

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.231 of 2024**

Arising Out of PS. Case No.-24 Year-2021 Thana- MAHILA PS District- Katihar

Nujaht Praveen, Daughter of Md. Kaiyum, Resident of Village-Bari
Gidarmari, P.S-Barari(Semapur), Sukhasan Milik, District-Katihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Rakibul Hak @ Rakibul, Son of Manjur Alam Resident of Village-Bari
Gidarmari, P.S-Barari(Semapur), District-Katihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Umesh Prasad, Advocate
For the State	:	Mr.Bipin Kumar, APP
For the Respondent No.2:	:	Mr. Bimal Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

Date: 04-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 21.12.2023 passed by the learned Additional Sessions Judge- VI-Cum-Special Judge POCSO, Katihar in G.R. No. 3540/2021 and CIS No. 06 of 2022, arising out of Mahila P.S. Case No. 24/2021, whereby Respondent Nos. 2 has been acquitted by the learned Trial Court from the charge of Sections 312, 313, 376, 504 and 506



of the Indian Penal Code and Sections 4 and 6 of the POCSO Act.

2. Vide order dated 09.01.2025, notices were issued to the Respondent No. 2, upon which he appeared by filing Vakalatnama through learned Advocate, Mr. Bimal Kumar.

3. The prosecution case, as per the written complaint of the informant dated 08.09.2021, in brief, is that on the allurement of marriage, Md. Rakibul Hak (23 years) always used to make sexual relationship with the informant. Meanwhile, she became pregnant and then three months ago, Rakibul Hak gave her medicine and got the pregnancy aborted against her wish. On 29.08.2021, around 10:00 P.M. in the night, Rakibul Hak came to her and started making sexual relationship like before, in the meantime, her uncle Md. Alam came out of his house to urinate and saw both of them making illicit relationship, and then he closed the door from outside and called her parents and others also. Thereafter, Manwara Khatoon, Farida Khaton and Md. Shamim Akhtar also came there and opened the door. In the meantime, Rakibul fled away from there. When her parents and uncle asked about the occurrence from her, she narrated it to them. The mother, sister and brother of accused Rakibul Hak assured her for



marriage in the morning. When the matter was placed before the villagers and *PANCH*'s in the morning, Rakibul Hak, Manwara Khatoon, Farida Khatoon and Md. Shamim Akhtar started abusing her and they, including Rakibul Hak denied the marriage. All of them threatened for dire consequence in case they would make hue and cry.

4. On the basis of written statement of the informant, Mahila P.S. Case No. 24/2021 was instituted under Sections 376, 504, 506 of the I.P.C. and Section 4 of the POCSO Act, and investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent No. 2 and cognizance was taken. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the Respondent No. 2, to which he pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether 07 witnesses viz. PW1 Md. Alam, PW2 informant/Victim, P.W3 Md. Kaium, PW4 Md. Maqusud, PW5 Suita Jaiswal (I.O.), PW6 Vaijuddin and PW 7 Dr. Shashi Kiran. The prosecution has also produced certain exhibits (statement of victim u/s 164 Cr.P.C., signature of victim on formal FIR, signature of the then S.I. on formal



FIR, signature of the then S.I. on FIR and medical report prepared by Dr. Shashi Kiran). The defence has also examined three witnesses viz. DW1 Ajhar Alam, DW2 Md. Malik Kastur, DW-3 Suryamani Kumar. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial court has acquitted the accused persons.

6. In a criminal appeal against acquittal, what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Surajpal Singh & Ors. Vs The State*** reported in ***1952 SCR 193***, Paragraph 13 of which reads as under:

“..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is



further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

7. In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450***, in paragraph 75, the Hon’ble Supreme Court reiterated the said view and observed as under:

“The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

8. The learned Trial Court, for acquittal of the accused, considered the following facts and assigned reasons as under:

1. That the prosecution failed to prove the age of the victim as a minor, which is a *sine qua non* for invoking the provisions of the Protection of Children from Sexual Offences (POCSO) Act.
2. And the allegation of rape does not find



corroboration if one may take the totality of the prosecution version into consideration; the victim herself admits that she was having a regular consensual physical relationship with the accused and she has not explained the circumstance that what compelled her to take such medicine for abortion. Mere her statement that she was not willing for abortion in the absence of overpowering circumstances cannot be termed as an offence, especially when the prosecution has been unable to prove that the victim was a minor at the relevant time.

9. We have heard learned counsel for the appellant and have also gone through the record of the case.

10. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

11. Upon examining the materials on record, it is clear that the prosecution has failed to establish the allegations of rape and miscarriage beyond reasonable doubt. It is noteworthy that the victim in her own statement in the FIR admitted that the accused had promised to marry her, and that



she had been in a physical relationship with him out of love for the past one year. This admission clearly suggests that the relationship was consensual in nature and not the result of any immediate threat, coercion or force. The belated allegation of rape, therefore, appears to be an afterthought, especially when there is no contemporaneous protest or complaint from the prosecutrix during the said period. At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of ***Sonu vs. State of UP*** reported in ***(2021) SCC Online SC 181***, wherein following has been observed:

“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.”



12. Further, in the case of ***Maheshwar Tigga vs. State of Jharkhand*** reported in ***(2020)10 SCC 108***, the Hon'ble Supreme Court in Para 20 observed as follows:

“20. We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the Appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in Uday (supra) are considered relevant:

25...It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the Appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak



moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the Appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the Appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the Appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.”

13. Further, it is relevant to take note of the decision of the Hon’ble Supreme Court in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra***, reported in ***(2019) 9 SCC 608*** wherein at para 16, the following has been observed:

“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 this Court observed:

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 Indian Penal Code 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."



14. The attention of this Court is further drawn towards the medical evidence that does not support the allegations of recent sexual assault. The medical report clearly records that the hymen was old ruptured, the vaginal canal was loose, and there were no fresh injuries to the genitalia or any other part of the body. In cases of recent forcible intercourse, some sign of physical struggle or resistance is normally expected; the complete absence of such findings seriously undermines the prosecution case.

15. Additionally, regarding the allegation of abortion, there is no credible medical or documentary evidence to support this claim. The prosecutrix did not produce any prescription, ultrasound report or doctor's testimony showing recent abortion treatment. Significantly, the FIR itself does not mention any abortion, which is a material omission. The medical report specifically mentions no evidence of recent abortion, observing that the endometrium was thickened and the USG of the lower abdomen indicated the last menstrual period was 20 days prior. These findings are incompatible with the assertion that a recent abortion had occurred.

16. Moreover, the delay of nine days in lodging the



FIR has not been convincingly explained and casts a shadow on the credibility of the entire prosecution version. In a case of such serious allegations, prompt reporting and consistent statements are of paramount importance, which are conspicuously lacking in the present matter.

17. Considering the admitted consensual nature of the relationship, the lack of corroborative medical evidence of rape and alleged abortion, the material contradictions in the prosecutrix's statements, and the unexplained delay in reporting the case to the police, this Court is of the considered opinion that the prosecution has failed to prove their case beyond reasonable doubt.

18. Thus, in the opinion of this Court, the Trial Court has taken a plausible view based on the evidence available on the record. The view taken by the Trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out.

19. In the result, the present criminal appeal preferred against judgment of acquittal dated 21.12.2023 passed by the Additional Sessions Judge-VI-cum- Spl. Judge POCSO in G.R. No. 3540/2021 and CIS No. 06 of 2022,



arising out of Mahila P.S. Case No. 24/2021 is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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