

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLA No.1130 of 2024**

(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).

Anand Kumar Samal *Appellant (s)*

-versus-

State of Odisha *Respondent (s)*

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. Surya Prasad Mishra, Sr. Adv.*
Along with
Mr. Ranjan Kumar Rout, Adv.

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

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-19.02.2026

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 30.10.2024 passed by the learned Ad Hoc Additional District and Sessions Judge (FTSC), Sambalpur in S.T. Case No.212 of 2023, arising out of Sambalpur P.S. Case No.42 of 2021, whereby the appellant was convicted for the offences under Section 376 of Indian



Penal Code and was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs 25,000/- and in default of payment of fine undergo rigorous imprisonment for six months and further sentenced under Section 306 of IPC to undergo rigorous imprisonment for 7 years and to pay fine of Rs 25,000/- in default to undergo rigorous imprisonment of six months.

I. FACTUAL MATRIX OF THE CASE:

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

- (i) On 16.11.2021, the informant, who is the brother of the deceased, submitted a written report before the inspector-in-charge of Charmal Police Station stating that his deceased sister had been residing in the house of the accused, situated behind Maheswari Medical, Rairakhol.
- (ii) At the relevant time, the accused was associated with the Aam Aadmi Party as a political leader and was practicing as an Advocate by profession. Owing to his acquaintance with the informant's cousin brother, Himanshu, he used to visit their house at intervals and, in that process, developed close intimacy with the family.
- (iii) In course of his visits, the accused persuaded the informant and their father to allow the deceased sister to stay at his house for the purpose of undergoing a computer course, assuring them that he would subsequently arrange employment for her. At that time, the deceased had completed her +2 course and was remaining at home without any engagement.



- (iv) Owing to such persuasion by the accused, the informant's father and cousin brother left the deceased at his house. During her stay there, she completed the computer course. Thereafter, she was engaged in Trilochan Netralaya, Sambalpur and accordingly stayed at Sambalpur for the purpose of attending the job.
- (v) The wife of the accused, who was working as a reporter, used to remain away from the house at Rairakhol in connection with her professional duties. Taking advantage of her absence, the accused allegedly called the informant's sister to his house and forcibly established physical relations with her on the assurance that he would marry her in future, stating that his wife was issueless. He is further alleged to have instructed her not to disclose the said affairs to anyone.
- (vi) On the alleged false assurance of marriage, the accused continued to call the deceased to his house and maintained physical relations with her. Subsequently, on 08.10.2021, when the deceased insisted that the accused marry her in terms of his earlier assurance, he neither responded to her phone calls nor met her thereafter. It is further alleged that the accused threatened to kill her, asserting his influence and authority as a political leader and an advocate.
- (vii) On 13.11.2021, the deceased went to the railway track at Rairakhol and informed the informant over phone that she was intending to commit suicide by jumping before a running train.



She requested him to reach the spot immediately and to collect her bag, which allegedly contained a suicide note. Despite the informant's advice dissuading her from taking such step, the deceased is stated to have jumped onto the railway track in front of a running train. It is alleged that the Appellant is solely responsible for the incident.

- (viii) Upon receipt of the information, the G.R.P.S, Sambalpur registered UD Case No. 41 of 2021, seized the mobile phone of the deceased and the suicide note, conducted inquest over the dead body, and after post-mortem examination, handed over the body to the family for funeral rites. After completion of the funeral, the informant reported the matter before the Charmal Police Station, where Charmel P.S. Case No. 157 of 2021 was registered under Section 376, 506 and 306 of IPC. Subsequently, the said case was transferred to G.R.P.S., Sambalpur and renumbered as G.R.P.S. Case No. 42 of 2021.
- (ix) The I.O. conducted the investigation, examined and recorded the statement of 18 witnesses, seized the documents, and upon completion of investigation, submitted charge sheet on 29.07.2023 before the learned SDJM, Sadar, Sambalpur. Charges were subsequently framed and judgment was passed on 30.10.2024 by the learned Ad-Hoc Addl. District & Sessions Judge (FTSC), Sambalpur convicting the Appellant under Sections 376 and 306 of IPC.



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 submits that the judgment of conviction and order of sentence passed by the learned Additional District and Sessions Judge, Sambalpur, passed in S.T. No. 212 of 2023 arising out of P.S. Case No. 42 of 2021, whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment along with imposition of fine, is wholly erroneous, unsustainable both on facts and in law, and is liable to be set aside.
 - (ii) The Appellant further submits that the learned Trial Court has failed to properly appreciate the materials and evidences available on record and has erroneously recorded the order of conviction. It is submitted that the learned Court below has not applied the cardinal principles of criminal jurisprudence and the settled principles governing appreciation of evidence, thereby rendering the impugned judgment is legally unsustainable.
 - (iii) The Appellant contends that the deceased committed suicide at Rairakhol and was residing at Sambalpur in connection with her employment. However, the case was registered neither at the place of occurrence, i.e. Rairakhol, nor at a place where she was



staying for her job at Sambalpur. Instead the F.I.R was lodged at Charmal P.S. being the place of her permanent residence.

- (iv) The Appellant further contends that the learned Trial Court misread and misinterpreted the essential ingredients of Section 376 of IPC. It is submitted that the prosecution has miserably failed to establish the charge against the accused. In particular, in the deposition of P.W.2, there is no specific allegation that the accused had sexual intercourse with the victim forcibly or without her consent.
- (v) The Appellant submits that the learned Trial Court, while passing the judgment heavily relied upon the suicide note marked as Exhibit-6. It is contended that a plain reading of the said note indicates that the victim was fully aware of the marital status of the Appellant, thereby suggesting that the physical relationship was maintained without any compulsion, force or inducement by way of a promise to marriage.
- (vi) The Appellant further submits that the conviction under Section 306 of IPC is the result of erroneous appreciation of both evidence and law. It is contended that there is no suggestion, much less of any cogent evidence from any witnesses, that the Appellant has ever instigated or compelled, or made any such statement to the victim prompting her to commit suicide.
- (vii) The Appellant contends that the deceased, with an ulterior motive to continue a relationship with him, persistently sought to maintain contact, and that he had discontinued all modes of



communication with her much prior to the alleged incident of suicide. It is submitted that such cessation of communication is an admitted fact on record.

(viii) The Appellant further contends that the I.O. failed to conduct a fair and complete investigation, inasmuch as he did not verify the attendance register of the victim at her workplace, nor did he examine her roommates, who being close associates, were in a position to depose regarding her mental state and personal affairs. On these grounds, it is submitted that the conviction recorded by the learned Ad-Hoc Additional District and Sessions Judge, Sambalpur is unsustainable in law and liable to be set aside.

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. It is, therefore, 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 and 306 of IPC by adducing cogent and reliable evidences, proving the case beyond all reasonable doubts.
- (iii) It is further submitted that the consent obtained by misrepresentation of fact or under a false promise of marriage does not amount to valid consent in view of Section 90 IPC. In the present case, it is contended that the victim engaged into a sexual relations with the Appellant solely on the basis of his false promise to marry her, and therefore, such consent is vitiated in law.
- (iv) The Respondent submits that the suicide note partakes the character of a dying declaration within the meaning of Section 32 of the Indian Evidence Act, and is therefore admissible in evidence. It is further contended that the informant is the sole witness who has deposed to the material circumstances relating to the commission of suicide by the deceased.
- (v) The Respondent further submits that the Appellant had abetted the commission of suicide by the deceased, and that the suicide note authorized by her, duly corroborated by the testimony of the informant, clearly establishes the ingredients of the offence under Section 306 of IPC. It is accordingly contended that the conviction under the said provision is legally sustainable.



(vi) It is contended by the Respondent that the present criminal appeal is devoid of merit, both on facts and in law, and is therefore liable to be dismissed in limine.

IV. FINDINGS OF THE AD HOC ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTSC), SAMBALPUR:

5. The learned Trial Court framed charges under Sections 376, 506 and 306 of the Indian Penal Code on the allegation that he had committed rape on the victim and had abetted her to commit suicide. Upon conclusion of the trial, the accused was convicted under Section 376 and 306 of IPC; however, no case was found to have been made out under Section 506 of IPC.
6. Upon appreciation of the oral and documentary evidence 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 prosecution witnesses, including the victim, the medical officers and the Investigating Officers, the learned Trial Court arrived at the conclusions that the accused has committed rape upon the victim on the pretext of marrying her. Accordingly, the Trial Court held that the charges under Section 376 of IPC stood proved against the accused.
7. In order to bring home the charge under Section 306 of IPC, the prosecution has relied upon the suicide note, which has been duly corroborated by the testimony of P.W.2 i.e, the Informant in the present case. It is submitted that the materials on record establish that the accused had abetted the victim to commit suicide. Accordingly, it



is contended that the prosecution has successfully proved the charge under Section 306 of IPC against the accused.

8. On the basis of the aforesaid findings, the learned Trial Court concluded that the prosecution had successfully established the offence under Section 376 IPC. Consequently, the accused was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs 25,000/- in default whereof he shall undergo rigorous imprisonment for a period of six months. And also convicted under Section 306 IPC, where sentenced to undergo rigorous imprisonment of 7 years and pay fine of Rs 25,000/- in default whereof shall undergo rigorous imprisonment for a period of six months.

V. COURT'S REASONING AND ANALYSIS:

9. This Court has heard the learned counsel appearing for the Appellant and the learned counsel for the State at considerable length. The records of the learned Trial Court, including the depositions of the prosecution witnesses, documentary evidence, and the impugned judgment of conviction and order of sentence, have been carefully perused. The principal question that arises for consideration in the present appeal is whether the prosecution has been able to establish, beyond reasonable doubt, that the Appellant committed the offences punishable under Sections 376 and 306 of the Indian Penal Code, and whether the findings recorded by the learned Trial Court suffer from any perversity, misappreciation of evidence, or error of law



warranting interference by this Court in exercise of its appellate jurisdiction under Section 374(2) of the Code of Criminal Procedure.

10. Before examining the rival contentions advanced by the parties, it would be apposite to re-appreciate the evidence on record in the light of the settled principles governing criminal trials, bearing in mind that the burden always lies upon the prosecution to prove the guilt of the accused beyond all reasonable doubt, and that any reasonable doubt arising from the evidence must necessarily operate in favour of the accused.
11. 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.
12. 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 375 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. The victim gave herself the consent to the sexual activity on the assurance that the accused would accept her forever and had said to marry her.

13. In the present case, the evidence on record indicates that the victim entered into sexual relations with the Appellant on assurance of marriage extended by him. If such promise is found to have been false from its very inception and made solely with the intent to induce the victim to submit to a physical relationship, the same would constitute a misconception of fact within the meaning of Section 90 of IPC. Consent obtained under such misconception cannot be regarded as free and voluntary consent in the eyes of law. Consequently, sexual intercourse founded upon a false promise to marriage, made without any intention of being fulfilled at the time of its making, would vitiate



the const and fall within the ambit of the offence punishable under Section 376 IPC.

14. It further transpires from the materials on record that the Appellant had expressed his intention to keep the victim as his wife permanently, upon which representation the victim reposed trust and consented to sexual intercourse. The relationship therefore, appears to have been founded on faith and confidence induced by the assurance extended by the Appellant. In this context, reference may be made to Section 114A of the Indian Evidence Act, which embodies a statutory presumption as to absence of consent in certain prosecutions for rape, where the victim states that she did not consent. The burden, in such circumstances, shifts upon the accused to rebut the presumption. Hence, it would have been incumbent upon the accused to rebut the presumption. Hence, it would have been incumbent upon the Appellant to discharge the onus and establish, by cogent evidence, that the deceased was a consenting party and that such consent was free, voluntary, and untainted by misconception of fact.
15. This Court is also of considered view that the 'Suicide Note' left by the deceased partakes the character of a dying declaration within the meaning of Section 32(1) of the Indian Evidence Act. A statement made by a person as to the cause of his or her death, or as to any of the circumstances of the transaction which resulted in death, is rendered relevant and admissible under the said provision.
16. The evidentiary value of such a declaration is founded upon the well-recognized maxims "*Nemo moriturus praesumitur mentiri*" - A man



will not meet his maker with a lie in his mouth. In view of this settled principle, the suicide note, if found to be voluntary truthful and free from any suspicious circumstances, can form the basis of conviction, or at the very least, lend substantial corroboration to the prosecution case.

17. The Judicial committee of the Privy Council echoed a similar sentiment in the landmark decision of *Pakala Narayana Swami v. Emperor*¹, popularly referred to as the “Trunk Murder Case”, wherein the scope and ambit of dying declaration came to be authoritatively expounded. In the said judgment, the expression ‘circumstances of the transaction which resulted in his death’ has been eloquently explained. As per the facts of the said case, *the deceased had left his house to go to Berhampur. While leaving his house, he had told his wife that he was going to Pakala Narayana Swamy’s house in Berhampur to demand him to pay back the amount given by him. Later on his dead body was found in a trunk and his body had been cut into pieces. The question before the Privy Council was as to whether such a statement made by the deceased’s wife would really come within the purview of Section 32(1) of the Evidence Act.* In fact it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving his house to go to Berhampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore, the expression ‘*any of the circumstances of the transaction which resulted in his death*’ is necessarily wider in its interpretation than the expression ‘*the cause of his death*’.

¹ AIR 1939 PRIVY COUNCIL



18. In the case in hand, the Informant (P.W.2) is the sole witness who has deposed to the material circumstances immediately preceding the death of the deceased. His testimony discloses that the deceased had telephonically contacted him moments prior to the occurrence and narrated the incident, thereby forming part of the same transaction culminating in her death. It has further come on record that a suicide note was recovered from the bag of the deceased. The contents thereof reveal that when she pressed the Appellant to honour his assurance of marriage, he refused, and allegedly retorted that if she so desired, she might end her life. Such statement, read in conjunction with the surrounding circumstances, establishes a proximate nexus between the conduct of the Appellant and the act of suicide.
19. In these circumstances, the suicide note assumes the character of a dying declaration within the meaning of Section 32(1) of the Indian Evidence Act. There appears no reason to doubt its voluntariness or authenticity. Guided by the well settled principle that a person standing on the brink of death is not presumed to speak falsely, this Court is of the view that the said declaration carries substantial evidentiary value and lends credible support to the prosecution case.
20. In order to fastened criminal liability under Section 306 IPC, there must exist a clear and proximate casual link between the acts of the accused and the commission of suicide by the deceased. The prosecution is required to establish that the accused had committed an active, direct, or overt act of instigation, conspiracy, or intentional aid which left the deceased with no other option but to take the extreme



step. The element of mens rea assumes pivotal significance; the accused must be shown to have possessed the intention to provoke, incite, or encourage the commission of suicide.

21. In order to sustain the charges under Section 306 IPC, it is incumbent upon the prosecution to establish a positive act on the part of the accused amounting to instigation, conspiracy, or intentional aiding of the commission of suicide. The existence of such act must be demonstrated either by direct evidence or through compelling circumstantial evidence pointing unerringly towards the guilt of the accused. It must further be shown that the alleged act of instigation or incitement, whether direct or indirect, bears a proximate and live link with the suicide committed by the deceased. The conduct attributed to the accused should be remote, vague, or disconnected from the occurrence, but must be of such nature as would reasonably drive a person to take the extreme step.
22. Similar interpretation was reiterated by the Supreme Court in the *Gurcharan Singh v. State of Punjab*,², wherein it has been held that:

“21. It is thus manifest that the offence punishable is one of the abetment of the commission of the suicide by nay person, predicating existence of. Alive link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any these constitutes would mitigate against his indictment. Remoteness of the culpable acts or omissions rooted in the

² 2017 1 SCC 433



intention of the accused to actualize the suicide would fall short the punitive mandate of Section 306 IPC. Continuity, culpability and complicity of the indictable acts or omission and the concomitant indices of abetment. Section 306 IPC, thus criminalizes the sustained incitement for suicide ."

23. In the facts of the present case, it emerges that the deceased was emotionally involved with the Appellant and had entered into a physical relationship with him on repeated occasions under the belief and assurance that he would marry her. The subsequent refusal of the Appellant to honour his promise, coupled with the alleged betrayal, appears to have shattered the trust reposed in him by the deceased. The materials on record suggest that, having been sexually exploited under the assurance of marriage and thereafter abandoned, the deceased found herself in a state of acute distress. The evidence indicates that the extreme step was taken in consequence of such conduct on the part of the Appellant. Thus, the chain of circumstances establishes a proximate nexus between the acts of the Appellant and the commission of suicide by the deceased, thereby attracting the culpability contemplated under Section 306 IPC.
24. In the instant matter, the prosecution has, by leading cogent and convincing evidence, demonstrated the existence of an active and direct act on the part of the Appellant which had a proximate bearing on the decision of the deceased to take her own life. The chain of circumstances is fortified by the recovery and proof of the suicide note. The authenticity of the said suicide note has been duly established through the report of the handwriting expert, which



conclusively opines that the writing therein is that of the deceased herself. The expert opinion thus lends scientific corroboration to the prosecution case and dispels any doubt as to the genuineness of the document. In view of such unimpeached evidence, the suicide note assumes significant evidentiary value and clearly reflects the mental state of the deceased as well as the circumstances which impelled her to commit suicide, thereby substantiating the prosecution's case regarding the direct nexus between the conduct of the Appellant and the tragic incident.

25. This Court, upon a comprehensive evaluation of the oral and documentary evidence on record, is of the considered view that the Appellant has committed the offences alleged and has been rightly held guilty under Sections 376 and 306 of the IPC. The findings recorded by the learned Trial Court are borne out by the evidence and do not suffer from perversity or misapplication of law warranting interference. Any approach tending to dilute the rigour of these statutory provisions, particularly in cases involving sexual exploitation under false assurance and its tragic aftermath, would not only defeat the legislative intent but also erode public confidence in the administration of criminal justice. The rule of law mandates that culpability, once established beyond reasonable doubt, must attract its due penal consequences.

VI. CONCLUSION:

26. In view of the foregoing analysis and upon an anxious and careful consideration of the material facts and circumstances of the case, this



Court is of the considered opinion that judgment of conviction passed by the learned Ad hoc Additional District and Sessions judge (FTSC), Sambalpur , in S.T. Case No. 212 of 2024 arising out of Sambalpur P.S. Case No. 42 of 2021 does not suffer from any illegality, infirmity or perversity warranting interference by this Court. Consequently, this Court is not inclined to accede to the relief prayed for.

27. Accordingly, the CRLA stands **dismissed**.
28. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

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