

MAKE NO PROMISES AND TELL ME NO LIES: A CRITIQUE OF *DEELIP SINGH V. STATE OF BIHAR* AIR 2005 SC 203

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The question of whether sexual intercourse, consent to which has been obtained by a false promise of marriage, amounts to rape or not is a question that has come before the Indian judiciary a number of times in recent years. The question has been addressed by the Supreme Court in two recent cases, Uday v. State of Karnataka and Deelip Singh v. State of Bihar. While the former held that the abovementioned situation did not amount to rape, the latter case held to the contrary. This paper carries out an analysis of this question and argues that it is Uday v. State of Karnataka and not Deelip Singh v. State of Bihar which lays down the correct position in law. To prove its hypothesis this paper carries out a review and analysis of all cases that had arisen on the question before Deelip Singh v. State of Bihar. Further, it supports its view by analyzing common law on the matter and goes onto show how the ratio in Deelip Singh v. State of Bihar is based on an incorrect application of the rules of statutory interpretation.

I. INTRODUCTION

Can sexual intercourse, consent to which is obtained by making a false promise¹ of marriage, be rape within the meaning of Section 375 of the Indian Penal Code, 1860 (“I.P.C.”)? In *Deelip Singh v. State of Bihar*² (“*Deelip*”), a two judge bench of the Supreme Court (“SC”) answered this question in the affirmative.³ However, before *Deelip*, another two judge bench of the SC in *Uday v. State of Karnataka*⁴ (“*Uday*”) answered the same question in the negative.⁵ In this paper we argue that the SC has erred in *Deelip* and that *Uday* lays down the correct position in law: Sexual intercourse, consent to which is obtained by making a false promise of marriage, is not rape.

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¹ This Paper understands *false promise* as distinct from *breach of promise*, such that unlike in the later, in the former the promise is made without any intention to perform. See *Deelip v. State of Bihar* AIR 2005 SC 203 at Para. 36.

² AIR 2005 SC 203.

³ See *infra* Part I.

⁴ AIR 2003 SC 1639.

⁵ See *infra* Part I.

A precisely worded Section 375⁶, culls out different grounds, falling within any of which, an act of sexual intercourse would be rape. One such ground is absence of consent of the woman. Consent is defined in Section 90⁷ of the I.P.C as “[a] consent is not such a consent as it is intended by any Section of this code, if the consent is given by a person [...] under a *misconception of fact*” [Emphasis added]. *Deelip* reasoned that a false promise of marriage is covered within “misconception of fact” and consent, thus obtained, is vitiated by Section 90. Any consequent act of sexual intercourse, *Deelip* surmised, would be marked by an absence of consent and would therefore constitute rape.⁸

While this paper argues that the above reasoning of *Deelip* is erroneous and that sexual intercourse, consent to which is obtained by making a false promise of marriage, is not rape, it is however not to suggest that the same might not be punishable under law. Thus, where a false promise of marriage is made and the same leads to “damage or harm to that person in body, mind, reputation or property”,

⁶ “375. Rape - A man is said to commit “rape” who, except in the case hereinafter expected, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

Firstly. - 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 her consent, when she is under sixteen years of age.

Explanation. - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape”

⁷ “90. 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 of misconception;...”

⁸ See *infra* Part I.

⁹ “415. Cheating:- Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.”

the same might be punishable under Section 415 of the IPC for cheating.⁹ Apart from being punishable under criminal law, making such a false promise might also be actionable under civil laws.¹⁰

Part I reviews the existing case law on this issue and carries on a detailed discussion of the reasoning in *Uday* and *Deelip* and argues that the ratio of *Deelip*, reached by making an incorrect reading of the ratio laid down in *Uday*, is of questionable authority. Part II reviews the common law position on consent vis-à-vis rape and argues that “misconception of fact” in Section 90, when read with Section 375, must be given a construction according to common law, such that misconception extends only to the nature and consequence of the act in question and not to one arising out of a false promise. Part III argues that the interpretation of “consent” in *Deelip* violates certain basic principles of statutory interpretation.

I. DEELIP VERSUS UDAY: A CRITIQUE OF CASE LAW

The question of whether sexual intercourse, consent to which was given on a false promise of marriage, is rape, has consistently arisen before the High Courts over the past few years. With the sole exception of *Saleeha Khatoon v. State of Bihar*¹¹, decided by the Patna High Court, in all the other cases, the High Courts have essentially dealt with breach of promise and not false promise and have held the same to not fall within “misconception of fact”, without necessarily implying that false promise does. It was finally in *Uday*, that false promise was specifically held by the SC, not to be covered within the expression “misconception of fact” in Section 90, and this finding was sought to be undone in *Deelip*.

The question of whether consent obtained by false promise is vitiated by Section 90 first came before the Calcutta High Court as a revision application in *Jayanthi Rani Panda v. State of West Bengal*¹². In that case, the respondent was charged with rape under Section 376 of the I.P.C. for having sexual intercourse with the petitioner, consent to which was obtained by making a false promise of marriage.¹³ The lower court, acquitting the respondent, had ruled that Section 90 is not attracted, as a false promise is not a fact and hence is not covered by the expression “misconception of fact” in Section 90.¹⁴ The Calcutta High Court, on a re-appreciation of facts found that “it cannot be said that [...] accused had no intention to marry the complainant” and that this is a case of “failure to keep a promise”.¹⁵ Thus, the Court found the present case to be that of breach of promise

¹⁰ Possibly under a claim for emotional distress. See *De Wolf v. Ford*, 192 N.Y. 397.

¹¹ 1989 Cri LJ 202 (Pat.).

¹² 1984 Cri. L.J. 1535.

¹³ *Id.* at para.1-2.

¹⁴ *Id.* at para. 3.

¹⁵ *Id.* at para. 7.

and not false promise and held the same not to attract Section 90.¹⁶ Further, the Court held that for Section 90 to be attracted, the fact misrepresented must be of immediate relevance and not pertaining to a “future uncertain date”, as in this case.¹⁷ On these grounds the Calcutta High Court rejected the petition and refused to convict the respondent under Section 376 for rape.

However, in making the above ruling the High Court, by observing that “Section 90 IPC cannot be called in aid of such a case [...] unless the Court can be assured from the very inception that the accused never really intended to marry her”¹⁸, raised an inference, that false promise, as opposed to breach of promise, would attract Section 90. Following *Jayanthi Rani Panda v. State of West Bengal*, the Calcutta High Court in *Hari Majhi v. State of West Bengal*¹⁹ and in *Abhoy Pradhan v. State of West Bengal*²⁰, set aside the conviction of the appellants under Section 376 for rape and under Section 417 for cheating, holding these cases to involve only a breach of promise and not false promise and hence, not attracting Section 90.²¹

In *State of Karnataka v. Anothnidias*²², the Karnataka High Court ruled that a case of breach of promise would not be covered by “misconception of fact” within the meaning of Section 90, and hence, sexual intercourse, consent to which was obtained by making a promise which was later breached, would not be rape.²³ While the Court did not specifically rule false promise not to fall within “misconception of fact”, the Court understood false promise as a fraud and noted that-

“ [T]here is a small category of cases which would come within the ambit of rape if the consent of the woman is by playing fraud on her. That category of cases however, is very small and the Section itself makes it clear that the fraud has got to be clearly established and the illustration given is that of an accused person who misleads a woman to agree to have sexual intercourse on the mistaken belief that the accused is the husband. ”²⁴

Again in *Honayya v. State of Karnataka*²⁵, the Karnataka High Court, following *State of Karnataka v. Anothnidias* held consent, given on a promise

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 1990 Cri.L.J. 650 (Cal.).

²⁰ 1999 Cri.L.J. 3534 (Cal.).

²¹ See *supra* note 19 at Para. 8-10; *id.* at Para. 16.

²² ILR 2000 Kar. 266.

²³ *Id.* at Para. 1.

²⁴ *Id.*

²⁵ ILR 2000 Kar. 3336.

which was later breached, would not attract Section 90 of the IPC and hence, any consequent sexual intercourse would not be rape, within the meaning of Section 375 of the IPC.²⁶

In *Saleha Khatoon v. State of Bihar*²⁷, the prosecutrix's consent to sexual intercourse was obtained by making a false promise of marriage.²⁸ On a complaint being filed, police investigation was carried out, with the police report submitted under Section 173 Cr.P.C making out a case of rape under Section 376 of I.P.C.²⁹ The magistrate however, did not commit the accused for rape under Section 376, but proceeded to try the accused under Section 498 for detaining a married woman, presumably on the ground that the prosecutrix was already married.³⁰ This order of the magistrate was challenged before the Patna High Court, which quashed the same, and remanded the accused for trial under Section 376.³¹ The Patna High Court, quashing the order of the magistrate, held false promise (understood as fraud and deception) to be covered under "misconception of fact" and consequently, sexual intercourse, on consent thus obtained, to be rape-

[I]t was a fraud that was practiced on her and she was deceived by false assurance. Such type of consent must be termed to consent obtained without her consent. Consent obtained by deceitful means is no consent and comes within the ambit of ingredients of the definition of rape.³²

As noted by *Uday*,³³ this observation of the Patna High Court must be seen in the light of the peculiar facts and circumstances of the case. Moreover, the Patna High Court only remanded the accused for trial and did not convict him under Section 376 and as such this observation was made only *prima facie*, without going into the merits of the case.³⁴

The question of whether sexual intercourse, consent to which is obtained by making a false promise, is rape, arose before the SC for the first time in *Uday*. In this case, the appellant had obtained the consent of the prosecutrix to sexual intercourse by making a promise to marry, which the lower court and the Karnataka High Court found to be false.³⁵ Finding the promise to be false, the lower court held the consent thus given to be covered under "misconception of fact" and hence

²⁶ *Id.* at para. 8.

²⁷ 1989 Cri.L.J. 202 (Pat.).

²⁸ *Id.* at para. 8.

²⁹ *Id.* at para. 1.

³⁰ *Id.* at para. 2.

³¹ *Id.* at para. 12.

³² *Id.* at para. 8.

³³ *Supra* note 4 at para. 19.

³⁴ *See supra* note 27 at paras. 10, 12.

³⁵ *Supra* note 4 at para 7-8.

held the consequent sexual intercourse to be rape.³⁶ On the Karnataka High Court confirming the holding of the lower court, the appellant- accused approached to the SC.

The SC, reasoned that “[I]legal consent, which will be held *sufficient* in a prosecution for rape, assumes a capacity to the person consenting to understand and appreciate the nature of the act committed [Emphasis added]”³⁷ and hence, sought to construe “misconception of fact” in Section 90 as misconception as to the *nature and consequence* of the sexual act.³⁸ Further, the Supreme Court held that “[a] false promise is not a fact within the meaning of the Code”³⁹. On these grounds the SC held that false promise is not covered within the expression “misconception of fact” with the result, that sexual intercourse, consent to which is obtained by making a false promise, is not rape.⁴⁰

The decision of the SC in *Uday* was followed by the Calcutta High Court in *Krishna Padho Mahto v. State of West Bengal*⁴¹ and in *Shamshad Ali v. State*⁴², where it was found that consent was given understanding the nature and consequence of sexual intercourse, and accordingly, charges of rape were negated. The Calcutta High Court in *Nripen Das v. State of West Bengal*⁴³, following *Uday*, ruled that, consent to sexual intercourse, obtained by making a false promise of marriage to a blind girl just bordering on majority, is vitiated by Section 90, as the girl in question, in view of her “age and status”⁴⁴ was unable to the understand the “result of such consent that ended in sexual act”.⁴⁵

However, in *Deelip* a two judge bench of the Supreme Court, sought to undo the decision in *Uday* by ruling that consent obtained by false promise is vitiated by Section 90 and hence, sexual intercourse, with consent thus obtained, is rape. In this Case, the lower court found the prosecutrix to be minor at the time of sexual intercourse and accordingly, convicted the appellant for rape under Section 376.⁴⁶ Further, the lower court found that even if it be asserted that prosecutrix was not a minor, there is a sufficient evidence to show that the appellant had sexual intercourse with the prosecutrix “against her will”.⁴⁷ On the High

³⁶ *Id.*

³⁷ *Id.* at para. 12.

³⁸ *Id.* at para 10, 11 and 21.

³⁹ *Id.* at para. 21.

⁴⁰ *Id.*

⁴¹ (2005) 2 CHN 198.

⁴² (2004) 2 CHN 424.

⁴³ (2004) 3 CHN 180.

⁴⁴ *Id.* at para. 13.

⁴⁵ *Id.*

⁴⁶ *Supra* note 2 at para. 4.

⁴⁷ *Id.*

Court confirming the findings of the lower court as regards the age of the prosecutrix at the relevant time,⁴⁸ the appellant approached the SC.

The SC on a re-appreciation of evidence found that neither was the prosecutrix a minor at the relevant time nor did the appellant have sexual intercourse with the prosecutrix “against her will”.⁴⁹ The charge of rape was then sought to be pressed against the appellant on the ground that he had obtained consent to sexual intercourse by making a false promise of marriage and such a consent, covered by the expression “misconception of fact”, is vitiated by Section 90.⁵⁰ The SC, accepting this contention, ruled that a false promise of marriage is covered by the expression “misconception of fact” and a consent thus obtained is vitiated by Section 90; accordingly, it was held that sexual intercourse, consent to which is obtained by making a false promise of marriage, is rape within the meaning of Section 375 of I.P.C.⁵¹ However, in the instant fact situation, the SC found it to be a case of breach of promise and not false promise and acquitted the appellant of the charge of rape under Section 376 of the I.P.C.⁵²

In finding the above ratio, the SC in *Deelip* relied on the decision of the Madras High Court in *In Re Jaladu*⁵³, which interpreted Section 90 of the I.P.C. as “broad enough to include *all cases of misrepresentation*”⁵⁴ [Emphasis added] with reference to which consent is given and which leads to “misconception of fact”.⁵⁵ Further *Deelip*, noting that, “[r]eading the judgment in *Uday*’s case as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact”⁵⁶, construed *Uday* as laying down the ratio only as regards only *breach of promise* and not *false promise*.⁵⁷

This reading of *Uday*, made by *Deelip* is patently incorrect: One, *Uday* categorically held that “[a] *false promise* is not a fact within the meaning of the Code [the I.P.C.]”⁵⁸ [Emphasis added] and it is difficult to imagine how, a false promise not being a fact within the meaning of I.P.C. could still be “misconception of fact” within the meaning of Section 90 of the I.P.C; two, in *Uday* the finding of the lower court and the High Court was specifically that of a false promise,⁵⁹ and

⁴⁸ *Id.*

⁴⁹ *Id.* at paras. 8-13

⁵⁰ *Id.* at paras. 15-16

⁵¹ *Id.* at paras. 29.

⁵² *Id.* at paras. 37.

⁵³ ILR 36 Mad. 453.

⁵⁴ *Id.* at paras. 14.

⁵⁵ *Supra* note 2 at paras. 27.

⁵⁶ *Id.* at paras. 29.

⁵⁷ *Id.*

⁵⁸ *Supra* note 37.

⁵⁹ *Supra* note 33.

with *Uday* not purporting to re-appreciate evidence, it must be assumed that it is on this basis that the ruling was passed. While *Uday* did observe the instant case was that of breach of promise,⁶⁰ this observation was made after laying down the ratio and was presented as “another difficulty in the way of the prosecution”⁶¹. Thus, with the SC in *Deelip* not finding it necessary to deal with the conflicting ratio of another two judge bench of the SC, the authority of the ratio laid down in *Deelip* is seriously compromised.

II. COMMON LAW VERSUS DEELIP ON “MISCONCEPTION OF FACT”

This part reviews the common law position on consent vis-à-vis rape and argues that “misconception of fact” in Section 90, when read with Section 375, must borrow from the common law position. Accordingly, it is argued that that “misconception of fact” must be construed as a misconception as to the *nature and consequence* of the act in relation to which consent is given and would not cover a misconception arising out of a false promise of marriage *simpliciter*, having no bearing on the nature and consequences of the act.

It is an established principle of common law that consent to engage in sexual intercourse is vitiated due to fraud or misrepresentation only when the fraud or misrepresentation extends to the “nature or quality of the act in question” or to the “identity of the person”.⁶² This principle was laid down in the English case of *R. v. Clarence*⁶³, where the accused, suffering from gonorrhoea failed to disclose the same to his sexual partner and was tried for rape on the ground that the consent given by the sexual partner was vitiated by fraud. The court acquitting the accused observed down that-

*“The only sort of fraud which so far destroys the effect of a woman’s consent as to convert a connection consented to in fact into rape are frauds as to the nature of the act itself, or as to the identity of the person who does the act. Consent in such cases does not exist at all because the act consented to, is not the act done”*⁶⁴

⁶⁰ *Supra* note 4 at para. 25.

⁶¹ *Id.*

⁶² PETER ROOK & ROBERT WARD, ROOK & WARD ON SEXUAL OFFENCES: LAW AND PRACTICE 47-48 (2004).

⁶³ [1888] 22 QBD 23.

⁶⁴ *Id.* at p. 44.

Similarly, the High Court of Australia in *R v. Papadimitropoulos*⁶⁵, repelled charges of rape against the accused who had obtained consent to sexual intercourse with the prosecuterix by pretending to enter into a marriage with her and observed that –

*“Such a consent demands a perception as to what is about to take place, as to the identity of the man and the character of what he is doing. But once the consent is comprehending and actual, the inducing causes cannot destroy its reality and leave the man guilty of rape.”*⁶⁶

Thus, applying this principle, rape was held to be committed, when the accused had sexual intercourse with the prosecutrix by misrepresenting the act to be one which improves a person’s voice for singing,⁶⁷ or when a medical man had sexual intercourse with the prosecutrix on the pretence of performing a surgery⁶⁸. But in *R. v. Linekar*⁶⁹ rape was not held, when the accused promised to pay for sexual intercourse, but later refused to pay for the same.

However, the Supreme Court of Canada, in *R v. Cuerrier*⁷⁰, did not apply this common law principle and convicted the accused of sexual assault, where the accused had been HIV-Positive and had failed to disclose the same to his sexual partners. The Court, found the common law principle of “fraud not vitiat[ing] consent to assault unless the mistake goes to the nature of the act or the identity of the partner”⁷¹ inapplicable in the Canadian context as there had been an amendment to the Criminal Code, replacing “fraud as to the nature and quality of the act” with “fraud” simpliciter, vitiating consent⁷² This amendment was construed by the Court as indicative of the legislative intention to overrule common law, with the result that the accused was convicted of sexual assault, even when there was no misrepresentation as to the nature and consequence of the act or to the identity of the partner.⁷³ Thus, in the absence of any specific legislative intention to overrule common law, “misrepresentation of fact” in Section 90, when read with Section 375 must be given a construction which is compatible with this common law principle.⁷⁴ It is submitted that in the context of the IPC, no such legislative intent to amend the common law position on consent vis-à-vis rape can be discerned, in the absence of which, the common law position must be reiterated.

⁶⁵ (1957) 98 C.L.R. 249.

⁶⁶ *Id.* at Para. 14.

⁶⁷ *R v. William* [1923] 1 KB 340.

⁶⁸ *R v. Carr* (1988) 165 CLR 314.

⁶⁹ [1995] 2 Cr. App. R. 49.

⁷⁰ [1998] 2 S.C.R. 371.

⁷¹ *Id.* at para. 25.

⁷² *Id.* at para. 95-108.

⁷³ *Id.* at para.125-139.

⁷⁴ S.K SARVARIA, R.A. NELSON’S INDIAN PENAL CODE 14-15 (2003); *See also* GURU PRASSANA SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 326-327 (2006).

Thus, a misconception arising out of a false promise of marriage *simpliciter*, having no bearing on the *nature and consequences* of the act of sexual intercourse in relation to which consent is given, would not be covered within the expression “misconception of fact”. Consequently, consent to sexual intercourse, given on the basis of a false promise of marriage, would not be vitiated and therefore, the consequent act of sexual intercourse would not amount to rape.

III. THE INTERPRETATION OF “CONSENT” IN DEELIP OFFENDS PRINCIPLES OF STATUTORY CONSTRUCTION

The controversy which this paper seeks to address is, in its most legalistic and basic form, is one relating to interpretation of words in a statute; specifically, the controversy relates to the correct interpretation of the word “consent” in S. 375 of the I.P.C. In this part we argue that interpreting “consent” in S.375, as the Court in *Deelip* has, as consent that might be vitiated by a false promise of marriage, offends two primary rules of statutory construction. Firstly, such a construction offends the golden rule of statutory construction that words and phrases in a statute must be given their ordinary or popular meaning. Secondly, assuming that the interpretation of “consent” by *Deelip* does not offend the above rule, such an interpretation still goes against the principle that words in a statute should not be interpreted in such a manner that it shall not lead to absurdity.

A. THE INTERPRETATION IN DEELIP OFFENDS THE GOLDEN RULE OF CONSTRUCTION

The golden rule of statutory interpretation has been stated as, “the words of a statute must *prima facie* be given their ordinary meaning.”⁷⁵ Such a meaning cannot be departed from by judges “in light of their own views as to policy”.⁷⁶ The rule has been applied consistently both by the courts in Britain and in India.⁷⁷ Using this rule as a guiding principle, we find that the Court in *Deelip* has committed a patent error in its interpretation of “consent” in Section 375 I.P.C.

⁷⁵ Per Viscount Simon, L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1904) AC 1014.

⁷⁶ *Shah v. Barnet London Borough Council* (1983) 1 All ER 226, 235.

⁷⁷ For recent cases applying the golden rule see *Suthendran v. Immigration Appeal Tribunal* (1976) 3 All ER 226 where Lord Simon of Glaisdale opined, “Parliament is *prima facie* to be credited with meaning what is said in an Act of Parliament. The drafting of statutes so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply ‘the golden rule’ of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense that is bears in its context, without omission or addition”. For Indian cases following the golden rule refer *Kehar Singh v. State* 1988 SC 1883, *Jugalikishore Saraf v. Row Cotton Co.Ltd.* AIR 1955 SC 376, *Kanai Lal Sur v. Paramnidhi Sahdukhan* AIR 1957 SC 907, *Workmen of National and Grindlays Bank Ltd. v. National and Grindlays Bank Ltd.*

“Consent”, according to the Shorter Oxford English Dictionary, means “agreement as to course of action.”⁷⁸ Using this meaning of consent as the ordinary or grammatical meaning of the word, we find that where there is an offer of sexual intercourse, made by a man and accepted by a woman, leading to sexual intercourse, there exists an agreement as to a single course of action. That is, there exists an agreement to do what is desired by at least one party to the agreement. This being the case, it cannot be argued that consent to sexual intercourse has been vitiated by the fact that there exists a promise by one party to marry the other party. One might argue that the existence of the promise changes the manner in which the Court should deal with the case at hand but it cannot be argued that the agreement to sexual intercourse ceases to exist because of the earlier promise to marry. In fact, such an interpretation of consent is one that has been consistently applied in the field of contract law. According to *Anson’s Law of Contract*,

*“The consent [to a contract] is none the less ‘genuine’ and ‘real’ even though it may be induced by fraud, mistake or duress. Consent may be induced by a mistaken hope of gain or a mistaken estimate of value or of the lie of a third person, and yet there is a contract and we do not doubt the ‘reality of consent’. Fraud, mistake, and duress are merely collateral operative facts that co-exist with the expressions of consent and have a very important effect upon resulting legal relations.”*⁷⁹

We thus see that the interpretation of the term “consent” in *Deelip* is incorrect and violative of the primary rule of statutory interpretation since it fails to accord to the term its natural and ordinary meaning and thus departs from the stance taken by the courts in previous cases.

B. THE INTERPRETATION IN DEELIP LEADS TO ABSURDITY

The absurdity rule of statutory interpretation has been described as follows, “in selecting out of different interpretations the court will adopt that which is just, sensible and reasonable than that which is none of these things”⁸⁰ as it may be presumed that the legislature should have used the word in that interpretation that least offends our sense of justice. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency.⁸¹

⁷⁸ SHORTER OXFORD ENGLISH DICTIONARY 304 (2005).

⁷⁹ WILLIAM. R. ANSON, PRINCIPLES OF THE LAW OF CONTRACT 199 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919), as cited in BLACK’S LAW DICTIONARY 300 (7th ed.).

⁸⁰ Nasiruddin v. State Transport Appellate Tribunal AIR 1976 SC 331, 338.

⁸¹ Tirath Singh v. Bachittar Singh AIR 1955 SC 830, 833.

We have already shown that the interpretation of “consent” in *Deelip* does not accord the term its ordinary and grammatical meaning and thus offends the golden rule of interpretation. Our argument in this sub-part is, even assuming that the interpretation in *Deelip* accords “consent” its grammatical meaning, it is still an incorrect interpretation since it violates the absurdity rule.

Consider the following situation: A man falsely promises to a woman that he is sterile and there is no fear of pregnancy arising out of sexual intercourse and based on this belief she agrees to engage in sexual intercourse with him. It later comes to the knowledge of the woman that the man actually was not sterile at the time of sexual intercourse. Following the ratio in *Deelip*, the man could be convicted of raping the woman irrespective of whether she is impregnated or not. This surely is an absurd result and it could not have been the intention of the legislature to bring about such a result at the time of framing the Section.

This absurdity can be stretched to its logical end so as to include within the ambit of rape even those cases where the alleged rapist has broken a more trivial promise to his sexual partner. This has also been recognised by the Courts as Willis J observed in *R v. Clarence*⁸²,

*“The consent obtained by fraud is not consent at all is not true as a general proposition either in fact or in law. If a man meets a woman in the street and knowingly gives her bad money in order to procure her consent to intercourse with him, he obtains her consent by fraud, but it would be childish to say that she did not consent.”*⁸³

The fact situation described above, that is, the paying of counterfeit money to procure consent to sexual intercourse, is again one that qualify as rape if we were to follow the interpretation of “consent” in *Deelip*. The absurdity of this result has been acknowledged by the judiciary and cannot be in doubt even to a layman.

We thus see that *Deelip* violates the rules of statutory construction on two counts. First, it fails to accord to “consent” its ordinary and grammatical meaning, as required by the golden rule of construction and second, even assuming that it does not violate the golden rule, it clearly violates the absurdity rule because following its interpretation of “consent” would clearly lead to absurd results.

⁸² (1888) 22 QBD 23.

⁸³ *Id.* at para. 29.

IV. CONCLUSION

Deelip is a perfect example of judges substituting their own views on policy as opposed to applying the law, to the case at hand. It is clearly the view of the judges that in cases of sexual intercourse, consent to which has been based on a false promise of marriage, injustice is done to the prosecutrix and the accused has to be punished. This attitude of the judges can easily be discerned from a close reading of *Deelip* and in particular is clearly exemplified by the following passage in the judgment-

*“[W]e cannot ignore the reprehensible conduct of the appellant, who by promising to marry the victim woman, persuaded her to have sexual relations and caused pregnancy. The act of the accused left behind her a trail of misery, ignominy and trauma. The only solace is that she married subsequently.”*⁸⁴

While the attitude of the judges might be justified in condemning the actions of the accused it does not allow them to find a cause for penal action where none exists. In this regard it would be appropriate to quote the observations of the Karnataka High Court in *State of Karnataka v. Anothnidas*⁸⁵-

*“The moral aspects of the case are entirely different because even if a court or a society disproves of the conduct of the accused in a criminal court, it would not be permissible to record a conviction unless the strict ingredients of law are satisfied.”*⁸⁶

In future cases which come before the court on this question, the judiciary, keeping with the above observation, should rectify the error made in *Deelip* and thereby decide this question correctly.

⁸⁴ *Supra* note 2, at para. 39.

⁸⁵ ILR 2000 Kar. 266.

⁸⁶ *Id.*, at para 2.