

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 1091 of 2008

Appellant

Versus

1. The State of Jharkhand
2. Victim

.... **Respondents**

For the Appellant	: Mr. A.K. Sahani, Adv. Mr. Abhijit Kumar, Adv.
For the Resp. State	: Mrs. Mahua Palit, A.P.P.
For the Resp. No. 2	: Mr. Krishanu Ray, Adv. Mr. Manish Kumar, Adv.

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

C.A.V. on 30.06.2026

Pronounced on 29.07.2026

1. Heard the arguments of learned counsel for the appellant and learned A.P.P. assisted by learned counsel for respondent No. 2.
2. The instant criminal appeal is directed against the Judgment of conviction dated 06.08.2008 and order of sentence dated 12.08.2008 passed by learned Addl. Sessions Judge, Fast Track Court-II, Seraikella in S.T. No. 143 of 2004, whereby and whereunder, the sole appellant has been convicted for the offence under Section 376 of the I.P.C. and sentenced to undergo R.I. for 8 (eight) years.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that on 27.01.2004, the prosecutrix (P.W.-1) along with two other ladies namely (P.W.-2) and (P.W.-3) had gone to see a fare at Pandupani and while returning they reached near Sokaro Dungri, at about 8:30 PM, in the meantime, the present

appellant met with the prosecutrix and allured her for marriage and also assured to solemnize marriage with her and brought to some distance at lonely place and committed rape. She has further alleged that accused is sexually exploiting her since five years on pretext of marriage.

On the basis of written report of the prosecutrix dated 30.01.2004, Rajnagar P.S. Case No. 03 of 2004 was registered for the offence under Section 376 of the IPC. After completion of investigation, charge sheet was submitted against the accused for the offence under Section 493 and 376 of the I.P.C.

The case was committed to the Court of sessions, where S.T. No. 143/2004 was registered. Charge for the offence under Section 376 of the IPC has been framed and explained to the accused in Hindi. The accused denied from charge leveled against him for the offence under Section 376 I.P.C. and claimed to be tried.

4. In the course of trial, altogether 7 witnesses were examined by the prosecution.
5. Apart from oral testimony of the witnesses, following documentary evidence have been adduced by the prosecution

Ext.-1 Signature of victim on written report

Ext.-2 The medical examination report of the victim.

6. On the other hand, the case of the defence is denial from occurrence and false implication and plea of innocence. However, no oral or documentary evidence has been adduced by the defence.
7. The learned trial Court after scrutinizing the evidence available on record, arrived at conclusion that the prosecutrix has categorically proved the love affair with the accused and on pretext of solemnizing marriage with her, the accused has sexually exploited her since five years. It was also observed that the intention of the accused was from the very inception to fulfill his sexual lust without solemnizing the marriage with the prosecutrix. Therefore, he has obtained the consent of the victim by playing fraud with her and under misconception of fact and accordingly, the learned trial court has convicted and sentenced the appellant as stated above.

Submissions on behalf of appellant: -

8. Learned counsel for the appellant assailing the impugned judgment has submitted that the impugned judgment is based upon non-consideration of the evidence of prosecutrix properly. The written report of the prosecutrix itself discloses that the occurrence took place on 27.01.2004 but she has lodged a written report on 30.01.2004 without offering any reasonable explanation for such inordinate delay of 3 days in instituting the F.I.R. Although, the F.I.R was lodged in the year 2004 but in the

concluding paragraph of the written report, she categorically admits that since 5 years, the prosecutrix was under live-in-relationship with the appellant with her own sweet will. Admittedly, the prosecutrix was aged about 30 years on the date of the occurrence. It is further submitted that the prosecutrix in her written report as well as statement under Section 161 Cr.P.C. and the testimony during trial has given colorable evidence which clearly indicates that there was consensual sexual relationship between the prosecutrix and the appellant since long, therefore, her consent was never vitiated by any reason whatsoever. The prosecution witnesses P.W.-4 and P.W.-5 have also admitted that in absence of other family members of the appellant, the prosecutrix used to live in his house. P.W.-2 and P.W.-3 have also admitted in their evidence that the prosecutrix was talking with the accused in the Mela herself, therefore, subsequent development regarding commission of rape with her is absolutely false and fabricated story. It is further submitted that there is no case of prosecutrix that the appellant declined to solemnize marriage with her at any point of time hence she has lodged this case rather she has manipulated the story of single commission of rape on 27.01.2004 with her by the appellant which has not been proved by any cogent and reliable evidence. The investigating officer was also not examined in this case to prove the actual place of occurrence. Therefore, the findings

recorded by the learned trial Court about the guilt of the appellant is absolutely perverse and beyond the weight of evidence available on record which is liable to be set aside and this appeal may be allowed.

The learned counsel for the appellant has placed reliance in the following reported judgments of Hon'ble Supreme Court:-

- i. Sonu @ Subhash Kumar Vs. State of U.P. & Anr.
2021 Supreme (SC) 182
- ii. Maheshwar Tigga Vs. State of Jharkhand
2020 Supreme (SC) 561
- iii. Kunal Chatterjee Vs. State of W.B. & Ors.
2025 Supreme (SC) 1703

Submissions on behalf of the State

9. On the other hand, learned A.P.P. assisted by learned counsel for the Respondent No. 2 refuting the aforesaid contentions raised on behalf of the appellant has contended that the learned trial Court has very wisely and aptly apprised and appreciated the evidence available on record in the light of overall circumstances under which the offence of rape was committed with the victim lady and continued to 5 years on false pretext of marriage. The prosecutrix is a tribal lady and has been sexually exploited by the present appellant since long 5 years. The learned trial Court has rightly placed reliance upon the reported judgment of the Hon'ble Supreme Court in **2004 (3) East Cri. Cases 250 (SC) (Jai Sree Yadav Vs. State of U.P.)**. The intention of the appellant was fraudulent from the very inception to fulfill his sexual lust with

the victim without solemnizing marriage with her vitiating her consent which was outcome of misconception and not a valid consent under Section 90 of the I.P.C. There is no illegality or infirmity in the impugned judgment calling for any interference by way of this appeal, which is devoid of merit and fit to be dismissed.

Analysis, reasons and decision:

10. I have gone through the record of the case along with impugned judgment in the light of contentions raised on behalf of respective parties.
11. The only point for determination in this appeal is “as to whether the impugned judgment and order of conviction and sentence of the appellant suffers from any error of law, which requires any interference in this appeal?”
12. Before embarking to decide the above point, it is pertinent to take brief resume of oral as well as documentary evidence adduced, during trial.

P.W.-1 is the prosecutrix. According to her evidence, on 27.01.2004, at about 8:00 PM, she was returning from Pandupani Fare along with her Aunt and . When they reached near Sakro Dungri, the accused met her and forcibly committed rape on her gagging her mouth. Thereafter, the accused assured her to solemnize marriage with her. She followed with the accused towards his home and prior to

reaching the house of the accused, he again committed rape with her and fled away. She was not aware about the house of the accused. When she went to the house of Mangal Soren who was his relative and requested him to accompany her to the house of _____ but due to night, he requested to go in the next day morning to the house of the accused. In the next day morning, she went to the house of the accused along with Mangal Dada but no one was present in the house. She stayed in his house about 2-3 days but he did not turn up then she came to Police Station along with her brother and Uncle (_____) and lodged this case. She has proved her signature on written report marked as Ext.-1. Police sent her to Sub-Divisional Hospital, Seraikella for medical examination. She has identified the accused in the dock.

In her cross-examination, she states that all the above statements were given by her at police station at the time of recording her statement by the police. She has disclosed to police about twice commission of rape on the date of occurrence with her. She has not stated before police that accused was sexually exploiting her since 5 years prior to occurrence on false pretext of marriage. She further reiterates that at first the accused committed rape on her, thereafter, he was alluring and enticing her to solemnize marriage with her. Then, she was convinced to get marriage with the accused. She has stated

before Police that she was acquainted with the accused since 5 years but it is wrong to say that she was under live-in-relationship with the accused since 5 years. She also admitted that if accused might have solemnized marriage with her then there was no occasion to institute this case against him.

She has denied the suggestion of the defence that since the accused has declined to solemnize marriage with her hence she has falsely implicated him.

P.W.-2 and **P.W.-3** have consistently stated that they had also gone to Mela with the prosecutrix where accused also met with the victim lady and while returning together in the way, the victim along with the accused talking together were found behind and these witnesses proceeded to their home. P.W.-2 has also admitted that prior to occurrence, there was love affair between the prosecutrix and the accused.

P.W.-4 has also corroborated testimony of prosecutrix to the extent that on 27.01.2004 in the night, she came to his house and asked to tell about the house of the accused Chunu Mardi but due to night he requested to stay at his home. This witness has stated that in the night, prosecutrix stayed in his house and in the next morning, he left her at the house of .

There is nothing in his cross-examination to rebut his above testimony.

P.W.-5 is the husband of P.W.-3 and came to know about the occurrence by the victim.

P.W.-6 is the uncle of the prosecutrix. He came to know from his wife on 27.01.2004 that in the village Mela, met with prosecutrix. Since the prosecutrix did not return in the night, hence, this witness went to the house of at Village Jhalak , where prosecutrix was found who disclosed that has committed rape with her in pretext of marriage. was not present at that time but his family members were present.

In his cross-examination, he admits that prior to date of occurrence, he was not acquainted with the accused and first time went to his house on 28.01.2004, thereafter, he brought the prosecutrix to police Station and the F.I.R. was lodged. He has denied the suggestion of defence that F.I.R. was lodged falsely by his niece.

P.W.-7 is the Doctor who has examined the victim on 31.01.2004 at 2:30 PM and opined that hymen was ruptured, vagina admits two fingers loose. No foreign hair seen. It is further stated that vaginal swab taken and sent for pathological examination. It is further opined that she used to sexual intercourse. Further it is stated that her age is approx 30 years. As per report of vaginal

swab, dead or alive spermatozoa were not found. This witness has proved the medical examination and opined that the victim is habituated for sexual intercourse for several years. The sexual intercourse within five days with virgin lady, the symptoms will be different from those ladies, who are habituated for sexual intercourse for several years.

13. From the above ocular testimony of the witnesses, it appears that prosecutrix aged about 30 years has filed this case against the accused after denial from solemnizing marriage by the accused person who has committed rape upon her while returning from Pandupani Mela but at the same time, there is specific evidence of P.W.-2 and P.W.-3 who had also gone to Pandupani Mela with the prosecutrix deposed that the prosecutrix was herself talking with the accused person on the date of occurrence and there was love affair between them since last five years. It also appears from the testimony of the prosecutrix herself that she has falsely tried to make out a case of rape by saying that the accused person has committed rape upon her first time while returning from Mela, rather, as per the evidence of the prosecution witnesses, there was love affair between the accused person and the prosecutrix since last five years and in the absence of the other family members of the accused person, the prosecutrix used to live with the appellant on her own will. The doctor who has examined the prosecutrix,

has also opined that the prosecutrix was habituated with sexual intercourse.

14. In view of the above factual background, it is pertinent to refer the relevant paragraph of judgment of Hon'ble Apex Court in **Mahesh Damu Khare v. State of Maharashtra and Anr. (2024) 11 SCC 398** as under: -

“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."

15. The learned counsel for the appellant has also rightly relied upon the judgment of Hon'ble Apex Court in the case of **Maheshwar Tigga (supra)** wherein the Hon'ble Apex Court has also held that consensual intercourse with a grown up girl is not rape and misconception of fact has to be in proximity of time to occurrence and cannot be spread over a period of four years.
16. It appears that victim herself in her deposition has stated in paragraph 5 that "आज जो बात मैं बतायी वही बात मैं पुलिस को भी बतायी। चुनु मार्ली से मेरा शारीरिक संबंध दो बार हुआ था। मैंने एफआईआर में ये बात सही लिखवाया था इसलिये मैं ये बात नहीं कहा है कि अभियुक्त शादी का प्रस्ताव देकर मेरा पाँच साल से यौन शोसन कर रहा था। शादी की बात अभियुक्त कह रहा था। अभियुक्त बुरा व्यवहार करके शादी की बात कर रहा था।"

Therefore, in view of the above discussion and reasons, this is not a case of rape on false promise of marriage. Further on the point of rape by accused on 27.01.2004, there is no eye witness and the victim is solely not reliable witness on whose evidence accused can be convicted because in her written report, she had stated that accused was sexually exploiting her for last five years on false promise of marriage while in her deposition, she has denied this and stated about commission of rape for two times. The medical evidence also shows that she was habituated for sexual intercourse for several years.

17. In result, I find substance in the point of argument raised on behalf of the appellant. Therefore, the impugned judgment of conviction and order of sentence passed by the learned trial Court is **set aside**. Accordingly, this appeal is **allowed** and the appellant is acquitted from the charge leveled against him.
18. Appellant is on bail, hence, he is discharged from the liabilities of bail bonds. The sureties are also discharged.
19. Pending I.A(s), if any, is also disposed of, accordingly.
20. Let a copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated: 29/07/2026
Basant / **NAFR**
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