

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,  
DIBRUGARH  
GR 2032/10  
U/S 417/493 IPC**

**STATE**

**Vs**

**SRI. RAM MANKI  
S/O. SRI. MANGRU MANKI  
R/O 1 NO. RONGA GORA  
PS MORAN**

Present : Smti. Talat Nasrat Jabin, AJS  
Ld. Advocate present :  
For the prosecution : Sri. L. Deori  
For the defence : Sri. S. Seal  
Evidence recorded on : 06/08/12, 13/11/14, 15/12/16  
06/04/19.  
Final argument heard on : 30/04/19.  
Date of judgement : 03/05/19.

## **JUDGEMENT**

1. The brief of the prosecution case is that the accused person under the promise of marrying the daughter of the informant Smti. Rupaboti Sawra induced her to enter into physical relation with him and thereby she became pregnant from his side. When the event came out to the notice of the local people, Smti. Rupaboti Sawra was asked about the same and she stated that she was pregnant from the side of the accused person. In the meantime the accused person fled away. The people of the locality called for a meeting but it was not attended by the accused person or his family members. Taking into consideration of the future prospect of the girl the instant case has been filed.

2. On receipt of the information, the OC of Moran Police Station received the FIR and registered it as Moran PS case number 117/10, U/S 493/420 IPC and forwarded the FIR for investigation. The investigating officer in the course of investigation, visited the place of occurrence, examined the witnesses, prepared the sketch map and the accused person was arrested and allowed to go on police bail. On the conclusion of investigation, police filed charge-sheet U/S 493/420 IPC.

3. On receiving the case for disposal, summons was issued to the accused person. On appearance of the accused person, copies of the relevant document was furnished to the accused person in compliance with S.207 Crpc After the consideration of materials on record, the particulars of offence U/S 493/417 IPC was read over and explained to the accused person Sri. Ram Manki to which he pleaded not guilty and claimed to be tried.

### **4. Points of determination:**

i. Whether the accused person under the promise of marrying the victim, entered into physical relation with her due to which she became pregnant and afterwards refuse to marry her and thereby committed offence punishable under section 417 IPC?

ii. Whether the accused person cohabitated with the victim by deceitfully inducing the belief of lawful marriage and thereby committed offence punishable under section 493 IPC?

### **5. THE TRIAL**

During the trial prosecution examined as many as 3 (three) witnesses and exhibited 5(five) numbers of document (shown in annexure appended herein below). The defence have fully utilised the opportunity to cross examine the prosecution witness. Considering the testimony of the prosecution witness the statement of the accused persons under section 313 CrPC is recorded and tagged with the record. The defence side examined as many as 4 (four) witnesses. After closure of evidence, I have heard the final arguments of the learned advocates of both the sides and there upon have reached the following decision.

## **6. DISCUSSION, DECISION AND REASONS THEREOF:**

Let me first consider the evidence adduced by different witnesses produced from the prosecution side.

PW1, Sri. Uttam Sawra in his evidence stated that he is the complainant to the case and the victim girl is his daughter. He further stated that his daughter became pregnant from the side of the accused person when he induced her to enter into physical relation with him under the pretext of marriage but after words he refuse to marry her and therefor he had filed the instant FIR being exhibit 1 and exhibit 1(1) being his signature.

PW1 in her cross examination stated that he did not remembered the date on which his daughter told him about the incident.

PW2, Smti. Rupaboti Sawra in her evidence stated the informant is her father. She had a love affair with the accused person since 2007. The accused person made false promise who marry her and entered into physical relation with her due to which she became pregnant. When she was asked by her father she informed him about the event. After this her family members including her parents, her aunty and other members went to the house of the accused person but the father of the accused person chased them out. In the meantime the accused person also fled away. During that time she was pregnant by six months. She further states that in the absence of her parents she used to reside in the house of her aunt. She gave birth to a baby boy. The case was filed before his birth. The 164 CrPC statement was also recorded as being exhibit 2 and exhibit 2(2) her signature.

PW2 in her cross examination stated that she intends to marry the accused person. Her parents abandoned her after she became pregnant. She further stated that she told the name of the accused person only when she was rebuked by her parents. The accused person denied that she became pregnant from his side. She did not remembered specifically when they had physical relation neither she remembered specifically when the accused person promise to marry her. She further stated that there is a power house near her house. And denied the fact that she had illicit relation with a person name Md. Ali.

PW3, Sri. Roma Gogoi in his evidence stated that he was the investigating officer of the Moran PS case number 117/10. In the course of investigation he visited the place of occurrence recorded the statement of the informant and other witnesses, prepared the sketch map, referred the victim for medical examination and also prayed for recording of statement of victim under section 164 CrPC and had filed the charge sheet against the accused person. exhibit 3 being the sketch map, exhibit 4 medical report, exhibit 5 charge sheet and exhibit 5 (1) his signature.

PW3 in her cross examination stated that the people mentioned in the exhibit 3 are not examined by him. The DNA test of the victim has not been conducted. He further stated that the medical report of the accused person does not reflect that he is physically fit to maintain a physical relationship with the victim. He further stated that the victim in her statement did not mention specifically when she entered in physical relation with the accused person. He further stated that the delay for filing of FIR is not mentioned.

DW1, Sri. Mangru Manki in his evidence identified Sri. Uttam Sawra and his daughter Smti. Rupaboti Sawra. He further stated that Smti. Rupaboti Sawra is the resident of 12 no. line, sepon just near his house. In the year 2009-2010 a construction work of a power house on a playground of a school of 12 no. line sepon was carried on. During that time a contractor from Silchar was engaged with the construction work. Under the contractor another person named Rubul Hussain looked after the work. He stayed at a camp in the construction site. During that time Smti. Rupaboti Sawra worked as a cook for Sri. Rubul Hussain and stayed at the camp of Sri. Rubul Hussain. Smti. Rupaboti Sawra and Rubul Hussain was caught together at 2am in the night by the chowkidar. The chowkidar inform the family members of Smti. Rupaboti Sawra. After this Rupaboti Sawra and Rubul Hussain fled away. After 5 to 6 months of the said incident Smti. Rupaboti Sawra return back to her home. At that time she was pregnant 5 to 6 months. She stayed with her mother for few days and then again went away. After that in the year 2015 she married Sri. Raju Bania of Sepon betbari line. She stayed with him for few days and after that married Sri. Kamal Bawri of Rajgarh. There she stayed for one or two month and from there she eloped with Sri. Upen Nayak of Sibsagar. Presently she is staying with Sri. Upen Nayak and is the mother of one or two child. He further stated that on 01/10/2010 Sri. Uttam Sawra and his daughter Rupaboti Sawra took and amount of rupees 5,000 from Sri. Ram Manki but they did not return the amount. Sri. Ram Manki went too asked for the money. DW1 also accompanied him. Sri. Uttam Sawra and Sri. Rupaboti Sawra did not returned the amount and instead filed the case. He stated that the allegations that Rupaboti Sawra was became pregnant from the side of Ram Manki is totally false as she had no love affair with him.

DW1 in the cross examination stated that the accused person is his son. He further stated that he did not membered the name of the company engaged in the construction work of the power house neither he remember the name of the contractor. He further stated that he did not remember on which dates Rupaboti Sawra got married. He stated that after the incident a meeting was called in the house of the victim. The meeting was not attended by him and his son. The meeting was called for due to some connection (Kheli Meli) between Rupaboti Sawra and Rubul Hussain. He stated that he did not remember his date of birth.

DW2, Sri. Ananda Sawra in his evidence identified Sri. Ram Manki, Sri. Uttam Sawra and Smti. Rupaboti Sawra. Sri. Uttam Sawra is his nephew and Rupaboti Sawra is his granddaughter. In the year 2009 to 2010 a power house was under construction and to look after the construction work a person named Rubul Hussain came from Silchar and resided in the camp of the power house there he met Rupaboti Sawra. At one instance Rubul Hussain and Rupaboti Sawra were caught together in the camp of power house. They saw both of them together at 2am to 3am. They asked Rupaboti Sawra and she stated that she works as a cook for Rubul Hussain. The people of the village informed the father of Rupaboti Sawra. After this Rubul Hussian send Rupaboti Sawra to somewere. They returned to be village after six months. During that period Rupaboti Sawra was pregnant. When she was aksed about her pregnancy she

fled away. After that she got married to Raja Bania of 15 no line, Sepon. From there she married another man with title bawri. From there she fled away with another man from Sibsagar with title Nayak and presently she is residing with him. He further stated that Sri. Uttam Sawra and Rupaboti Sawra took an amount of rupees 5000/- from Ram Manki and when Ram Manki asked them to return the money they fought with him and both the parties filed the case against each other. He further stated that the allegation that Ram Manki and Rupaboti Sawar had love affair and Rupaboti got pregnant from his side is false.

DW2 in the cross examination stated that the he had heard about Kamal Bawri from other people. He further stated that the instances that he has mention in his evidence are heard from others but the instance of 15 no. line is seen by him. He stated that he had seen Rupaboti and Rubul Hussain together at night when they were caught.

DW3, Sri. Alim Sawra in his evidence identified Sri. Ram Manki, Sri. Uttam Sawra and Smti. Rupaboti Sawra. Rupaboti Sawra is his niece. In the year 2009 to 2010 a power house was under construction and to look after the construction work a person named Rubul Hussain came from Siliguri and resided in the camp of the power house. Rupaboti Sawra cooked food for Rubul Hussain. One night Rupaboti Sawar and Rubul Hussain were caught together when they came out from the house of Uttam Sawra. The people of the village wanted to discuss the matter but instead Rupaboti Sawra fled away with Rubul Hussain. After 6 to 7 months she came back to the line and during that time she was pregnant. She was chased out by her brother. But she returned home again after 4 to 5 months. He further stated that in the year 2015 she got married to Raja Bania of 15 no. line. After staying with him for 3 months she got married to another man with the title "Tanti" she stayed with him for one and half month and from their she fled away with a man with the title Nayak. Presently she is residing with him. He further stated that Sri. Uttam Sawra and Rupaboti Sawra took an amount of rupees 5000/- from Ram Manki and when Ram Manki asked them to return the money they fought with him and both the parties filed the case against each other. The incident took place in the year 2010. He further stated that the allegation that Ram Manki and Rupaboti Sawar had love affair and Rupaboti got pregnant from his side is false.

DW3 in the cross examination stated that the power house constructed in the year 2009 to 2010 and Sri. Rubul Hussain was the contractor of the construction work of the power house.

DW4, Smti. Ram Manki in his evidence identified Sri. Uttam Sawra and Smti. Rupaboti Sawra. The present age of Rupaboti Sawra is 30 years and she used to reside in 12 no. line sepon. In the year 2009 to 2010 a power house was under construction and to look after the construction work a person named Rubul Hussain came and resided in the camp of the power house. Rupaboti Sawar used to reside with him as his cook. During that time the members of the VDP caught Rupaboti Sawra and Rubul Hussain together. The members of the VDP informed the family of Rupaboti Sawra. Rupaboti Sawra fled away with Rubul Hussain. However she return back after 6 to 7 months and she was pregnant at that time. She stayed for few days and went away. In the year 2015 she got married to Raja Bania of 15 no. line. After that she was married

to another man named Kamal Bawri and from there she fled away with Upen Nayak and is presently residing with him. He further stated that Sri. Uttam Sawra and Rupaboti Sawra took an amount of rupees 5000/- from DW4 and when he asked them to return the money they fought with him and both the parties filed the case against each other. The incident took place in the year 2010. He further stated that the allegation that Rupaboti Sawar had love affair with him and Rupaboti got pregnant from his side is false. He denied the allegations that he induced Smti. Rupaboti Sawra with a promise of marriage.

DW4 in the cross examination stated that he did not attend the meeting called for in connection with Rupaboti and Rubul Hussain. He further stated that he took anticipatory bail in connection with the case file against him but denied the fact that as because the case of Rupaboti was true he took the anticipatory bail. The FIR was file on 11/10/2010 and he took the anticipatory bail on 08/12/2010.

## **7. APPRECIATION OF EVIDENCE:**

The accused person is booked under section 417 IPC. Which is stated as under: **Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.**

This section punishes the simple cases of cheating. The essential ingredients to constitute offence under this section are –

No.1. There should be fraudulent or dishonest inducement of a person by deceiving him.

No.2. Person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property.

No.3. the person so deceived should be intentionally induced to do or not to do anything which could not do until he was deceived.

Now reverting back to the case in hand we have a fact where the accused person is alleged by the informant that he under the pretext of marrying the informant had entered into physical relation with her due to which she became pregnant but later on denied to accept her as well as her child. In order to establish the case the evidence from the prosecution side reflects that the informant is the father of the victim and he had filed this case stating that his daughter informed him that the accused person promised his daughter to marry her and entered in physical relation with her due to which she became pregnant but later on the refuse to marry her. A meeting was called in this respect but the accused person and his family did not attend the meeting rather he fled away from there. The version of the informant is restated by the victim by stating that the accused person under the pretext of marrying her fraudulently induced her to enter into physical relation with him due to which she became pregnant and later he refuse to marry her. The statement of the victim is recorded under section 164 CrPC in which she has clearly stated that the accused person had love affair with her and also promised her to marry her and had physical relation with her on several occasion due to which she became pregnant. When she broke the news of her pregnancy to the accused

person he refused to marry her and fled away. A meeting was also called but the same was not attended by the accused person or his family. Thus there is a complete corroboration between the statements of the victim recorded under section 164 CrPC with the evidence adduced by her as PW2. There is also corroboration in the evidence of PW1 and PW2. The defence side adduced 4 number of witnesses. In the evidence of the defence witnesses it is reflected that in the year 2009 to 2010 the victim was involve physically with another person named Rubul Hussain and it is reflected in the evidence of the defence side that she was pregnant from his side. The defence witnesses has also given instances whereby the victim of the case was married to several other person. What is to be consider here is that whether the accused person promised to marry the victim and under the pretext of the same deceitfully induced her to establish physical relation with him and later on refused to marry her.

The defence side in the argument has brought forward different pleas in defence of the accused person. Firstly the advocate for the accused person had argued that in the FIR exhibit as exhibit 1, there is no allegation that the accused person promised the victim that he would marry her and later on refuse the same. However on perusal of the FIR it clearly reflects that the accused person entered into physical relation with the victim by deceitfully inducing her under the pretext of marriage. It is also alleged that the accused person later on fled away. Thus the allegations has been clearly put forward by the informant in the FIR.

The defence side then stated that in order to bring home the charge under section 417 IPC. It is to be proved that the accused person promised the victim that he would marry her and later on denied to do the same.

On a clear scrutiny of the evidence of PW1 and PW2 it appears that they have stated in their evidence that the accused person had induced the victim girl with pretext of marrying her and establish physical relation with her and when the fact came out a meeting was called in which the accused person did not come and rather fled away. The victim girl examined as PW2 in her evidence had clearly stated that she and the accused person had love affair and the accused person promised her that he would marry her and established physical relation with her due which she became pregnant and when the event came to the knowledge of her family they went to the house of the accused person but the parents of the accused person chased them out of the house and the accused person also fled away. The 164 CrPC statement of the victim clearly states that the accused person promised her that he would marry her. She has clearly stated "**He muk kole je muk bhal pai aru mur logot biya patibo**". Under this promise they established physical relation and she became pregnant. She informed about the same to the accused person but he said that the child does not belong to him and he left. Later on she came to know that the accused person fled away.

Now let me take into consideration **section 8 of Indian Evidence Act.** which reads as under :

**Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of**

**any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Explanation 1.— The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. Illustrations**

Thus section 8 of Indian Evidence Act makes the fact relevant which relates to the conduct of any party against whom is the subject of any proceeding, whether it was previous or subsequent there to. The fact that the accused person fled away on being told about the pregnancy of the victim reflects about his conduct subsequent to the event. The same version is stated by PW1 and PW2. The conduct of the accused person clearly reflects that he wanted to escape from the liability of marrying the victim and therefore he fled away. The defence counsel had argued that the 164 CrPC statement of the victim reflects that the accused person did not accept the paternity of the child. It is further argued that the statement under section 164 CrPC is not a substantial piece of evidence but merely can be used for corroboration of contradiction of the witnesses. Taking that to be true, there is absolute corroboration in the statement of the victim recorded under section 164 Crpc and the evidence adduced by her in the court. Apart from that the accused cannot be given the benefit to defy his liability only by challenging or disputing the paternity of the child. The defence side had submitted a judgement of **Hon’ble Gauhati High Court in the case of Moni Gogoi Vs Sarumoni Hazarika, reported in 1992 (2) Gau LJ 169** whereby it is stated that there may be several reasons under which the accused may fail to keep his promise. He may even change his mind for various reason. Failure of the accused person to keep the promise to marry the victim shall constitute breach of promise and not offence under section 417 IPC.

The fact of the instant case is completely different. In the case referred by defence side the paternity of the child was never in question. What Hon’ble High Court ascertained in this case was the failure of the accused person to keep his promise. But in the case in hand there is no question of the failure on the part of the accused person to keep his promise. The fact that the accused person fled away and did not attend the meeting clearly reflects that he had no intention to marry the victim. Thus it was not a failure to keep promise but an intentional act of the accused person to deceive the victim.

The defence side has furnished another judgement of Madras High Court but the facts of the case has no nexus with the instant case.

The defence side then raised question as to the paternity of the child and stated that the evidence of defence witness clearly states that the victim had relationship with several other man and therefore the accused person

cannot be held liable under this case. It is true that the defence witnessed including the accused person has given the names of several other person and alleged that the victim girl had married all of them. The defence side tried to establish that the child which is alleged to belong to the accused person is rather the child of another person named Rubul Hussain. But during the cross examination of the prosecution witness the defence did not tried to bring to the light any such instances. Rather during the cross examination of PW1 the defence brought the name of another person named Abdul Ali. At the same time no such plea was taken by the accused person during his examination under section 313 CrPC. the advocate from the defence side had referred to section 3 of Indian Evidence act and stated that the evidence of both the sides must be equally weighted.

It is true that the evidence of both the sides must be given equal importance yet it does not do away the fact that the defence side cannot bring forward any other fact or circumstance of which plea has not been taken either during the cross examination of the prosecution side or during examination of the accused person under section 313 CrPC. The fact that 2 different names came forward namely Abdul Ali and Rubul Hussain also shakes the credit of the witnesses of defence side. The defence side also tried to bring the fact of transaction of money Rupees 5000 between the informant and the accused person and according to the defence side this transaction of money was the main reason for the entire case. But here again no such plea was taken by the accused person in his examination under section 313 CrPC. Thus it cannot be taken into consideration. Thus the evidence of the prosecution witnesses PW1, PW2 along with the statement of the victim recorded under section 164 CrPC clearly reflects that the accused person promise the victim girl that he would marry her and under the pretext of same deceitfully induced her to establish physical relation with him due to which she became pregnant but later on he fled away which clearly shows that he refused to marry her. Thus all the essential ingredients of section 417 IPC is established by the prosecution side against the accused person.

Thus the case has been successfully established under section 417 IPC against the accused person.

Secondly, the accused person is booked under 493 IPC which provides punishment for cohabitation caused by a men deceitfully inducing a belief of lawful marriage. The evidence of prosecution side nowhere reflects any material pointing out that the accused person deceitfully induced the belief of the lawful marriage and cohabitated with the victim girl.

Thus prosecution side has failed to prove the case under section 493 IPC against the accused person.

**ORDER**

I thereby acquitted the accused person Sri. Ram Manki under section 493 IPC.

I thereby convict the accused person Sri. Ram Manki under section 417 IPC.

I have considered the application of Probation of Offender's Act upon the convicted person and I am of the opinion that the convicted person should not be forwarded the benefit of the said provision because the offence committed by the convicted person have caused damage to the mind and reputation of the victim and the fact that she will always be look down upon by the society cannot be denied. Apart from that any leniency towards the convicted person in such matters will send wrong message to the society.

I have heard the convicted person on the point of sentencing which is recoded on a separate sheet of paper and the same is tagged with the record. The accused person stated that this is his first time offence and he has a family to look after and he would not repeat the offence again.

I convict the accused person Sri. Ram Manki under section 417 IPC with a fine of Rs. 5,000 (Five Thousand), in default to simple imprisonment for a term of 3 days. The accused person is convicted only with fine because at the time of committing of the offence the accused person was a boy of 20 to 22 years. Considering the age of the accused person at the time of offence a lenient approach is adopted.

The fine amount deposited by the convicted person is to be given to the informant as compensation.

Material exhibits (if any) are to be disposed of in due course of time.

The copy of the judgement is to be supplied to the convicted person free of cost as per section 363(1), CrPC.

Given under my hand & seal of this court and delivered in the open Court on this 3<sup>rd</sup> May, 2019.

Talat Nasrat Jabin, AJS

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Judicial magistrate first class, Dibrugarh

**Appendix:**

List of prosecution witnesses

PW1: SRI. UTTAM SAWAR.

PW2: SMTI. RUPBOTI SAWRA.

PW3: SRI. ROMA GOGOI.

List of defence witnesses:

DW1: SRI. MANGRU MANKI.

DW2: SRI. ANANDA SAWRA.

DW3: SRI. ALIM SAWRA.

DW4: SRI. RAM MANKI.

Exhibits of prosecution side

Ext. 1: FIR

Ext. 1(1): SIGNATURE OF THE INFORMANT.

Ext. 2: STATEMENT OF INFORMANT UNDER SECTION 164 CrPC.

Ext. 2(1): SIGNATURE OF THE INFORMANT.

Ext. 2(2): SIGNATURE OF THE INFORMANT.

Ext. 3: MEDICAL REPORT

Ext. 3(1): SIGNATURE OF THE MEDICAL OFFICER.

Exhibits of defence side

NIL

Signature

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