

# LEGALFOXES LAW TIMES

## WHETHER SEXUAL INTERCOURSE BASED ON FALSE PROMISE TO MARRY IS RAPE OR NOT?

By Rukmani Sachdeva

Marriage is the starting or the initial point for starting the family and is a deep-rooted and enduring vow. It certainly gives an opportunity to grow in an altruistic and unselfish manner by serving the husband and children. Marriage is deeper and greater than a physical union; it is also divine, sacred and psychological union. This union reflects the union between God and His Temple.

Wedding is a legal and social sanctioned union commonly between male and female, which is regulated by laws, statutes, traditions, customs, and usages, which specifies the rights and duties of husband and wife.

Today, India is achieving significant and considerable heights, but issues of women's security is still a pertinent and applicable issue in our society. The number of wrongdoings against ladies is on an exponential ascent. One of the most widely recognized wrongdoings against women today is that of rape. Rape is defined under Section 375 of the Indian Penal Code<sup>1</sup> as an act of a man having a sexual intercourse with a woman without her consent and against her will or after getting her consent forcefully by threatening her or by harming her or by damaging the property. The general thought among individuals is that a man can be indicted for the offense of rape just when the victim has not given her consent. But a man can be indicted for rape even for a situation where the consent is taken from the victim under misconception or misrepresentation.

The assent for sexual intercourse got by an individual by giving a bogus guarantee of marriage would not pardon him from criminal charges. Whenever any person gives promise to the victim to marry her but never had any intention to do the same and the victim gives the consent for sexual intercourse on such an assurance by the accused that he would marry her, then such a

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<sup>1</sup>Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India).

consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the Indian Penal Code, 1860 and in such a case, consent would not be the excuse for the offender and such an offender can be said to have committed the rape as defined under Section 375 of the Indian Penal Code, and can be convicted for the offence under Section 376 of the IPC.

Section 90 of Indian Penal Code<sup>2</sup> explains consent given under fear or misconception. And section 375 of Indian Penal code defines the committal of rape in detail.

In the well-known case *KainiRajan v. State of Kerala*<sup>3</sup> the Hon'ble Supreme Court of India clarified and gave a detail of the fundamentals and parameters of the offense of rape by stating that section 375 of Indian Penal Code defines rape, which demonstrates that the primary clause works, where the lady is in control of her senses, and in this way, capable for consenting still the act has been done without her will; and second, where it is performed without her consent; the third, fourth and fifth, when there is consent, yet it isn't such consent which excuses the offender, since it has been attained by placing her on any individual in whom she is interested in fear of death or of hurt. Against her will would mean that the act has been performed despite the opposition of woman. Interpretation of consent can be drawn on the given evidence and probabilities of the case. Permission is also stated as an act of reason connected with deliberation.

It indicates an operative will in the mind of an individual to allow the doing of a said act. Section 90 of Indian Penal Code doesn't define consent but it gives the detail as to what is not consent. one of essentials of Section 375 IPC, requires wilful consent and precipitation not just after the activity of insight dependent on the information on the criticalness and good nature of the demonstration yet in the wake of having completely practiced the decision among opposition and consent. whether there was consent or not, is to be discovered and ascertained with a very careful study of all the relevant circumstances and with cautious investigation of every single pertinent situation

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<sup>2</sup>Indian Penal Code, 1860, § 90, No. 45, Acts of Parliament, 1860 (India).

<sup>3</sup>(2013) 9 SCC 113-A

In the noteworthy judgement of Deepak Gulati v. state of Haryana<sup>4</sup> Hon'ble Supreme court stated that consent can be express or implied, coerced or mistaken, obtained through a will or through deceit. Consent is an act of reason, joined by consideration, the mind gauging, as in parity, the great and wickedness on each side. There is a reasonable distinction among rape and consensual sex. For a situation like this, the court should cautiously look at whether the culprit had wanted to marry the victim in question, or had mala fide thought processes, and had made a bogus guarantee or false promise with this impact just to fulfill his desire or lust, as the latter falls within the ambit of cheating and deception.

In another case of State of UP V. Naushad,<sup>5</sup> the victim has deposed on record that the culprit in the given case promised a wedding with her and asked her to have sexual intercourse with him. She thought that he have promised to marry her and due to the same she said yes for the sexual intercourse after that she got pregnant, and his family refused to marry him with the victim and said no for the same on the ground that she is of bad character. Hon'ble Supreme court in this case convicted the accused under section 376 of Indian Penal Code,1860 and he stated that consent given under fear or misconception is not a consent as per section 90 of Indian Penal Code. And in the present case, the consent has been given as a consequence of a misconception, and the same is vitiated.

On April 13th ,2019 The hon'ble Supreme Court gave the landmark judgement in the case Anurag Soni Vs. State of Chhattisgarh<sup>6</sup> that sexual intercourse on the pretext of promise to marry the victim is rape and harm to the integrity and respect of the lady. A bench of Hon'ble Justices L Nageswara Rao and MR Shah in their recent judgment observed and explained that rape harms a woman's pride and honor. Even if for the matter of fact the lady and her rapist have already well settled in their own lives and dealing good with their families, it could not be observed or regarded as a ground to have the crime be null, invalid, and void.

As indicated by the court a fake promise to marry for engaging in sexual relations isn't just a hit to the respect of a ladies but also insults her regard and pride.

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<sup>4</sup>(2013) 7 SCC 675

<sup>5</sup> (2013) 16 SCC 651

<sup>6</sup> Criminal Appeal No. 629 of 2019 arising out of SLP (Criminal) No. 618/2019 DOD 09.04.2019

The judgment went ahead a case enlisted by a woman blaming a Chhattisgarh-based specialist for raping her in 2013. The lady, an inhabitant of Koni, Bilaspur, was familiar with the respondent since 2009 and had a relationship. The respondent had vowed or promised to wed her and their families were in the grip of this.

The accused was, nonetheless, drawn into an alternate woman though he was in the relationship with the victim. He later broke his promise to the person in question and married the other woman with whom he was engaged. An FIR was registered against the accused and he was censured of rape. Criminal Appeal No. 629 of 2019 arising out of SLP (Criminal) No. 618/2019 DOD 09.04.2019 (2013) 16 SCC 651

The Hon'ble High Court convicted the accused and punished him with 10 years of rigorous imprisonment. The accused approached the Hon'ble Supreme court challenging the High court's decision.

The apex court observed that all the evidences and proof which were presented during the trial had established that accused never actually had the intention to marry the victim and promised her for marriage for establishing a sexual relationship with her. Court held this as rape and held that a rapist must face the consequences of the crime he had done.

The court observed and noted that this case is a clear case of cheating and deception, and if the accused would have made this thing clear to the victim that he never wants to marry her, then she would not have established a sexual relationship with him.

Nevertheless, the hon'ble court decreased the accused's sentence to seven years of imprisonment.

Rape enduringly affects the lives of the victims. And in most of cases, it's not only the victim who faces the brutal and calamitous consequences of sexual violence and rape, but also the family suffers from pain and consequences. In a male centric culture like India where the women have low status, the individuals firmly associated with the person in question, particularly the family is additionally influenced because of the antagonistic social responses. Survivors of sexual savagery experience a wide scope of physical and mental issues. Rape makes the greatest distress, misery and embarrassment to the person in question and her family. This is why, merely because the accused is married to another woman and/or even the victim is subsequently married

to some other person, not creates any ground not to convict and charge the accused for the offence punishable under Section 376 of the Indian Penal Code. rapist must face the consequences if the crime he had done.

Additionally, after this landmark verdict on 21st August,2019 Hon'ble Supreme court held another notable point that every failed promise to marry is not rape until or unless the false promise and malafide intention is proven. The hon'ble court expressed that if women keep on engaging in sexual relations with the man in spite of staying dubious that it would prompt marriage, she can't charge the said man for rape. SC Bench clarified that there is a difference between false promise and breach of promise.

A Mumbai based lawyer and an activist Flavia Agnes once explained in the article of Times of India<sup>7</sup> that we have to consider instances of those who're from socially oppressed foundations and are attracted into sex on bogus guarantees of marriage and afterward dumped when they get pregnant. And one way ahead would be to make a separate section in the rape laws for these specific cases to convict such culprits, claim damages and maintenance or future security of children.



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