

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, BANPUR  
PRESENT:

Sri Satya Ranjan Pradhan  
Asst..Sessions Judge, Banpur

**S.T. Case No. 85/60 of 2014**

(Arising out of G.R. Case No. 16/2014  
corresponding to Banpur P.S. Case No. 13/2014)

State. ... Prosecution.

-Versus-

Santosh Kumar Pradhan, aged about 28 years,  
S/o Late Gobinda Pradhan  
Vill: Haridamula, P.S: Khalikote  
Dist: Ganjam.

...

Accused.

For the Prosecution : Sri S.Mishra, Addl. P.P.  
For the Defence : Sri Prasanta ku. Panda & Dilip ku. Jalli,  
Advocates.

Date of Argument : 12.11.2014

Date of Judgment : 19.11.2014

Offence U/s 417/376/312 I.P.C.

**JUDGMENT**

1. The above named accused stands charged U/s 417/376/312 of the Indian Penal Code for having committed the offence of cheating , rape and for causing miscarriage of the prosecutrix.
2. The brief facts of the prosecution story as narrated in the F.I.R is that:

The prosecutrix is a widow with three children. Her husband had expired three years prior to the date of lodging of the F.I.R. She was earning her livelihood by working as a daily labourer. The accused started keeping good relationship with her and visited her house regularly. Claiming him to be unmarried and with a proposal of

marriage the accused wanted to keep physical relationship with her, to which she initially did not agree. But subsequently when the accused time and again proposed her to marry and also promised that he will take care of her children, she agreed to it. Out of their relation the prosecutrix also became pregnant. But the accused left the prosecutrix knowing about the pregnancy with a sum of Rs. 25,000/- obtained from the self help group through her. Although the prosecutrix searched for him but could not succeed. Subsequently on 22.11.2013 prosecutrix with one Gadadhar Dalei went to the house of the accused situated in village Haridamula and found the accused to be a married person and father of three children. When she narrated everything to the family members of the accused they assaulted her and threatened to do away with her life. So she returned back. On 28.12.2013 at 6 pm she met the accused near Gangadharpur Railway station. There the accused along with Sania Pradhan and Buli Pradhan assaulted her and took away Rs. 250/- from her. Thereafter on 14.01.2014 the prosecutrix went to Nachuni O.P and lodged a written report which was registered as Banpur P.S. Case No. 13, U/s 376/354//379/34 I.P.C by the I.I.C Banpur P.S. During the course of investigation the statement of the victim was recorded U/s 164 Cr.P.C. by the learned J.M.F.C., Banpur. She and the accused were sent for medical examination, her wearing apparels were seized and the accused was arrested. After completion of investigation C.S was submitted against the present accused U/s 417/376/312 of the I.P.C and the case was committed to the Court of Sessions. After going through the materials available on record charge was framed against the accused under the aforesaid provisions of law.

3. The plea of the accused is one of complete denial.

4. The points for determination in this case are :-

(i) Whether the accused had cheated the prosecutrix?

(ii) Whether the accused had sexual intercourse with the prosecutrix with a false promise of marriage and thereby committed the offence of rape?

(iii) Whether the accused voluntarily caused miscarriage of the prosecutrix?

5. To substantiate its case prosecution had examined as many as 15 witnesses Out of them P.W.6 is the prosecutrix, P.Ws 14 & 15 are the M.Os, P.W.13 is the I.O, P.W.9 is the R.I who had demarcated the house of the prosecutrix, P.W.5 is the scribe, P.W.1,2,8 & 11 are the seizure witnesses and rest are the independent witnesses. whereas defence had examined none. That apart Prosecution had relied upon certain documents marked as Ext.1 to 16.

6. As mentioned in the preceding paragraph the prosecution in order to substantiate its case had examined as many as 15 witnesses including the prosecutrix as P.W.6. As revealed from the case record she is the only witness to the occurrence available in this case. Others are the post occurrence witness or circumstantial witness. So her evidence is taken first for discussion. The prosecutrix while being examined as P.W.6 disclosed that she is a widow and was staying on rent in village Baulabandha. For her livelihood she used to go to Bhubaneswar and Jatni in first DMU train and works a daily labourer. In the said train he met the accused who was working as a peon in National Highway office. For four to five months they went in the same train for work. During their conversation the accused projected himself as an unmarried person and was staying at Khalikote with her mother. He further intended to stay in her house on the pretext of the

distance of his house from the Railway Station to which she denied as she was staying alone but the accused convinced her to identify him as his brother if somebody will ask about him. Then he started staying with her. During their stay the accused proposed to marry her and showed his intention to be the father of her children. Believing upon such proposal the prosecutrix agreed to such physical relationship. Out of the said relationship the prosecutrix became pregnant twice and on both the occasions her pregnancy was terminated by the accused by administering some medicines. When she became pregnant for the 3<sup>rd</sup> time the accused agreed to marry her in the court and for that he went to bring his friends to be the witnesses to the marriage. But he never returned back. Prior to that the accused had taken a sum of Rs.50,000/- from her which she had taken from Mahila Samiti. As the accused did not return back even after one month and as the Mahila Samiti people asked for money the prosecutrix went in search of him. First she went to his office but there she came to know that the accused is not coming to the office. Thereafter she went to Rambha and met with one Gadadhar Dalei. Along with said Gadadhar Dalei she went to the house of the accused and initially identified herself as a sister of the accused. But after discovering about the marital status of the accused and his children, she disclosed everything before them. After hearing the story from the prosecutrix the family members of the accused threatened to kill her. Thereafter the prosecutrix along with said Gadadhar Dalei went to one Satya Pattnaik and described about the occurrence. Subsequently a meeting was arranged in the cashew factory of one Babuli Babu in presence of Satya Pattnaik, Babuli Babu, Gopal Pradhan, Gadadhar Dalei and accused. In the said meeting the prosecutrix described everything about the occurrence and it was agreed that the accused will return back her money but he did not. So

she went to one Sarat Pattnaik who is a practicing Advocate for scribing the F.I.R. The said F.I.R. was marked on behalf of the prosecution as Ext.3. She further disclosed that after lodging of the FIR she was medically examined by the doctor. The police had also seized her wearing apparels. In addition to that her statement was recorded in the court as per the provisions U/s 164 Cr.P.C. which was marked as Ext.5. This witness was cross examined at length wherein it was elicited from her mouth that although she was in visiting term with her parents she did not disclose about such occurrence to them and that on both the occasions when her pregnancy was terminated she knew very well about the nature of the medicine which were given to her by the accused. In addition to that some discrepancies were found out regarding the date of lodging of the F.I.R. Apart from that she stood firm to the statement made by her during her examination in chief regarding the occurrence. Apart from the prosecutrix no other eye witness was examined by the prosecution. Generally speaking it is not possible at times to produce any eye witness to an occurrence of rape. In this case also it is not possible to produce an eye witness to the occurrence because this type of offence generally occurs in lonely places or at a place far from the sight of general public. Here in this case the occurrence took place in the house of the prosecutrix and the prosecutrix was staying alone. To substantiate the fact that the accused was having a visiting term to the house of the prosecutrix prosecution had examined two witnesses namely Pradeep Naik and Bharata Behera as P.Ws 3 and 4. Both of them are the neighbours of the informant. Out of the said two witnesses P.W.4 Bharata Behera only stated that he is a neighbour of the informant and knows the accused who is her cousin brother. The prosecutrix and the accused used to go to work together. Apart from that he did not disclose anything more

although he was put to question by the learned Addl. P.P U/s 154 Evidence Act. However P.W.3 Pradeep Naik stated that the accused was frequently coming to the house of the prosecutrix and also used to stay there. Both of them used to go to work together and out of their relationship she became pregnant. In the cross examination this witness stated that he is also staying in the same house but in another room. In cross examination para-9 he disclosed that he came to know about the pregnancy of the prosecutrix from the newspaper. Although this witness was cross examined at length his credibility could not be shaken by the defence. So if the version of both P.Ws 3 & 4 is considered together it will definitely lend a ring of truth in favour of prosecution case. Similarly if the version of the prosecutrix is believed she had gone to the house of the accused along with one Gadadhar Dalei and subsequently a meeting was arranged where in Gadadhar Dalei, Satya Pattnaik and Gopal Pradhan were present. The said witnesses namely Gopal Pradhan, Gadadhar Dalei and Satya Pattnaik were examined by the prosecution as P.W.7,10 and 12 respectively. Out of the said three witnesses the witness namely Gopal Pradhan while being examined as P.W.7 denied his knowledge about the occurrence. Although he was examined by the prosecution as per the section 154 of the Evidence Act nothing much of importance was elicited from his mouth. But the other witnesses such as P.Ws 10 and 12 supported the case of the prosecution. P.W.10 Gadadhar Dalei corroborating the version of prosecutrix disclosed that in the Month of November or December of 2013 the prosecutrix had been to his medicine store and described about the occurrence. Thereafter he took her to the house of the accused and found him to be a married person and father of three children. From there he and the prosecutrix went to Gopal Pradhan and described about the occurrence. 15days

thereafter a meeting was arranged in the cashew factory of Babuli Babu wherein Babuli Babu, Satya Pattnaik, he himself and 15 other people of their village were present. In that meeting the accused had admitted his relationship with the informant and also admitted to have taken money from her. Similarly P.W.12 Satya Pattnaik disclosed about the meeting wherein the accused agreed about his relationship with the prosecutrix. Both these said witnesses were cross examined at length but stood to their statement that the accused had admitted about his relationship with the prosecutrix. To further strengthen its case prosecution had examined the medical officers who had examined the prosecutrix, as P.Ws 14 and 15. P.W.14 Doctor Bibhupada Hota during his examination disclosed that on 14.01.2014 he had examined the victim on police requisition but found no external injury on her private part suggesting forcible sexual intercourse. Further he did not find any sign of recent sexual intercourse as she had taken bath and done toilet. Apart from P.W.14 another doctor Dr. Amiya Charan Jenamani was examined as P.W.15, who had conducted the ultrasound of the prosecutrix on 15.01.2014 being referred by O.G. Specialist Dr. S.P.Nayak. During his examination he found one live fetus with gestational age of 17 weeks 3 days with +/- 1 week five days and the weight of fetus at that time was 211.42pound. From the aforesaid examination of P.W.15 it became quite clear that the prosecutrix was pregnant as alleged by her. Although P.W.14 in his cross examination stated that the prosecutrix was not present at the time of his examination, the same can not be given much weight because neither he had made any examination on that aspect nor mentioned about the same in his report. On the other hand the statement of P.W.15 is based upon ultrasound test conducted by him. The said ultrasound report was marked on behalf of the

prosecution as Ext.4/1. The only hurdle on the way of the prosecution is that P.W.14 during his examination did not find any bodily injury suggesting forcibly sexual intercourse and any sign of sexual intercourse. In this regard it can be said that there was a long gap between last sexual intercourse and the medical examination. As suggested in the medical report in between the prosecutrix had taken bath and had toilet. So as there was a long gap between the last sexual act of the accused with the prosecutrix and the medical examination, no injury or any sign of recent sexual act could be detected by P.W.14. On the other hand the ultrasound report marked as Ext.4/1 and the evidence led by P.W.15 clearly supports the case of prosecution and version of the prosecutrix. Apart from these witnesses prosecution had examined other witnesses to prove the seizure of the wearing apparels of both, the vaginal swab, pubic hair of both, vaginal ferner, nails of both, seminal swab of accused etc. collected by the M.O along with the R.I. Who had demarcated the house of the prosecutrix and the investigating officer. From the aforesaid statements so made by the prosecutrix and the witnesses it is established that the accused was frequently visiting and staying in the house of the prosecutrix and was having sexual intercourse with her on the false promise of marriage. Now the question is whether the accused can be held guilty for the offence U/s 376 of the I.P.C for that or not.

7. Section 376 of the I.P.C defines the offence of rape and enumerates six descriptions of the offences. The description “Secondly” speaks of rape “without her consent”. Thus Sexual intercourse by a man with a woman without her consent will constitute the offence of rape. Now we have to examine as to whether in the present case, the accused is guilty of sexual intercourse with the

prosecutrix “against her consent”. The prosecutrix in this case had deposed that the accused promised to marry her and wanted to be the father of her children and on that pretext had sexual intercourse with her. He further projected himself as an unmarried person. Out of their relation the prosecutrix became pregnant for three times . Twice her pregnancy was terminated by administering medicines. Third time when she became pregnant the accused agreed to marry her in the court. By saying so he went to bring some of his friends to be the witnesses to the said marriage but never returned back. So keeping this fact in mind we have to find out if the prosecutrix entered into such relationship of her own with her consent or her consent was obtained by the accused on misconception of fact. During the course of the argument the learned counsel appearing for the accused argued that the plea of accused is one of complete denial and false allegation but if it is found that the accused was having sexual intercourse with the prosecutrix the same can be held to be an consented act of the prosecutrix as she is a fully grown up lady and entered into such relationship knowing very well the nature and future thereof. so it is an act of promiscuity. For that he relied upon the judgment laid down by the Honble chhatisgarh High court in ***Bhawani Shavara-Vs-State of Chhatisgarh, 2012(2)Acquittal-229(chhatt)***. On the other hand the learned Addl. P.P. argued that such consent given by the prosecutrix was not a free consent rather it was given under a misconception of fact. For that he relied upon the judgment of the Apex court rendered in ***State of U.P Vs Naushad reported in AIR2014 SC-384*** . So we have to find out now as to how the term consent is defined under I.P.C. **Section 90 of the I.P.C.** defines consent known to be given under 'fear or misconception' the relevant portion there of reads as follows “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 or 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.....". Thus if consent was given by the prosecutrix under a misconception of fact it is vitiated. The term 'consent' was interpreted and the meaning thereof was clearly discussed by the Apex court in plethora of cases such as in ***Dillip Singh vs State of Bihar AIR-2005 SC203, Udaya Vs State of Karnataka AIR 2003 SC 1639 , Pradeep Kumar Verma Vs State of Bihar and another AIR 2007 SC 3059 , Yedla Srinibas Rao Vs State of A.P.2006 (11) SCC 615.*** While analyzing the aforesaid judgments the Apex court in ***Deepak Gulati Vs state of Haryana , Criminal Appeal No.2322of 2010 decided on 20<sup>th</sup> May-2013*** had held that "in the event that the accused's promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that where the prosecutrix , under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act can not be said to be consensual, so far as the offence of the rape is concerned."

The said term of consent is also clearly and elaborately discussed by the Apex Court in ***Deelip Singh –Versus –State of Bihar reported in AIR-2005-SC-203*** wherein the Apex court while interpreting section 90 of the I.P.C has held that 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 or 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". Consent given firstly under fear of injury and secondly under a misconception of fact is not "consent" at all. That is what is enjoined by the first part of Section 90. These two grounds specified in Section 90 are analogous to coercion and mistake of fact which are the familiar grounds that can vitiate a transaction under the jurisprudence of our country as well as other countries. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear or injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the persons giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the persons doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology. Similarly the Apex court in ***State of U.P Vs Naushad reported in AIR2014 SC-384*** while dealing with a similar case has held that " If the consent was given by the prosecutrix under a misconception of fact, it is vitiated". So as held by the Apex court we have to find out firstly as to the intention of the accused. Secondly whether the prosecutrix was under a misconception of fact that the accused will marry her and believing her statement she submits herself to the accused or not. Thirdly whether the accused too had the knowledge or reason to

believe that the consent was given by the prosecutrix in consequence of fear of injury or misconception of fact. As found out from the statement of the prosecutrix the accused projected himself as an unmarried person and promised to marry her and take care of her children. Here in this case the prosecutrix is a widow with three children. She was earning her livelihood by going to Bhubaneswar or Jatani daily in the train. From that income she was maintaining herself as well as her children. When the accused came in contact with her and promised the aforesaid facts she agreed upon such proposal thinking about their marriage and future of her children. On the other hand the intention of the accused was never to marry the prosecutrix but to satisfy his desire of sex which can very well be presumed from the fact that he projected himself to be an unmarried person although he was married having three children and his spouse was also alive. on the other hand the prosecutrix was having no knowledge about his marital status, she could only discover the same when she had been to the house of the accused with P.W.10 Gadadhar Dalei. The story narrated by the prosecutrix got strength from the statement so made by P.W.10 and 12 who also stated about the admission so made by the accused in the meeting held in their presence. From the aforesaid discussion it clearly reveals that the consent which was given by the prosecutrix was not a free consent but it was obtained by the accused under misconception of fact as defined U/s 90 of the I.P.C. Like wise it was within the knowledge of the accused that she consented for the said act only after believing his promise because if it was not then she won't had resisted the said act till that long. Hence the act committed by the accused necessarily comes one under Section 375 of I.P.C punishable U/s 376 I.P.C.

8. Apart from the offence U/s 376 of the I.P.C the accused is also

charged U/s 417/312 I.P.C for committing the offence of cheating and miscarriage. Before analyzing the ingredients thereof it is pertinent to discuss about the other grounds on which the counsel for the accused raised suspicion over the case of the prosecution and those are firstly that there was inordinate delay in lodging of the F.I.R by the prosecutrix which was also not explained by the prosecution. Secondly that although the prosecutrix was having a good relation with her family members she had not communicated about the occurrence to them. So far as delay in lodging of the FIR is concerned it was pointed out by the learned counsel appearing for the accused that although the FIR was scribed on 29.12 2013 as evident from the contents of the FIR, the same was lodged on 14.01.2014 and the reason for its delay was not explained by the prosecution either in the FIR or through the prosecutrix. On the other hand learned Public Prosecutor argued that in this type of offence generally delay occurs and only on the ground of delay the case of the prosecution should not be thrown aboard which is otherwise reliable, cogent and trustworthy. For this he relied upon the judgment of the Apex court decided between ***State of Himachal Pradesh- Versus- Gian Chand-2001 (II) OLR SC-367*** wherein the Apex court has held that “delay in lodging the FIR can not be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on its guard to search if any explanation has been offered for the delay and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, then the delay would be fatal to the prosecution.” So as held by the Apex court we have to find out whether the reason for delay in lodging

of the FIR has been explained in this case or not. If not then whether such delay has the effect of embellishment in the prosecution version or not. On perusal of the case record at hand it reveals that there was a delay in lodging of the FIR and the same was not properly explained by the prosecution. But as mentioned earlier it can not be a sole ground for throwing aboard the case of the prosecution. The prosecutrix of this case is a widow lady who is staying in a rented house alone. She has no support either from her family members or from the family members of her in-laws. In this circumstance it can be presumed that it was hardship on her part to come, in front and fight alone for her own cause in the backdrop of the social stigma. Further the defence also could not point out the possible embellishments which took place due to the delay in lodging of the F.I.R. Therefore in absence of the same only on the ground of delay the case of the prosecution for a offence U/s 376 of the I.P.C which is otherwise reliable, cogent and trustworthy can not be thrown abroad. So far as not informing the matter to her family members it was argued that as admitted by the prosecutrix she was having visiting terms with her parents house. So she could have intimated them but neither she intimated it at the first instance nor at the time of holding meeting although she was asked by P.W.10 and 12 to intimate them. In this regard to find out the reason we have to go through the statement of P.W.12 made in his cross examination wherein he stated that although she had asked the prosecutrix she did not brought her family members. on being asked about the reason she told him that 'out of shame' she has not intimated them. So in my view considering this statement in the light that she is a widow, the misery of the prosecutrix can very well be understood.

9. As mentioned earlier apart from the offence U/s 376 of

the I.P.C the accused also charged U/s 312/417 of the I.P.C. So far as the offence U/s 312 of the I.P.C is concerned the same deals with the offence of causing miscarriage. To bring home the charge under the aforesaid offence the prosecution must prove that (i) the accused had voluntarily caused miscarriage of the prosecutrix who was with a child and(ii) that such miscarriage was not done in good faith for the purpose of saving the life of a prosecutrix. As revealed from the statement of the prosecutrix out of her relationship with the accused she was pregnant for three times. Twice her pregnancy was terminated by the accused by administering some medicines. In this regard the Learned counsel appearing for the accused laid emphasis on the statement of the prosecutrix given in para- 20 and 21 of her cross examination wherein she had admitted that although the accused had given her the medicines for abortion, she took it after knowing about its nature and consequence thereof. By relying upon such statements the learned counsel appearing for the accused argued that as because the prosecutrix knowing very well about the nature of the medicine had taken it, the accused can not be held guilty for the aforesaid offences. In this regard it can be said that this offence U/s of 312 of the I.P.C. deals with causing miscarriage with the consent of the woman while section 313 of the I.P.C deals with causing of miscarriage without the consent of the women. So the said argument made by the learned counsel for the accused does not have any force in it. Having said so we have to find out whether the present accused can be held guilty for the aforesaid offence of causing miscarriage or not. Although the prosecutrix had stated about the termination of pregnancy twice, in the court, she had not mentioned the same in the body of the F.I.R. That apart this offence as defined U/s 312 of the I.P.C can only be committed when the woman was in fact pregnant. Although there may

be guilt intention and attempt to commit on the person of a woman believed to be but who really not pregnant. The offence as defined here seems to require that the woman should be with a child. The aforesaid facts were mentioned because even it is itself accepted that the accused had administered medicine to the prosecutrix, it was the duty of the prosecution to prove that she was pregnant at that time. Because even if the intention of the accused was to terminate the pregnancy and for that he had given medicines to the prosecutrix. He can not be held guilty under this section if the prosecutrix was not pregnant on that occasion. Although the prosecutrix only orally stated about her previous pregnancies but no corroborative piece of evidence was produced by the prosecution to establish the same. That means either any oral evidence or any documentary evidence. In absence of the same I am of the opinion that the ingredients of the offence U/s 312 of the I.P.C is not quite made out. Accordingly the accused can not be held liable for the said offence U/s 312 of the I.P.C.

10. The other offence for which the accused was charged is one U/s 417 of the I.P.C. but the defining provision of said offence is 415 of the I.P.C. So as to prove the offence U/s 415 of the I.P.C the prosecution must prove that (i) there was a deception of a person (ii) whereby fraudulently or dishonestly, inducing the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or (iii) intentionally inducing that person so deceived to do or omit to do anything, which he would not do or omit if he were not so deceived, (iv) that act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Here as defined U/s 415 of I.P.C. there are two types of deception one is deception of a person by fraudulently or dishonestly inducing him to deliver any property or to consent to the retention of property by any

person or secondly the person should intentionally induce the victim to do a thing which he would not have done if he was not so deceived. Here in this case the accused is charged U/s 417 of I.P.C for committing an act which comes under both the parts of Section 415 I.P.C. Here it was the allegation of the prosecution that he had taken a sum of Rs.25,000/- from the informant which she had brought from the self help group but did not return and secondly for cohabiting with the prosecutrix giving a false assurance of marriage. So far as the act of the accused which covers under first part of the said offence it was alleged by the informant in the body of the FIR that the accused had taken a sum of Rs.25,000/- from her. But during her examination in chief she disclosed that he had taken a sum of Rs. 50,000/- from her. If the version of P.W.10 is believed in the meeting so arranged the prosecutrix disclosed that the accused had taken a sum of Rs.1,00,000/- from the Mahila Samiti through her. Similarly P.W.12 disclosed that the informant had told him that the accused had taken a sum of Rs.1,50,000/- from the self help group through her. So as revealed from the F.I.R and the statements of P.W.6, 10 & 12 the amount which was alleged to have been taken by the accused from the prosecutrix varies from Rs.25,000/- to 1,50,000/-. There is no consistency between their statement regarding the exact amount taken by the accused. To prove the same the prosecution could have filed the document relating to withdrawal of money by the prosecutrix from the self-help group. But it was not produced. In absence of the same it is not safe to rely upon the statements of the witnesses regarding the money taken by the accused from the prosecutrix. So far as the second part of section 415 of I.P.C is concerned the accusation against the accused rest upon the allegation of the prosecutrix that he had kept physical relationship with her on the false pretext of marriage.

In this regard reference can be made to the judgment of the Hon'ble Gauhati High Court reported in **2007 Cri.J- 615 decided in between M.D. Jakir Ali- Versus- State of Assam**, where the Hon'ble Court has held that "when an accused makes a false promise to marry which he never intends to carry out and induces thereby the victim so deceived to have with him sexual act, which the victim would not have indulged in or permitted, had she not been induced by such deception and when such act of having sexual intercourse by her with the accused causes or is likely to cause damage or harm to her body, mind, reputation, the act of the accused would amount to cheating. Thus when a woman is induced to part with her chastity or virginity which is the most valued possession of hers the person who so induces the women by making false representation would be liable for punishment U/s 417 I.P.C. If the victim's having sexual intercourse with such a person causes or is likely to cause harm to her body mind or reputation for in such a case unless so deceived the victim would not have permitted sexual act by the accused. To put it differently had such a victim not so deceived she would not have permitted sexual act or would have refrained from allowing such sexual act and clearly in such a case but for her permitting sexual act she would not have suffered harm to her body, mind or reputation". Similarly the High Court of Andhra Pradesh dealing with a similar case had convicted the accused for the offence U/s 376/417 I.P.C. who had indulged in sexual act which the prosecutrix on the false promise of marriage. The said judgment of the Hon'ble High Court of Andhra Pradesh was also upheld by the Hon'ble Apex court in the case decided between **Yedla Srinibas Rao -Versus-State of A.P.(2006) -11 SCC-615**. So as because in this case the accused on the false pretext of marriage indulged in sexual act with the prosecutrix and being so deceived by such promise the prosecutrix

permitted him for the sexual act which she otherwise might have not permitted the accused is liable U/s 417 I.P.C. The fact of promise and the intention of the accused was also previously clearly discussed while discussing the offence U/s 376 I.P.C So it need not be discussed again.

From the above discussion I found the accused guilty for the offence U/s 376/417 of I.P.C and he is convicted thereunder . At the same time he is found not guilty U/s 312 of I.P.C and is acquitted therefrom U/s 235(1) Cr.P.C.

So far as rendering the beneficial provision of P.O.Act is concerned considering the nature and gravity of the alleged offence I am of the opinion that the same shall not be rendered to the accused at the same time for the selfsame reason I also do not feel it proper to release him under section 360 Cr.P.C.

Asst. Sessions Judge, Banpur.

### **HEARING ON THE QUESTION OF SENTENCE**

Heard the convict, Learned counsel for the convict and Learned Addl. PP on the question of sentence. The Learned Counsel for the convict submitted that the convict is a first offender having no criminal antecedent against his name.Hence lenient view may be taken in awarding sentence, whereas the Learned Addl. P.P. Prayed to impose stringent and exemplary punishment to the convict.

Considering the magnitude of the offence,taking the aggravating and mitigating factors into account the convict is sentenced to undergo Rigorous Imprisonment for a period of 7 (seven) years and to pay a fine of Rs. 10,000/- (Rupees Ten thousands), in default, to undergo Rigorous Imprisonment for a period of 6 (six) months for the offence punishable under section 376 I.P.C.At the same time the convict is also

sentenced to undergo Rigorous Imprisonment for a period of 1 (one) year and to pay fine of Rs. 5,000/- (Rupees Five Thousand), in default to undergo Rigorous Imprisonment for 1 (one) month for the offence u/s 417 I.P.C. Both the sentence shall run concurrently. The period of detention as UTP be set off from the sentence of imprisonment as per section 428 Cr.P.C. The fine if paid by the convict be given to the victim towards compensation for the injury caused by the offence, in terms of section 357 of the Cr.P.C. Since the amount of compensation is not sufficient in commensurate to the injury caused to the prosecutrix, this case is recommended to the District Legal Services Authority, Khurda at Bhubaneswar under section 357-A of the Cr.P.C to award more compensation under Victim compensation scheme to the victim.

The seized articles if any be destroyed after four months of expiry of the appeal period if no appeal is preferred and in case of any appeal the same shall be dealt with as per the order of the Appellate court.

Asst. Sessions Judge, Banpur.

Typed to my dictation & corrected by me. Judgment being sealed and signed is pronounced in the open court today i.e. on 19<sup>th</sup> day of November, 2014.

Asst. Sessions Judge, Banpur.

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION.

- |        |                         |
|--------|-------------------------|
| P.W.1. | Laxman Kumar Behera     |
| P.W.2. | Nihar Ranjan Srichandan |
| P.W.3. | Pradeep Naik            |
| P.W.4  | Bharat Behera           |
| P.W.5  | Sarat Pattnaik          |

P.W.6	The name of the victim is withheld to preserve anonymity of victim.
P.W.7	Gopal Chandra Pradhan.
P.W.8	Md. Ranjan.
P.W.9	Madhusmita Maharana.
P.W.10	Gadadhar Dalei.
P.W.11	Susanta Kumar Behera
P.W.12	Satya Pattnaik
P.W.13	Manjulata Khadanga.
P.W.14	Dr. Bibhupada Hota.
P.W.15	Dr. Amiya Charan Jenamani

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE.

NONE.

LIST OF EXHIBIT MARKED FOR THE PROSECUTION.

Ext.1.	Seizure list.
Ext.1/1.	Signature of P.W.1 on Ext.1.
Ext. ½	Signature of P.W.2 on Ext.1.
Ext. 1/3	Signature of P.W.8 on Ext.1.
Ext. ¼	Signature of P.W.13 on Ext.1.
Ext.2	Property seizure memo.
Ext. 2/1	Signature of P.W.1 on Ext.2.
Ext.2/2	Signature of P.W.2 on Ext.2.
Ext. 2/3	Signature of P.W.6 on Ext.2.
Ext.2/4	Signature of P.W.13 on Ext.2.
Ext.3	FIR.
Ext.3/1	Signature of P.W.6 on Ext.3.
Ext.3/2	Signature of P.W.13 on Ext.3.
Ext.3/3	Signature of IIC on Ext.3.
Ext.4.	Signature of P.W.6 on Medical report.
Ext.4/1	Medical report submitted by P.W.15.

Ext.4/2	Signature of P.W.15 on Ext.4/1.
Ext.5	164 Cr,P.C statement.
Ext.5/1	Signature of P.W.6 on 164 of Cr.P.C. statement.
Ext.6	Signature of P.W.6 on consent for examination.
Ext.6/1	Signature of P.W.7 on Ext.6
Ext.6/2	Medical report prepared by P.W.14.
Ext.6/3	Signature of P.W.14 on Ext. 6/2.
Ext.6/4	Medical report of Accused prepared by P.W.14.
Ext.6/5	Signature of P.W.14 on Ext.6/4.
Ext.7	Signature of P.W.7 on seizure list.
Ext. 7/1	Signature of P.W.11 on Ext.7.
Ext. 7/2	Seizure list prepared by P.W.13.
Ext.7/3	Signature of P.W.14 on Ext.7/2.
Ext.8	Signature of P.W.7 on consent for examination.
Ext. 8/1	Signature of P.W.11 on Ext.8
Ext. 8/2	Medical report of accused.
Ext.8/3	Signature of P.W.14 on Ext.8/2.
Ext.9.	Sketch map prepared by P.W.9.
Ext.9/1	Signature of P.W.9 on Ext.9
Ext.10	Spot map prepared by P.W.13.
Ext.10/1	Signature of P.W.13 on Ext.10.
Ext.11	Prayer made by P.W.13 for sending Exhibits.
Ext.11/1	Signature of P.W.13 on Ext. 11
Ext.12	Prayer made by P.W.13. to J.M.F.C., Banpur.
Ext.12/1	Signature of P.W.13 on Ext.13.

LIST OF EXHIBIT MARKED FOR THE DEFENCE.

NIL.