

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.110 of 2009**

Devanand S/o. Bharat Lal, aged about 26 years, Caste Halba,
Resident of village Kochera, Police Station Daundilohara, Distt.
Durg (CG)

---- Appellant

Versus

State Of Chhattisgarh, Through Police Station Daundilohara,
Distt. Durg (CG)

---- Respondent

For the appellant : Smt. Hamida Siddique, Advocate
For the respondent/State : Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****10.10.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 29.11.2008 passed by Additional Sessions Judge, Balod, Distt. Durg (CG) in Session Trial No.20/2008 wherein the said Court convicted the appellant for commission of offence under Sections 376(1) and 417 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.5000/-; RI for one year with default stipulation for committing rape on the prosecutrix and for also cheating her.

2. As per the prosecution case, the appellant committed sexual intercourse with the prosecutrix on the pretext of marriage since two years prior to 04.02.2007. On 04.02.2007 the appellant

took the prosecutrix at his home with assurance that he will keep her as his wife and information to that effect was given to the Panchayat Daundilohara, but he did not marry her and left the house leaving the prosecutrix at home. The matter was reported and investigated and the appellant was convicted and sentenced as mentioned above.

3. The question for consideration is whether it is a case of consent under misconception of facts. Prosecutrix (PW-6) has admitted that she was having relation with the appellant since two years when she started residing with the appellant. It is not clear from the statement of the prosecutrix that on which date the appellant promised her to marry. Prosecution is under obligation to prove that the promise was made before maintaining the physical relation. But that is not proved by the evidence of the prosecutrix. She maintained physical relation for two years and thereafter meeting was convened in the village where the appellant promised to marry with her or they will live as husband and wife. When physical relation between the both the side was maintained prior to the meeting convened in the village it cannot be said that consent was given by the prosecutrix under any misconception of facts. Looking to the physical relation between both the parties, it is not a case where it can be said that the relation is maintained without consent or against her will. Therefore, offence under section 376(1) IPC is not established from her statement.

4. For establishing offence under Section 417 IPC, ingredients of cheating has to be satisfied. Now the question for consideration is whether physical relation is maintained by the respondent by deceiving the prosecutrix fraudulently or dishonestly. As per the version of the prosecutrix, it is clear that she has maintained the relation with the appellant for two years before any meeting was arranged in the village. It means the relation between the parties was maintained with the consent and there is nothing against the will of the prosecutrix. It is not a case that the relation was maintained after deceiving the prosecutrix. Looking to their long physical relation, it cannot be considered as a case of cheating. Therefore, offence under Section 417 IPC is also not established.

5. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Sections 376(1) and 417 IPC. The appellant is reported to be on bail. His bail bond shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE