



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

**FRIDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 454/2017

Between:

1. SHAIK SHARUKH, S/O. SYARABHANU, AGED ABOUT 20 YEARS
OCC: NIL, R/O. 26TH WARD, REPALLE, GUNTUR DISTRICT, A.P.

...PETITIONER

AND

1. THE STATE OF A P, Rep. by Public Prosecutor, High Court at
Hyderabad, Hyderabad.

...RESPONDENT

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to present this Memorandum of Grounds of Criminal Revision Petition being aggrieved by the judgement passed by the Learned Assistant Sessions Judge, Repalle. Guntur District, A.P in S C No. 19 of 2014 dated 16.9.2014 which was confirmed by the Learned XI Additional District & Sessions Judge, Tenali, Guntur District, A.P. in Criminal Appeal No. 339 of 2014 on 14.2.2017 to undergo Rigorous Imprisonment for a period of 7 (Seven) years and fine of Rs.5,000-00 in default in payment of fine amount, the accused shall suffer simple imprisonment for a period of One Year for the charged offence under section 376 of I.P.C. Further, the accused was also sentenced to suffer simple imprisonment for a period of three months for the charged offence punishable Under Section 417 of IPC.

IA NO: 1 OF 2017(CRLRCMP 681 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of Certified copy of the Judgment passed by the Learned Assistant Sessions Judge, Repalle, Guntur District in SC.No.19 of 2014 on 16.09.2014 and pass

IA NO: 2 OF 2017(CRLRCMP 720 OF 2017)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence passed by learned Assistant Sessions Judge, Repalle. Guntur District, A.P in S C No. 19 of 2014 dated 16.9.2014 which was confirmed by the Learned XI Additional District & Sessions Judge, Tenali, Guntur District, A.P. in Criminal Appeal No. 339 of 2014 on 14.2.2017 and enlarge the petitioner on bail pending disposal of the said Crl.RC.

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased May be pleased to consider the directions of the Hon'ble Supreme Court in Criminal Appeal arising out of SLP (Crl.) No. 2891 of 2026 dated 08.04.2026 and reopen the Criminal Revision Case No.454 of 2017, for hearing and dispose of the same Avithin two months from the date of the said order and pass

IA NO: 2 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased May be pleased to Grant interim bail to the petitioner for a period of two weeks or till 20.05.2026, in Crl.RC No. 454 of 2017, dated 21.04.2022 on such terms and conditions as this Honble Court deems fit and proper, in the interest of justice.

Counsel for the Petitioner:

1.JADA SRAVAN KUMAR

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**CRIMINAL REVISION CASE NO: 454/2017****ORDER:**

The petitioner was convicted by the learned trial Court for the offences punishable under Sections 376 and 417 of IPC and the conviction was confirmed by the learned Appellate Court by concurrent findings.

2. The brief facts of the prosecution case is that prosecutrix (P.W.1) was residing in her maternal grand-parents' house. Accused was also residing in the neighbouring house with his mother. Accused was studying II Year B.Tech in one Engineering College. Prosecutrix also I Year student of the B.Tech College. There was love affair between each other. On 29.01.2012, accused came to the house where P.W.1 was residing, by jumping over the wall and with the pretext of marriage, participated in sex with prosecutrix by saying some deceitful words. Thereafter, accused left the house. At that time, he was witnessed by L.W.5 and L.W.6. Again, in the month of June, on the pretext of talk at the house of L.W.4, accused again had sexual intercourse with prosecutrix. Later, accused stopped speaking with P.W.1 and did not lift phone calls. Finally, the accused stated to prosecutrix that his family is not allowed him to marry P.W.1. Thus, FIR was lodged to the police by a report of P.W.1 on 13.10.2012. During the course of trial, 13 witnesses were examined and 12 documents were marked. Some contradictions of 161 statement of P.W.1 and P.W.7 were also marked on behalf of defence. After taking the evidences and after hearing the arguments, the learned trial Court has convicted the accused for the offence punishable under Section 376 IPC and

punished him for imprisonment for seven years with a fine of Rs.5,000/- and for three months for the offence punishable under Section 417 IPC. The order of conviction went up to appeal where the learned Appellate Court has also confirmed the order of conviction by dismissing the appeal. Hence, this revision case.

3. **Submission of learned counsel for the petitioner:**

(a) Learned counsel for the petitioner submits that the impugned order of conviction is based on surmises and conjectures. Ingredients of offence under Section 376 IPC have never been proved by the prosecution. They have failed to bring home the accused beyond reasonable doubt. The independent witnesses not supported the prosecution case. Thereby, there is miscarriage of justice. It is categorically pointed out by learned counsel for the petitioner that there is a long delay in lodging the FIR, which itself shows that colourful version of FIR has been placed before the police authority while long-standing civil dispute between the family of P.W.1 and accused. He further pointed out that the report of P.W.1 indicates one incident on 29.01.2012, which was witnessed by two independent witnesses L.W.5 and L.W.6, but they did not support the case of the prosecution and declared as hostile. P.W.3 is one of the friends of P.W.1 who stated about the incident in the month of June, 2012. But, she did not witness the incident. Moreover, the evidence of P.W.3 is full of contradictions and exaggerations. P.W.7 is grandmother, elder of family of P.W.1, whose evidence also is full of contradictions and exaggerations and deviation from her early statement recorded by the

police also under Section 161 Cr.P.C. The learned counsel for the petitioner further submits that the medical evidence specifically forensic report does not prove the offence punishable under Section 376 IPC.

(b) He further submits that the recent view of Hon'ble Supreme Court is very clear in respect of offence punishable under Section 376 IPC. He referred a decision of the Hon'ble Supreme Court in **Pramod Sryabhan Pawar vs. State of Maharashtra & Anr.**¹. He submits that the Hon'ble Apex court in deciding the issue has specifically observed that when parties are consenting to have sexual relationship with each other, the offence punishable under Section 376 IPC is not maintainable.

"19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose.

They are as follows:

- (i) The complainant and the appellant knew each other since 1998 and were intimate since 2004;
- (ii) The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and
- (iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

¹ 2019 LawSuit (SC) 1504

(c) Learned counsel for the petitioner also cited a decision of Co-ordinate Bench of this Court passed in Crl.Appeal No.904 of 2008 regarding delay in lodging FIR and its implications wherein it is held that:

“19. Admittedly, P.W.2 lodged the private complaint after lapse of about five months of the incident. The alleged incident occurred on 17.06.2003 and the private complaint was lodged on 05.11.2003. There is no satisfactory explanation from P.W.2 for the abnormal delay of about five months in lodging the report. He only stated that no police approached him, and as such, he represented to the higher police officials. Copy of the police report allegedly sent by P.W.2 to police is not filed. No doubt, mere delay in setting the criminal law into motion, by itself, is not a ground to disbelieve the entire version of P.W.2. But, in view of the strained relations between P.W.2 and the accused and in view of the cases pending between P.W.3 and wife of A.3 for the offence under Section 354 IPC relating to an offence that occurred on the same day of the incident, the delay assumes significance. As stated supra, there is no satisfactory explanation offered by P.W.2 for the delay. In the circumstances, it can be inferred that the private complaint appears to have been drafted after discharge of P.W.2 to suit the injuries mentioned in Ex.P.1. Therefore, in the circumstances of the case, delay renders the circumstances questionable. Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. A delayed report not only gets bereft of the advantage of spontaneity, the danger of introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations also creeps in, which casts a serious doubt on its veracity. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creation of an afterthought. The various aforesaid lapses cumulatively affect the overall sanctity of the prosecution case, making it fall short of the threshold of ‘beyond reasonable doubt’. Therefore, in the circumstances of the case, in view of the strained relations between the parties and lodging of report by wife of A.3 against P.W.2 for the offence under Section 354 IPC, which ended in conviction, the unexplained delay in lodging the private complaint goes to the root of the case. Further more, the weapons of offence are not produced before the Court, and on the same evidence, the trial Court acquitted a.4 to A.6

of the charges levelled against them and also acquitted the appellants of the other offences”.

(d) He also cited a decision of the Hon’ble Apex Court in **State of Andhra Pradesh vs. L.P.Venkateswarlu**² to show that when there is no supporting evidence, specifically medical evidence to prove the offence, the punishment under Section 376 IPC is not maintainable.

“1. The State is in appeal against an order of acquittal recorded by the High Court of Andhra Pradesh.

2. We have perused the evidence recorded by the Trial Court with the assistance of learned counsel for the parties. Not only has the prosecutrix given a go-bye to the version, in material particulars, as recorded in the FIR in her evidence recorded in Court, but, even the medical evidence recorded by the Doctor – P.W.12 does not at all support the allegations made by the prosecutrix.

3. In the face of the evidence on the record, the view expressed by the High Court cannot be said to be unreasonable, let alone perverse. The order of acquittal does not merit any interference. The appeal, therefore, fails and is dismissed. The respondent is on bail. His bail bonds shall stand discharged.”

4. **Submission of the prosecution:**

(a) Sri K.Sandeep, learned Assistant Public Prosecutor, refuting the contentions of the petitioner submits that the learned Courts below have properly appreciated the facts and circumstances of the case and thereby decided the issue on the basis of evidence on record. To contradict the submission of delay in lodging the FIR, he submits that during course of examination before the learned Courts below, the prosecutrix has specifically stated that the alleged sexual intercourse was on the pretext of marriage.

² 2000 LawSuit (SC) 522

Finally, prosecutrix went to College of the accused in the month of October, 2012 but he refused to marry the prosecutrix. Thereafter, within two days, FIR was lodged. Hence, there was no delay in lodging the FIR. The prosecutrix met the accused in his College on 08.10.2012 and thereafter report was filed before the police on 13.10.2012. He submits that in the facts and circumstances, there is no delay in lodging the FIR.

(b) It is the submission of the State that P.W.1 has entirely supported the prosecution case, which was also corroborated by P.W.2 and P.W.3. P.W.3 is one of the friends, who was present at the time of alleged incident. He further submits that P.W.7 is the grand-mother of P.W.1 who also supports the prosecution case.

(c) Learned Assistant Public Prosecutor finally submits that there may have some contradictions, but the same contradictions are not fatal to the prosecutrix case. He further submits that the medical report and the statement of Doctor including medical reports suggest that chance of sexual intercourse may not be ruled out. Thus, the evidence proving the guilt of the petitioner under section 376 IPC has been properly placed on record. The learned trial Court has properly scanned the issue and has passed the order of conviction.

(d) Learned Assistant Public Prosecutor further submits that it would be proved by the learned Court below that the prosecutrix was aged 16 to 17 years at the time of alleged offence. Thus, such offence was committed by the accused by taking the consent of prosecutrix, who was aged about 16 to 17 years at the time of alleged incident. Thus, the consent of the prosecutrix

cannot be said to be voluntary one. It has been specifically proved that unless there is a promise of marriage, the prosecutrix should not have allowed the accused to commit such offence. He further pointed out that the issue was specifically clarified by the Appellate Court in its judgment and it is the specific observation of the Court in Para No.33 that the consent of prosecutrix under the age of 18 years is no consent. He further submits that the observations of the Hon'ble Supreme Court are on different facts and circumstances, so they are not applicable to the present case. Both the learned Courts below has decided the issue, there is no perversity. Hence, the order of conviction is maintainable. He further submits that the relationship between the petitioner and P.W.1 has been proved by the prosecution by collection of call details from the Company concerned which proved that the petitioner as well as prosecutrix has long conversation through phone.

Observation of this Court:

5. Perused the entire case as well as the evidence recorded by the learned trial Court.
6. In this case, charges were framed against the petitioner under Section 376 IPC for the commission of offence defined under Section 375 IPC. The definition of 'rape' was clarified in Section 375 IPC under seven descriptions.
7. The prosecution case, as narrated against the present petitioner, is that the accused had love affair with P.W.1 and by influence of such love affair, P.W.1 allowed the accused to come near her. Thereafter the accused with a

pretext of marriage has enjoyed sex with P.W.1 which would not have been done if there is no assurance of marriage by the accused.

8. Explanation 6 of Section 375 IPC has stated if sexual intercourse has done with or without her consent, when she is under 18 years of age that constitutes the offence of rape.

9. In this particular case, the defence has totally denied the relationship as well as the alleged incident. Having decided the entire issue altogether as well as the observation of the learned trial Court and learned Appellate Court, it appears that if we decide the report of P.W.1, it discloses that the first incident happened on 29.01.2012 when admittedly the prosecutrix was under the age of 18 years. The call details report which proved and exhibited, sufficiently shows the fact that there is relationship between the prosecutrix and the accused and they talked each other for more than one times. It is true that the written complaint disclose that at the time of alleged incident, P.W.4 has witnessed that the accused has jumped over the wall and fled away but he declared hostile. Moreover, P.W.7 who is grand-mother of P.W.1 has also seen the incident on 29.01.2012, but during trial P.W.7 has stated the fact otherwise. If we omit the contradictions of P.W.7 which is relevant fact that P.W.7 was aware about the said incident dated 29.01.2012 on the date itself, when there exist a long-standing dispute between the two families, why such incident was not reported to the police. At this juncture, the learned Assistant Public Prosecutor tried to convince this Court that the prestige of a woman in

the society is a paramount factor which must have played a role, not to report the matter to the police at that time.

10. Furthermore, it appears that last incident of sexual intercourse happened in the month of June, 2012, but it was reported to the police on 13.10.2012. The medical evidence regarding examination of prosecutrix by the Doctors and the forensic expert's report after so much delay of the alleged incident will not be sufficient to prove the offence. In overall view, it has to be looked into whether the observation of the learned trial Court as well as the learned Appellate Court is justified in the facts and circumstances of this case. Truly, there are some contradictions in the case of the prosecution but it has been specifically proved that there is relationship between the petitioner and the prosecutrix. There is love relationship between the petitioner and the prosecutrix which sufficiently proved by the call details report. P.W.3 was present at the time of alleged incident. P.W.1 has stated the first incident. Though the medical report does not prove anything, the evidence of P.W.1 and P.W.3 cannot rule out entirely.

11. In considering the judgment of the Hon'ble Apex Court in **Pramod Suryabhan Pawar's case (supra)** the Hon'ble Supreme Court is of the view that when there are two major persons admittedly entered into consensual relationship including sexual intercourse of each other for a long time that cannot be termed or defined as rape under Section 375 IPC.

12. In **Lankapalli Venkateswarlu's case (supra)**, the Hon'ble Supreme Court has decided the issue that if there is no medical evidence, the allegation made by the prosecutrix cannot be said to be proved.

13. Moreover, the issue of sexual intercourse with a woman with a pretext of marriage was essentially clarified by the Hon'ble Supreme Court in **Amar Singh Rajput vs. State of Madhya Pradesh** (Misc. Criminal Case No.46602 of 2022) wherein the Hon'ble Supreme Court has decided the issue whether sexual intercourse on the pretext of marriage vitiates consent of a woman on misconception of facts. The Hon'ble Supreme Court has held as under:

"16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman Under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed: (SCC pp.682-84, paras 21 & 24)

21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the Accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the Accused, and not solely on account of misrepresentation made to her by the Accused, or where an Accused on account of

circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the Accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 Indian Penal Code cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the Accused had never really intended to marry her.

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 Hon'ble Apex Court in the case of Dr. Dhruvaram Murlidhar Sonar Vs. Naval Singh Rajput and others reported in 2019 (3) MPLJ (Cri.) SC 52 has held as under:-

"20. Thus, there is a clear distinction between rape and consensual sex. The Court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a

false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the Indian Penal Code.

On going through the law laid down by the Hon'ble Apex Court it is evident that there is a distinction between "mere breach of promise" and "giving a false promise to marry". Only a false promise to marry made with an intention to deceive a woman would vitiate the woman's consent being obtained under misconception of fact, but mere breach of promise cannot be said to be a false promise. In the present case at hand, the complainant-prosecutrix was in physical relationship with petitioner for a long period. She herself went with the petitioner to a house in Seondha. Thus, it cannot be said that her consent was obtained by misconception of fact. At the most, it can be said to be a breach of promise to marry. Near about more than one year time is sufficient time for a prudent woman to realize as to whether the promise of marriage made by the petitioner is false from its very inception or there is a possibility of breach of promise. When the petitioner was not acceding to her request for marriage, then why she continued with relationship with him till lodging of the FIR. Thus, it is clear that at the most, it can be said that it is a case of breach of promise and, therefore, it cannot be said that the promise made by the petitioner was obtained under fear or misconception of fact.

Under these circumstances, the prosecution of the petitioner for offence under Sections 376(2)(N, 506 and 34 of IPC would be nothing but abuse of process of law and, therefore, FIR crime No. 164/2021 registered at police Station Seondha, Distt. Datia for the offence punishable under Sections 376(2) (N, 506 and 34 of IPC and its subsequent criminal proceedings in the form of charge-sheet are quashed against the petitioner Petition stands allowed”

14. In the case before the Hon’ble Appellate court in **Amar Singh Rajput** case (supra), it was evident that there are relationship and sexual intercourse between the two major persons. Later though they are ready to marry each other, but the accused could not keep the promise on different circumstances. It has been pleaded before the Hon’ble Supreme Court that the consent of a lady should not be had if such promise would not there. At that time, the Hon’ble Apex Court has decided whether this promise or the consent of the lady is under misconception of facts.

15. In this particular case, the law laid down by the Hon’ble Apex Court in **Amar Singh Rajput’s** case (supra) is also not applicable as the prosecutrix was below the age of 18 years at the time of alleged incident.

16. The petitioner has categorically argued that the facts as stated in the prosecution case regarding sexual intercourse by the petitioner with the prosecutrix was not at all proved and totally denied, but in the attendant facts and circumstances to allow such submissions or to accept such submissions, the evidence of P.W.1 and P.W.3 has to be ruled out properly. In a case under Section 376 IPC evidence of prosecutrix may be considered to be sufficient to

record conviction if it otherwise reliable. In this case, evidence of P.W.1 appears to be convincing.

17. In the present facts and circumstances of the case, though there are some contradictions and omissions in the evidence of P.Ws.1, 3 and 7 such omissions are not fatal to the prosecution case. The learned trial Court as well as learned Appellate Court specifically narrated regarding commission of the offence and its implication upon the prosecutrix of aged under 18 years and her consent thereof and I find no justification to interfere with the order of conviction and sentence passed by the learned trial Court, confirmed by the learned Appellate Court. I find no merits in the revision case.

17. Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

SUBHENDU SAMANTA, J

Date: 01.05.2026

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THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 454/2017

Date: 01.05.2026
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