take Rs.2,000/- for abortion of pregnancy of his daughter but he was not agreed from the above proposal. When the accused did not ready for solemnization of marriage with his daughter then this case was lodged.,

(v) P.W.5 – Shyam Pari Devi (mother of the victim girl) :This witness has deposed that her daughter had informed the act of rape committed by the appellant. When she became pregnant then Rs.2,000/- was being given to them for abortion and solemnization of her marriage at other place.

(vi) P.W.6 – Victim Girl : The victim has supported the prosecution case.



(vii) P.W.7 – Sakhi Chand Sah (I.O.): He has deposed that the witnesses have not supported the fact that the accused and the victim have solemnized marriage with each other. He further deposed that one witness has told that he had seen the accused and the victim moving on a bicycle in the market of Bagaha.

(viii) P.W.8 – Dr. Manju Jaiswal, the doctor, who medically examined the victim on 17.08.2009. In her deposition, the doctor stated that at the time of examination, the victim was carrying a pregnancy of about eight weeks' duration. The medical examination further revealed that the victim was approximately 19 years of age and was habituated to sexual intercourse. The doctor did not find any recent sign of sexual assault.

12. The record reveals that P.W.-1 has been declared hostile during the trial as nothing transpired from their testimony during the trial which may be said relevant for the purpose of corroborating or contradicting the version of other prosecution witnesses, who supported the crime in question during the trial. Therefore, the testimony of this witness is not relevant qua establishing guilt of the accused/appellant.

13. On the basis of materials surfaced during the



trial, the appellant/accused was examined under Section 313 of the Cr.P.C. by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

14. Before I proceed to analyze the allegations based on the facts and evidences which has come in course of trial, I find it appropriate to reproduce the provisions of Sections 375 and 376 of the Indian Penal Code and governing law settled by the Apex Court for the sake of convenience and better understanding of the facts, which are as under:-

“375. Rape.— A man is said to commit "rape" if he —(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her



consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

376. Punishment for rape.— *(1)Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]"*

15. Section 375 of IPC clearly lays down that a person is said to have committed rape if he performs any of the sexual acts mentioned in sub-clauses (a), (b), (c), and (d),



without the consent of a woman. Further, in terms of Section 90 of IPC, if a consent is given under misconception of fact, such consent is not a consent in the eyes of law and cannot be considered lawful and voluntary. While discussing the ingredients of Section 375 of IPC and Section 90 of IPC, the Hon'ble Supreme Court has held in the case of ***Mahesh Damu Khare v. State of Maharashtra***, reported in ***(2024) 11 SCC 398*** which is as under:

22. Section 90IPC reads as follows:

“90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or.”

25. Keeping this aspect in mind as to what amounts to consent with reference to Section 375IPC, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in Shambhu Kharwar v. State of U.P. [Shambhu Kharwar v. State of U.P., (2024) 16 SCC 502 : 2022 SCC OnLine SC 1032] as follows: (SCC para 9)

“9. In Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , a two-Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in Sonu v. State of U.P. [Sonu v. State of U.P., (2021) 18 SCC 517] , observed that: (Pramod Suryabhan Pawar case [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC pp. 616-18 & 620, paras 12, 14, 16 & 18)

‘12. This Court has repeatedly held that consent



with respect to Section 375IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. ...

14. ... Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. ...

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. ...

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.’ ”

(emphasis supplied)

26. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered



whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in Naim Ahamed v. State (NCT of Delhi) [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385] : (SCC p. 398, para 21)

“21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause — Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right fP.W.-8 is the doctor who medically examined the victim on 17.08.2009. In her deposition, the doctor stated that at the time of examination, the victim was carrying a pregnancy of about eight weeks' duration. The medical examination further revealed that the victim was approximately 19 years of age and was habituated to sexual intercourse. The doctor did not find any recent sign of sexual assault on her person.rom the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376.”

27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have



physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. *Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.*

29. *It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)*

“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 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.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her." (emphasis in original and supplied)

EMERGING TREND OF CRIMINALIZING CONSENSUAL RELATIONSHIP

16. It is equally well settled that a mere breach of a genuine promise to marry, where the promise was made in good faith but could not be fulfilled due to subsequent circumstances beyond the control of the promisor, does not amount to a false promise and cannot be said to vitiate consent. The Apex Court has repeatedly emphasized that to establish rape on the ground



of a false promise to marry, it must be shown that (i) the promise was false at the inception (ii) the sexual relationship was entered into solely on the basis of that promise and (iii) the consent of the woman was vitiated by the misconception of fact. The intention of the accused at the initial stage, and the immediacy of the nexus between the promise and the act of sexual intercourse, are critical elements in determining whether consent was indeed vitiated.

17. The Apex Court in case of ***Deepak Gulati v. State of Haryana*** reported in ***(2013) 7 SCC 675***, has observed as under:

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

(emphasis supplied)



18. The Apex Court reiterating the principle in case of ***Pramod Suryabhan Pawar v. State of Maharashtra*** reported in ***(2019) 9 SCC 608*** has observed as under:

“16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)

“21. ... 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 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.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the



act of a girl in entirety, and fasten criminal liability on the other, [Ed. : The matter between two asterisks has been emphasised in original.] unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her [Ed. : The matter between two asterisks has been emphasised in original.] .”

(emphasis supplied)

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

19. In case of ***Naim Ahamed, vs. State (NCT of Delhi)***, reported in **(2023) 15 SCC 385**, the Apex Court has held that “a promise to marry without anything more will not give rise to “misconception of fact” within the meaning of Section 90”.

“16. In *Deelip Singh v. State of Bihar* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253] , this Court after discussing various earlier decisions of this Court and other High Courts, further explained the observations made in *Uday case* [*Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] and observed as under : (*Deelip Singh case* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253] , SCC p. 104, para 28)

“28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to “misconception of fact” within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without



having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in Jayanti Rani Panda [Jayanti Rani Panda v. State of W.B., 1983 SCC OnLine Cal 98 : (1983) 2 CHN 290 : 1984 Cri LJ 1535] which was approvingly referred to in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] . The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (SCC OnLine Cal para 7) — ‘unless the court can be assured that from the very inception the accused never really intended to marry her.’ In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case [N. Jaladu, In re, 1911 SCC OnLine Mad 3 : ILR (1913) 36 Mad 453 : 1914 Cri LJ 24] (vide passage quoted supra). By making the solitary observation that “a false promise is not a fact within the meaning of the Code”, it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket 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 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.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her." "

(emphasis in original)

*26. The Apex Court has also cautioned against the emerging trend of criminalizing consensual relationships simply because they end in disappointment. In **Mahesh Damu Khare v. State of Maharashtra and Prashant v. State of Delhi**, reported in **(2024) 11 SCC 398**, the Apex Court noted that where a physical relationship has been maintained for a prolonged period by mutual consent, it cannot be assumed with certainty that the sexual acts were solely induced by the promise of marriage. Mere breakup of a long-term consensual relationship or subsequent refusal to marry does not, by itself, constitute rape. Courts must, therefore, carefully distinguish between deception at the inception of a relationship and later unfulfilled expectations, ensuring that criminal law is not invoked to settle personal disputes, while*



simultaneously safeguarding women against deliberate fraud or false promises that induce sexual intercourse. formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."

(emphasis in original)

17. In Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , this Court gave one more dimension of the word "consent" by distinguishing "rape" and "consensual sex" and observed as under : (SCC pp. 682-84, paras 21 & 24)

"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 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.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."''

(emphasis in original)

20. The Apex Court has also cautioned against the emerging trend of criminalizing consensual relationships simply because they end in disappointment. In the case of ***Mahesh Damu Khare (supra)***, the Apex Court after analyzing its earlier decision has concluded that where a physical relationship has been maintained for a prolonged period by mutual consent, it cannot be assumed with certainty that the sexual acts were solely induced by the promise of marriage. Mere breakup of a long-term consensual relationship or subsequent refusal to marry does not, by itself, constitute rape. Courts must, therefore, carefully distinguish between deception at the inception of a relationship and later



unfulfilled expectations, ensuring that criminal law is not invoked to settle personal disputes, while simultaneously safeguarding women against deliberate fraud or false promises that induce sexual intercourse.

21. Based on the above principles of law, now I conclude that the offence of rape under Section 375 of the Indian Penal Code arises only where sexual intercourse is committed against the will of a woman or without her consent. Consent itself must be free, voluntary, and uninfluenced by fear or misconception of fact. Section 90 IPC provides that consent obtained under a misconception of fact is not true consent. In cases involving promises to marry, the principle has been consistently held by the Apex Court that if such a promise is made fraudulently, with no intention of being fulfilled, and solely to induce a woman to engage in sexual intercourse, it constitutes a “misconception of fact” that vitiates consent. In such circumstances, sexual intercourse carried out under the false pretext of marriage may constitute the offence of rape.

22. Considering the findings recorded by the learned Trial Court, the evidence adduced during trial, and the materials available on record, it transpires that the victim girl (P.W.-6) has, in her deposition before the Court, admitted that



she was in a relationship with the appellant for about one year and that during the subsistence of such relationship, she voluntarily established physical relations with him. It further appears from the statement of the victim recorded under Section 164 Cr.P.C. that she had alleged that the accused established physical relations with her against her will and, upon her protest, assured her that he would marry with her. She further stated that when she became pregnant as a consequence of the said relationship, the accused refused to solemnize marriage with her. These statements, therefore, require careful scrutiny in light of the surrounding circumstances and the other evidence brought on record in order to ascertain the true nature of the relationship between the parties and whether the ingredients of the offences alleged against the appellant stand duly established.

23. P.W.-8 is the doctor who medically examined the victim on 17.08.2009. In her deposition, the doctor stated that at the time of examination, the victim was carrying a pregnancy of about eight weeks' duration. The medical examination further revealed that the victim was approximately 19 years of age and was habituated to sexual intercourse. The doctor did not find any recent sign of sexual assault on her person. It is pertinent to note that the victim herself had disclosed her age to be about 21



years. Thus, the medical evidence corroborates the fact that the victim was carrying an eight-week pregnancy at the relevant time, while no recent physical indication of forcible sexual intercourse was detected during the medical examination.

24. I find that the victim was admittedly a major on the date of the alleged occurrence. The prosecution case itself suggests that the physical relationship between the victim and the appellant continued over a period of about one year. Even if the age of the victim is taken to be 19 years, as assessed by the doctor (P.W.-8) during medical examination, and not 21 years as disclosed by the victim herself, she was nevertheless a major and competent to understand the nature and consequences of her acts. It is, however, noteworthy that the learned Trial Court has not recorded any specific finding with regard to the age of the victim, despite the evidence available on record indicating that she had attained majority at the relevant point of time. The omission to return a clear finding on this aspect assumes significance in view of the nature of the allegations and the defence raised by the appellant.

25. So far as the foetus is concerned, the prosecution has failed to establish any scientific link between the appellant and the pregnancy of the victim. The DNA profiling of the



foetus was admittedly not matched with the DNA of the appellant. In the absence of such crucial scientific evidence, no conclusive finding can be recorded that the appellant was the person responsible for the pregnancy or that he had established sexual relations with the victim resulting in the conception. The failure of the prosecution to adduce the best available evidence on this aspect creates a significant gap in the chain of circumstances sought to be relied upon. In criminal jurisprudence, where two views are possible, one favourable to the accused must prevail. Consequently, the benefit arising from this deficiency in the prosecution case must necessarily ensure to the advantage of the appellant.

26. Accordingly, the present appeal is allowed.

27. The impugned judgment of conviction dated 19.12.2013 and order of sentence dated 20.12.2013 is hereby set aside and quashed. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, as such, he is discharged from the liability of his bail bonds. The fine deposited by the appellant, if any, shall be refunded to him.

28. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees Ten



Thousand) to Mr. Ravindra Kumar, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service.

29. The office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	16.07.2026
Uploading Date	23.07.2026
Transmission Date	23.07.2026

