

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLA No.154 of 2025**

(In the matter of an application under Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 374(2) of Criminal Procedure Code, 1973).

Mana Challan ***Appellant (s)***

-versus-

State of Odisha ***Respondent (s)***

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. PVS Nanaji Achary, Adv.*

For Respondent (s) : *Ms. Sarita Moharana, ASC*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-20.02.2026

DATE OF JUDGMENT:-27.02.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Appellant has filed the instant Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973/ Section 415(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking the appellate jurisdiction of this Court. The appeal is preferred against the Judgment dated 08.08.2024 passed by the learned Ad hoc Additional District and Sessions Judge (Fast Track), Special Court, Jeypore, in connection with T.R. Case No. 146 of 2017 arising out of Jeypore Mahila P.S. Case No. 56 of 2016, whereby the appellant was convicted for the offences under Section 376(2)(n) of Indian Penal Code and was



sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,000/- and in default of payment of fine undergo rigorous imprisonment for two months.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) The informant, being the mother of the victim, lodged a written report before the Inspector-in-charge of Jeypore Mahila P.S., on the basis of which a case registered under Section 376(2)(n), 506,34,109 of IPC read with Section 6 of the POCSO Act.
- (ii) The Appellant and Victim belong to the same village and were well acquainted with each other prior to the alleged occurrence. It is the prosecution case that in the month of Magha, 2016, during the night hours, the Appellant came to the house of the Victim, induced and seduced her on the promise of marriage, and on such assurance, established sexual intercourse with her.
- (iii) It is further alleged that the Appellant continued the physical relationship for a considerable period of time, as a result of which the victim became pregnant. The informant, upon noticing the physical symptoms indicative of pregnancy, being questioned the victim, whereupon she discloses the entire incident and attributed the same to the Appellant.
- (iv) Thereupon, the Victim was taken to the hospital for medical care and on 03.01.2016 she delivered a female child. Subsequently, on 07.11.2016, a village meeting was convened in which the family



members of the Appellant were present. It is alleged that during the said meeting, the family members of the Appellant refused to accept the victim and the child, and further demanded a sum of Rs 3000/- from the informant for not disclosing the incident to them.

- (v) Thereafter, the I.O. conducted a detailed investigation into the matter and submitted the chargesheet before the competent Court. Upon perusal of the materials, the learned Trial Court took cognizance of the offence and the trial commenced. After due consideration of the evidence, the Appellant was found guilty of committing the offence under Section 376(2)(n) of IPC and was convicted to undergo rigorous imprisonment of 10 years and to pay a fine of Rs 5000/- and in default of payment of the fine, to undergo rigorous imprisonment for a further period of two months.

Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by way of the present criminal appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

3. The learned counsel for the Appellant respectfully and earnestly made the following submissions in support of his contentions:
- (i) The Appellant contends that the judgment of conviction and the order of sentence passed by the learned Ad-Hoc Additional District and Sessions Judge, Jeypore, in T.R. No. 146 of 2017, whereby the appellant has been convicted and sentenced to



undergo rigorous imprisonment along with imposition of fine, is wholly erroneous, contrary to law, and unsustainable on the facts of the case. The Appellant submits that the said judgment and order are liable to be set aside in the inherent of justice.

- (ii) The Appellant further submits that the learned Trial Court has failed to properly appreciate the materials and evidences available on record and, as a consequence, erroneously recorded the conviction. It is contended that the learned Court below did not apply the cardinal principles of criminal jurisprudence and the settled principles governing appreciation of evidence, resulting in a judgment that is legally unsustainable and liable to be set aside.
- (iii) The Appellant contends that the informant (P.W.1), who is the mother of the victim, has admitted in her deposition that she was unaware of the contents of the F.I.R., and that the report was prepared by an Advocate. The Appellant submits that such admission casts serious doubt on the veracity and authenticity of the prosecution case.
- (iv) The Appellant further contends that the learned Trial Court acquitted him of the allegation under POCSO Act and convicted the accused under Section 376(2)(n) of IPC. It is submitted that, as per the ossification test, the victim was a major at the time of the alleged incident, which led to his acquittal under Section 6 of the POCSO Act, and consequently, the conviction under Section 376(2)(n) IPC is liable to be reconsidered.



- (v) The Appellant further submits that the learned Trial Court ought to have considered that no stage during the alleged relationship was any force applied upon the victim. It is contended that the relationship between the Appellant and the victim was entirely consensual, and, as such, the provision of Section 376 of IPC are not attracted.
- (vi) The Appellant contends that the P.W.2, the Victim, has admitted in her deposition that the Appellant maintained a physical relationship with her for over a prolonged period on the assurance of marriage. It is further submitted that the victim herself admitted that she did not disclose her pregnancy to her mother and only informed her after a period of six months. The Appellant submits that such admission indicate concealment on part of the victim and cast doubt on the prosecution narrative.
- (vii) The Appellant submits that he and the Victim were involved in a love relationship of wholly consensual nature. It is further contended that the Appellant never disputed the paternity of the child during the course of the trial, which remains undisputed, thereby underscoring the consensual character of the relationship.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

- 4. *Per contra*, the learned counsel for the Respondent earnestly made the submission that the present CRLA deserves to be rejected in limine.
 - (i) The Respondent submits that, the learned Trial Court, upon proper appreciation of the oral and documentary evidence



available on record, has rightly passed the impugned judgment of conviction and order of sentence against the Appellant. The findings recorded by the learned Trial Court are well-reasoned, based on cogent and credible evidence. Therefore, it is humbly prayed that the judgment of conviction and sentence passed by the learned Trial Court be upheld and the appeal preferred by the Appellant be dismissed.

- (ii) It is vehemently contented on behalf of the Respondent that the prosecution has successfully established the commission of the offence under Section 376(2)(n) of IPC by adducing cogent and reliable evidences, proving the case beyond all reasonable doubts.
- (iii) It is further submitted that the testimony of the victim, is in itself, sufficient to sustain the conviction. The same stands duly corroborated by the evidence of other prosecution witnesses as well as the surrounding circumstances brought on record. Hence, the learned Trial Court has rightly arrived at the conclusion that the Appellant had committed the offence as alleged.
- (iv) The Respondent submits that the informant being a widow, had gone to her native village and remained there for a period of seven months. Upon her return, she observed that the victim's menstruation had ceased. Concerned about the situation, she took the victim to a medical practitioner at Kotpad, who, upon examination, opined that the victim was pregnant.



- (v) The Respondent further submits that, upon being questioned by the informant, the victim disclosed the occurrence and stated that the Appellant had been frequently visiting her residence and had maintained a physical relationship with her under the pretext of marrying her.
- (vi) Thereafter, the informed organized a village meeting to seek a resolution of the matter, in which the accused and his family were present. It is submitted that the accused and his family refused to acknowledge the parentage of the child born to the victim, and notwithstanding such denial, the victim proceeded to give birth to the child.
- (vii) The Respondent submits that when the Appellant refused to agree to a resolution at the village meeting, the Informant lodged a report at the P.S. Subsequent investigation was conducted, a chargesheet was filed, and cognizance was taken by the learned Court. Upon conclusion of the trial, the Appellant was found guilty of the offence under Section 376(2)(n) IPC.

IV. FINDINGS OF THE AD HOC ADDITIONAL DISTRICT AND SESSIONS JUDGE (FAST TRACK SPECIAL COURT), JEYPORE:

- 5. The learned Trial Court framed charges under Sections 376(2)(i), 376(2)(n), 506 of the Indian Penal Code r/w Section 6 of the POCSO Act. The allegations in the chargesheet were that the accused had repeatedly committed rape upon a minor victim, who was under 16 years of age, against her will and without her consent; had committed criminal intimidation by threatening the victim with injury to her



person with intent to cause alarm to her; and had sexually assaulted the minor victim repeatedly.

6. Upon conclusion of the trial and a careful appraisal of the evidence on record, this Court notes that the accused was convicted under Section 376(2)(n) of IPC. The conviction is premised, inter alia, on the ossification test, which established that the victim was a major at the relevant time. Consequently, the provisions of POCSO Act, 2012 were not attracted, and the conviction under Section 376(2)(n) alone was upheld.
7. Upon appreciation of the oral and documentary evidence available on record, the learned Trial Court held that sufficient materials were available to substantiate the charges framed against the accused. On a careful evaluation of the testimonies of the victim, the medical officers and the Investigating Officers, the learned Trial Court arrived at the conclusions that the accused has committed rape with impression to her to marry her. Accordingly, the Trial Court held that the charges under Section 376(2)(n) of IPC as well as Section 8 of POCSO Act stood proved.
8. On the basis of the aforesaid findings, the learned Trial Court concluded that the prosecution had successfully established the offence under Section 376(2)(n) IPC. Consequently, the accused was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs 5,000/- in default whereof he shall undergo rigorous imprisonment for a period of two months.



V. COURT'S REASONING AND ANALYSIS:

9. Upon bestowing anxious and thoughtful consideration to the rival submissions advanced at the Bar, and upon an independent and comprehensive reappraisal of the entire evidentiary record, this Court finds that the learned Trial Court has meticulously analyzed the oral and documentary evidence on record in its correct perspective and in consonance with the settled principles of criminal jurisprudence.
10. The impugned judgment reflects a judicious, well-reasoned and legally sustainable appreciation of evidence. The conclusions arrived at by the learned Trial Court are founded upon cogent, reliable and legally admissible evidence and are supported by proper reasoning. This Court does not find any perversity, patent illegality or manifest error of law in findings so recorded. Accordingly, the findings of conviction do not warrant interference by this Court in exercise of its appellate jurisdiction.
11. The legal position governing determination of age is well crystallized in *Jarnail Singh v. State of Haryana*¹, the Supreme Court has held that the date of birth entered in school records carries a presumption of correctness and must be accepted unless convincingly rebutted. This position was reiterated in *Mahadeo v. State of Maharashtra*², wherein the Court held that documentary evidence regarding age prevails over medical opinion in case of variance. This Court, upon independent scrutiny of the said materials, find no infirmity in the reliance so

¹ (2013) 7 SCC 263

² (2013) 14 SCC 637



placed by the learned Trial Court, and the conclusion regarding the minority of the victim does not suffer any legal or factual error.

12. In the instant case, the question of the age of the victim at the time of the alleged occurrence assumes critical significance. It is noted that the victim did not fall within the definition of "child" as provided under Section 2(d) of the POCSO Act, 2012. In view of the dispute regarding her age, an ossification test was conducted, which indicated that the victim's age at the relevant time between 18 to 20 years. Consequently, the victim cannot be classified as a "child" under the POCSO Act.
13. It is further observed that Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides the procedural mechanism to be followed in cases of dispute regarding age, wherein ossification or other scientific tests may be employed to determine the age of the person when other reliable materials for verification are not available. The provisions of Section 94 are thus applicable to ascertain the age of the victim in the present case for the purpose of applicability of the POCSO Act.
14. **Section 376(2)(n)** of IPC prescribes enhanced punishment in cases *where rape is committed repeatedly upon the same woman. The provision mandates rigorous imprisonment for a term not less than ten years, which may extend to the remainder of the offender's natural life.* The object of this provision is to address aggravated instances of sexual assault, where the offence is not a single confined to a single act but occurs repeatedly on the same victim. The expression "repeatedly" employed in the provision is of significance. It contemplates more than one act of



sexual assault, committed at different points in time on the same victim. Judicial pronouncements have consistently interpreted this expression to connote a series of acts that are separate and independent in nature, and not merely a continuation of a single transaction.

15. In genuine cases under Section 376(2)(n) of IPC, the pattern is usually manifest; an initial act of sexual assault is perpetrated, followed by multiple subsequent acts effected through fear, coercion, deception, or other means which render the victim vulnerable and unable to escape the perpetrator. The provision thus seeks to punish repeated violations of bodily integrity and sexual autonomy of a woman in an aggravated form.
16. It is well settled that Courts must exercise extreme care and caution in adjudicating cases arising under Section 376(2)(n) of IPC. In such cases, it is imperative to identify the essential ingredients of the offence, which include, inter alia, that the accused made a promise of marriage to the victim solely with a view to obtain her consent of sexual intercourse, without any intention of fulfilling such promise from the very outset. Further, it must be established that the false promise of marriage had a direct and proximate bearing on the victim's consent to engage in sexual relations. The Courts are enjoined to scrutinize the evidence meticulously to ensure that the prosecution proves beyond reasonable doubt that the accused exploited the victim's trust through deliberate deception, thereby bringing the case squarely within the ambit of Section 376(2)(n) IPC.



17. In the case of rape committed under the false pretext of marriage, the essential contention is that the consent given by the woman was induced by a misconception of fact, namely, the representation that the accused would solemnize marriage with her. Such consent, being founded on a deliberate misrepresentation, cannot be regarded as free and voluntary within the meaning of Section 90 of IPC. Consequently, when sexual intercourse is obtained by deliberately misleading the victim into believing that a lawful marriage would ensue, the same constitutes rape, as the consent so procured is vitiated by fraud and deception. The Courts have consistently held that the exploitation of such trust and reliance falls squarely within the ambit of criminal liability under penal code.
18. The provision **Section 90 of IPC** deals with legal concept of consent obtained under fear or misconception of fact, it provides that:

“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 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....”.

Consequently, where a woman does not give consent freely and voluntarily to the sexual acts contemplated under Section 376(2)(n) IPC, but consents under a misconception of fact, the consent is vitiated in law. The provision clarifies that consent obtained by deliberate misrepresentation or fraud is not true consent in the eyes of law, and sexual intercourse in such circumstances constitutes the offence of



rape. Section 90 IPC, therefore, embodies the principle that consent must be real, informed, and free from any inducement founded on fear, coercion, or deception.

19. In the context of Section 376(2)(n) IPC, the concept of “consent” must necessarily must involve an active, informed and reasonable deliberation by the woman with respect to the proposed act. The question that arises is whether such consent was vitiated by a “misconception of fact”, for instance, arising from a false promise of marriage. In the present case, the primary contention advanced by the prosecutrix is that the Appellant engaged in sexual intercourse with her on the assurance and false promise of marrying her. In view of this, her consent, being premised upon a material misconception of fact induced by the Appellant, is vitiated in law. The law is well settled that consent obtained under fraudulent misrepresentation cannot be regarded as free and voluntary, and sexual intercourse procured under such circumstances constitutes rape within the meaning of Section 376(2)(n) IPC.
20. The Supreme Court has echoed on the similar contention in the *Uday v. State of Karnataka*,³, wherein it has been held that:

“25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in

³ (2003) 4 SCC 46



consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant."

21. In the present case, the evidence on record demonstrates that the Appellant, by giving false assurance of marriage, maintained a physical relationship with the victim and committed sexual acts repeatedly, ultimately resulting in her pregnancy and the birth of a child. The fraudulent promise of marriage, being deliberately calculated to deceive the victim and obtain her consent, directly vitiated her free consent. The acts of the Appellant, therefore, squarely fall within the ambit of the offences punishable under Section 376(2)(n) IPC, as the sexual intercourse was procured by deliberate deception and misrepresentation.
22. The question of delay in lodging the F.I.R. warrants careful scrutiny. In the present case, there is no substantial delay attributable to the informant. It is evident from the record that the informant, being the mother of the victim, was not present at home at the time of the alleged occurrence and had returned only after a period of seven months, during which the victim was left alone at home. Upon her return, the informant observing the victim's pregnancy and the delay in her menstrual cycle, made inquiries, whereupon the victim disclosed the incident. the Court further notes that in cases of sexual assault, it is not uncommon for victims to delay disclosure due to social stigma, fear, or trauma. The initial nondisclosure by the victim,



under such circumstances, does not detract from the credibility of her testimony or the veracity of the prosecution case.

23. The inherent bashfulness of females and tendency to conceal outrage of sexual aggression are the factors, which the Court cannot overlook. The testimony of the victim in such cases is vital. Unless and until it is shown that there are compelling reasons, which necessitate corroboration of testimony, the testimony of the victim can be relied upon to base the conviction. Moreover, it has also been recorded that Appellant had extended threats to kill her if she confined the matter to anyone and upon which also his family wanted to give Rs 3000/- to settle the matter.
24. The Supreme Court also relied upon to reiterate in *Satpal Singh V. State of Haryana*,⁴, wherein it has been held that:

"13. In a rape case the prosecutrix remains worried about her future. She remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of society's attitude towards such a woman. It casts doubts and shame upon her rather than comfort and sympathise with her. Family remains concern about the its honour and reputation of the prosecutrix. After only having a cool thought it is possible for the family to lodge a complaint in sexual offences."

25. The victim in the present case was utterly helpless. One can well envisages the immense pain, and trauma endured by her in the aftermath of the Appellant's reprehensible acts. She must have

⁴ (2003) 4 SCC 46



suffered the shock of her life on account of such an outrageous violation of her bodily integrity and personal dignity. It is further will recognized that in cases of sexual assault, no self-respecting woman would voluntarily appear in Court to subject herself to the ordeal of recounting humiliating and degrading details of the offence committed upon her. The very act of testifying under such circumstances underscores the veracity of her allegations and the courage with which she has faced the traumatic experience.

26. The record further reveals that, being a single widow mother and without any external support, upheld the welfare of her daughter and ensured that the child was delivered safely, all the while relying upon the assurance of the Appellant that he would solemnize marriage with the victim. Thereafter, the informant brought the matter to the notice of the villagers, and a village meeting was convened, in which the family members of the Appellant were also present. During the said meeting, both the Appellant and his family categorically denied any obligation to accept the victim and the child.
27. Such a conduct on the part of the Appellant and his family inflicts irreparable harm upon the emotional and psychological well-being of the victim. It not only shatters her trust in humanity but also perpetuates a social milieu that demeans and dehumanizes women, undermining their dignity, autonomy, and sense of security. The adverse impact of such acts extends beyond the individual, striking at the very fabric of social morality and justice.



28. Upon an overall and cumulative evaluation of the oral and documentary evidence on record, this Court is satisfied that the prosecution has established, beyond all reasonable doubt, that the Appellant committed sexual assault upon the victim by inducing her with false promise of marriage. The prosecutrix's testimony is duly corroborated by her prompt disclosure to her mother, the attendant circumstances and other supporting evidence on record.
29. Nothing substantial has been elicited in the course of cross-examination so as to discredit her version or to create any reasonable doubt with regard to the veracity of the prosecution case. The evidence of the victim inspires full judicial confidence and is found to be wholly trustworthy. In view of the above, this Court holds that the essential ingredients of the offences charged have been duly proved against the Appellant, warranting affirmation of the finding of guilt.

VI. CONCLUSION:

30. In view of the foregoing analysis and upon an anxious and meticulous of the material facts and circumstances of the case, this Court is of the considered and firm opinion that the judgment of conviction and order of sentence passed by the learned Ad hoc Additional District and Sessions Judge (First Track Special Court), Jeypore, in T.R. No.146 of 2017, do not suffer from any illegality, infirmity or perversity warranting interference by this Court.
31. The findings recorded by the learned Trial Court are based upon a proper appreciation of the evidence on record and are well supported by the cogent and convincing reasons. Accordingly, the present



Criminal Appeal, being devoid of merit, stands dismissed. The judgment of conviction and order of sentence passed by the learned Trial Court are hereby affirmed. Consequently, this Court is not inclined to accede to the relief prayed for by the Appellant.

32. Accordingly, the CRLA stands **dismissed**.
33. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 27th February, 2026/*