CGHC010276882021 2026:CGHC:43660

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AJAY KUMAR DWIVEDI
cn=AJAY KUMAR DWIVEDI, ou=HIGH COURT, o=HIGH COURT OF CHHATTISGARH, st=Chhattisgarh, c=IN

HIGH COURT OF CHHATTISGARH AT BILASPUR

THE DATE WHEN THE CASE IS RESERVED	THE DATE WHEN THE JUDGMENT IS PRONOUNCED	THE DATE WHEN THE JUDGMENT IS UPLOADED ON THE WEBSITE	
		Operative	**Full**
01.10.2026	**08.10.2026**	****	**08.10.2026**

CRA No. 1251 of 2021

Mukesh Dugga S/o Parsuram @ Ramprasad Dugga Aged About 29 Years R/o Village Amakada, Thana Taadooki, District North Bastar Kanker (CG).

... Appellant.

Versus

State Of Chhattisgarh Through Officer In Charge, Police Station Antagarh, District North Baster Kanker (CG).

... Respondent.

For Appellant	:	Mr. R. K. Jain and Mrs. Kiran Jain, Advocate.
For State	:	Mr. Ashutosh Shukla, Panel Lawyer.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

C A V Judgment

1. This criminal appeal preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, the 'CrPC') is directed against the judgment of conviction and order of sentence dated 06.08.2021 passed by the learned Additional Sessions Judge, Bhanupratappur, District North Bastar Kanker (CG) (henceforth referred to as the '**trial Court**') in Sessions

Trial No. 16/2019, whereby the learned trial Court convicted and sentenced the appellant as under:

Sr. No.	**Conviction under Section**	**Jail Sentence**	**Fine Sentence**	**Default Stipulation**
1	376(2)(n) of the Indian Penal Code	RI for 10 years	Rs. 25,000/-	RI for 1 year
2	312 of the Indian Penal Code	RI for 1 year	Rs. 25,000/-	RI for 1 month

(Both sentences were directed to run concurrently)

2. The case of the prosecution, in brief, is that on 04.05.2019, the prosecutrix (PW-2) submitted a written complaint (Ex. P-1) before the Police Station Antagarh stating that in the year 2006, while studying in Class 10th at Tadoki High School, she became acquainted with the appellant Mukesh Dugga, who was her classmate, and both developed love relation with each other. In the year 2015, the appellant took a rented room in Nayapara, Antagarh for his studies. It was alleged that in August 2015, the appellant brought the prosecutrix to his rented room and, on the promise of marriage, established physical relations with her. Thereafter, between 2015 and 2017, the appellant repeatedly maintained physical relations with her on the pretext of marriage. In April 2017, when her menstrual cycle stopped and she was found to be pregnant, the appellant allegedly brought medicine on 02.05.2017 and administered it to her, assuring that they would marry after two to three years, causing her miscarriage. Subsequently, the appellant started avoiding her and when she asked to marry her, he refused, hurled abuses, and also threatened her. On the basis of the written report (Ex. P-1), First Information Report (Ex. P-5) was registered at Police Station Antagarh

as Crime No. 28/2019 under Sections 376, 312, 294, and 506 of the Indian Penal Code, 1860 (for brevity, the 'IPC').

3. During investigation, the prosecutrix was medically examined by doctor (PW-12) vide MLC report (Ex. P-21). Statement of the prosecutrix under Section 164 of the CrPC (Ex. P-6) was recorded. Spot maps were prepared by the Investigating Officer vide Ex. P-3 and Patwari vide Ex. P-16. An empty strip of Nifegest medicine and an OPD prescription from Assisi Shanti Hospital, Narayanpur were seized vide seizure memo (Ex. P-4). Query report regarding the medicine was obtained from doctor PW-13 vide Ex. P-22. Medical examination of the appellant was conducted by doctor PW-6 vide report Ex. P-9, in which he was found capable to perform sexual intercourse. After completing the investigation, a charge-sheet was filed before the Judicial Magistrate First Class, Bhanupratappur, who committed the case to the Court of Session, and the trial was conducted by the learned trial Court.

4. The learned trial Court framed charges under Sections 376(2)(n), 312, 294, and 506 (Part-2) of the IPC against the appellant. The appellant abjured his guilt, pleaded innocence, and claimed for trial.

5. In order to bring home the charges, the prosecution examined 16 witnesses and exhibited 26 documentary evidences. The statement of the appellant under Section 313 of the CrPC was recorded, wherein he denied all incriminating circumstances appearing against him and claimed false implication, however, stated that he and prosecutrix were studying in same school. No defence witness was examined.

6. Upon evaluating the evidence, the learned trial Court acquitted the appellant of the charges under Sections 294 and 506 (Part-2) of the IPC, but convicted and sentenced him under Sections 376(2)(n) and 312 of the IPC, as detailed

in initial paragraph of this judgment. Aggrieved by the said judgment of conviction and order of sentence, the appellant has preferred the present appeal.

7. Learned counsel for the appellant submits that the prosecutrix (PW-2) was a mature adult aged about 24–25 years at the inception of the alleged incident in 2015 and about 28 years when she deposed before the Court. The prosecutrix herself admitted in her cross-examination that she had been in love with the appellant since their school days, was fully conscious of the consequences of physical intimacy, and willingly visited the appellant's room and maintained physical relations for years without raising any alarm or lodging any complaint. Thus their relationship was fully consensual, hence it cannot be termed as rape. He further submits that the seized empty wrapper of medicine was produced by the prosecutrix herself after two years, and there is no evidence establishing that the appellant procured or administered any such medicine. He also submits that there is nothing material on record except oral statement of mother of the prosecutrix (PW-1), prosecutrix (PW-2) and her uncle (Mama) - PW8. There is also no evidence that the prosecutrix has conceived on account of physical relation with the appellant. Though doctor (PW-12) has stated in her examination-in-chief that victim has suffered abortion/delivery but in her cross-examination she has rebutted the aforesaid fact. Another doctor (PW-13) has only stated that alleged medicine 'Nefazest' is sufficient for abortion but it has not been proved that the appellant has given any such medicine to the victim. It is submitted that the independent witness PW-3, who is friend of the prosecutrix, did not support the prosecution case and was declared hostile. Learned counsel contends that the FIR was lodged with an unexplained delay of more than

two years on 04.05.2019 i.e. after alleged last relation in the year 2017, only after the appellant secured Government Service in Armed Force of Chhattisgarh, solely to coerce him into marriage. Furthermore, the charge under Section 312 of the IPC is also /completely unfounded as the medical records does not support the case of the prosecution. Therefore, the impugned judgment is perverse and liable to be set aside.

8. Per contra, learned counsel appearing for the State supports the impugned judgment, submitting that the appellant induced the prosecutrix into physical relations by promising marriage and later denied marry her. It is also submitted that the pregnancy and subsequent miscarriage stand corroborated by medical evidence of the doctors (PW-12, PW-13, and PW-14). Hence, no interference is warranted with the findings of the learned trial Court.

9. I have carefully considered the rival submissions advanced by learned counsel for the parties and perused the record of the trial Court with utmost circumspection.

10. In the instant case, the appellant has been convicted for the offences punishable under Sections 376(2)(n) and 312 of the IPC. Therefore, it would be apposite to reproduce the relevant provisions thereof, which read as under:-

> **"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.
>
> **2.** Whoever...
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(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

312. Causing miscarriage.—

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.— A woman who causes herself to miscarry, is within the meaning of this section."

11. Section 376(2)(n) of the IPC provides for enhanced punishment where rape is committed repeatedly on the same woman. It provides for rigorous imprisonment for a term of not less than ten years, which may extend to imprisonment for the remainder of the person’s natural life, along with a fine. The purpose of this provision is to deal with cases where the offence of rape is not a single incident but is committed repeatedly against the same woman. The word “repeatedly” used in the provision is important. It refers to separate acts of sexual assault committed on different occasions, and not to acts forming part of one continuous incident. Thus, to attract this provision, there should be material showing that the accused committed rape on more than one occasion against the same woman.

12. Section 312 of the IPC deals with voluntarily causing miscarriage, except where the miscarriage is caused in good faith for the purpose of saving the life of the woman. The provision makes a distinction between a woman who is “with child”, that is, where the pregnancy has begun, and a woman who is “quick with child”, that is, where the foetus has reached a stage at which its movements can be felt. A higher punishment is provided in the latter case. To establish an offence under this section, the prosecution must prove by reliable evidence that the woman was pregnant, that miscarriage was caused, and that the miscarriage was voluntarily caused by the accused or at his instance, by use of force, coercion or any substance intended to cause miscarriage, without any lawful medical reason.

13. The victim (PW-2) has stated in her deposition that the appellant was her classmate in Class X at Tadoki High School. At that time, they fell in love. In the year 2015, the appellant went to Antagarh for further studies, where he used to call her. In 2015, when the appellant took her to Antagarh along with her friend, he allured her on the pretext of marriage in August 2015 and established physical relations with her. She has further deposed that between 2015 and 2017, they had physical relations on several occasions, sometimes at Antagarh and sometimes at the house of her friend in Village Tadoki. On account of such relations, she became pregnant. Therefore, the appellant took her for a medical examination at Assisi Hospital, Narayanpur, on 08.04.2017. At that time, she was carrying a pregnancy of approximately three and a half months. The appellant administered some medicine to her, which she took unknowingly, as she was not aware that it was a medicine for abortion, and ultimately, she suffered a miscarriage.

14. PW-1 is the mother of the victim. As per her deposition, in the month of April 2017, the appellant established physical relations with the victim, due to which she became pregnant, and the pregnancy was terminated on account of the medicine given to her by the appellant. She has further stated that the said physical relations were established by the appellant on the pretext of marriage.

15. PW-8 is the maternal uncle (Mama) of the victim. According to his deposition, the mother of the victim had informed him that, on the pretext of marriage, the appellant had allured the victim and sexually exploited her, due to which she became pregnant. Consequently, a meeting was also called at Village Amakada.

16. PW-3 is a friend of the victim and had allegedly accompanied her to Antagarh. However, she has not supported the deposition of the victim. Rather, she has only stated that the victim had told her that she liked the appellant and that they were having an affair.

17. Thus, from the aforesaid deposition of the victim, it appears that she was in a physical relationship with the appellant from 2015 till 2017 on several occasions. In her cross-examination also, she has stated that she was having an affair with the appellant and used to meet him. Nothing has been elicited in her cross-examination to disbelieve the fact that the appellant and the victim were in a physical relationship from 2015 to 2017. Though this fact has not received substantive support from the depositions of any of the witnesses, namely, her mother (PW-1), her friend (PW-3) and her maternal uncle (PW-8), and has also not received support from the medical evidence of PW-12, who medically examined the victim, but nothing has been elicited

in cross-examination of the victim to disbelieve that the appellant and the victim were in a physical relationship from 2015 to 2017.

18. The next question that arises for consideration is whether the appellant engaged in physical relations with the victim/prosecutrix on the basis of deception or misconception of fact or on a false promise of marriage.

19. The victim (PW-2) stated in her cross-examination that the appellant had assured her that he would marry her and, therefore, she had physical relations with him for three years. However, this statement of the victim does not receive support from the evidence of her mother (PW-1), friend (PW-3) or maternal uncle (PW-8). Rather, they have stated about the aforesaid fact only on the basis of information given by the victim that the appellant had promised to marry her. If the appellant had promised to marry her, this fact could have been stated by the victim at least to her mother (PW-1) or her friend (PW-3). However, her mother has stated that this fact was disclosed to her by the victim for the first time in the year 2017, whereas their relationship is stated to have commenced in 2015. PW-3, the friend of the victim, has not stated anything in this regard. Rather, she has denied all the incriminating facts put to her by the learned Government/State counsel. Further, if the appellant had made a promise to marry her and, even after a considerable period, had not performed the marriage, the victim could have refused to continue the physical relationship. However, she has not stated anything in her deposition to show that she had ever refused to have such a relationship or had insisted that she would continue the physical relationship only after the appellant married her.

20. At the relevant time, i.e., in the year 2015, the victim (PW-2) was an adult and educated lady, aged about 24-25 years, and was thus aware of the

consequences of her actions. Despite this, she continued to have physical relations with the appellant for a period of about three years, which is a considerable period of time. In such circumstances, physical intimacy occurring during the course of a continuing relationship cannot, merely because the relationship ultimately failed to culminate in marriage, retrospectively be treated as an offence of rape.

21. Apart from the above, in the instant case, as per the evidence of the victim, their relationship ended in the year 2017, whereas the FIR was lodged by the victim in the year 2019, i.e., after about two years of the last physical relationship, and that too only after the appellant was selected in the Armed Forces and returned in the year 2019 after completing his training. Thus, there is also an inordinate delay in lodging the report.

22. The legal position regarding consent in long standing relation under the promise of marriage has been considered by the Hon'ble Supreme Court in catena of judgments. In the case of **Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764**, the Hon'ble Apex Court has held that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The relevant portion is extracted as under:

> **"20.** In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the

> prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.**"**

23. In the matter of **Rajnish Singh vs. State of Uttar Pradesh, (2025) 4 SCC 197,** the Hon'ble Supreme Court held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is reproduced hereunder:-

> **"33**. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby,

dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

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39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

24. Recently in the case of **Samadhan v. State of Maharashtra & Another (2025 INSC 1351)**, the Hon'ble Supreme Court considering the similar issue has observed at Para 29 as under:

"29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are

> given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation."

25. Reverting to the present case, the victim (PW-2) herself has stated that she was in a love affair with the appellant and had physical relations with him for about three years. Though she has stated that the appellant had allured her by assuring that he would marry her, nothing has been stated by the victim to show that, during such a long relationship, she ever raised any objection or insisted that she would enter into such a relationship further, only after their marriage. Rather, she not only indulged in such a relationship in her village, but also used to go and meet the appellant at Antagarh. Therefore, in view of the law laid down by the Hon'ble Apex Court, in the absence of any substantive evidence regarding misconception of fact or deception on the part of the appellant, it cannot be held, merely on the basis of the plain statement of the victim, that she continued the relationship for a long period of three years solely on the basis of a false promise of marriage made by the appellant. Rather, it appears that the victim, being a well-educated adult woman, entered into such a relationship with the appellant on account of the love affair between them. Therefore, the conviction of the appellant for the offence under Section 376(2)(n) of the IPC is not sustainable.

26. So far as the conviction under Section 312 of the IPC for causing miscarriage of the victim is concerned, the victim (PW-2) has stated in her deposition that, on account of the physical relationship between her and the appellant, she conceived, and therefore, the appellant took her for a medical check-up at Assisi Shanthi Hospital, Narayanpur, on 08.04.2017. She has further stated that the appellant administered certain medicines to her, as a result of which her pregnancy was terminated. This fact has also been supported by her mother and maternal uncle (PW-8). It is also supported by the evidence of Dr. Om Prakash Upadhyaya (PW-14), who examined the UPT report of the victim and the hospital register of Assisi Shanthi Hospital, Narayanpur (Article-A/3), thereby supporting the fact that the victim had become pregnant.

27. The victim (PW-2) has also stated that the appellant had forcibly administered medicine to her for terminating her pregnancy. In this regard, the police seized an empty wrapper of 'Nifegest' medicine from the victim vide Seizure Memo (Ex.P-4) dated 04.05.2019. Dr. S.K. Gota (PW-13) has stated that taking the complete course of the medicine for three days is sufficient to cause abortion. However, no evidence has been led by the prosecution to establish that the aforesaid medicine was purchased by the appellant or that he had administered the same to the victim except deposition of the victim. Even otherwise, as per the deposition of the victim, her pregnancy was terminated in the year 2017, whereas the empty strip of the alleged medicine was seized more than two years later, in the year 2019. Ordinarily, a person would not preserve an empty medicine wrapper for such a long period of two to three years. Thus, there is a material discrepancy in the evidence with regard to the fact as to how and when the appellant

allegedly administered such medicine to the victim. Further, if the appellant had taken the victim for medical examination regarding her pregnancy on 08.04.2017 at Assisi Shanthi Hospital, Narayanpur, he would ordinarily have been present before the doctor. However, when questioned by Dr. Om Prakash Upadhyaya (PW-14), the victim did not produce the appellant before the doctor. Hence, merely on the basis of the deposition of the victim, it cannot be reliably held that the appellant had taken her for the aforesaid medical examination.

28. Moreover, the victim (PW-2), in her cross-examination, admitted the suggestion put by the defence counsel at paragraph 15 that her pregnancy was terminated at her mother's house. On the other hand, her mother (PW-1), in her cross-examination at paragraph 8, firstly admitted that she was not aware as to where the victim's pregnancy was terminated. Secondly, she stated that the pregnancy was terminated when the victim was residing at the house of the appellant. She also admitted that the termination did not take place in her presence and that the victim had subsequently informed her about the aforesaid facts. Thus, there is a material discrepancy and contradiction regarding the place where the victim's pregnancy was terminated. Therefore, merely on the basis of the bare statement of the victim that her pregnancy was terminated by the appellant by administering medicine to her, the same cannot be treated as reliable and sufficient to sustain the conviction. Consequently, the conviction of the appellant under Section 312 of the IPC is also not found to be sustainable.

29. For the foregoing and in the light of the principles laid down by the Hon'ble Supreme Court in afore-cited cases, this Court arrives at the conclusion that the prosecution has utterly failed to prove the charges levelled against the

appellant. The conviction and sentence recorded by the learned trial Court are contrary to the evidence on record and unsustainable in law.

30. Accordingly, the criminal appeal is **allowed**. The judgment of conviction and order of sentence dated 06.08.2021 passed by the learned Additional Sessions Judge, Bhanupratappur, District North Bastar Kanker in Sessions Trial No. 16/2019 is hereby set aside and the appellant is acquitted of the charges under Sections 376(2)(n) and 312 of the IPC.

31. The appellant shall be entitled to refund of the fine amount, if deposited, in accordance with law.

32. The appellant is reported to be on bail. He need not surrender. The bail bonds furnished by him shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the Cr.P.C. (481 of the BNSS).

33. Pending application(s), if any, stand disposed of.

Sd/-

(Naresh Kumar Chandravanshi)
Judge

Ajay