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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.393 of 2009
CNR-ODHC010373662009

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

..... *Appellant*

-Versus-

State of Orissa *Respondent*

For the Appellant : Mr. Prabhav Behera, Advocate

For the Respondent : Mr. Jateswar Nayak, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 14.07.2026 : Date of Judgment: 30.07.2026

S.S. Mishra, J. The present Criminal Appeal is arising out of the judgment dated 09.09.2009 passed by the learned Addl. Sessions Judge (FTC), Bhawanipatna in Sessions Case No. 102/82 of 2008, whereby the respondent-accused was acquitted of the offence punishable under Section 376 but convicted under Section 417 of the Indian Penal Code and sentenced to undergo R.I. for one year.

2. Heard Mr. Prabhav Behera, learned counsel for the appellant and Mr. Jateswar Nayak, learned Addl. Government Advocate for the State-respondent.



3. The prosecution case, in brief, is that the prosecutrix was a minor girl aged about 17 years at the relevant time. The accused, _____, was a resident of Bharatbahal under Bolangir district and, about one year prior to lodging of the F.I.R., was residing in the house of his relative, namely, Bikram Singh, situated in the village of the prosecutrix. During his stay in the village, the accused allegedly developed physical intimacy with the prosecutrix by assuring her that he would marry her. It is alleged that, after the matter came to the knowledge of the villagers, the accused left the village and went away. Thereafter, the parents of the prosecutrix arranged her marriage with one _____, which was scheduled to be solemnized on 04.04.2008. On the date fixed for the marriage, the accused allegedly contacted the family members of the proposed bridegroom over telephone and requested them not to proceed with the marriage, stating that he was in love with the prosecutrix and intended to marry her. On being informed of the same, the family members of the bridegroom cancelled the proposed marriage. Subsequently, when the prosecutrix requested the accused to marry her, he did not agree to do so. Consequently, on 10.04.2008, the



prosecutrix lodged a written report at Utkela outpost, on the basis of which Kesinga P.S. Case No.45 of 2008 was registered against the accused for the offences punishable under Sections 376 and 417 of the Indian Penal Code.

4. Upon completion of investigation, charge-sheet was submitted against the accused for the offences punishable under Sections 376 and 417 of the Indian Penal Code. The case was thereafter committed to the Court of Sessions and, upon transfer, the accused faced trial before the learned trial Court.

5. In order to substantiate the charges, the prosecution examined eleven witnesses. P.W.9 was the prosecutrix; P.W.4 was her father; P.Ws.1, 2, 7 and 8 were examined in relation to the different seizures made during investigation; P.W.5 was the Medical Officer who medically examined the prosecutrix; P.W.6 was the Medical Officer who examined the accused; P.W.3 was the Headmaster of Katapada Primary School, who produced the school admission register relating to the age of the prosecutrix; and P.Ws.10 and 11 were the Investigating Officers. No witness was examined on behalf of the



defence, the plea of the accused being one of complete denial and false implication.

6. The learned trial Court, upon appreciation of the evidence on record, held that the prosecutrix's date of birth, as established from the school admission register proved through the Headmaster (P.W.3), was 12.07.1989 and, therefore, she had already attained the age of 18 years at the time of the alleged occurrence. The trial Court further found from the evidence of the prosecutrix that she and the accused were in love and that the accused had assured her to marry, pursuant to which they developed a physical relationship. It was accordingly held that the prosecutrix was a consenting party to the sexual intercourse and that the prosecution had failed to establish that she had been induced to have sexual intercourse solely on account of the assurance of marriage. The trial Court observed that the prosecutrix had voluntarily consented to the sexual relationship with the accused, with whom she was deeply in love, and, being a major and sufficiently mature, was aware of the consequences of the sexual act. Consequently, the accused was acquitted of the charge under Section 376 IPC. However, relying upon the evidence that the accused had



sexual intercourse with the prosecutrix on several occasions after promising to marry her, thereby making her pregnant, and thereafter refused to marry her, the learned trial Court concluded that the accused had committed the offence of cheating and accordingly convicted him under Section 417 IPC. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

“9. Now I have to find out if from the facts proved above the accused can be held guilty for the offence of rape punishable under section 376 IPC. In her evidence during cross examination the victim girl admitted that her date of birth is 12.7.1989, as per the school admission register. As per the evidence of P.W.3, the Head Master of Kadapada Primary School, on whose production the school admission register was proved and as per the school admission register, the date of birth of the victim is 12.7.1989. As such by the time of incident, the victim had already attained 18 years of age. As per the evidence of the prosecutrix she and accused both were in love with each other and the accused assured to marry her and then developed physical relationship with her. As such she was a consenting party to the sexual act. From her evidence it is not proved that because of the occurrence of the accused to marry her, she was tempted to have sex with him. Rather from her evidence it is proved that she voluntarily consented for having sexual intercourse with the accused with whom she was deeply in love. She agreed to have sex with the accused after knowing well the consequence thereto as she was a major



girl by that time and she was well matured to have knowledge about the sexual act. Accordingly, it does not constitute an offence of rape U/s 376 of IPC. Hence the accused is not found guilty for the offence U/s 376 of IPC. However, from the evidence of the prosecutrix it is found that the accused had sexual intercourse with the prosecutrix several time promising to marry her and made her pregnant and then refused to marry her. In my opinion the act of the accused constituted an offence of cheating and he is found guilty for the offence U/s 417 Cr.P.C.”

7. The principal question which arises for consideration in the present appeal is whether, in the facts and circumstances of the case, the learned trial Court was justified in recording a conviction under Section 417 IPC merely on the ground that the accused had entered into a physical relationship with the prosecutrix after assuring her of marriage and subsequently did not marry her. In order to answer the said question, it is necessary to examine whether the prosecution has established the essential ingredients of the offence of cheating and, in particular, whether the alleged promise of marriage was false from its inception and was made with dishonest intention. It would be appropriate to notice the statutory provisions which have direct



bearing upon the controversy. Section 90 of the Indian Penal Code provides as follows:

“90. Consent known to be given under fear or misconception.—

A consent is not such a consent as it 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.”

Sections 415 and 417 of the Indian Penal Code read as follows:

“415. Cheating.—

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.— A dishonest concealment of facts is a deception within the meaning of this section.



417. Punishment for cheating.—

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

The expression "cheating" occurring in Section 417 IPC has to be understood in the light of Section 415 IPC. Thus, the prosecution must establish the requisite ingredients of deception and dishonest or fraudulent inducement. Mere breach of a promise, without proof that the promise was false and was made dishonestly at the very inception, would not by itself constitute the offence of cheating. Thus, in a case founded upon an alleged promise of marriage, the mere fact that the promise was subsequently not fulfilled cannot, in itself, establish the offence of cheating. The prosecution must establish that the promise was false at the very inception and that the accused, at the time of making the promise, had no intention to honour it. A subsequent refusal to marry may be relevant evidence, but it cannot, by itself, conclusively establish the dishonest intention which must exist at the inception of the promise.



8. The question of consent in cases involving an alleged promise of marriage also assumes significance in the context of Section 90 IPC. Section 90 IPC provides that a consent is not such consent as is intended by any provision of the Code if it 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. Therefore, the prosecution must establish not merely that a promise of marriage was made, but also that such promise was false from the inception, that the prosecutrix's consent was obtained in consequence of such misconception and that the accused knew or had reason to believe that the consent was so given.

9. The Hon'ble Supreme Court in *Pramod Suryabhan Pawar v. State of Maharashtra*, reported in *AIR 2019 Supreme Court 4010*, has authoritatively laid down the distinction between a false promise of marriage and a subsequent breach of promise. The Court held that, to establish that consent was vitiated by a misconception of fact arising from a promise to marry, it must be shown, firstly, that the promise of marriage was a false promise, given in bad faith and with



no intention of being adhered to at the time it was made, and secondly, that the false promise itself had immediate relevance or a direct nexus to the woman's decision to engage in the sexual act. The mere failure to fulfil a promise subsequently cannot automatically lead to the conclusion that the promise was false when it was initially made. It was held thus:-

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

The aforesaid principle has also been reiterated and applied by the Gauhati High Court in ***Guluk Kathar v. State of Assam***, ***Neutral Citation No. 2025:GAU-AS:636***, wherein the Court found that there was no material indicating that, at the inception of the relationship, the accused had no intention to marry the victim. The Court observed that the relationship between the parties had



subsequently broken down and held that, in the absence of clinching evidence to establish that the victim had continued the relationship on account of a misconception of fact, the accused could not be convicted under Section 417 IPC. The Court further reiterated that mere refusal to marry would not constitute the offence under Section 417 IPC unless the requirements of Section 90 IPC were established.

It was held thus:-

“16. This Court has also not found anything to indicate from the available materials even suggesting that at the inception, the accused did not intend to marry the victim. What is discernible is that the relation between them broke down. Therefore, in the considered opinion of this Court, in absence of any clinching evidence to prove that the victim, PW-1 had continued her relationship with the accused for 4 years on a misconception of fact, the accused could not have been convicted for commission of offence under Section 417 IPC, more particularly, in view of the settled propositions of law that mere refusal to marry would not constitute offence under Section 417 of the IPC until and unless the requirement under Section 90 IPC is established by the prosecution, which in the case, the prosecution has failed. Therefore, in the considered opinion of this Court, the impugned judgments and orders are vitiated by perversity and cannot withstand the scrutiny of this Court within the parameter of its revisional jurisdiction. The judgment relied on by Mr. VA



Chowdhury, learned amicus cannot be made applicable in the given facts of the case.”

10. On the basis of the aforesaid principles, this Court finds that the conviction of the accused under Section 417 IPC cannot be sustained. Significantly, the evidence relied upon by the prosecution itself demonstrates that the accused and the prosecutrix were in deep love. The learned trial Court, while acquitting the accused under Section 376 IPC, specifically accepted the position that the prosecutrix was a consenting party to the physical relationship and that the prosecution had failed to establish that the alleged assurance of marriage was the inducement which caused her to submit to sexual intercourse. Once the trial Court found that the relationship was consensual and that the charge of rape was not established, the question whether the promise of marriage constituted cheating still required an independent examination of the essential ingredients of Section 415 IPC.

11. In the present case, there is no convincing evidence to demonstrate that the accused, at the very inception of the relationship, had made a false promise of marriage with no intention whatsoever to marry the prosecutrix. On the contrary, the subsequent conduct



attributed to the accused by the prosecution itself materially weighs against such an inference. It is the prosecution's own case that, when the prosecutrix's marriage with Upendra Singh was arranged, the accused contacted the family members of the proposed bridegroom and requested them not to proceed with the marriage on the ground that he was in love with the prosecutrix and wanted to marry her. Such conduct, though it may not by itself establish a legal obligation to marry, is certainly relevant while assessing whether the accused had a dishonest intention not to marry the prosecutrix from the very inception. The distinction between a promise which was false from the beginning and a promise which was subsequently not fulfilled is fundamental to the determination of criminal liability under Section 417 IPC.

12. The learned trial Court appears to have proceeded primarily on the basis that the accused had established sexual relations with the prosecutrix after promising to marry her, that the prosecutrix became pregnant and that he subsequently refused to marry her. However, such subsequent conduct, without proof of the accused's dishonest intention at the inception of the promise, is insufficient to constitute



cheating. The law laid down in *Pramod Suryabhan Pawar* (supra) makes it clear that the crucial point of determination is the state of mind of the accused when the promise was made. The prosecution cannot establish the offence merely by demonstrating that the promise was ultimately not fulfilled.

13. The same reasoning applies to the requirement of Section 90 IPC. The prosecution has failed to establish that the prosecutrix's consent was obtained under a misconception of fact which the accused knew or had reason to believe to exist. The evidence does not establish that the accused had deliberately created a false representation of marriage as a ruse to obtain sexual relations. Rather, the evidence indicates a continuing relationship between two persons who were in love and who, at least at one stage, contemplated marriage. The subsequent breakdown of that relationship cannot, in the absence of evidence of dishonest intention at inception, be retrospectively characterised as cheating.

14. This Court also finds that the learned trial Court's acquittal of the accused under Section 376 IPC, based upon its finding that the prosecutrix was a consenting party and that the prosecution failed to



establish that her consent was obtained on account of the assurance of marriage, assumes relevance while considering the charge under Section 417 IPC. Although the two offences have distinct ingredients, the same evidence cannot be selectively relied upon to acquit the accused of rape on the ground that the relationship was consensual while simultaneously convicting him for cheating solely because the relationship subsequently failed, without establishing the independent ingredient of dishonest intention at the inception.

15. On an overall assessment of the evidence, this Court is of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt that the accused had made a false promise of marriage in bad faith and without any intention of fulfilling the same at the time when the promise was made. The subsequent refusal to marry the prosecutrix, though unfortunate, does not by itself satisfy the ingredients of Section 417 IPC. The requirements of Section 90 IPC have also not been established in the manner required by law.

16. For the reasons stated above, the conviction of the respondent-accused under Section 417 of the Indian Penal Code cannot be sustained. The judgment of conviction and order of sentence passed



by the learned trial Court is hereby set aside. The respondent-accused is acquitted of the charge under Section 417 IPC.

17. Accordingly, the Criminal Appeal is allowed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of July 2026/ Ashok