

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No. 978 of 2005

[Against the judgment and order of conviction and sentence dated 04.07.2005 & 05.07.2005 respectively, passed by learned Additional District & Sessions Judge, II, Gumla, in S.T. Case No. 125 of 2004]

Ramesh Sahu, son of Sri Etwa Sahu, resident of Village-Palkot, P.S.-Palkot, District-Gumla

... .. **Appellant**

Versus

1. The State of Jharkhand
2. Victim Girl (X)

... .. **Respondents**

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. A.K. Chaturvedi, Advocate
For the State : Mr. S.K. Srivastava, A.P.P.

JUDGMENT

C.A.V. on 17.06.2026

Pronounced on 29/06/2026

1. I have already heard the arguments of Mr. A.K. Chaturvedi, learned counsel for the appellant and Mr. S.K. Srivastava, learned A.P.P. for State.

2. The instant criminal appeal is directed against the judgment and order of conviction and sentence dated 04.07.2005 & 05.07.2005 respectively, passed by learned Additional District & Sessions Judge, II, Gumla, in S.T. Case No. 125 of 2004, whereby and whereunder the above named appellant has been held guilty for the offence under Sections 376 & 313 of the I.P.C. and sentenced to undergo R.I. for seven years along with fine of Rs.2000/- for the offence under Section 376 of the I.P.C. and R.I. for five years along with fine of Rs.2000/- for the offence under Section 313 of the I.P.C. with default stipulation. Both the sentences were directed to run concurrently.

Factual Matrix

3. Factual matrix giving rise to this appeal is that the prosecutrix

was married with one Sunil Kumar @ Sunil Naik, in the year 1987-88 and after short span of two years of her marriage, her husband expired due to tuberculosis. The prosecutrix started living at her paternal home since after death of her husband. It is alleged that the prosecutrix developed friendship with Ramesh Sahu (appellant). On 10.12.1999, both have gone to forest area, where the appellant caught hold of her from behind and committed rape upon her extending threatening of life. It is alleged that subsequently, the appellant allured the prosecutrix to solemnize marriage and continued in sexual intercourse with her and often used to stay at her house in the night. It is further alleged that in the month of December 2002, the appellant got a rented house owned by Heeno Ghasi situated at Depatoli, Palkot, where the prosecutrix also resided with the appellant for 4-5 months. The prosecutrix became pregnant twice, but the appellant got the same terminated by assaulting her on abdomen. It is alleged that the prosecutrix persistently requested for solemnizing marriage with the appellant, but in one pretext or other he was postponing the same and ultimately flatly denied to perform marriage with her. Hence, the prosecutrix lodged F.I.R. before Palkot police station on 06.01.2004 from her parental home.

On the basis of *fardbeyan* of the prosecutrix, F.I.R. was registered for the offence under Sections 323, 376 & 313 of the I.P.C. After completion of investigation, charge-sheet was submitted against the appellant and the case was committed to the Court of Sessions, where S.T. Case No. 125 of 2004.

4. The appellant denied from charges leveled against him and claimed to be tried.

5. In the course of trial, altogether six witnesses were examined including the prosecutrix on behalf of prosecution and several documentary evidence were also adduced.

6. On the other hand, the case of defence is denial from occurrence and false implication.

7. However, two witnesses have been examined by defence, namely **D.W.-1**, Tempo Ram and **D.W.-2**, Heeno Devi and no documentary evidence has been adduced by defence.

Submissions on behalf of appellant: -

8. Learned counsel for the appellant has submitted that it is consensual sexual intercourse with a grown up lady and previously married. The F.I.R. was lodged after 4-5 years of the alleged occurrence, when the relationship between the appellant and the victim became strained. It is further submitted that from the very contents of F.I.R. and testimony of prosecutrix, it is crystal clear that she has instituted this case when the appellant refused to solemnize marriage with her. It is further submitted that all the witnesses examined by prosecution are interested and related witnesses. P.W.-1 is the mother and P.W.-2 is the father of the victim and P.W.-3 is the prosecutrix herself. P.W.-4 an independent witness has been declared hostile by the prosecution. P.W.-5 is the Doctor, who medically examined the victim and P.W.-6 is the Investigating Officer. Therefore, the evidence of interested witnesses cannot be relied upon as a gospel truth without any corroboration from independent source, which is lacking in this case. The doctor has found no history of termination of pregnancy of the prosecutrix. In the given scenario as brought on record by the

prosecution, no offence under Section 376 of the I.P.C. is constituted. The learned Trial Court has miserably failed to properly scrutinize the testimony of witnesses and the essential ingredient of offence of rape, as such arrived at wrong conclusion about guilt of the appellant. Therefore, impugned judgment of conviction and sentence of appellant is fit to be set aside and this appeal may be allowed.

Submissions on behalf of State: -

9. On the other hand, learned A.P.P. for the State has submitted that from the very inception, the appellant trapped the victim under false promise of marriage. There is cogent and consistent evidence of the victim that she persistently requested the appellant to solemnize marriage, but she was consoled and sexually exploited due to her vulnerable condition after death of her husband. The intention of appellant from the very inception was only to satisfy his sexual lust with the prosecutrix without solemnizing marriage with her. The prosecutrix became pregnant twice which was also got terminated by administering medicines or by assaulting her on abdomen. There is no reason to disbelieve the testimony of the prosecutrix and there is no animus to falsely implicate the appellant. The conduct of the appellant in having sexual intercourse on false promise of marriage having deceitful intention to satisfy his lust from the very inception and not to solemnize marriage with the prosecutrix has vitiated her consent, which cannot be said to be voluntary consent rather suffers from misconception of fact under Section 90 of the I.P.C. The learned Trial Court has considered the overall aspects of the case in threadbare manner and arrived at right conclusion about guilt of the appellant. The

impugned judgment does not suffer from any error of law calling for any interference in this appeal, which is devoid of merits and fit to be dismissed.

10. I have gone through the record of the case along with impugned judgment in the light of contentions raised on behalf of both side.

11. The only point for consideration in this appeal is that **“as to whether the impugned judgment of conviction and sentence of the appellant suffers from any serious error of law calling for any interference in this appeal?”**

12. Before delving to decide the above point, it is pertinent to apprise with the oral and documentary evidence adduced by the parties during the trial.

P.W.-3, the prosecutrix, is the most important witness in this case. She has consistently proved the contents of her *fardbeyan* and deposed that she was married in the year 1987-88 with one Sunil Kumar @ Sunil Naik. Unfortunately, her husband died due to tuberculosis just after two years of the marriage, then she started residing at her parental home at village Palkot. In the course of time, the accused became familiar with her and on 10.12.1999 in the morning, she had gone to nearby forest area, where accused Ramesh Sahu caught hold of her from behind threatening that if she will raise alarm, he will shoot him, thereafter, the accused forcibly committed rape upon her. Subsequently, accused visited with the mother of this witness and told her that he wants to keep this witness and bear all her expenses. Thereafter, the accused started residing with her sometime in her house. Due to sexual intercourse committed by accused she became

pregnant which was also terminated by accused assaulting her on abdomen. Thereafter, again the accused assured her in writing promising to perform marriage with her and keep her properly. She again became pregnant but the accused aborted her pregnancy by assaulting. She has proved her signature on *fardbeyan* as **Exhibit-1**. She has denied the suggestion of defence that the accused was married in the year 1997 itself, and he has no relationship with her. She has further denied that she has lodged a false case with a view to blackmail the accused with false allegations and also concocted a story of abortion.

P.W.-1-Smt. Pati Devi is the mother of prosecutrix. According to her evidence on the date of occurrence her elder daughter (prosecutrix) had gone to forest area for grazing she-goat at about 09:00 A.M., the accused Ramesh Sahu committed rape with her when her daughter returned from the forest, she narrated about the incident and told that the accused has threatened to kill by shooting and committed rape and also threatened her not to disclose this incident to anyone otherwise she will be killed. She has further deposed that prosecutrix was married in the year 1987-88 but her husband died within two years of marriage due to tuberculosis since then her daughter (prosecutrix) was residing at her parental home.

In her cross-examination, she has also admitted that the accused used to reside with her daughter about 3-4 years within her knowledge. She has denied the suggestion of defence that this false case was lodged with a view to blackmail the accused.

P.W.-2-Madhu Naik is the father of the prosecutrix. He has also

deposed in the same line as mother of the prosecutrix. According to his evidence also, his daughter was forcibly raped by the accused, while she had gone to forest for grazing she-goat. Thereafter, accused used to reside with his daughter for three years and in that period she became pregnant then the accused administered her some medicine causing her abortion.

In his cross-examination, he also admits that on 10.12.1999, his daughter informed about occurrence of rape with her. He has denied the suggestion of defence that with a view to extort some money from the accused, he has lodged this false case at the instance of his daughter.

P.W.-4-Gandur Nayak has been declared hostile by the prosecution.

P.W.-5-Dr. P. Narayan is the doctor who has examined the victim on 06.01.2004 and found following:-

No external injury on any part of her body.

On internal examination:-

(i) Vagina admits two finders easily. Cervical os was round in shape but not multiparous.

(ii) On microscopic examination of vaginal swab it shows no spermatozoa.

In my Opinion:-

(a) The woman used to sexual intercourse, may have aborted in past as shown from appearance of her cervical os.

(b) The evidence of rape was not found.

(c) The medical examination report proved by the doctor is marked as **Exhibit-2**.

In his cross-examination, this witness has failed to say as to how long before the examination, the abortion had occurred.

P.W.-6-S.I., Vinay Kumar is the I.O. of this case. He took charge of this case on 06.01.2004, while he was posted as S.I., Palkot police station. He has proved the *fardbeyan* of prosecutrix as **Exhibit-3** and endorsement on *fardbeyan* as **Exhibit-3/1**. He has further proved formal F.I.R. as **Exhibit-4**. After receiving the charge of investigation, he visited the place of occurrence and also recorded restatement of the victim. He also recorded statement of parents of the victim and inspected the place of occurrence. The first place of occurrence is situated in village Gobarsili, Barka Madra Forest, where prosecutrix was grazing her she-goat meanwhile, accused committed rape on her near the Gobarsili rock. He arrested the accused Ramesh Sahu and also sent the prosecutrix at Sadar Hospital, Gumla for medical examination. After finding sufficient evidence against the accused, he submitted charge-sheet for the offence under Sections 323, 313, 376 & 417 of the I.P.C.

This witness has stated in his cross-examination that Gandur Nayak (P.W.4) has stated in his statement under Section 161 Cr.P.C. that Ramesh Sahu lured the prosecutrix with the promise of marriage and kept her in the house of Heeno Ghasi and he used to go regularly. He has not recorded statement of Heeno Ghasi because she was never found in his house and his neighbor Gandur Nayak was interrogated. There is nothing else in his cross-examination.

On the other hand, **D.W.-1-Tempo Ram**, the father of first husband of the prosecutrix, namely Sunil Kumar @ Sunil Naik has

simply stated that his son died in the month of *Chaitra* 2002, who was married with the prosecutrix of this case. There is nothing else worth quoting as defence.

D.W.-2-Heeno Devi has stated that accused Ramesh Sahu and the prosecutrix never resided in her house on rent. She has stated nothing else in favour of defence.

In his statement under Section 313 Cr.P.C., the accused has simply denied the occurrence and pleaded false implication. As per trend of suggestion given to material witnesses the further plea of defence is that he has falsely been implicated only for blackmailing and extorting money.

13. From perusal of impugned judgment, it appears that the learned Trial Court has considered that very first act of sexual intercourse committed by the appellant with the prosecutrix in the forest area was committed putting her in fear of death and grievous injuries. She was also threatened to not disclose the incident to anyone and lodge any case. Thereafter, the accused made a promise to marry with the prosecutrix and started keeping her as husband and wife and bearing her expenses within the knowledge of her parents, but later on he flatly declined from solemnizing marriage with the prosecutrix without any cogent reasons. Therefore, the consent of the victim was obtained not only putting her in fear of death but also deceiving her on false pretext of marriage. Accordingly, the appellant was held guilty for the offence under Section 376 of the I.P.C. The delay in lodging the F.I.R. in the peculiar facts and circumstances of the case was also considered to be not inordinate and sufficiently explained with reasons. The learned

Trial Court further found that the appellant has terminated pregnancy of the prosecutrix twice by assaulting her on abdomen, while she was resisting and protesting. Therefore, the said miscarriage was caused without her consent. Accordingly, the appellant has been held guilty for the offence under Section 313 of the I.P.C. also.

14. I have given anxious consideration towards the factual scenario of this case as proved by the prosecution, particularly appearing in the evidence of prosecutrix, who is sufferer of the crime. It is clear cut case of the prosecutrix that initially she was subjected to rape on threat of life on 10.12.1999. Thereafter, on persistent request of the accused who also met to her in presence of her parents, that he will keep her and also bear her expenses and solemnize marriage with her. She was permitted to live with the accused. She also admits that about 3-4 years they resided together and in that period she became pregnant twice, but her pregnancy was terminated without her consent by the accused through physical assault on abdomen.

15. The learned counsel for the appellant has laid much emphasis upon the fact that there was consensual sexual relationship between the parties for a long period of time. There is no whisper that the appellant ever made any promise to solemnize marriage with the prosecutrix. Therefore, the consent of the prosecutrix cannot be vitiated under Section 90 of the I.P.C. being a false promise of marriage indicating that the intention of the appellant was from the very inception was deceitful and he never intended to solemnize marriage with the prosecutrix.

The learned counsel for the appellant has placed reliance upon

reported judgment in *Mandar Deepak Pawar versus The State of Maharashtra & Anr.* reported in *2022 Live Law (SC) 649*, wherein it was held that the parties chose to have physical relationship without marriage for a considerable period of time and later on for some reason the parties fail apart due to breach of promise of marriage which was made in good faith, but subsequently not fulfilled and F.I.R. lodged after three years, therefore, amounts to misuse of criminal process.

16. In the case of *Naim Ahamed versus State (NCT of Delhi) (2023) 15 SCC 385*, the Hon'ble Apex Court has elaborately discussed the applicability of Section 90 of the I.P.C. regarding consent in rape case and distinguished false promise of marriage with breach of promise of marriage, it was held :-

“21.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 fulfill 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.”

17. Thus, from the aforesaid principle laid down by the Hon'ble

Apex Court, it is crystal clear that the consent of the prosecutrix for indulgence in sexual intercourse with a person on false promise of marriage would amount to “Misconception of fact” within the meaning of Section 90, only if it is shown by the prosecution that from the very beginning the accused had no intention to perform marriage with the victim rather to deceive her only for fulfilling his sexual lust.

18. It is trite that consent of a woman with respect to Section 375 of the I.P.C. 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; **Firstly**, promise of marriage must have been a false promise, given in bad faith and with no intention of being adhere to at the time, it was given and **Secondly**, false promise itself, must be of immediate relevance, or bear a direct nexous to the woman’s decision to engage in the sexual act.

19. In the instant case, it is undisputed fact that the prosecutrix was married in the year 1987-88 and just within two years, she became widow due to death of her husband, who was suffering from tuberculosis. The prosecutrix was a helpless lady and started residing at her paternal home, where on the fateful day the appellant forcibly committed rape with her, while she was in forest for grazing she-goat. Thereafter, the appellant proposed to the victim as well as to her parents that he will marry and keep the victim with him and also bear her expenses. The prosecutrix was also kept in a rented house by the appellant and living as husband and wife. It is alleged that in the course of time, the prosecutrix twice became pregnant, but her pregnancy was

terminated by providing some medicine. In spite of, persistent request of prosecutrix to solemnize marriage, the appellant in one excuse or other was lingering the same. At this juncture, it is relevant to mention that the first occurrence of forcible sexual assault took place with the prosecutrix on 10.12.1999, the appellant has suggested the victim that in the year 1997 itself his marriage was solemnized, rather the victim has expressed her ignorance as to when the accused solemnize his marriage. Therefore, it can safely be inferred that in spite of being a married person, the appellant seduced the victim to solemnize marriage with her and bear her expenses and also used to residing with her under pretext of marriage and satisfying his sexual lust. When he declined to solemnize marriage with the prosecutrix then this case was lodged. As against it, the defence has brought nothing on record regarding any exceptional circumstances due to which he was prevented from solemnizing marriage with the victim. He has also concealed the factum of his being already married person clearly indicates that from the very inception, he had intention to deceive the prosecutrix and take undue advantage of sexual lust. Therefore, it cannot be said that there was any breach of promise of marriage due to reason of any exceptional hardship rather it was false promise of marriage which was never intended to be fulfilled vitiating the consent of prosecutrix under Section 90 of the I.P.C. The mere fact that no case was lodged since long period of 3-4 years does not hold much water to throw out the prosecution case.

20. In view of above discussion and reasons, I concur with the findings of learned Trial Court that the appellant has committed rape

with the victim punishable under Section 376 of the I.P.C.

21. So far charge under Section 313 of the I.P.C. is concerned, there is no iota of evidence, it is simply alleged by the prosecutrix that on both occasion of her pregnancy, she was assaulted by appellant on her abdomen which terminated her pregnancy. In this regard she has admitted that she got her treatment by Dr. Shakuntala Pandey, but no documentary evidence has been adduced in this regard nor the said Dr. Shakuntala Panday was examined by the prosecution. Therefore, there is no concrete evidence on record that the appellant has caused miscarriage of the prosecutrix without her consent. It appears that the learned Trial Court has simply believed the testimony of prosecutrix without satisfying his conscience about the ingredients of offence under Section 313 of the I.P.C. Therefore, conviction and sentence of the appellant for the offence under Section 313 of the I.P.C. is hereby set aside.

22. In view of aforesaid discussions and reasons, this appeal is **partly allowed**. The conviction and sentence of the appellant for the offence under Section 376 of the I.P.C. is upheld, but the conviction and sentence for the offence under Section 313 of the I.P.C. is set aside.

23. The appellant is on bail. His bail bond is cancelled and the appellant is directed to surrender before the learned Trial Court within two months from the date of this judgment to receive the sentence awarded to him for the offence under Section 376 of the I.P.C. by the learned Trial Court, setting off the imprisonment already undergone by him during pendency of trial.

24. If the appellant does not appear within the aforesaid stipulated

period before the concerned Trial Court, the learned Trial Court shall take all coercive steps for his arrest and after arrest of the appellant send him to jail custody under proper conviction warrant for undergoing the remaining period of sentence awarded to him by the learned Trial Court for the offence under Section 376 of the I.P.C.

25. Pending I.A(s), if any, stands disposed of.

26. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned immediately for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court

Dated 29/06/2026

Arpit/ A. F. R.

Uploaded on 30/06/2026