

LEGAL NOTES

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Day by day criminal activity against women is increasing in the society. One of the most heinous crimes against women in the society is cheating and rape. Often it is seen in many cases that the offender is causing belief in the mind of the victim woman by making a false promise of marriage and obtaining consent for sexual intercourse with her and later refusing to marry her, due to which, not only the body of the victim but also the entire future of the victim is being exploited.

Though the investigating officers are investigating these cases and filing charge sheets U/s 417, 376 IPC against the culprits, most of the cases are not standing to judicial scrutiny due to legal infirmities and lack of evidence etc. In a large number of cases the result is either acquittal or discharge of the accused on one or more grounds, namely 1) sufficient legal evidence was not available regarding involvement of the accused in the commission of the offence, 2) the allegations in the FIR or the complaint, even if they were taken at their face value do not constitute the offence alleged against the accused.

To prove the offence U/s 417, 376 IPC in such cases the evidence is required on the following aspects:

- 1) The accused by deceitful means fraudulently induced the victim.
- 2) That the accused had the intention to deceive at the time when the inducement was made.
- 3) That consent for sexual intercourse was given under “misconception of fact”.
- 4) That the accused had knowledge that the victim had consented for the sexual intercourse in consequence of a “misconception of fact” arising from his promise.

- 5) That from the inception the accused never really intended to marry the victim woman.

The investigating officer should call in aid Sec.90 of IPC while investigating into these type offences. According to Sec.90 the consent given by a woman for sexual intercourse is not consent if it was given under a “misconception of fact”. The evidence collected should attract the ingredients of Sec.375 read with Sec.90 IPC.

In **UDAY VS STATE OF KARNATAKA 2003(1) ALD (CrI) 498 (SC)** the Supreme Court elaborately discussed on the aspects of cheating and rape and made the following observations:

“In a case of this nature two conditions must be fulfilled for the application of Sec.90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception.”

In **SURAM KIRAN KUMAR REDDY VS STATE OF A.P. AND ANOTHER 2002 (2) ALD (CrI) 835 (AP)** it was observed by Andhra Pradesh High Court:

“Chastity and / or ‘virginity’ of woman is also covered by property used in Sec.415 IPC, for the reason that a woman who engages in sexual activity for payment is called a ‘prostitute’ and the ‘payment’ in such case is made by the man for ‘buying’ sexual pleasure. Traditionally Indian woman try to preserve their virginity to ‘offer’ it to their husband on the first night of their nuptial. They also treat and consider ‘chastity’ as if it were property. For rape they say in Telugu ‘Manamu Dochuconnadu’. When translated means he stole my chastity as if it were property.”