

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

**Present:-**

**HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.**

**CRA 220 OF 2014**

**RAFI @ RAFIUDDIN MIA & MIAN**

**VS**

**THE STATE OF WEST BENGAL**

**For the Appellant** : **Mr. Manas Kumar Das, Adv.**  
**Mr. Mobaidur Hossain, Adv.**

**For the State** : **Ms. Zareen Nasema Khan, Adv.**  
**Mr. Prakash Mishra, Adv.**

**Last heard on** : **19.11.2025**

**Judgement on** : **28.01.2026**

**Uploaded on** : **28.01.2026**

**CHAITALI CHATTERJEE DAS, J.:-**

1. This appeal is filed against an judgement and order dated January 29, 2014 and January 30<sup>th</sup>, 2014 passed by Additional Session Judge, Fast Track Court at Kandi, Murshidabad in Session trial no. 1 (January) 2012 whereby the appellant was held guilty of the offence punishable under Section 376 of the Indian Penal Code and sentenced to imprisonment for 7 years. The appellant was further directed to pay a fine of Rs.20, 000 in default to suffer R.I. for one year six months for the offence punishable under Section 376 of the Indian Penal Code.

**Brief fact**

2. A complaint was lodged on January 1, 2006 by the de-facto complainant/mother alleging that since last 6/7 months the appellant co-habited with her daughter with a promise to marry her without their knowledge and she has been impregnated of 5 to 6 months. After knowing the fact the de-facto complainant and her family members requested the appellant to marry her but he and his men and agent refused such proposal of marriage. Accordingly the complaint was lodged.
3. On the basis of such complaint Burwan P.S. Case was registered under Section 376 of the Indian Penal Code and on completion of the investigation the charge-sheet was submitted under same Section against the present appellant. Since the case was exclusively triable by a Court of Session the case was transferred to the Court of Learned Additional Session Judge, Kandi on commitment and the charge was framed by the Learned Additional Session Judge, First Fast Track Court at Kandi for disposal. The Learned Court framed the charge against the appellant under Section 376 of the Indian Penal Code to which the appellant pleaded not guilty and claimed to be tried. Hence the trial commenced. In order to establish the case prosecution examined as many as 8 witnesses. The Learned Trial Court after considering the evidences and the argument advanced by the parties passed the order of conviction against the present appellant.  
  
Being aggrieved thereby and dissatisfied with the said judgement and order of conviction this appeal has been filed.

### **Submissions**

4. The Learned Advocate appearing on behalf of the appellant submits that the victim was a major lady and she voluntarily entered into such sexual relations and it was consensual. The family of the de-facto complainant after came to learn about the incident did not lodge any complaint rather went for a talk of compromise and demanded huge amount and on refusal by the present appellant to pay such an hefty amount he has been falsely implicated. It is further submitted that in a catena of decision the Hon'ble Supreme Court held that mere breach of promises to marry does not constitute Rape which is absolutely promising since the victim was aware of the fact that the appellant was a married person. No injury report was found during investigation and no force was applied and the victim was not a minor. It is further submitted that there was no misconception of the victim as she was very much aware about the marital status of the present appellant which can be found from her evidence. That apart the victim admitted to have received a wrist watch from the appellant and he has been framed since he did not agree to the extraneous consideration. It is further submitted that the Learned Trial Court ought to have disbelieve the testimony of P.W. 1 which is full of inconsistencies .The judgement was passed considering the testimony of the victim girl without considering the evidences as a whole and that circumstantial evidence is not suggestive of commission of any rape.
5. Per contra the Learned Prosecution raises vehement objection to the submissions made by the appellant. It is his contention that the appellant from the very beginning was never interested to marry the victim And he

only gave her false promises to marry to fulfil his lust .The appellant made her believe that he had no issue and that if she gives him issue he would marry her. Later on when the girl became pregnant the appellant refused to marry the girl. That apart the victim was of a tender age when the appellant was a married man and despite that he indulged such relationship taking advantage of the financial condition of the victim girl. It is further submitted that the victim gave birth to the child on two days of lodging the FIR and at the time of adducing evidence was Aged about 26/27 years and not married and the appellant in absence of his wife fulfilled his lust for which the victim became the worst sufferer More so the appellant belongs to Muslim community and hence is permitted to enter into a second marriage and hence the knowledge the marital statu8s cannot play crucial role in this case .On the contrary it further supports the prosecution case of misconception from the beginning in the mind of the victim. Accordingly submitted that the Learned Court rightly pass the order of conviction which requires no interference.

### **Analysis**

6. Heard the submissions of both the Learned Advocates. On careful perusal of facts and circumstances on record and considering the arguments as advanced by the Learned Advocates, the moot question now falls for consideration is as to whether the prosecution was able to prove the case beyond the shadow of reasonable doubt for passing an order of conviction under Section 375 IPC.
7. The genesis of the case is unfolded from the complaint lodged by the mother of the victim girl before the Officer-in-Charge, Burwan Police Station,

Burwan, Murshidabad on November 1, 2006. The allegations levelled in the written complaint is that the appellant used to cohabit with the victim with a false promises to marry and she became pregnant of 5/6 months on the date of lodging of the complaint and after knowing the fact of incident the de-facto complainant and others gave the proposal of their marriage but on refusal to such proposal by the appellant the complaint had to be lodged.

**8.** In order to unearth the truth the evidence of the prosecution witnesses are to be looked in. The de-facto complainant adduced evidence as P.W. 1, after 6 years from the alleged incident. She admitted that the appellant had love affair with her daughter as a result they co-habitated and her daughter became pregnant. She came to learn some from the local people about the pregnancy of her daughter who was unmarried. She further deposed that there was a talk of compromise in their village but the appellant did not accept the settlement and denied to marry her. Her testimony further manifest that after two days of lodging complaint her daughter gave birth of a child on 2<sup>nd</sup> of November, 2006. During cross-examination she again said that the sister-in-law of the appellant informed her about pregnancy of her daughter .She denied the suggestion given to her that the accused had no love affair with her daughter or they did not have a physical relation.

**9.** The victim herself deposed as P.W. 3. Her testimony discloses that the appellant called her to his house and asked her to marry him as because he had no issue. After that he asked her to lay on the bed and then had physical relation. As the appellant promised her to marry she consented to such sexual relationship. It continued for 4 days and then she became pregnant but she could not disclose such fact to anybody out of shame

excepting to her sister-in-law Anar Kali. She further deposed that on the 4<sup>th</sup> day the appellant asked her to go to his house and when they were physically involved, the wife of the appellant was not in the house.

**10.** This testimony primarily established that the victim girl having full knowledge about the marital status of the appellant and also knowing fully well about the absence of the wife in the house indulged herself to go to that extent and encouraged such physical on the assurance given by the appellant that he would marry her because he had no issue.

**11.** Therefore there remains no doubt in the mind of the court that the sexual activities were otherwise consensual. There is a clear distinction in between Rape and consensual sex and hence the court must examine whether there was only a breach of promise to marry or the motive of the appellant was mala fide from the inception and he made the false promise only to meet his lust. In this case the age is not disputed and on scanning of evidence it can be found that her age was recorded at the time of adducing evidence as 20 years but she herself stated to be aged about 26/27 years. The complaint is silent about any age of the victim. The brother of the victim though stated that at the time of incident she was aged about 12/13 years but considering the statement recorded by the Magistrate under Section 164CrPC, the same loses its foundation.

**12.** The victim herself stated about the Salish Sabha held in the village and the refusal on the part of the appellant to obey the decision. While adducing evidence she claimed to be unmarried and has given birth of a male child who was aged about 5 and half years at the time of adducing evidence.

**13.** The brother of the victim / P.W. 2 admitted love affair between his sister and the appellant and also he assured his sister to marry her and he would give money to her. This witness also deposed that his sister was raped forcibly when she was going through their house in absence of his wife. After some days they came to know about the matter and asked her sister and then told village people for settlement but the matter was settled at that time his sister became pregnant.

**14.** The testimony of this witness further discloses that he became aware about the pregnancy of his sister when she was 8 months pregnant from her sister only who informed him about the affair and also that they had sexual relationship as a result she became pregnant. They said about the settlement to Abdul Ohab of Mahisgram, Dulal Mian who were residing at that time at Mahisgram. The father's house of appellant is also at Mahisgram as can be found from the evidence of this witness. He could not say whether the appellant had landed property or not and he had no knowledge about the access of her sister to the house of the appellant.

**15.** The sister-in-law of the victim, Anar Kali deposed as P.W. 4. She knew that appellant had love affair with the victim. The victim and some other persons used to go through the paths going towards the house of the appellant and she saw for two days about the beckoning by the appellant and she also told the appellant that he was doing wrong. After 7 months from the incident she found the victim as pregnant. On asking she informed her about the sexual relation had with the appellant. This witness also informed to the village people and there was Salishi in the village and the appellant did not obey the decision and then police came to their village. She

also said that the victim did not inform her anything and she also did not say anything to the wife of the appellant or her mother-in-law. She came to learn about the pregnancy of the victim about 10/15 days and then she informed the police about the same.

**16.** P.W. 5 Jamal Mian the cousin brother of the victim deposed that about 5/6 years ago when he was returning to his house he found Salish Sabha was going in their village and he heard about the appellant and the victim. He also heard about the settlement of Rs. 30,000 to be given by the appellant to the victim and then he left such Salishi. The Doctor who examined the victim on May 7, 2007 at Kandi SD Hospital being the Medical Officer, Dr. Madhurekha Saha deposed that on examination circumstantial evidence did not suggestive rape. Her hymen was found ruptured but no foreign body and injury mark were noticed in her private part. She proved the medical report prepared by her.

**17.** P.W. 8 received the written complaint who was posted as S.I. of Police on November 1, 2006 he filled up formal FIR. He also investigated the case and in course of investigation he visited P.O. and prepared rough sketch map with index. He examined the witnesses and also prayed for medical examination.

**18.** So the above testimonies if clubbed together with the testimony of the victim lady the factum of love affair between the victim and the appellant followed by consensual sexual relationship is well established. In this case the appellant was examined under Section 313 of the Code of Criminal Procedure and the incriminating part of the evidence when placed before him; he denied the fact as a false statement.

**19.** Before the court proceeds further the relevant provision be reproduced herein below in order to ascertain how far the instant case fit into the same. In terms of Section 375 of the Indian Penal code a man commits “rape” .

**Section 375 IPC-(Definition)**

*What it says (paraphrase): A man commits “rape” if he causes penetration (penis, object, or mouth or causes penetration by manipulation) of a woman’s vagina/urethra/anus/mouth, under any of the specified circumstances-e.g. against her will, without consent, consent obtained by fear or misconception, consent given believing the man to be her husband, when she cannot understand the nature of the act (unsoundness/intoxication).When she is under 18, or unable to communicate consent.(Explanations define “vagina” and “consent”; statutory exceptions apply).*

The circumstances which are necessary to establish the act within the definition of Section 375 are against her will, without her consent, consent obtained by putting her or someone she is interested in fear to death or hurt or consent given because she mistakenly believes the man is (or is lawfully married to ) another man or a) consent given when by reason of b)unsoundness of mind ,c)intoxication , d) or administration of drug she is unable to incident the e) nature/consequence or.) When she is under age 18 years of age g) she is unable to communicate consent.

In this case admittedly there was love affair between the victim and the appellant and there was consensual sexual relationship but with the

assurance to marry her which was refused when she became pregnant .The statement also disclosed that she voluntarily went to the house of the appellant after she was called by the appellant on those times. The point to be considered as to whether such consent of victim was on misconception from the very inception or not.

**20.** In order to attract Section 90 IPC it must be from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship must be proved. It is settled that a person can be convicted for the offence committed for rape only if the court reaches a conclusion that the intention of the accused was mala fide .It is also settled by way of judicial pronouncement that consent of a woman with respect to section 375 must involve an active and reasoned deliberation towards the proposed act.

**21.** The submission of the learned advocate of the appellant was that since the victim girl throughout was aware about the marriage of the appellant she entered into such relationship so no deception was there on the part of the appellant. This court is unable to agree with the same since it is a clear case of deception from the beginning as the appellant being a married person only in order to satisfy his lust assured the victim who was be of 19/20 years illiterate and rustic village girl made false promises to marry if she could give him a child and she believed the person. The appellant in his examination in chief only took the defence of innocence, when the incriminating materials were placed before him. Later when he refused to marry she could not disclose anything to any of her parents out of shame.

Therefore she voluntarily surrendered herself to the man as she was in love with the person who assured her of marrying her.

**22.** It is clear that the prosecutrix had sexual intercourse with the accused on the representation made by the accused that he would marry her. This was a false promise held out by the accused and had this promise not been given perhaps, she would not have permitted the accused to have sexual intercourse. Therefore, whether this amounts to consent or the accused obtained a consent by playing fraud on her.

Section 90 reads as under:

*“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 [Consent of insane person] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or [Consent of child] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”*

**23.** So it appears that the intention of the accused as per the testimony of P.W. 3 the victim corroborated by the de-facto complainant and the brother, right from the beginning was not honest and he kept on promising that he will marry her, till she became pregnant. He also gave a wrist watch and assured to give money and hence allured the lady to get attracted towards

him. This kind of consent obtained by the accused cannot be said to be any consent because the victim from the very beginning was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. It can be also seen that they cohabitate for 4days and also when his wife was not present. It is also established that there was a village salish and a talk of compromise but the Appellant refused to pay the amount claimed .The appellant during his examination under Section 313 Cr.P.C did not dispute the incriminating part of evidences when placed before him excepting taking the plea of innocence.

### **Conclusion**

**24.** In the case of **Anurag Soni vs State of Chattishgarh<sup>1</sup>** , the Hon'ble Apex Court held:

*"37. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC."*

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<sup>1</sup> (2019)13 SCC 1,

**25.** The Learned Trial Court relied upon the evidence of the victim though considered her age within 19 to 20 years. It was decided that the consent was based solely on promise of marriage and the behaviour of the appellant was false from the beginning and hence the consent was under misconception of fact and therefore was not valid consent. It was also observed that medical injury was not essential since the examination held month later when victim already delivered a child. The prosecution story was never shaken in cross-examination and defence failed to rebut and/or create reasonable doubt.

**26.** Therefore it is more than clear that the accused made a false promise that he would marry her and cohabited with her for four days and after she conceived, he refused to marry her. The medical report also therefore did not suggest any sign of injury since the act was consensual.

Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who made the promise for marriage if she gives him a child. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception and hence cannot be treated to be a consent.

**27.** This Court also fully endorses to such view considering the above detailed analysis of the entire facts and circumstances of the case and hence do not find any reason to interfere with the same. The appellant must face the consequences of his misdeed for the egregious offence committed with

the lady with a mala fide intention from the beginning with false promise to marry and impregnated her and then refused to marry her and she gave birth to the child.

**28.** Therefore this Court does not find any merit in this appeal and is liable to be set aside.

**29.** Hence this criminal appeal is hereby dismissed without any costs. The judgement and order of conviction passed by the Learned Court is hereby affirmed.

**30.** In view of the seriousness of the offence the Probation of Offenders Act or Section 360 of Cr.P.C is not applied as the same would have an adverse impact in the society.

**31.** Department is directed to forward a copy of this judgement along with the T.C.R. to the concerned Court at once.

**32.** Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(CHAITALI CHATTERJEE DAS,J.)**