

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1079 of 2011

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Ravindra Mandal, Son of Asha Ram Mandal, Village-Atharah Chawnni Tola,
P.S-Pranpur, District – Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vishwajeet Gajendra Pratap Singh, *Amicus Curiae*.

For the Respondent/s : Mr. Abhay Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

C.A.V. JUDGMENT

Date : 20-04-2026

Heard Mr. Vishwajeet Gajendra Pratap Singh,
learned *Amicus Curiae* and Mr. Abhay Kumar, learned APP for
the State.

2. The above criminal appeal has been preferred
against the judgment of conviction dated 07.09.2011 and order
of sentence dated 08.09.2011 passed in Sessions Trial No.
96/2010, arising out of Pranpur P.S. Case No. 115 of 2008, G.R.
No. 1889/2008 by learned Additional Sessions Judge, F.T.C.-I,
Katihar, whereby the learned trial court convicted the appellant
under Section 376 of the Indian Penal Code and sentenced him
to undergo 10 years R.I. and to pay a fine of Rs. 5,000, and in
default of payment of fine, to further undergo R.I. for one year.



FACTS OF THE CASE

3. The prosecution story as per the complaint petition, in brief, is that the victim girl aged about 14 years being a student of Class X of Middle School, Pranpur residing with her parents went to ease herself near Bamboo clumps of Dinesh Mandal on 28.12.2007 and while the victim girl was tying string of her *salwar* after attending natural call, the appellant came and tied her mouth with *gamchha* and pushed her on the ground and committed rape with her. The victim girl started weeping and crying, then the appellant told her to keep quiet and promised her that he would marry with her and she should not disclose the incident to any member of her family. The victim girl got convinced and she established physical relationship with the appellant 2-3 times, as a result of which, the victim conceived. The accused appellant refused to marry and the victim kept persuading him to marry. The allegation is that the appellant allegedly had assured the victim first to abort and then he would marry. It is even alleged that the appellant himself attempted to administer medicine of abortion to the victim but failed. The abortion failed and the foetus developed for four months which was recognized by the mother of the victim. Thereafter the victim narrated the story of her relationship with the appellant



for which a *panchayati* was convened in the village on 27.5.2008 and *Panches* asked the appellant to marry with the victim girl, but the accused appellant refused to marry with her, which resulted into filing of the complaint before the Magistrate.

4. The learned Magistrate sent the complaint petition to the P.S. Pranpur for investigation under Section 156(3) Cr.P.C. Thereafter, Pranpur P.S. Case No. 115 of 2008 was registered under Section 376 of the Indian Penal Code against the appellant. After investigation, charge-sheet was submitted under Section 376 IPC, and upon trial in Sessions Trial No. 96/10, the learned trial court convicted the appellant under section 376 of the IPC vide judgment of conviction dated 07.09.2011 and order of sentence dated 08.09.2011.

ARGUMENT OF AMICUS CURIAE

5. Mr. Vishwajeet Gajendra Pratap Singh, learned *Amicus curiae*, submitted that the impugned judgment of conviction dated 07.09.2011 and order of sentence dated 08.09.2011 passed by the learned Additional Sessions Judge, F.T.C.-I, Katihar Patna in Sessions Trial No. 96/2010 is illegal and unsustainable in the eye of law, as the same has been passed without proper appreciation of the evidence on record. It is



contended that the prosecution case is vitiated by an inordinate and unexplained delay in lodging the FIR, as the alleged occurrence took place on 28.12.2007 whereas the FIR was instituted only on 04.08.2008, which creates serious doubt regarding the authenticity of the prosecution story. It is further submitted that the conduct of the victim, as alleged, appears unnatural inasmuch as she continued to maintain physical relations with the appellant on the alleged promise of marriage without raising any alarm or complaint, thereby indicating that the relationship, if any, was consensual in nature. Learned counsel further submitted that the prosecution has failed to establish the age of the victim beyond reasonable doubt, as no documentary evidence such as school certificate or birth certificate has been brought on record, and the Doctor (P.W. 10) has assessed the age of the victim to be about 18–19 years, thereby making the question of consent relevant. It is also contended that material witnesses have not supported the prosecution case and have been declared hostile, and the testimony of other witnesses is either hearsay or not reliable. The learned counsel thus submits that in view of the material contradictions, lack of corroboration, and failure of the prosecution to prove its case beyond reasonable doubt, the



appellants are entitled to benefit of doubt and the impugned judgment is liable to be set aside.

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 ten witnesses, namely:

P.W.-1 Yugal Mandal (brother of the victim girl),

P.W.-2 Dinesh Mandal (co-villager),

P.W.-3 Sahdeo Mandal (Father of the victim girl),

P.W.-4 Rukya Devi (mother of the victim girl),

P.W.-5 Shashi Shekhar Sharma (I.O.),



P.W.-6 Bhagal Lal Mandal (second I.O.),

P.W.-7 Putul Kumari (victim girl).

P.W.-8 Manoj Kumar Mandal

P.W.-9 Suresh Mandal

P.W. -10 Dr. Laxmi Sen (Medical Officer)

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

(i) Ext.1 – Endorsement on complaint petition

(ii) Ext.2 – Formal F.I.R.

(iii) Ext.3 – Charge Sheet

(iv) Ext. 4 to 4/3 Signature of Putul Kumari on complaint petition

(v) Ext. 5 – Medical 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 – Yugul Mandal (Brother of the victim) (Hearsay Witness): This witness has deposed that he was not present at the time of occurrence. He came to know about the incident from his mother, who informed him that the accused committed rape upon his sister, as a result of which she became



pregnant. He has further stated that a *Panchayati* was convened wherein the accused refused to marry the victim. His evidence is purely hearsay in nature.

(ii) P.W.2 – Dinesh Mandal (Eye Witness): This witness has deposed that on the date of occurrence at about 9:00 P.M., while going towards the bamboo clumps situated near his house, he saw the accused committing rape upon the victim girl after gagging her mouth with a cloth. Upon being noticed, the accused fled away after threatening him. He has further stated that a *Panchayati* was held wherein the accused agreed to marry the victim but later refused.

(iii) P.W.3 – Sahdeo Mandal (Father of the victim) (Hearsay Witness): This witness has stated that he came to know about the occurrence from his daughter. According to him, the accused committed rape upon his daughter and thereafter she became pregnant. He has also stated about the *Panchayati* wherein the accused initially agreed but subsequently refused to marry the victim.

(iv) P.W.4 – Rukiya Devi (Mother of the victim): This witness has deposed that her daughter informed her that the accused committed rape upon her at about 9:00 P.M. in the bamboo clumps. She has further stated that *Panchayati* was



held, but the accused ultimately refused to marry the victim, after which the case was instituted.

(v) P.W.5 – Sashi Sekhar Sharma (Investigating Officer): This witness has deposed that he took up investigation, visited the place of occurrence, recorded statements of witnesses, and proved the formal F.I.R. and endorsement. He has also brought on record the defence version through a petition submitted by the mother of the accused alleging false implication.

(vi) P.W.6 – Bhagat Lal Mandal (Second Investigating Officer): This witness has submitted charge-sheet against the accused under Section 376 IPC. He has also recorded the statement of the accused during investigation.

(vii) P.W.7 – Putul Kumari (Victim Girl): The victim has fully supported the prosecution case. She has deposed that on 28.12.2007 at about 9:00 P.M., while she had gone to the bamboo clumps to attend the call of nature, the accused came, gagged her mouth, threatened her, and committed rape upon her. She has further stated that due to the occurrence, she became pregnant and later gave birth to a female child. She has also stated about the *Panchayati* where the accused agreed to marry her but later refused.



(viii) P.W.8 – Manoj Kumar Mandal (Hostile Witness): This witness has not supported the prosecution case and has been declared hostile. He denied his previous statement made before the police.

(ix) P.W.9 – Suresh Mandal (Hostile Witness): This witness has also not supported the prosecution case and was declared hostile. He denied having made any incriminating statement before the police.

(x) P.W.10 – Dr. Laxmi Sen (Medical Witness): This witness has deposed that she examined the victim and found her age to be about 18–19 years. She found that the victim was pregnant (about 32–34 weeks) and her hymen was old torn. However, she did not find any sign of recent forceful intercourse.

12. The record reveals that P.W.-8 and P.W.-9 were 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 these witnesses are 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.PC 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 from 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 Supreme 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. Recently in the case of ***Mahesh Damu Khare v. State of Maharashtra and Prashant v. State of Delhi***, reported in ***(2024) 11 SCC 398***, the Apex Court has held 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.

**ON THE POINT OF DELAY IN LODGING OF
F.I.R. UNDER SECTION 376 IPC**

22. The Hon’ble Supreme Court has consistently held that delay in lodging the F.I.R. under Section 376 IPC cannot be used as ritualistic formula for discarding the prosecution case and doubting its authenticity as has been held in the case *Tulshidas Kanolkar Vs. State of Goa, reported in (2003) 8 SCC 590*. Upon a thorough re-appreciation of the evidence on record, the alleged occurrence took place on 28.12.2007, it is admitted that the complaint was instituted on 04.08.2008, nearly after eight months, but it is settled that the delay in sexual offences is not always fatal. In the present case, the delay was caused in negotiating through a *Panchayati* between the parties



which failed due to non-acceptance of proposal of marriage by the appellant. The criminal machinery has been set in motion only after the marriage proposal had failed. In above background, applying the principle of law laid down by the Apex Court in ***Deepak Gulati (Supra) and Naim Ahamed (Supra)***, which mandates the Courts to first distinguish between a "false promise of marriage" made with a *mala fide* intent from the inception and a "breach of promise" arising out of unforeseen circumstances. The evidence on record indicates admitted relationship between the appellant and the complainant-Respondent for several years, during which period the complainant-Respondent had conceived baby without raising an alarm or taking any legal action against the appellant suggests that the sexual relationship was consensual in nature. The family members accepting the relationship also preferred not to take any legal action against the appellant but tried to negotiate by way of *panchayati* which failed. However, reason for the failure could not be determined in absence of examination of any of the panches that it was appellant's denial.

ON THE POINT OF DETERMINATION OF AGE

23. The doctor (PW-10) who had found hymen was torn, however did not find any recent forceful intercourse



suggesting that the victim was fully aware of the nature and consequences of the relationship. In light of the consistent view of the Apex Court, a consensual sexual relationship does not constitute the offence of rape. The surrounding circumstances suggest that there was no use of force or any attempt for penetrative sex in the absence of medical evidence shows that the prosecution has failed to establish proximity to the offence of rape. At the same time, I find that the prosecution has failed to establish the victim's minority at the time of the incident in absence of documentary evidence like birth certificate or school records. The testimony of the Medical Officer (P.W. 10), shows that he had assessed the victim's age as 18–19 years, which becomes the most reliable indicator. The other question which is required to be answered is, as to whether, the conduct of the appellant falls within the category of (i) breach of promise to marriage, and (ii) secondly, active and reasoned deliberation. The victim being adult at the relevant time, her "active and reasoned deliberation" in maintaining a physical relationship over several years vitiates the claim that her consent was obtained under a "misconception of fact." Following the ratio in ***Pramod Suryabhan Pawar (supra)***, “a breach of a promise to marry” cannot be equated to a false promise unless it is proved



that the accused had no intention to marry from the very beginning. In this case, the victim in her own statement demolishes the story of refusal to marry which appears to be a subsequent development rather than a pre-meditated deception. There are material contradictions in the testimonies of the prosecution witnesses of P.W.-1(brother of the victim), P.W.-3 (father of the victim) and P.W.-4(mother of the victim), leaving the prosecution case unsupported by independent corroboration.

24. This Court observes that the prosecution has not convincingly established that the appellant, at the inception of the relationship, lacked a genuine intention to fulfill the promise of marriage. The material indicates a prolonged association between the parties, reflecting continued consensual involvement, which does not support the inference that the relationship was solely induced by such promise. The subsequent failure or refusal to marry, in the absence of clear and cogent evidence of deceit from the very beginning, cannot by itself lead to the conclusion that the consent was obtained under a misconception of fact. In such circumstances, this Court is of the considered view that the essential ingredients necessary to attract the alleged offence are not satisfactorily made out.

25. Accordingly, the present appeal is allowed.



26. The impugned judgment of conviction dated 07.09.2011 and order of sentence dated 08.09.2011, is hereby set aside. 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.

27. The Patna High Court, Legal Services Committee is, hereby, directed to pay a sum of Rs. 10,000/- (Rupees ten thousand) to Mr. Vishwajeet Gajendra Pratap Singh, learned *Amicus Curiae*, as consolidated fee, for rendering his valuable professional service.

28. 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)

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AFR/NAFR	AFR
CAV DATE	03.04.2026
Uploading Date	20.04.2026
Transmission Date	20.04.2026

