

## State By Jalahalli Police vs Anuj Arya on 14 September, 2015

IN THE COURT OF THE LIV ADDL., CITY CIVIL & SESSIONS  
JUDGE AT BANGALORE CITY (CCH-55)

Dated this the 14th day of September 2015

Present: SMT.VIJAYALAXMI S.UPANAL, M.A., LL.M.,  
LIV ADDL., CITY CIVIL & SESSIONS JUDGE,  
BANGLORE CITY

S.C.NO.472/2012

COMPLAINANT State by Jalahalli Police,  
Bangalore City.  
(By Learned Public Prosecutor)

-Vs -

ACCUSED Anuj Arya,  
S/o.Surendra Singh Arya, 28yrs,  
R/at. No.E-23,  
Sri Ramasadana Apartment,  
Gokula Post,  
Bangalore-54.

Permanent resident of:

No.H.110, Sector-22,  
Noida,  
Uttar Pradesh.

(By Sri.R.L.N.-Advocate)

1.	Date of commission of offence	19-10-2011
2.	Date of report of occurrence	01-02-2012
	2	S.C.No.472/2012

3.	Date of arrest of Accused	
	Date of release of Accused	ACCUSED
	Period undergone in custody by Accused	ON BAIL
4.	Date of commencement of evidence	12-12-2012
5.	Date of closing of evidence	17-03-2015
6.	Name of the complainant	Victim/ prosecutrix
7.	Offences complained of	Sections 376, 420 of IPC

- |    |                      |                        |
|----|----------------------|------------------------|
| 8. | Opinion of the Judge | Accused is convicted   |
| 9. | Order of sentence    | As per the final order |

#### JUDGMENT

Police Inspector-Jalahalli Police Station-Bangalore, has submitted charge sheet against the accused for the offences punishable under Section 376 and 420 of IPC in Crime No.27/ 2012.

2. The brief facts of the prosecution case as per charge sheet are as under:

The accused and victim-girl are known to each other since six years. Subsequently they both were fell in love. On 19-10- 2011 the accused invited the victim-girl to his house bearing No.E-23, Sri Rama Sadan Apartment, Gokul, Bangalore-54, for celebration of his birthday. When the victim-girl had gone to the house of accused he has induced her to have sexual intercourse by saying that within some months they are going to marry with each other and if the physical relationship is made by using condom, there is no wrong. Though the victim-girl has refused to have physical relationship, the accused without hearing the words of victim-girl in between 03.30 to 04.00p.m., without the consent of the victim-girl and against her will had sexual inter course with her forcibly. On 29-01-2012 when the victim girl asked the accused to marry her, the accused told her that he has done all this only for his satisfaction and he is not ready to marry her, further said that his friendship with victim-

girl will be continued as it is. By saying the same, the accused has cheated the victim-girl. Hence this charge sheet.

3. On the basis of the complaint lodged by the complainant/victim produced at Ex.P1, P.S.I-Pw.10-Sri.Siddalingappa of Jalahalli Police Station, registered the case against the accused in Crime No.27/2012 for the offences punishable under Section 376 and 420 of IPC, submitted the FIR as per Ex.P16 to the jurisdictional Court and also to his higher officers. He has directed H.C.4130 and P.C.10352 i.e., Cw.7 and Cw.8 to search and arrest the accused person. On 01- 02-2012 Cw.7 and Cw.8 have produced the accused before him. He has arrested the accused by following arrest rules, recorded the statement of Cw.7. Cw.8-H.C.4130 gave his report as per Ex.P12. On 02-02-2012, Pw.10 has recorded the voluntary statement of accused as per Ex.P17. On the same day at about 09.00a.m., he visited the spot of offence and drawn mahazar on the spot shown by the complainant/victim in presence of Panchas-Cw.4 and one Anup Kumar as per Ex.P2. He has recorded the statement of Anup Kumar and Cw.4 and Cw.5 and further statement of complainant. Thereafter he has sent the prosecutrix along with W.P.C.No.2506 and the accused along with H.C.4373 to M.S.Ramaiah Hospital for their medical examination. The requisitions submitted by Pw.10 in that regard are at Ex.P15 and Ex.P13 respectively. After completion of medical examination he has produced the accused before the Court through HC.4373 and H.C.3293. Thereafter he has handed over the case papers for further investigation to Pw.11.

4. Pw.11-the Police Inspector-Sri.M.S.Satyanarayana, Jalahalli Police Station has deposed that on 04-02-2012 he has received the case papers for further investigation. On 06-02- 2012 he has recorded the statement of Cw.3. On 08-02-2012 he has recorded the statement of Cw.2 i.e., the father of prosecutrix. On 13-02-2012 H.C-Jayaram has produced the medical examination reports of the accused and the complainant as per Ex.P14 and Ex.P3 respectively. On 28-03- 2012 he has obtained the copy of lease agreement through which the accused has obtained an apartment on lease in Sri Rama Sadan apartment, the said lease agreement is at Ex.P18. Thereafter the complainant has produced the copies of E-mail talks held in between the complainant and accused as per Ex.P8. After completion of investigation he has submitted the charge sheet against the accused for the offences punishable under Sections 376 and 420 of IPC.

5. After receipt of Charge Sheet against the accused, the learned VII ACMM-Bangalore City, took cognizance of the offences alleged against the accused and registered a case against him in C.C.No.9409/2012 on his file for the offences punishable under Sections 376 and 420 of IPC.

6. After securing the presence of the accused before the Court, the learned VII ACMM-Bangalore City, has complied with the provisions of Section 207 of Cr.P.C., by furnishing copies of charge sheet and prosecution papers to the accused. The offence alleged against accused punishable under Section 376 IPC is exclusively triable by Sessions Court, the learned VII ACMM-Bangalore City, under Section 209 of Cr.P.C., has committed the case against the accused to the Principal City Civil & Sessions Judge, Bangalore City, for trial and the same came to be registered in S.C.No.472/2012 on the file of Principal City Civil & Sessions Court, Bangalore City, who in turn has made over the case to this Court for disposal in accordance with law.

7. After transfer of the case to this Court, the presence of accused is secured before this Court and after hearing both sides on the charge to be framed against the accused, my learned predecessor then in office has framed charge against the accused for the offences punishable under Section 376 and 420 of IPC.

8. The charge was read over and explained to the accused in the language known to him. The accused has pleaded not guilty and claimed to be tried. Hence, prosecution was called upon to lead evidence on its side to prove the guilt of the accused.

9. In order to prove the guilt of the accused, the prosecution has examined in all Pw.1 to Pw.11 and got marked Ex.P1 to Ex.P18 and MO1 in support of its case.

10. After recording the evidence adduced by the prosecution, the statement of accused under Section 313 of Cr.P.C., has been recorded. All the incriminating subsistence appearing against him in the evidence of the prosecution witness has been read over and explained to the accused in the language known to him. The accused has totally denied the same. The accused has examined one witness as defense evidence Dw.1 and got marked Ex.D1 to D3.

11. I have heard argument on both sides.

12. The points that arise for my consideration are as under:

1. Whether the prosecution proves beyond all reasonable doubt that since 14-11-2011 up to 25-01-2012 in the Apartment No.23, 1st Floor, E-Block, Sri Rama Sadan Apartment, wherein the accused was residing, within the limits of Jalahalli Police Station, Bangalore City, the accused has raped the complainant-victim forcibly without her consent, and had sexual intercourse with her repeatedly by assuring that he will marry her, thereby committed an offence punishable under Section 376 of IPC?

2. Whether the prosecution proves beyond all reasonable doubt that the accused with the dishonest intention, gave false promise that he will marry the complainant, made her to believe him and committed forcible sexual intercourse with her and later on refused to marry her by saying that he had sexual intercourse with the complainant-victim for his own satisfaction and not more than that, thereby cheated her and committed an offence punishable under Section 420 of IPC?

3. What Order?

13. My findings on the above points are as under:

Point No.1: In the Affirmative Point No.2: In the Affirmative Point No.3: As per the final order for the following REASONS

14. POINTS No.1 and 2: In the light of the evidence available on record, I am taking these points together for my consideration, since they are inter-connected and inter-related with each other. Further the finding on one point will have bearing on another. Therefore, to avoid repetition of discussion on the set of evidence, I have taken these points together for consideration.

15. It is for the prosecution to produce cogent and convincing evidence to prove the guilt of the accused beyond all reasonable doubt.

16. In order to prove the guilt of the accused for the offences alleged against the accused, the prosecution has to prove the following ingredients beyond all reasonable doubt.

1. That on 14-11-2011 the accused had raped the prosecutrix, forcibly, without her consent and continued to have sexual intercourse with the prosecutrix by blackmailing her emotionally, and by giving false assurance that he would marry her.

2. That the accused by keeping the complainant under such belief that he will marry her, had sexual intercourse with her without her consent and later on refused to marry her.

3. That the accused with dishonest intension to cheat the complainant, gave false assurance to her that he will marry her and made her to believe him.

17. The prosecution in order to bring home the guilt of the accused totally examined 11 witnesses, viz., Pw.1-Smt.Mala, the friend of victim-complainant, Pw.2-P.Udayakar-the father of prosecutrix, Pw.3-the prosecutrix/complainant, Pw.4-Rangappa- Security guard of Sri Rama Sadan Apartment, Pw.5-Police Head Constable who has arrested the accused and submitted his report as per Ex.P12, Pw.6-Anup Kumar-Panch to Spot Panchnama at Ex.P2, Pw.7-Raj Singh Arya-the brother-in-law of victim, Pw.8-Smt.Sarala-the mother of complainant-victim, Pw9- Dr.S.Praveen, who has examined the victim/complainant, Pw.10

-T.R.Siddalingappa-P.S.I-Jalahalli Police Station, Pw.11-M.S. Sathyanarayana-Police Inspector of Jalahalli Police Station. Dw.1-Jobimuthayai, Security Manager, Movenpick Hotel, Bangalore. P.W.6 to P.W.8 are additional witnesses examined by the prosecution.

18. The prosecution has also produced the original complaint at Ex.P1, Panchnama at Ex.P2, the medical examination report at Ex.P3, declaration given by victim-girl on 17-02-2012 at Ex.P4, another declaration dated 17-02-2012 given by the father of the accused person at Ex.P5. The declarations given by victim girl and father of accused dated 18- 02-2012 are at Ex.P6 and Ex.P7 respectively. Ex.P8-E-mail, G- talks and massages (containing 260pages) report, Ex.P9-News paper, Ex.P10 and Ex.P11-credit cards. Ex.P12 is the report of Pw.5, Ex.P13 to Ex.P15 are reports. Ex.P16-F.I.R., voluntary statement of accused at Ex.P17, copy of lease agreement at Ex.P18.

19. The prosecution has got marked the C.D., as MO1.

20. Before proceeding to appreciate the evidence available on record, it is necessary to know the averments made in the complaint.

21. The complainant is the victim in this case. She has submitted complaint on 01-02-2012 that she came to know the accused six years back, when working in Lalith Ashok Hotel. Thereafter she met him through face book in September-2011. As the complainant has seen the accused previously, that is six years back, she sent friendship request to him and he accepted the same. Since then they both were started to talk and chat through phone, face book, G-talk etc. After some days the accused disclosed his mind to the complainant that he is in love with her and he wants to marry her. At the first instance the complainant-victim refused the said proposal, but when the accused told the same repeatedly she accepted the proposal of marriage. They started to meet with each other. On 19-10-2011 the accused invited the complainant to his house, on the eve of birthday celebration. The complainant had gone to his house, under impression that the other invitees may be present in the house of accused, but nobody was there in the house and the accused told that except her, he has not invited any other friends and asked her to have physical relationship with him as his birthday gift, on the ground that in the modern days these things are common and tried to impress upon her emotionally that if she really loves him, she should accept for physical relationship. However, the complainant has not accepted the said demand and told him that till marriage it is not proper and returned to her house on that day. Thereafter, whenever they met with each other, the accused started to press her to have physical relationship with him by saying that they are going to marry within a short period. He has also told the complainant that if they have physical relationship by using condoms, nothing will be happened. Again on another day, she had gone to the house of

accused, as the accused was suffering from illness. On that day the accused has not behaved wrongly, she talked with him casually and returned back. Thereafter, i.e. on 14th November, 2011 the victim had gone to the house of accused, wherein he forcibly had sexual intercourse with her though she has not consented for the same and resisted his act. After the said incident, she started to cry, but the accused tried to console her that he is going to marry her within a short period and told her don't worry about it. The victim had return to her house and sent SMS to the accused, questioning him why he has done so, the accused told her that he has done so with an intention that no other guy should come in her life except himself and he wanted to protect his right on the victim-girl and assured that he will marry her. Such type of physical relationship was continued up to January, 25th 2012 and the accused used her physically by making emotional black mail that he would marry her. On 25-01-2012 also when the complainant had gone to his house and asked about their marriage, he had sexual intercourse with her and asked her for some time for marriage talks. On 26-01-2012 the complainant pressed him to talk with his parents about their marriage, for which the accused agreed. But thereafter, he started to avoid the complainant. When the complainant questioned the accused about his behaviour that he is avoiding her, he told her that he is not interested in her and he has done all these with complainant only for his sexual satisfaction and not more than that and he never intended to marry her, but offered her to continue their friendship as it is. When the accused has not agreed to marry her, the complainant has lodged the complaint.

22. On the basis of the complaint lodged by the complainant, the Investigating Officer, after completion of investigation has submitted the charge sheet against the present accused for the offences punishable under Section 376 and 420 of IPC.

23. Now, we have to see the oral and documentary evidence adduced by the prosecution in order to prove the guilt of accused.

24. Pw.3-Prosecutrix has deposed before the Court as per the contents of her complaint.

25. Pw.6-Anup Kumar is Pancha to the Panchnama marked at Ex.P2. According to the prosecution records after registration of FIR, the Investigating Officer has visited the spot of offence which was shown by the complainant and on the said spot in the presence of Panchas he has drawn Panchnama as per Ex.P2. Pw.6 is one of the Panchas, working as a Plumber in Sri Rama Sadan Apartment. The accused is residing in apartment bearing No.E-23, in the said building and there were three persons residing in the same apartment. The complainant has shown Apartment No.E-23 wherein the accused was residing and took the police and Panchas to the bed-room of the said house and informed that the accused has raped her in the said bed-room. The police have written the Panchnama and obtained the signature of Pw.6. At the time of said Panchnama Pw.4-Rangappa, who was working as Security guard in the said building was also present. He identified his signature at Ex.P2(b).

26. In the cross-examination of Pw.6 he admits that he has not given any document or the letter issued by the Managing Committee of Sri Rama Sadan Apartment that he is working as Plumber in the said building. He has gone to E-23 as the police called him, wherein he has seen the accused and the victim-girl. He has asserted that he put his signature on Ex.P2 in the Apartment bearing

No.E-23.

27. The evidence of Pw.6 clearly shows that the victim- girl after filing of the complaint took the police and the Panchas to Apartment No.E-23 in Sri Rama Sadan Apartment and shown the scene of offence, wherein the police have drawn Panchnama as per Ex.P2. In his cross-examination nothing has been disclosed that he is deposing false. Therefore, the evidence of Pw.6 is sufficient to prove the drawing of Panchnama on the spot of offence.

28. Thereafter the police have also sent the victim/ prosecutrix for medical examination. In that regard, the prosecution has examined Pw.9-Dr.S.Praveen, working as Professor, Forensic Science Department, M.S.Ramaiah Hospital- Bangalore. He has deposed that on 02-02-2012 at the request of P.S.I., Jalahalli Police Station, he has examined the victim in between 11.30a.m., to 12.30noon by obtaining her consent. He has found no external injuries on her body. On physical examination her body was moderately built and well nourished. On external genital examination he has seen that at hymen there are old tears at 2<sup>o</sup>, 6<sup>o</sup> and 7<sup>o</sup> chock position and in vagina two fingers easily admitted. He has collected the vaginal swab; there was no evidence of spermatozoa. He has issued his certificate as per Ex.P3. In his opinion there was no evidence of recent sexual intercourse. However she was used to an act like that of sexual intercourse. The requisition given by police is marked at Ex.P13 and the signature of this witness on Ex.P3 is at Ex.P3(b) and on Ex.P13 at Ex.P13(a).

29. Pw.4-Rangappa-Security Guard in Executive Security Company, is working as Security Guard in Sri Rama Sadan Apartment. He has deposed that about two years back i.e., on 21-02-2013 (the date on which his evidence is recorded) he was working as Security Guard. 8months back two police came to the said Sri Rama Sadan Apartment along with one girl and enquired about the accused person. They have written something in the said apartment and obtained the signature of two persons. The said girl had come to Apartment No.E-23 previously. Pw.4 being a Security Guard asked the residents of said apartment about her arrival and the said resident told him to send her inside. Thereafter he was taking her signature in the register maintained and used to allow her to enter the said premises. Further he has deposed that he informed to the police about her visit to Apartment No.E-23. In the cross- examination of Pw.4, he has identified the presence of accused as resident of said Apartment, whereas he has shown his inability to say the dates and time when the victim-girl visited the said Apartment.

30. The evidence of Pw.4 clearly shows that the victim- girl used to visit the apartment, wherein the accused was residing.

31. Now, we have to see whether the prosecution has succeeded in proving the guilt of the accused on the basis of the evidence available on record. At this stage, it is necessary to see the oral and documentary evidence adduced by Pw.3 who is victim/prosecutrix. The gist of evidence of Pw.3 is that herself and accused were known to each other during 2005 i.e., six years prior to September 2011, when they both were working in Grand Ashok Hotel. But at that time they had not met with each other. Thereafter they came in contact in September-2011 and the friendship was started. They started to chat through face-book, G-talk, SMS and through mobile. In their talks they both were talking about their family members and their future plan and life. Pw.3 has told to accused that her

parents are searching for bridegroom and the accused told her that his parents are searching for suitable bride. Subsequently the said friendship turned into love and the accused made proposal of marriage. Though at the first instance, the victim-girl refused the proposal as their Castes are different and they both are belonging to different States, but, after repeated proposal made by the accused, she accepted his proposal and took him to her house, introduced him to her parents, before them also he made the proposal of marriage with the victim-girl. The parents of victim-girl told him to get the opinion of his parents. Thereafter the accused started to force the complainant to have sexual inter course, for which she refused. But the friendship and love affair continued in between them and the accused assured her often and often that he would marry her with the permission of his parents. Further she has deposed that, she has asked the accused, that if his parents are not accepted for their marriage then what would be the result, for which the accused made her to believe him that he will manage his parents, moreover they both are major, having good job and independently earning. On 19-10-2011 according to Pw.3, the accused called her to his house which was rented house on the eve of his birthday celebration. When she had been to his house, he demanded her to co-operate with him sexually as a gift to his birthday and attempted to have sexual intercourse with her, but the victim- girl not allowed him to proceed against her by saying that it is all after marriage. Thereafter on 14-11-2011 she had been to the house of accused on his invitation, but on that day also he has again forced her for sexual intercourse and by emotional blackmail he had sexual intercourse with the victim-girl forcibly, even though she resisted. Immediately after the said forcible rape, the victim-girl was mentally disturbed and started to cry, for which the accused tried to console her that they are going to marry within a short period and don't worry about it. After her return to her house, she sent SMS to accused by asking why he has done so, for which the accused told her as under:

"DgÉÆÄ|AiÄÄÄ £Ä£Ä£ÄÄÄ §°Ä¼Ä ¸æÄw,ÄÄvÉÜÄ£É ªÄÄvÄÄÜ vÄ£ßÄ £ÄÄß  
©lÄÖ ¨ÉÄgÄgÄÆ £Ä£Äß fÄªÄ£z Ä Ä°è §gÄ¨ÄgÄzÉAzÄÄ °ÄUÉ ªÄiÄrzÉ£ÉAzÄÄ  
°ÉÄ½zÄ£ÄÄ."

By saying these words he made her to believe him and she has not disclosed the said fact before her parents as her father is heart patient, and the accused assured her in unequivocal words that he is in love with her and he would marry her.

32. Pw.3 has further deposed that on 23rd January itself, she had gone to the house of accused and asked him about their marriage, pressed him to talk with his parents, but he has assured that he will talk with his parents within 2-3days. In between November 14th, 2011 to 25th January, 2012 several times the accused had sexual inter course with the victim-girl by black mailing her emotionally and assuring her that he will marry her. But after 25-01-2012 he started to avoid the victim- girl. Therefore, she talked with his both sisters, but the sisters of accused have blocked the face-book. Atlast the accused told that: "I have done all these for his satisfaction and not more than that." Further he has made proposal to continue the friendship with him and to continue physical relationship as they are friends. Therefore, the victim-girl has suffered much mentally, lodged complaint and the accused was arrested and sent to jail.



33. Even after lodging of the complaint, Pw.3 deposed that the accused was arrested by police, the father and sister of the accused by name-Meenakshi have started to negotiate with the victim-girl and her parents that they will perform her marriage with accused after his release and requested her to help him to come out from the jail. The victim-girl with the hope that the father and sister of accused may help her to marry the accused accepted their request, as a result, the victim-girl, the father and sisters of accused with the help of advocate for accused have got prepared Ex.P4 to Ex.P7 in the office of learned counsel for accused.

34. After release of accused, the accused and his family members left Bangalore without the knowledge of complainant and her parents. When the complainant contacted them again and again they spent much time by saying that they will come to Bangalore for talks. Thereafter they came to Bangalore, but they have refused to perform her marriage with the accused by saying that they have to wait till disposal of this case. After filing of charge sheet, the father of accused came and told that there is nothing in the charge sheet to attribute the alleged offences against the accused. Therefore, they refused to perform her marriage with accused and also threatened her if she proceed with the present case.

35. The learned advocate for accused has attacked the case of the prosecution that as per the complaint-Ex.P1 it is the translation of her English complaint into Kannada and the original complaint which was in English, written on 30-01-2012 is not seen the light of the day and the same is not produced before the Court. Ex.P1-complaint was received in the police station on 01-02-2012 and the same is not the original complaint and the First Information Report dated 30-01-2012 is not produced before the Court.

36. The learned Public Prosecutor submitted that the complainant has started to write the complaint on 30-01-2012 when she had been to the police station in order to lodge the complaint. But at that time the police asked her to write the complaint afterwards as they will bring the accused and after talks with the accused the complaint can be written. Therefore, on 30-01-2012 she has stopped the writing of the complaint. On 31-01-2012 the police asked her to go to Vidyaranyapura Police Station on the basis of jurisdiction. In Vidyaranyapura Police Station the accused came and told that his father and sister are coming on 01-02-2012 and thereafter he will talk with the complainant. On 01-02-2012 when the father and sister of accused came, they refused to perform the marriage of victim- girl with the accused. Therefore, on the same paper on which she started to write the complaint on 30-01-2012, she wrote the complaint on 01-02-2012 and presented in the Police Station.

37. I perused Ex.P1. At top, the date is mentioned as 30- 01-2012. On the left side it is mentioned that the complaint is translation of her previous complaint in English to Kannada. The said complaint was received in Jalahalli Police Station on 01-02-2012. In that regard it is necessary to see the evidence of Pw.3 at Para-9 to 11. According to Pw.3, on 30-01-2012 she started to write the complaint at Jalahalli Police Station, but the police told her that they will bring the accused and after talks with him she can file the complaint. But on 30-01-2012 the accused had not come to the Police Station. She stopped the writing of the complaint on that day. On 31-01-2012 the Jalahalli police asked her to go to Vidyaranyapura Police Station as her house is situated within the

jurisdiction of Vidyaranyapura Police Station and told her that they will bring the accused to the said Police Station itself. Therefore, she had gone to Vidyaranyapura Police Station, wherein the accused came. The accused told that he is not ready to marry her. At that time the Vidyaranyapura Police asked her to go to Jalahalli Police Station on the ground that the incidents were happened within the jurisdiction of Jalahalli Police Station. Therefore, on that day in the afternoon she had gone to Jalahalli Police Station, wherein the accused also came. In the said police station the accused told that his father and sister are coming on 01-02-2012. Therefore, on 31-01-2012 also she had not complete the writing of complaint. On 01-02-2012 the complainant, her parents had gone to Jalahalli police station, wherein the accused along with his father and sister had come. On talks, the father and sister of accused refused to perform the marriage of victim-girl with the accused. They told her that:

"...ÉÃgÉ KÉÁzÀgÀÄÄ PÉÃ½j, aÄÄzÄÄaÉ aÄiÁvÀæ aÄiÁrPÉÆ¼ÄÄâaÄÄ¢®è." Then the complainant has lodged the complaint on that day "ÉÄÉÄUÉ ÉÄÉÄß fÃaÄÉÄ ©lÄÖ "ÉÃgÉ KÉÄÆ "ÉÃPÁVgÀ®è CzÁPÁÌV D ¢ÉÄ ,ÄAeÉ |ügÄâ¢ PÉÆmÉÖÉÄÄ." Therefore, the say of the learned counsel for accused that on 30-01-2012 there was another complaint written in English has not seen the light of the day is not acceptable.

38. In that regard no suggestions have been made by the learned advocate for accused in the cross-examination of Pw.3 that on 30-01-2012 she had filed complaint written in English to the concern Police Station.

39. It is further argued by the learned advocate for accused that the complainant has filed the complaint in delayed stage. As per the charge sheet, the first incident was happened on 19-10-2011 but the complaint was filed on 01-02-2012, there is delay of more than three months. Therefore, the contents of complaint are concocted and on the basis of cooked up story the complainant has submitted the false complaint against the accused.

40. The learned Public Prosecutor submitted that in case of rape delay in filing the complaint is not material to acquit the accused. He has relied upon the following rulings:

2010 CRI.L.J.2892-Santhosh Moolya Vs. State of Karnataka, the Hon'ble Supreme Court of India has observed as under:

"There was delay of 42days in lodging complaint- Same was properly explained by victims-Except victims, no male member was available in their family to help them to lodge report-Mother of victims corroborated assertion about their illiteracy and fear due to threat call of applicants."

2010 CRI.L.J. 4283-Satpal Singh Vs. State of Haryana, the Hon'ble Supreme Court of India has observed as under:

"In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact- situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur. This Court has always taken judicial notice of the fact that "ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon."

(2009(1) Crimes 111 (SC)-State of U.P., Vs. Manoj Kumar Pandey, the Hon'ble Supreme Court of India has observed as under:

"Apart from that normal rule regarding the duty of the prosecution to explain the delay in lodging FIR and the lack of prejudice and/or prejudice caused because of such delayed lodging of FIR does not per se apply to cases of rape."

2008 CRI.L.J. 714-State of M.P. Vs. Babulal, the Hon'ble Supreme Court of India has observed as under:

"Evidence of victim was "Straight forward" and believable-Plea of false implication-delay in filing the FIR are not ground for acquittal."

1998 CRI.L.J. 785-S.Krishna Vs. State of Karnataka, the Hon'ble High Court of Karnataka has observed as under:

"Lodging of complaint after accused refused to agree to terms of settlement shortly thereafter- Delay in lodging complaint well explained-Not fatal to prosecution."

1990 CRI.L.J. 1434-Jito Vs. State of Himachal Pradesh, the Hon'ble High Court of Himachal Pradesh has observed as under:

"Penal Code (45 of 1860), S.376-Criminal P.C. (2 of 1974), S.154-RAPE-FIR-Rape case-Delay in filing F.I.R- Girl's future and honour of family at stake-

Father's impression that medical certificate essential for filing F.I.R.-Financial hardship of family-Delay satisfactorily explained.

Where the delay in filing F.I.R., is caused firstly because after hearing about the incident the parents as well as the other family members of the prosecutrix are involved in a serious thinking as to whether the matter should be reported to the police or not, looking to the future of the girl and the honour of the family, secondly the father of the prosecutrix was under impression that matter can only be initiated in case the medical certificate is obtained first, thirdly family did not have sufficient money with them to incur necessary expenditure for going from place to place, thus the considerable time is spent in the process, delay in filing F.I.R., said to be explained satisfactorily."

41. He has rightly relied on the above rulings. I have gone through the said rulings. It is a fact that in the society that too in the Indian Traditional families, prevailing in India, delay in filing the complaint in cases of sexual assault, sexual offences, cannot be equated with the cases involving other offences. In the said rulings it is also observed by the different Hon'ble High Courts and Hon'ble Supreme Court that before filing the complaint in cases of sexual offences the parents used to think about the future life of their daughter and honour of the family. Therefore, in the present case also the delay in filing the complaint has no much importance as the victim-girl/prosecutrix-Pw.3 has explained in detail why there was delay in filing such complaint. The explanation given by the victim-girl/ prosecutrix is held proper.

42. It is further submitted by the learned advocate for accused that in the complaint the victim-girl/prosecutrix clearly mentioned that on 19-10-2011 there was no sexual inter course by the accused with the complainant. In her statement recorded on 02-02-2012, she has stated that on 19-10-2011 she had not accept the demand made by the accused for sexual intercourse. But, the accused told her that if the physical relation ship is made by using the condoms, nothing would be happened. The accused induced the complainant that he will marry her and in between 03.30p.m., to 04.00p.m., on 19-10- 2011 he has committed rape on her. Till 25-01-2012 the accused had sexual intercourse with the complainant, oftenly. But she gave her further statement on 02-06-2012 that on 19- 10-2011 in between 03.00p.m., to 04.00p.m., when the complainant had been to the house of accused on his invitation, the accused told her that he is in deep love with her and he would marry her and tried to have sexual intercourse with her but the complainant has not permitted him to have sexual inter course on 19-10-2011.

43. It is submitted that the complainant herself is not firm when the alleged incident was happened. At one breath according to her on 19-10-2011 the accused had raped her forcibly and at another breath she has stated that on that day, though the accused tried to rape her but she has not allowed him to come over her. Therefore the prosecution case is not believable.

44. Pw.3 has deposed that the first sexual intercourse between herself and the accused was on 14-11-2011 and thereafter it was continued often up to 25-01-2012. Therefore, the learned advocate for accused submitted that the victim /prosecutrix herself is not firm about the date of first sexual intercourse and subsequent dates of incidents. It is submitted that the say of victim/prosecutrix in that regard is cooked up story.

45. The learned Public Prosecutor submitted that there was love affair between the accused and the victim/prosecutrix; she is not expected to remember the date on which the first sexual intercourse was taken place between the complainant and the accused. They both were lovers; she had full faith that he is going to marry her within a short period.

46. The learned advocate for accused has relied upon the judgment passed in Criminal Appeal No.2238/2010 in Criminal Appeal No.425/2015 (@ SLP (Crl.) No.9896 of 2011) and Criminal Appeal No.636 of 2012, wherein also the offences alleged against accused was punishable under Section 376 of IPC, the victim became pregnant and on the facts of said case the Hon'ble Supreme Court held that the victim's testimony does not inspire confidence.

47. He has also relied upon oral judgment passed in Criminal Appeal No.419/2005 on the file of Hon'ble High Court of Judicature at Bombay Nagpur Bench dated 04-09-2015, wherein it is observed that on the basis of evidence that has appeared on record, it cannot be said that with an certainty that this person must have been the appellant himself. At the most what can be said is that the prosecutrix may have had some relation with the appellant and as she stayed away for the whole night from her house voluntarily and probably had no justifiable explanation to put forth for such an act, she may have tried to implicate the appellant in the present case. The Hon'ble High Court of Bombay-Nagpur Bench, in view of the evidence available in the said case it is held that the evidence of prosecutrix as not trust worthy and the corroboration to the evidence of prosecutrix would be required.

48. Relying on these judgments the learned advocate for accused submitted that Pw.3 has deposed every thing which is not mentioned in the complaint. There is no explanation why the complainant has not mentioned all these facts which are now deposed before the Court in the complaint itself. Therefore, it is an improvement and not more than that. The evidence of Pw.3 is not believable and it is cooked up story subsequent to filing of the complaint. Further more, the alleged sexual intercourse was only with the consent of the victim/prosecutrix. When the victim/prosecutrix is a consenting party, the allegation of rape cannot be accepted. He has relied upon the rulings reported in:

(2003) 4 SCC 46-Uday Vs. State of Karnataka, the Hon'ble Supreme Court has observed as under:

" The consensus of judicial opinion is in favour of the view that consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral equality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. The circumstances show that the freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

(2014) 4 SCC 42-Joshinder Yadav Vs. State of Bihar, the Hon'ble Supreme Court has observed as under:

"The criminal court must be alert, it must oversee the actions of prosecution and investigating agency and, in case it suspects foul play, it must use its vast powers and frustrate any attempt to set at naught, a genuine prosecution."

49. On going through the facts and circumstances of the above referred rulings, on which the learned advocate for accused has relied upon, are entirely different from the facts and circumstances of the present case. In the present case the evidence of Pw.3 is whether trustworthy or not is to be considered on the available evidence before the Court.

50. On the other hand the learned Public Prosecutor has relied upon the rulings reported in 1987 CRI.L.J. 1965-Mani Vs. State of Kerala, the Hon'ble Kerala High Court has observed as under:

"FIR-First Information report-It is not encyclopedia of entire prosecution case-It need not give all details-It is only starting point to alert investigation machinery into probe.

A first information report is not, and need not be, a catalogue of all information that may be in the mind of the informant. Several factors would determine what would be said and what would be misused. The dimensions of perception, the sense of importance or unimportance of events in the mind of the maker of the statement, his own state of mind, his view of relevancy and irrelevancy would all form the back-drop in which the statement made will have to be considered. A first information report is not an encyclopedia of the entire prosecution case but only a starting point that alerts the investigating machinery into the process of probe the result of which will be evaluated by the Court. Therefore, no fault can be found with the first information report about a murder case lodged by a witness because the informant did not mention the injuries sustained by one of the witnesses in the course of the same transaction."

2001 SCC (Cri)1514-Chandrasekhar Sureshchandra Bhatt Vs. State of Maharashtra, the Hon'ble Supreme Court has observed as under:

"The marginal variations between the statement of the prosecution witness recorded under Section 161 Cr.PC., and the testimony given in court, cannot be dubbed as improvement made with any sinister motive. They are elaborations elicited by the Public Prosecutor during the examination-in- chief. It is the prerogative of the Public Prosecutor to elicit such points from a witness as he deems necessary for the case. No Public Prosecutor can be nailed to the statement recorded under Section 161 of the Code."

AIR 2007 SC 2594-Asharam & Anr. Vs. State of M.P., the Hon'ble Supreme Court has observed as under:

"Criminal. P.C. (2 of 1974).S.156-F.I.R.-Not substantive piece of evidence-Cannot contradict evidence of eye-witness."

2007(3) Crimes 310(SC)-State of Rajasthan Vs. Nana & Others, the Hon'ble Supreme Court has observed as under:

"Merely because there was some difference in the version of one witness so far as his statement in the court vis-à-vis Statement in the FIR is concerned that does not in any way affect the credible and cogent evidence of other witnesses."

AIR 2008 SC 1603-Animireddy Venkata Ramana & Ors Vs. Public Prosecutor, High Court of Andhra Pradesh, the Hon'ble Supreme Court has observed as under:

"Criminal P.C. (2 of 1974), S.154- FIR-Need not be encyclopedic-Considering effect of some omissions in FIR on part of some omissions in FIR on part of informant-Probable physical and mental conditions of informant, can not be ignored."

(2011) 1 SCC (Cri) 381- State of Uttar Pradesh Vs. Krishna Master and Others, the Hon'ble Supreme Court has observed as under:

"Criminal Trial-Appreciation of evidence- Generally-Principles- Court should read evidence as a whole-So read, if it appears to have a ring of truth, then discrepancies, inconsistencies, infirmities or deficiencies of minor nature not touching core of the case cannot be ground for rejecting the evidence-Court should sift the evidence to separate falsehood from truth-It should not adopt a hyper technical approach ."

2014 (1) KCCR SN 78 (SC)-Vinod Kumar Vs. State of Haryana, the Hon'ble Supreme Court has observed as under:

"Evidence Act, 1872-Section 3-Appreciation of evidence-Minor discrepancies on trivial matters not touching core of case or not going to root of matter-cannot result in rejection of evidence as a whole-No true witness can possibly escape from making some discrepant details-Court should bear in mind that it is only when discrepancies in evidence of a witness are so incompatible with credibility of his version that it would be justified in jettisoning his evidence."

51. Relying on these rulings it is submitted that it is not necessary to mention the entire evidence of prosecutrix in the complaint itself and the minor discrepancies cannot be considered, when there is sufficient materials on record to prove the guilt of accused. He has further relied upon the following rulings:

2005 CRI.L.J. 4375- State of M.P. Vs. Dayal Sahu, the Hon'ble Supreme Court has observed as under:

"Once the statement of prosecutrix inspires confidence and accepted by the Courts as such, conviction can be passed only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitates the Courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case. If the statement of the prosecutrix and other prosecution witnesses inspire confidence."

2005 CRI.L.J. 710- Rajendra Datta Zarekar Vs. State of Goa, the Hon'ble Supreme Court has observed as under:

"Penal Code (45 of 1860), S.375-RAPE-FALSE IMPLICATION-Rape-False implication of accused- Normally improbable-Rape leaves a permanent scar and has a serious psychological impact on victim and also her family members-No one would normally concoct a story of rape just to falsely implicate a person."

2008 CRI.L.J. 3543- Moti Lal Vs. State of M.P., the Hon'ble Supreme Court has observed as under:

"Penal Code (45 of 1860), S.376-RAPE- is not merely physical injury but deep sense of some deathless shame-Accused cannot insist on corroborative evidence, even if case spoken b victim was probable.

The physical scar on a rape victim may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insists on corroborative evidence, even if taken as a whole; the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery."

2009 CRI.L.J. 4133- Rajinder Vs. State of H.P., the Hon'ble Supreme Court has observed as under:

"Penal Code (45 of 1860), S.376-RAPE- -Rape- Testimony of prosecutrix-Sufficient to base conviction-Look for corroboration-Not necessary except in cases of high improbability.

In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self- respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary to



uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix."

2006 CRI.L.J. 139-State of Himachal Pradesh Vs. Asha Ram, the Hon'ble Supreme Court has observed as under:

"Penal Code (45 of 1860), S.376-RAPE-Rape- Conviction for, can be founded on testimony of prosecutrix alone-Evidence of prosecutrix is more reliable than that of an injured witness-Minor contradictions or insignificant discrepancies in her statement, immaterial."

1983 CRI.L.J. 1096- Bhoginbhai Hirjibhai Vs. State of Gujarat, the Hon'ble Supreme Court has observed as under:

"Evidence Act (1 of 1872), S.3-EVIDENCE-

Appreciation of-Discrepancies-Overmuch  
importance cannot be given to minor  
discrepancies."

2014 (1) Crimes 346 (SC)- State of U.P., Vs. Naushad, the Hon'ble Supreme Court has observed as under:

"A woman's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires."

1977 CRI.L.J. 410- Bal Kishan Vs. State and another, the Hon'ble Delhi High Court has observed as under:

"Evidence Act (1872), Sections.114, 138-Failure to cross-examine witness in respect of material assertion-Party would be presumed to have admitted truth of that assertion."

1992 CRI.L.J. 334-Vunnam Lakshminarayana Vs. State Inspector of Police, Narasaraopet, the Hon'ble Andhra Pradesh High Court has observed as under:

"Penal Code (45 of 1860), S 376-EVIDENCE-Rape- Evidence and proof-Medical evidence and evidence of victim aged 10years proving rape-Suggestion to victim of false implication of accused at the instance of her father because of village factions unjustified."

52. I have gone through all these rulings referred above. Keeping in mind the principles laid down in the above referred rulings by both the parties, now we have to scrutinize the evidence available on

record.

53. It is an admitted fact that the accused and complainant both are known to each other. In the complaint as well as in her further statement on 02-06-2012 it is the case of victim/prosecutrix that on 19-10-2011 the accused only attempted to have sexual intercourse with the victim/ prosecutrix and such act was not completed. Thereafter when the complainant had gone to the house of accused on his call, that he was suffering from illness, at that time also no such incident was happened. But, on 14-11-2011 when she again gone to the house of accused on his request, the accused had sexual intercourse with the complainant forcibly even though she resisted the act of accused. Pw.3 has further deposed that she has asked the accused why he has done so for which the accused told that: "DgÉÆÄ|AiÄÄ £Ä£Ä §°Ä¼Ä |æÄw, ÄÄvÉÜ£É ÄÄvÄÄÜ vÄ£Ä£ÄÄß ©lÄÖ "ÉÄgÄgÄÆ £Ä£Äß fÄªÄ£ÄzÄ°è §gÄ"ÄgÄzÄzÄÄ °ÁUÉ ªÄiÄrzÉ£ÄzÄÄ °ÉÄ½zÄ£ÄÄ." She has mentioned in the complaint as under:

"MAZÄÄ ¢£Ä DvÄ£ÄÄ £ÉÆAiÄiÁØzÄ vÄ£Äß ªÄ£ÉAiÄÄ°èè EzÁYUÄ G- Talk £Ä°è ZÄmi ªÄiÄqÄÄwÜgÄÄ ªÁUÄ, PÄAqÉÆÄªÄi GYÄAiÉÆÄV¹ zÉÊ»PÄªÄV, ÉÄjzÄgÉ K£ÄÆ DUÄÄ ªÄÄ¢®è JAzÄÄ vÄÄÄ"Á §®ªÄAvÄ ªÄiÄrzÄ. £Ä£ÄÄ DUÄ"ÄÉ ZÄmi£Ä°è ¢gÄPÄj¹zÉYÄ£É. EzÄQIÄvÄ ªÄÄÄAZÉ MAzÄÄ ¢£Ä CªÄ£ÄÄ £Ä£ÉÆßqÄ£É §®ªÄAvÄªÄV zÉÊ»PÄªÄV YÉÇ, ÁðV zÉÊ»PÄ, ÄÄ\$AzÄ ªÄiÄrzÄY. CAzÄÄ £Ä£ÄÄ CvÄÄP Ü ÉÆAqÄÄ ªÄ£ÉUÉ °ÉÆÄV SMS ªÄÄÆ®PÄ »ÄUÉÄPÉ ªÄiÄrzÉ JAzÄÄ PÉÄ½zÄgÉ CªÄ£ÄÄ £Ä£ÄUÉ ¢£Äß fÄªÄ£ÄzÄ°è "ÉÄgÉAiÄiÄgÄzÄgÄÆ °ÄÄqÄÄUÄ \$AzÄÄ ¢£Ä£ÄÄ ªÄÄzÄÄªÄiÄiÁUÄÄªÄ, ÄzÄsävÉAiÄÄ£ÄÄß EgÄ"ÄgÄzÄÄ, £Ä£ÄÄ CªÄªUÉ, ÉÄgÄ"ÉÄPÄÄ, CzÄPÉi £Ä£Äß °ÄPÄi£ÄÄß £Ä£ÄÄ eÆÄYÄ£ÄªÄV PÄYÄqÄ"ÉÄPÄÄ CzÄPÉi »ÄUÉ ªÄiÄrzÉÄ, EzÄÄ £Ä£Äß |æÄw AiÄiÄªÄUÄ®Æ £Ä£ÄßzÄV G½AiÄÄ"ÉÄPÉAzÄÄ »ÄUÉ ªÄiÄrzÉ, £Ä£ÄÄ ¢£Ä£ÄÄ ªÄÄzÄÄªÄiÄiÁUÄÄvÉÜ£É JAzÄÄ, ÄªÄiÄzsÄ£Ä ªÄiÄrzÄ. F, ÄÄ\$AzÄs »ÄUÉ 25£ÉÄ d£ÄªÄj£ÄÄgÉUÄÆ £Äq- ÉÄvÄÄ. F ªÄÄzsÉÄ CªÄ£ÄÄ PÉ®ªÄÄ, Ä® »ÄUÉ EªÄÆÄµÄ£Ä"i "ÁèPªÄ£ÄÄ"i ªÄiÄr, 25£ÉÄ d£ÄªÄjAiÄÄAzÄÄ £Ä£ÄÄ CªÄ£Ä ªÄ£ÉUÉ °ÉÆÄVzÉ.Y CªÄ£ÄÄ »ÄUÉ §®ªÄAvÄ ªÄiÄrzÄ."

54. According to Pw.3, the said physical relationship was continued up to 25-01-2012. It is also stated that prior to 25- 01-2012 the accused had gone to his native place-Noida. The accused asked the complainant to come to airport on 17-01- 2012 midnight at 12.30 to receive him, as he was returning from Noida. Therefore, the complainant along with her friend-Mala i.e., Pw.1 had been to Air port on that night and picked the accused. At the time of returning from Air port the complainant, her friend-Mala and accused were moving in the car. On the way he told to the complainant and Mala that he has talked with his parents about his marriage with the victim/prosecutrix and there will be an engagement of their marriage within a short period. Therefore, the victim/prosecutrix fully believed the words of accused. On the way they dropped Pw.1 to her house and the complainant at the instance of accused, believing his words of engagement, stayed in the house of accused wherein they both had sexual intercourse on 17-01-2012.

55. In that regard the prosecution has produced Ex.P8- i.e., talks held in between the complainant and accused by way of chatting, messages etc. On Page No.1 on 17-01-2012 at about 11.49hours he told as under "atleast Ek baar u tell things seriously am I wrong in asking those things." On page No.5 the talks between the complainant and accused show that he asked the complainant to come to airport to receive him. When the complainant told him that in the night how it is possible for her to come to airport, for which he advised the complainant to say to her mother that she is staying at Mala's house in the night, by telling her some party is there or something which she would think right and told her she should inform the said fact to her mother after she reaching the office. These words show that the accused was demanding for physical relationship with the complainant and asked her to say false to her mother that she will stay on that night in the house of her friend-Mala. Thereafter made the prosecutrix to remain with him on that night. After 17-01-2012 up to 23-01-2012, there was no response from accused and Pw.3 felt that he is trying to avoid her. Therefore, on 23-01-2012 she herself had gone to the house of accused, but the accused sent her back by saying that he will talk with his parents on 25-01-2012. Thereafter the victim/prosecutrix on 25-01-2012 again had gone to the house of accused, wherein he again used the victim/prosecutrix physically and asked one week time to talk with his parents about their marriage. On 26th and 27th January, 2012 when the complainant asked the accused through SMS, what happened, the accused told her that he will talk on Sunday, but thereafter he has stopped to talk with her completely. Therefore, the victim/prosecutrix again and again asked the accused why he has kept quiet on all these days, he told that he is not interested to talk with her and all he has done with the victim/prosecutrix is only for his satisfaction. This fact is supported by Ex.P8-the chats and messages exchanged in between the accused and the complainant, held on 28-01-2012, which disclose that on that day already the accused was decided to avoid the complainant. When the complainant repeatedly called the accused he has not picked up her call and the message was sent by him as "what is your problem, can't you understand simple language that I don't want to talk." The victim/prosecutrix sent one message that "if it is true, I will think I have no right to live, it is better I don't, because I cannot live without you." And asked him "phir aapne mujhe itna jhoot kyun bola, tat u love me u cnt liv widot me y d hell did u physicy cme so close to me." The accused sent message as " I dnt knw n nyways I m a cheap guy I dnt hv ny feelings for nything I do all things for my satisfaction" (under lined by this Court). Thereafter he has stopped completely to talk with the victim/prosecutrix.

56. In the cross-examination of Pw.3, no where it is denied that on 14-11-2011, 17th and 25th January-2012 and further in the mean time between 14-11-2011 to 25-01-2012 there was no forcible sexual intercourse by accused with the prosecutrix. She has deposed that at the first time she refused for physical relationship, but latter on the accused had sexual intercourse with her forcibly without her consent and that she mentally suffered in that regard and questioned the accused why he has done so, the accused assured her that he would marry her and also stated that to avoid the entry of any other person in the life of prosecutrix, he has done so. Subsequently according to Pw.3, the accused started to have sexual intercourse by emotionally blackmailing her that he would marry her.

57. It is submitted by the learned advocate for accused that the prosecutrix at the time of the alleged incident was not a minor, during 2011 and 2012, but she has not disclosed the same either to her parents or to the police immediately after the incident. Therefore, the case of prosecutrix itself is

doubtful.

58. But on perusal of the records of the prosecution it is disclosed that on 19-10-2011 the accused attempted to have sexual intercourse with the prosecutrix. But on that day she has succeeded to restrain the accused to come over her and rescued herself. But there was love affair between them and the accused assured her that he would marry her. At the beginning itself the prosecutrix told him that they are belonging to different castes and different states and how their marriage is possible, for which the accused promised her that he will manage his parents and they both are majors and earning members. The evidence of Pw.2 and Pw.8, the parents of prosecutrix show that they were not opposing the marriage proposal between the prosecutrix and the accused. Therefore, when there was a love affair between the parties and the parents of prosecutrix were not objecting for the same, in the subsequent days, on repeated demands for sexual intercourse by the accused, on one unfortunate moment the accused came over her and had sexual intercourse, even though she refused for the same.

59. Pw.2-the father and Pw.8-the mother of prosecutrix have deposed that during October-2011 the accused visited their house and he was introduced by complainant. Their daughter also informed them about the proposal of marriage put by accused. Pw.2 has deposed that when he came to know about the said proposal, he told them after talking with parents of accused they will fix the marriage.

60. This evidence shows that the parents of prosecutrix had no knowledge about the physical relationship between their daughter and the accused till they came to know about the same in the Police Station in January 2012 itself. Therefore, the evidence of Pw.2 and Pw.8 supported the evidence of Pw.3 about her friendship with the accused and proposal of marriage put by the accused.

61. Pw.1-Mala is close friend of Prosecutrix. She has deposed that when herself and complainant were working in the same company, she had knowledge about the love affair between the accused and complainant. The accused used to visit their office and sometimes he used to take out the complainant with him from the office. The complainant also informed her about their physical relationship.

62. The evidence of Pw.3 and Pw.1 i.e., the complainant and her friend-Mala, discloses that on 17-01-2012 Pw.1 was accompanied with Pw.3 to Airport to pick the accused who came from Noida. On that night in the car the accused informed to the complainant and Pw.1 that he has talked with his parents about the marriage of himself and prosecutrix and assured that within short period their marriage engagement will be held. These words made the complainant to believe him fully and on that night she remained with the accused. It shows that the sexual intercourse held on 17-01-2012 was with the consent of the prosecutrix and the first sexual intercourse by the accused with Pw.3 i.e., on 14-11-2011 was forcible sexual intercourse and without her free consent.

63. Pw.7-the husband of sister of complainant came into picture only on 30-01-2012 when he was called by complainant and informed about her relationship with the accused and the refusal of the accused to marry her. Subsequently he was accompanied with complainant and her parents till filing of complaint.

64. Now it becomes necessary to this Court to consider whether there was forcible sexual intercourse by the accused with complainant without her consent and the subsequent sexual intercourse with the prosecutrix on the promise of marriage, will amount to consent or not. Section 375 of IPC states six circumstances, wherein the sexual intercourse committed amount to rape which reads as under:

65. Rape-A man is said to commit "rape" who, except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First - Against her will.

Secondly- Without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without consent, when she is under sixteen years of age.

66. The rulings referred above clearly show that once the statement of prosecutrix inspires confidence, no corroboration of testimony of the prosecutrix is necessary. Further it is held that in case of sexual offence, especially in case of rape, it leaves a permanent scar and serious psychological impact on victim girl and her family members. It is also well settled principle that in Indian traditional society, no one would normally concoct a story of rape just to falsely implicate a person, who is really innocent. If such a false story is concocted by a girl of respectable family, it may or may not affect the accused, but it will definitely affect the complainant herself and her family reputation by creating a scar on them in the society.

67. In the present case Pw.3 has deposed about the love affair with the accused and the marriage proposal by the accused. Ex.P8, the portions referred above and the other talks held between the complainant and accused through G-Talks, face book and SMS show the existence of love affair between the accused and complainant and the demand for sexual intercourse by the accused and his say of about use the condoms. The messages referred above show that on 17-01- 2012 he called the complainant to the Airport to pick him from the Airport to his house and advised the complainant to say false to her mother that on that day she will stay with her friend- Mala and made her to live in his house and had sexual intercourse. It shows that since November-2011 till 17-01-2012 and on 25-01-2012 he assured the complainant often that he will marry her and on 17-01-2012 he even told

her that within a short period their marriage engagement will be made by his parents which made the complainant to believe him fully.

68. The question in the present case is whether the conduct of accused falls under any of the six descriptions enumerated in Section 375 of IPC as referred above. It is clear by the evidence of Pw.3 that though the prosecutrix protested the act of the accused for sexual intercourse at the first instance on 14-11-2011, the accused had sexual intercourse with her forcibly and without her consent which attract the Ist and IInd grounds mentioned in Section 375 of IPC. He has continued to have sexual intercourse repeatedly, on the representation made by the accused that he would marry her. It shows that if such promise has not been given to prosecutrix and if the accused has not acted as if he loves her and would marry her, if he has not made the complainant to believe him that their marriage engagement will be made within a short period, perhaps she would not have permitted the accused to have sexual intercourse with her. It will attract the IVth ground mentioned in Section 375 of IPC. Therefore, by giving false promise of marriage if the accused had sexual intercourse with prosecutrix, whether such consent would amount to free consent is a question for consideration.

69. Section 90 of IPC defines the CONSENT as under:

"Consent known to be given under fear or misconception-A consent is not such a consent as it 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."

70. Thus if the CONSENT is given by the prosecutrix under misconception of fact, it is vitiated. In the present case the accused had sexual intercourse with prosecutrix since November-2011 to January 2012, by giving false promise that he would marry her with the consent of his parents and if his parents have not permitted their marriage, he assured her that he will manage them and more over they both are major and earning independently. It shows his intention to say that suppose his parents are not agreed for his marriage with prosecutrix, they both can marry, without the consent of his parents, as they both are major and independently earning. Thus false promise was made by the accused only with an intention to have sexual intercourse with her and not more than that. This act of accused clearly falls under the definition of rape as he had sexual intercourse with the prosecutrix forcibly at the first time and later on by obtaining her CONSENT under misconception of fact as stated under Section 90 of IPC.

71. The learned advocate for accused has relied upon (2003) 4 SCC 46-Uday Vs. State of Karnataka. In the said case it is held that the prosecutrix was in a deep love with the accused, on promise that he would marry her on later date, she continued to meet accused, had sexual intercourse with him, became pregnant. The complainant has lodged the complaint as the accused has refused to marry her. In the said case it is held that the prosecutrix is consenting party to the sexual intercourse and the promise that the accused would marry her is not a misconception of fact under Section 90 of Indian Penal Code.

72. Relying on this ruling the learned advocate for accused submitted that the prosecutrix in this case is major and she gave consent for sexual intercourse with the accused. The consent of prosecutrix in view of promise made by accused that he would marry her is not misconception of fact and does not attract Section 90 and Section 375 of IPC.

73. The Hon'ble Supreme court, in the said ruling, has observed in the said ruling that there is no evidence to prove conclusively that the appellant never intended to marry her. In the present case at the time with the accused made proposal for marriage, the complainant/ prosecutrix clearly told him that they both are belonging to different States and different Casts and their marriage is not so easy, but the accused told her that he will manage his parents and made her to believe his words that he will marry her at any cost even if there are several hurdles for their marriage. Further the statement of accused that, "I dnt knw n nyways I m a cheap guy I dnt hv ny feelings for nything I do all things for my satisfaction" show clearly that he never was intending to marry the prosecutrix and his intention was only to use the victim for his satisfaction. On going through the said ruling it is clear that the facts and circumstances of that case are entirely different from the facts of present case.

74. In a ruling reported in (2006) 11 SCC 615-Yedla Srinivasa Rao Vs. State of Andhra Pradesh, the Hon'ble Supreme Court of India has observed as under:

"It appears that the intention of the accused as per the testimony of Pw.1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him..... Therefore, the intention of the accused right from the beginning was not bona-fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent .....".

75. Further, in para-17 of the said judgment, it is held that:-

"In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law."

76. In the said case the Hon'ble Supreme Court of India has held that "the accused was guilty of offence of rape as he had obtained the consent of the prosecutrix fraudulently under misconception of fact."

77. It is also necessary to see the subsequent conduct of accused and his family members. On the basis of the complaint when the accused was arrested by police and sent to jail, again the father and sister of accused came to Bangalore and assured to the complainant that after release of accused from jail they will perform her marriage with accused and requested her to help them to get release the accused from the jail. Ex.P4 and Ex.P5 are the declarations given by Pw.3 on 17-02-2012 and 18-02-2012.

78. It is stated in Ex.P4 and Ex.P6 that as per the assurance given by Anuj Aray's father-Mr.Surendra Singh Aray that the problem will be solved in the best possible way agreeable and favourable to both the families and she would like to give another chance to Anuj Aray, if this can be settled out of Court, which is attached along with this statement and requested the Court to give a chance to the accused to discuss this issue with both the families.

79. In Ex.P5 and Ex.P7 the declarations made by the father of accused, it is declared that immediately after the knowledge of said case against his son, he has spoken to the victim/prosecutrix and his son-Anuj Aray in that regard. In reply they have stated that they are in good relationship, but due to misunderstandings, Pw.3 has lodged complaint against his son. He has spoken personally to Pw.3 about the dispute and assured her that he will personally solve the problem in a best possible way, which is favourable and agreeable to both the families. The dispute between them is purely of personal nature and it can be resolved between both the families. He undertakes to resolve the dispute once his son is released from the jail .

80. These four documents show that immediately when the accused was sent to jail his father and sister came to Bangalore and tried to resolve the matter. In that regard Pw.3 has deposed that the father and sister of Anuj Araya told to Pw.3 and her parents that immediately after the release of accused from the jail, they will perform their marriage. Only on that assurance Ex.P4 to Ex.P7 have been prepared, according to Pw.3 in the office of the advocate for accused, who is now representing the accused before this Court.

81. Pw.3 has further deposed that on the assurance given by father and sister of accused, she met the accused in jail also. She demanded the accused and his father to mention in Ex.P4 to Ex.P7 that they will perform their marriage after release of accused, but according to Pw.3 they told her that this document is to be produced before the Court to get release the accused from jail and it is not possible to mention in the said document that they have to perform their marriage after release of accused. But once the accused is released from jail, they started to say that they have to wait till disposal of case and refused to perform the marriage of prosecutrix and accused and told her that they are ready to pay certain amount to the complainant/prosecutrix. This behaviour of father and sister of the accused and of accused, show their intention that they have treated the complainant as if she is prostitute and offered to pay certain amount as compensation for use of complainant by accused, showing great insult to the character of prosecutrix.

82. In the present case if we see the conduct of prosecutrix and accused, and Ex.P8 the talks and messages held in between the accused and the prosecutrix, they show that the prosecutrix was in a deep love with the accused, but the accused was only pretending that he is in love with her and



making assurance oftenly that he would marry her and within a short period their marriage engagement will be done. This statement was made only with an intention to use the prosecutrix physically to satisfy his lust. At the first instance, i.e., on 19-10-2011 the accused has attempted to have sexual intercourse with the complainant/prosecutrix, but on that day he failed in his attempt. Subsequently he demanded for sexual intercourse with the prosecutrix repeatedly by assuring to the extent that if they use condoms, nothing will happen, more over they are going to marry in a near future. On 14-11-2011 he succeeded in his attempt to have sexual intercourse with the complainant and as per the evidence of Pw.3, the said act was with force and without her consent.

83. The learned Advocate for accused submits that the prosecutrix is deposing falsely, and her evidence is not trustworthy, and believable.

84. This submission is not supporting by the records available before the court and there is no rebuttable evidence by the accused. Except the evidence of D.W.1, the accused has not chosen to enter into witness box to lead his evidence in order to rebut the evidence of prosecution witnesses, and even he has not taken any strain to lead the evidence of his father and sister, for the reasons best known to him. Assuming that the evidence of complainant is lie and she is deposing falsely before the Court, even though in her further statement before police on 02-02-2012 it is mentioned that the accused had sexual intercourse with her on 19-10-2011 forcibly, but in her complaint as well as in her further statement dated 02-06-2012, she has not stated that on 19-10-2012, there was forcibly sexual intercourse by accused, without consent. If really she is intending only to harass the accused and punish him by hook or crook, there was no impediment to her to depose that there was forcible sexual intercourse by accused with her on 19-10-2011 itself. As per Pw.3 subsequent to 14-11-2011, he started to have sexual intercourse oftenly with her by black mailing her emotionally assuring that he will marry her. It appears that the intention of accused as per the evidence of Pw.3 and preparation of Ex.P4 to Ex.P7, right from the beginning was not honest and he keep on promising till 25-01-2011 that he would marry her, when the prosecutrix repeatedly asked the accused to talk with his parents about their marriage, he has postponed the same and at last he has refused to marry her by saying that he has done all this for his satisfaction. Therefore since beginning the intention of accused was not bonafide and he used the prosecutrix to satisfy his sexual desire by misleading her that he would marry her. The act of accused clearly shows that his intention was not to marry the prosecutrix and pursuant the prosecutrix to believe him that he is going to marry her and continued to have sexual intercourse with her under total misconception of fact that he would marry her. Therefore, the said consent cannot be treated as consent under law.

85. The learned Public Prosecutor has further relied upon 2013(4) Crimes SC Page 47 in Md.Iqbal & Another Vs. State of Jharkhand, wherein the Hon'ble Supreme Court of India has observed that "there is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statement of other witnesses". According to this ruling when the offence committed is punishable under Section 376 of IPC, if the prosecutrix has deposed before the Court and her evidence is believable and trustworthy, the conviction can be based on sole testimony of prosecutrix. No further corroboration to her evidence is necessary.

86. In the present case it is a fact that Pw.3 has clearly deposed about the alleged rape made by the accused i.e., at the first instance sexual intercourse with force and thereafter black mailing her that he would marry her. Pw.1 the friend of prosecutrix has supported the case of prosecutrix about the physical relationship between the complainant and the accused and the mental sufferings of victim/prosecutrix when the accused had sexual intercourse with the prosecutrix at the first time. Further she has supported the case of prosecutrix that on 17-01-2012 when they were returning from Airport in a car, the accused told that he has talked with his parents and within a short period their marriage engagement will be performed. The subsequent conduct of accused shows that the said statement made by the accused was only with an intention to make the prosecutrix to stay with him on that night and to have sexual intercourse with her. The evidence of Pw.2 and Pw.8-the parents of prosecutrix supported the love relationship between their daughter and accused. No girl can say about the sexual intercourse which she had with the accused to her parents, that too when their marriage was not yet performed. Therefore, the evidence of Pw.2 and Pw.8 cannot be discarded on the ground that they have shown their ignorance about physical relationship between their daughter and accused till the time of filing of complaint.

87. The act of accused, his father and sister further supported the evidence of Pw.3 that when the accused was sent to jail, the main object of father and sister of accused including the accused was to bring him out from the jail by hook or crook. Therefore, at that time they assured that they will perform the marriage of prosecutrix with accused after his release from the jail. In the cross-examination of Pw.3 the suggestions have been made that in Ex.P4 to Ex.P7, nowhere it is mentioned that they agreed to perform her marriage with accused. Pw.3 admits the same and deposed that as per the advice of advocate for accused (who is now requesting the accused) that the said documents are to be produced before the Court; hence the assurance of marriage after release of accused is not mentioned in Ex.P4 to Ex.P7. In that regard it is necessary to observe here that at the first instance on 01-02-2012 before lodging complaint when the father and sister of accused along with the accused have talked with the prosecutrix and her parents, on that day they said that they will give certain amount to the prosecutrix and refused to perform her marriage with accused, but the prosecutrix has refused to receive the amount as it is her life question. Therefore she has lodged the complaint.

88. Assuming that at the time of preparing Ex.P4 to Ex.P7, no assurance of marriage was given either by the accused or by his father and sister, then it is necessary to see the evidence of Pw.3 and her parents in that regard. They all deposed that before lodging the complaint, the accused called his father and sister to Bangalore and after their arrival they talked with the victim/prosecutrix that they are ready to pay certain amounts to the prosecutrix and not ready to take her in marriage to their son, for which the prosecutrix had not agreed as she has thought that it is her life question and requested for marriage. When the accused and his family members were not ready for the same, then only the FIR was registered. In such a situation it is not possible to accept the say of defense that at the time of preparing Ex.P4 to Ex.P7 also they were not agreed for marriage, but agreed only to pay certain amount to the prosecutrix and the prosecution has also agreed to receive certain amount from the accused and his father. After release of accused, again the accused and his family members are not agreed for marriage. It shows that even after filing of complaint also the accused and his family members have cheated the complainant by saying that they will perform the marriage

of complainant with accused after his release from jail and requested her to help them to get release the accused from jail. If really the intention of prosecutrix was to get the amount from the accused and his parents, she might have accepted the offer put by father and sister of accused to receive certain amount and to close the case. But Pw.3 deposed that she has not accepted the money offered as it is her life question and filed complaint. When such being the case, it is not possible to believe the suggestions made by defense that at the time of preparing Ex.P4 to Ex.P7 she agreed to receive the amount and put her signature on the said documents. Therefore, the said suggestions are not believable and not acceptable.

89. Whatever may be the subsequent behaviour of the parties and the events that taken place, as discussed above the evidence of Pw.3, Pw.1, Pw.2 and Pw.8 fully support the case of prosecution. There is nothing on record to disbelieve the evidence of prosecution witnesses in that regard.

90. At the time of recording the statement of accused under Section 313 of Cr.P.C., he has totally denied all the incriminating circumstances made against him.

91. The defense has examined one witness as Dw.1, who is working as Security Manager in Movenpick Hotel-Bangalore. He has deposed that since 2011 up to one year the accused has worked in their hotel. He has produced Ex.D1 and Ex.D2 to show that on 19-10-2011 and on 14-11-2011 the accused was on duty. Ex.D3 is character certificate relating to accused. In the cross-examination of Dw.1 he admits that he has not received any summons from the Court to appear and to adduce evidence and to produce documents. He admits that Ex.D1 to Ex.D3 are not issued by him. He admits that the workers working in the said hotel and their working time etc., come under the control of HR. The workers who are preparing the food and other eatables in the hotel ordinarily come to hotel at 06.00a.m, and remain in the hotel up to 11.00 to 12.00p.m., night depending upon their work. But further deposed that in such circumstances, in the afternoon such workers will take rest. He admits that at that time if the worker wants to go outside the hotel for one hour, such worker has to take Out Pass and if such worker wants to go out from the hotel for more than one hour, he has to put his thumb impression on biometrics. He admits that he has no personal knowledge about the working hours of the accused i.e., time when he ordinarily used to come to the hotel and the time when he was going out from the hotel. Therefore, the evidence of Dw.1 that on 19-10-2011 and on 14- 11-2011 the accused was present in the hotel is no way helpful to the defense.

92. In the ruling reported in 2003 INDLAW SC 1154- State of Punjab Vs. Ramdev Vs. Singh, in which The Hon'ble Supreme Court of India has observed that "Commission of rape or sexual violence apart from being a dehumanizing act is unlawful intrusion on the right of privacy and sanctity of a female. .... A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e., her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society". It is further held in the said ruling that "even if the victim in the said case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being actually assaulted by anyone and everyone".

93. Therefore, it is clear that rape is an offence causing injury to the dignity, honour, reputation and chastity of the prosecutrix. If the victim/prosecutrix who has suffered much by the acts of accused has adduced evidence which is trust worthy and aptly believable, the conviction can be imposed on the accused.

94. In the present case as discussed above, Pw.3-the prosecutrix has deposed in support of prosecution case in detail and her relationship with accused is supported by the evidence of Pw.1, Pw.2 and Pw.8. The same is further supported by preparing Ex.P4 to Ex.P7 at the instance of father and sister of accused.

95. At this stage it is proper to rely on the ruling reported in 2014(1) Crimes 346(SC)-State of U.P., Vs. Naushad, wherein the Hon'ble Supreme Court of India has observed as under:

"Indian Penal Code, 1860-Section 376 read with Section 90-Criminal Procedure Code, 1973-Section 378 Rape-Misconception of fact-If consent is given by prosecutrix under misconception of fact, it is vitiated - Accused had sexual intercourse with prosecutrix by giving false assurance to prosecutrix that he would marry her-After she got pregnant, he refused to do so- accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix-He never intended to marry her and procured her consent only for reason of having sexual relations with her which act of accused falls squarely under definition of rape-He brazenly raped her for two years giving her false assurance that he would marry her-High Court has gravely erred in fact and in law by reversing conviction of accused for offence of rape-Trial court was absolutely correct in appreciating evidence on record and convicting and sentencing accused for offence of rape-Trial court was correct in awarding maximum sentence of life imprisonment to accused as he was committed a breach of trust that prosecutrix had in him-impugned order set-aside."

96. In the said case the accused-Naushad was the son of maternal uncle of prosecutrix-Shabana's father, who was the informant. It is complained that the accused used to visit the house of informant oftenly and enticed his daughter-Shabana and cheated her promising to marry her and had a regular sexual intercourse with her on this pretext, because of which she became pregnant. When the informant came to know about this fact he has complained to the parents of the accused by name-Irshad and his wife, they accepted their fault and promised to punish Naushad. A Panchayat was held a day before lodging the report when Irshad and his wife offered Rs.10,000/- to Rs.20,000/- to them and refused to take the prosecutrix in marriage with Naushad, even they gave the threat of life to the complainant if any action is taken. On the basis of this information the case has been registered.

97. It is further observed in the said ruling that "A Woman's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires." It is also observed in the said ruling that " It is apparent from the evidence on record that the accused had obtained the consent of the prosecutrix for sexual intercourse under misconception of fact i.e., he would marry her and thus

made her pregnant. He is thus guilty of rape as defined under Section 375 of IPC and liable to be punished for offence under Section 376 of IPC."

98. The evidence on record discloses that the prosecutrix and the accused have gone in deep love and the accused promised her that he would marry her. On 14-11-2011 the accused forcibly had sexual intercourse with the prosecutrix even against her will and without her consent. When she started to cry, he tried to console her that he would marry her and succeeded to make her to believe him completely. Subsequently he started to have sexual intercourse with the prosecutrix on and often by emotionally black mailing her that he would marry her. When the talks were held between the victim and her parents on one side, the accused, his father and sister on another side even prior to filing of complaint and after release of accused, the accused and his family members were offered some amount to the prosecutrix and refused to take her in marriage to accused. Therefore, the accused has used the body of victim as plaything. It is submitted by advocate for accused that when this case is pending the prosecutrix has married some other person. But it is not ground to acquit the accused. Nobody will accept that the prosecutrix should remain unmarried till disposal of case, when the accused had clearly denied to marry her. Therefore, it is clear that subsequent sexual intercourse between the accused and the prosecutrix cannot be considered as consent, the first sexual intercourse on 14-11-2011 was with force and without the consent of prosecutrix and the subsequent sexual intercourse were on the basis of misconception of fact that the accused would marry her. Under these circumstances I am of the opinion that the prosecution has succeeded in proving beyond all reasonable doubt that the accused has committed offences punishable under Section 376 and 420 of IPC. Hence, I answer the above Points No.1 and 2 accordingly.

99. POINT No.3: In view of my findings on the above points, the accused is liable for conviction to the offences punishable under Section 376 and 420 of IPC. In the result, I proceed to pass the following:

ORDER Acting under Section 235(2) of Cr.P.C., the accused is convicted to the offences punishable under Sections 376 and 420 of IPC.

To hear regarding quantum of sentence.

(Dictated to the Judgment Writer transcribed & typed by her and also computerized my dictation by the Judgment Writer to. It is then corrected, revised and pronounced by me in the Open Court on this the 14th day of September 2015).

(VIJAYALAXMI S.UPANAL) LIV Addl., City Civil & Sessions Judge, Bangalore.

SENTENCE The learned advocate for accused submits that the accused is the only son to his father and he is the only bread earning member in the family. His parents are suffering from illness and depending on the earning of accused for their livelihood. If the accused is sent to jail for long period he will lose his life and even his parents will suffer much. The complainant is already married and settled in her life. It is further submitted that the Court kindly consider the conduct of accused during

investigation and during trial and take lenient view. It is further contended that the Court kindly consider the dependency of the parents on the accused and submits to take lenient view.

2. The learned Public Prosecutor submits that maximum punishment be awarded against the accused, as the accused has committed heinous offence. He has relied upon the ruling reported in AIR 2013 SCC 3246-State of Hariyana Vs. Janaki Singh & another, wherein it is observed that the offence under Section 376 IPC is most heinous crime against woman, it affects her personality and rodes her confidence, violates her right to life. Sentence bargaining is not permissible in rape cases.

3. He has further relied upon the ruling reported in AIR 2013 SCC 2997- State of M.P., Vs. Najab Khan, that the Hon'ble Supreme Court has observed that at the time of imposing sentence, Court must not only keep in view the right of victim of the crime but also the society at large.

4. Keeping in mind the principles laid down in the above rulings, I perused the records. The age of the accused is about 30 or 31years. It is a fact that now-a-days the atrocities against women are increasing, day-by-day. In such cases, if the Court takes much lenient view, certainly the wrong message will go to the society. Under Section 376 IPC the minimum punishment is imprisonment of either description for a term which shall not be less than 7years, but which may be for life or for a term which may extend to 10years and shall also be liable to fine, unless the woman raped is his own wife and is not less than 12years in which case he shall be punished with imprisonment of either description for a term which may extend to 2years or with fine or with both. Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term less than 7years.

5. In the present case, no other adequate and special reasons are submitted by the defence counsel to impose lesser punishment. The submission that during pendency of this case the victim-girl has married another person and now she is residing with her husband, is not a ground to take lenient view against the accused. However, considering the age of the accused, keeping in mind the submission of the learned advocate for the accused that the accused is of young age and his family members are depending on him, I proceed to pass the following;

**ORDER** The accused is sentenced to undergo rigorous imprisonment for a period of Eight years and fine of Rs.20,000/- for the offence punishable under Section 376 of IPC and in default of payment of fine to undergo simple imprisonment for five months.

The accused is sentenced to undergo rigorous imprisonment for two years with fine of Rs.10,000/-- for the offence punishable under Section 420 of IPC and in default of payment of fine to undergo simple imprisonment for three months.

The substantive sentence of imprisonments stated above shall run concurrently, but the sentence in default of payment of fine, in case, the fine amount is not paid, shall run consecutively.

The period of detention in judicial custody, if any, undergone by the accused already is given set off u/s 428 Cr.P.C.

If the fine amount is recovered, Rs.20,000/- out of total fine amount, shall be paid to the victim-girl, as compensation.

MO.1 shall be kept along with documents.

The bail bond of the accused and surety bond stand cancelled.

The office is directed to give free copy of the Judgment to the accused immediately.

(Computerized by the Judgment Writer to my dictation, corrected, revised and then pronounced by me in the Open Court on this the 15th day of September 2015).

LIV Addl., City Civil & Sessions Judge, Bangalore.

ANNEXURE Witnesses examined for the prosecution:

Pw.1	Mala	Cw.3	12-12-2012
Pw.2	P.Udayakar	Cw.2	13-12-2012
Pw.3	Roopkala	Cw.1	13-12-2012
Pw.4	Rangappa	Cw.5	21-02-2013
Pw.5	V.Ramaiah	Cw.8	21-02-2013
Pw.6	Anoop Kumar	Addl.	03-04-2013
Pw.7	Raja Singh Arya	Wit-	03-04-2013

Pw.8	Sarala	nesses	03-04-2013
Pw.9	Dr.S.Praveen	Cw.6	03-07-2014
Pw.10	T.R.Siddalingappa	Cw.9	19-07-2014
Pw.11	M.S.Satyanarayana	Cw.10	19-07-2014

Documents marked for the prosecution:

Ex.P1	Complaint	Pw.3	13-12-2012
Ex.P1a	Signature of Pw.3	"	"
Ex.P1b	Signature of Pw.10	Pw.10	19-07-2014
Ex.P2	Mahazar	Pw.3	13-12-2012
Ex.P2a	Signature of Pw.3	"	"
Ex.P2b	Signature of Pw.6	Pw.6	03-04-2013
Ex.P2c	Signature of Pw.10	Pw.10	19-07-2014
Ex.P3	Medical Examination	Pw.9	03-07-2014

	report of complainant		
Ex.P3a	Signature of Pw.3	Pw.3	13-12-2012
Ex.P3b	Signature of Pw.9	Pw.9	03-07-2014
Ex.P3c	Signature of Pw.11	Pw.11	19-07-2014
Ex.P4	Declaration paper	Pw.3	03-01-2013
Ex.P5	Declaration paper	"	"
Ex.P6	Declaration paper	"	"
Ex.P7	Declaration letter	"	"
Ex.P8	E-Mail	"	"
Ex.P8a	Signature of Pw.11	Pw.11	19-07-2014
Ex.P9	Newspaper-Bangalore Mirror	Pw.3	03-01-2013
Ex.P10	Credit Card Page No.4	"	"
Ex.P11	Credit Card Page No.10	"	"
Ex.P12	Report of Pw.5	Pw.5	21-02-2013
Ex.P12a	Signature of Pw.5	"	"
Ex.P12b	Signature of Pw.10	Pw.10	19-07-2014
Ex.P13	Requisition Letter	Pw.9	03-07-2014
Ex.P13a	Signature of Pw.9	"	"
Ex.P13b	Signature of Pw.10	Pw.10	19-07-2014
Ex.P14	Medical Examination Report of accused	Pw.9	03-07-2014
Ex.P14a	Signature of Pw.9	"	"
Ex.P14b	Signature of accused	"	"
Ex.P14c	Signature of Pw.11	Pw.11	19-07-2014
Ex.P15	Requisition Letter	Pw.9	03-07-2014
Ex.P15a	Signature of Pw.9	"	"
Ex.P15b	Signature of Pw.10	Pw.10	19-07-2014
Ex.P16	FIR	Pw.10	19-07-2014
Ex.P16a	Signature of Pw.10	"	"
Ex.P17	Accused voluntary statement	Pw.10	19-07-2014
Ex.P17a	Signature of Pw.10	"	"
Ex.P18	Xerox copy of lease agreement	Pw.11	"
Ex.P18a	Signature of Pw.11	"	"

Material objects marked for the prosecution:

M0.1	C.D	Pw.3	03-01-2013
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Witnesses examined for the accused:

Dw.1	Jobimuthayi	09-03-2015
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Documents marked for the accused:



Ex.D1	Employment certificate	Dw.1	09-03-2015
Ex.D1(a)	Signature of Dw.1	Dw.1	09-03-2015
Ex.D2	Attendance record	Dw.1	09-03-2015
Ex.D3	Character certificate	Dw.1	09-03-2015

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Witness examined and material objects marked for the accused:

- Nil -

LIV Addl., City Civil & Sessions Judge, Bangalore.