

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE : JORHAT.**

PRESENT : Md. Manwar Ali, M.A.,LL.B., A.J.S.,

Chief Judicial Magistrate,

Jorhat.

For the prosecution ..... Mrs. D. Hazarika, Addl.P.P.

For the defence ..... Mr. I.K.Bora, Advocate.

Ref. : G.R.Case No. 26 of 2008.

State -vs-

Bhaikan Hazarika ..... Accused.

Under section 417 of the I.P.C.

Offence explained on ..... 27.03.2009.

Evidence recorded on ..... 04.05.2009; 16.06.2010; 09.07.2010;  
09.08.2010; 17.06.2011.

Statement recorded on ..... 16.07.2011.

Argument heard on ..... 19.11.2011.

Judgment delivered on ..... 05.12.2011.

**J U D G M E N T.**

1. The prosecution initiated this case on receipt of an ejahar at Bongaon police outpost under Majuli police station filed by one Smti Sarumai Bhuyan, daughter of Sri Bapu Bhuyan of village Salmora Gaon under Majuli police station, District Jorhat, alleging that since last two years she had love affairs with one Bhaikan Hazarika (accused), son of Sri Lakhi Hazarika and became pregnant. On 26.03.08 at about 6-30 p.m. the complainant visited the house of the accused, but the accused fled away. Thereafter, the complainant stayed in the house of the accused on that night. Next morning, the accused having 'Khukri' in his hand assaulted her and attempted to throw her in the river. But one Bhadra Hazarika saved her life. On 01.04.08, accused Bhaikan Hazarika and his brother Ajit Hazarika demanded dowry of cash amount of Rs. 50,000/- (Rupees fifty thousand) from the complainant and

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they also attempted to throw her in a river, but she somehow managed to save her life and on the next day, i.e. on 02.04.08, she lodged the ejahar.

2. The In-charge, Bongaon police outpost, on receipt of the said ejahar, vide G.D. Entry No. 24 dated 02.04.2008, forwarded the same to the officer-in-charge of Majuli police station, for registering a case and on receipt of the said ejahar forwarded by the In-charge, Bongaon police outpost, the officer-in-charge, Majuli police station, registered a case vide Majuli P.S. Case No. 11/2008, u/s 493/315/387/34 of I.P.C. and endorsed Sri Dipanta Phukan, S.I. of police, to take up the investigation of the instant case. After completion of the investigation the I.O. submitted charge sheet against accused Bhaikan Hazarika u/s 493/387/315 of I.P.C.

3. On appearance of the accused person before the Court, necessary copies were furnished to him u/s 209 of the Cr.P.C. and as the alleged offences are triable by the Court of the Hon'ble Sessions Judge, vide order dated 10.08.08 my learned predecessor committed the case to the Court of the Hon'ble Sessions Judge, Jorhat. Vide order dated 26.11.08, passed by the Hon'ble Assistant Sessions Judge, Jorhat, in Sessions case No.94 (JM)/08 held that there is no prima facie case u/s 315 of I.P.C. and the accused was discharged u/s 315 of I.P.C. and as the rest offences brought against the accused are triable by Magistrate of the first class, the case was transferred to the Court of the learned Chief Judicial Magistrate, Jorhat, for disposal in accordance with the provisions of law. On receipt of the same, the then learned Chief Judicial Magistrate, Jorhat, vide order dated 27.03.09, after hearing both sides and perusal of the records and on being found prima facie materials u/s 417 of the I.P.C., the particulars of offence u/s 417 of I.P.C. were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

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4. The prosecution, in support of its case, examined as many as seven witnesses who were cross-examined by the defence in extenso. The defence did not adduce any evidence. Statement of the accused u/s 313 Cr.P.C. was recorded. The plea of the defence was nothing but an utter denial.

**POINTS FOR DETERMINATION :**

5. (i) Whether the accused person cheated the complainant Smti. Sarumai Bhuyan as alleged on the relevant date and time and thereby committed offence u/s 417 of the I.P.C. ?

**DISCUSSION, DECISION AND REASONS THEREOF :**

6. To evaluate the evidence of the prosecution witnesses u/s 3 of the Evidence Act, the evidence are to be seen individually. P.W.1 Smti. Sorumai Bhuyan

Hazarika has deposed in her evidence that she is the informant. She knows the accused person. Since last two years she has love affairs with the accused. The accused also took the P.W.1 by fleeing to his house where she stayed with him for about one week. The accused had promised to marry her and induced her to have sexual intercourse with him and as a result, she became pregnant. Thereafter, the

accused administered three tablets and as a result her pregnancy was miscarriaged. The accused also attempted to kill her, but the P.W.1 somehow managed to save herself and then filed this instant case. P.W.1 has also confirmed the ejahar marked as Ext.1 with her signature marked as Ext.1(1). During investigation her statement u/s 164 of Cr.P.C. was also recorded. P.W.1 has also confirmed the statement recorded u/s 164 of the Cr.P.C. marked as Ext.2 with her signatures marked as Ext2(1) and Ext.2(2). In her cross- examination she has further stated that she lived in the house of her elder sister. There are four dwelling houses in between the house of the accused and her sister. Many suggestions were put by the defence during cross-

examination of P.W.1 which were denied by her. But the defence could not disprove the fact that the

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accused had cheated her by inducing her to have sexual intercourse with a promise to marry her. P.W.1 is the victim and she has vividly stated the incident and as she is the eye-witness of the incident, I find that she has stated truthfully and I do not find any reason to discard the evidence of this witness.

7. P.W.2 Sri Mohendra Bhyan has stated that he knows the accused person. He also knows the informant. She wanted to get married with the accused. But the family members of the accused did not accept P.W.1. Then P.W.1 lodged the complaint before the Mohila Somittee. The accused denied the allegation before the Mohila Somittee. Thereafter, the Mohila Somittee suggested P.W.1 to file case. The elder brother of the accused had got married the elder sister of P.W.1 and in this connection P.W.1 used to visit the house of the accused. P.W.2 does not know what is the relation between the accused and the P.W.1. The defence declined to cross-examine P.W.2.

8. P.W.3 Smti. Geeta Bharali has stated that P.W.1 is her aunt. She also knows the accused person. Four years prior to the incident, P.W.1 used to live in her house. Accused Bhaikan Hazarika is the brother-in-law of her another aunt and in this connection the accused used to visit her house. Then developed their love affairs between the P.W.1 and the accused and due to their physical relationship her aunt (P.W.1) became pregnant. Thereafter, the accused administered medicine to P.W.1 and then the accused took P.W.1 to his house. After about seven days, the accused started demanding dowry, assaulted P.W.1 and on her failure to fulfil the demand of dowry, drove her out of his house and since then P.W.1 has been taking shelter in the house of P.W.3. P.W.3 has further stated that due to the medicine given by the accused, the pregnancy of P.W.1 was miscarried. P.W.3 has further stated in her cross-examination that she did not witness the physical relationship between the

accused and P.W.1. Many suggestions were put by the defence during cross-examination of P.W.3 which were denied by her.

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9. P.W.4 Smti. Putul Hazarika has stated that P.W.1 Sorumai Bhuyan is her sister and the accused Bhaikan is her brother-in-law. The accused brought Sorumai as his wife by fleeing to her house. But next day the accused fled away leaving alone P.W.1 in her house. After two hours accused Bhaikan Hazarika again visited the house of P.W.4 and thereafter Bhaikan Hazarika and Ajit Hazarika assaulted P.W.1 for non-fulfilment of the demanded dowry. Thereafter, a meeting of the Mohila Somittee was held in her courtyard and in that meeting accused Bhaikan Hazarika refused to marry P.W.1, and thereafter, accused Bhaikain fled away. P.W.1 was pregnant at that time. Many suggestions were put by the defence during cross-examination of P.W.4 which were denied by her.

10. P.W.5 Dr. Banamala Bezboruah has stated that on 05.04.08 she was posted at J.D.S. Civil Hospital, Jorhat, as Sub-Divisional Medical & Health Officer. On that day, at about 12-20 p.m. P.W.5 examined Smti. Sarumai Bhuyan (P.W.1) on police requisition, but she did not find any sign of violence and after taking X-ray of P.W.1 she found the age of the victim (P.W.1) to be above eighteen years. The cross-examination of P.W.5 was declined by the defence.

11. P.W.6 Smti. Purnima Bharali has stated that P.W.1 is her sister and the accused is the brother-in-law of one of her sisters. Two years prior to the incident, Sarumai Bhuyan (P.W.1) used to live in her house and during that period the accused person Bhaikan Hazarika frequently used to visit her house. Once the accused took P.W.1 to his house as his wife and kept her there for a period of seven days and thereafter P.W.6 heard that Bhaikan Hazarika (the accused) had assaulted Sarumai Bhuyan (P.W.1). Many suggestions were put by the defence during cross-examination of P.W.6 which were denied by her.

12. P.W.7 Sri Dipanta Phukan, T.S.I., has stated that on 02.04.08 he was

posted at Bongaon Police outpost as In-charge. On that day he received one F.I.R. from one Smti. Sarumai Bhuyan and after G.D. Entry he forwarded the F.I.R. to the

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officer-in-charge of Majuli police station for registering a case and the Officer-in-charge, Majuli police station, after registering a case endorsed him to take up the investigation of the instant case. P.W.7 recorded the statement of the informant (P.W.1) in the police outpost and thereafter he visited the place of occurrence and also prepared a sketch map of the place of occurrence. P.W.7 has confirmed the sketch map marked as Ext.4 with his signature marked as Ext.4(1). P.W.7 has also recorded the statement of other witnesses during investigation. The statement u/s 164 of Cr.P.C. of the informant was also recorded. The accused was arrested. He also collected the medical certificate and after completion of the investigation, he submitted the charge sheet against the accused. P.W.7 has also confirmed the charge sheet marked as Ext.5 with his signature marked as Ext.5(1). In his cross-examination P.W.7 has further stated that he did not record the statements of the witnesses near the place of occurrence as they refused to give their statements. He also did not see any injury mark on P.W.1.

13. The learned Addl.P.P. Mrs. D.Hazarika, while arguing for and on behalf of the State has submitted that the prosecution has proved its case against the accused person beyond doubt and, therefore, Mrs. Hazarika contended to accept the prosecution case and to convict the accused person.

14. Per contra, Mr. I.K. Bora, the learned counsel for the defence, raised the following points before me :-

- (i) There is contradiction in the version of the witnesses ;
- (ii) No offence u/s 417 of I.P.C. is made out.

The learned defence lawyer has further submitted that the prosecution has not been able to bring home the guilt of the accused person and has prayed to acquit the

accused person from the charge u/s 417 of I.P.C. In this regard the learned defence counsel has placed reliance on the case of Shaikh Nabab Shaikh Babu Musalman and others-vs- State of Maharashtra 1993 CRI.L.J.43(SUPREME COURT). I have gone

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through the said ruling. But the same is highly dissimilar in nature to the instant case and the said judgment does not assist the accused. The learned defence counsel has further submitted that as to constitute the offence of cheating the intentional inducement of the person must be proved and such intention must be at the time of making promise or misrepresentation. Mere failure to keep up the promise, without the intentional inducement at the time of making the promise or misrepresentation, is not sufficient to prove the existence of such intention right from the beginning.

15. However, there may not be any direct evidence as to the fact of intention to deceive, which can be implied from the facts proved. Such intentional inducement and deception can be proved by number of circumstances from which a reasonable inference can be drawn (Debendra Kumar Singla -vs- Baldev Krishna Singla (2005) 9 SCC 15. On the other hand, the learned Addl.P.P. Mrs. Hazarika has submitted that it has been proved that the accused has intentionally induced the victim (P.W.1) to surrender to his sexual lust with the promise or misrepresentation that he will marry the victim (P.W.1) and as a result of which she became pregnant, thereby causing damage or harm to the victim in her body, mind and reputation, which constitute the offence of cheating within the meaning of section 415 of the I.P.C. I have carefully sifted the evidence on record and the victim (P.W.1) vividly described the entire incident. In her evidence she has stated that the accused induced her to have sexual intercourse with him by making a promise to marry her and so induced by the promise of marriage made by the accused and believing that the

promise was bonafide, she allowed the accused to have sexual intercourse, which she had with the accused, she conceived and became pregnant and thereafter the accused evaded from marrying her. The evidence of P.W.1 is also corroborated by other P.Ws.

16. “Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through some human process.” (1978)4-SCC 161.

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17. There are some discrepancies, exaggerations in the statements of the P.Ws. for that reason, the evidence cannot be discarded. Much importance should not be given to minor discrepancies, they can be overlooked unless, discrepancies go to the root of the matter to impeach the basic version of the case. Further version here is supported by probabilities.

18. In the case of State of Himachal Pradesh -vs- Lakhraj (2000)1 SCC-247, the Hon'ble Apex Court has distinguished minor discrepancies from contradiction and held that minor discrepancies or variation in evidence does not make the case doubtful.

19. It is well settled law that the interestedness of witnesses is not fatal, if believed. Section 134 of the Evidence Act lays down in clear terms that no particular number of witness is necessary for proof or disproof of any fact.

20. The Hon'ble Gauhati High Court in case of Md. Zakir Hussain -vs- State of Assam, reported in (2008)2 GLR 264 in Para 25 and 26 observed and held as follows :-

PARA 25 :- When an accused makes a false promise to marry, which he never intends to carry out, and induces thereby the victim so deceived, to have with him sexual act, which the victim would not have indulged in or permitted, had she not been induced by such deception and when such act of having sexual intercourse by

her with the accused causes, or is likely to cause, damage or harm to her body, mind or reputation, the act of the accused would amount to cheating. Thus when a woman is induced to part with her chastity or virginity, which is the most valued possession of hers, the person, who so induces the woman by making false representation, would be liable for punishment under section 417 of I.P.C. if the victim's having sexual intercourse, with such a person, causes, or is likely to cause, harm to her body, mind or reputation, for, in such a case, unless so deceived, the victim would not have permitted sexual act by the accused. To put it differently, had such a victim not been deceived, she would not

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have permitted sexual act or would have refrained from allowing such sexual act and clearly in such a case, but for her permitting such sexual act, she would not have suffered harm to her body, mind or reputation.

PARA 26 :- Since the definition of the offence of cheating indicates, as already pointed out above, that even when no parting of property is occasioned by deception, the deception may still amount to cheating if, as a result of the deception a woman does anything or omits to do anything, which she would not have, but for such deception, done or omitted to do, it logically follows that when an accused, not intending to marry a woman, induces a woman so deceived to have sexual intercourse with him or induces such a woman to omit from resisting the act of sexual intercourse by him with her, the act of the accused of having sexual intercourse with such a woman would amount to offence of cheating if the act of the woman in letting such a man have sexual intercourse with her or the act of the woman in omitting to resist the act of sexual intercourse by such a man with her causes or is likely to cause damage or harm to the person of such a woman, her mind or reputation.

21. I have carefully sifted the evidence on record, after careful

appreciation of the materials in evidence on record and keeping in view of the position of law and in view of the foregoing discussions in the instant case, it is found that all the prosecution witnesses have implicated the accused person Bhaikan Hazarika with the offence. Hence, in the light of the above discussion stated forth above, I am inclined to hold that the prosecution has come out with flying colours in bringing home the guilt of the accused person Bhaikan Hazarika u/s 417 of I.P.C. beyond all reasonable doubt. The accused person Bhaikan Hazarka is therefore, convicted u/s 417 of I.P.C.

22. Therefore, taking into consideration of above observation and the gravity and nature of the offence, I am reluctant to release the convicted accused person on probation of good conduct or due admonition as per provision of Sec. 3 or 4 of Probation of Offenders Act or as per provision of Sec. 360 of the Cr.P.C.

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23. Heard the accused person Bhaikan Hazarika on the point of sentence u/s 248(2) of the Cr.P.C. Accused person fervently prayed for leniency.

24. Considering all facts and circumstances of the case and nature of the offence, I sentence the accused person Bhaikan Hazarika u/s 417 of I.P.C. to undergo simple imprisonment for 6(six) months.

25. The period of earlier detention, if any, of the accused person in connection with the instant case, shall be set off.

26. Let a free copy of the judgment be furnished to the accused person.

27. Given under my hand and seal of this Court on this the 5<sup>th</sup> day aof December,2011, at Jorhat.

Chief Judicial Magistrate,

Jorhat.

Dictated & corrected by ame :

Chief Judicial Magistrate,

Jorhat.

Transcribed & typed by :

P.K.Bora,

Stenographer.