

(2023) 12 GAU CK 0030
In the Gauhati High Court
Case No : Criminal Appeal (J) No. 19 Of 2022

Pranjal Saikia

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 313, 482

Indian Penal Code, 1860 — Section 90, 347, 375, 376, 417, 419, 493, 494

Citation : (2023) 12 GAU CK 0030

Hon'ble Judges : Mridul Kumar Kalita, J

Bench : Single Bench

Advocate : Debashree Saikia, B. Bhuyan

Final Decision : Disposed Of

Judgement

1. Heard Ms. D. Saikia, learned Amicus Curiae for the appellant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This criminal appeal has been registered on receipt of an appeal petition by the appellant Shri Pranjal Saikia through the Superintendent, Central Jail, Jorhat impugning the judgment and order dated 22.03.2021 passed by the Court of learned Additional Sessions Judge, Jorhat in Sessions Case No. 233/2016 whereby the present appellant has been convicted under Section 417/376 of the Indian Penal Code and has been sentenced to undergo simple imprisonment for six months and to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo further imprisonment of one month under Section 417 of the Indian Penal Code and was also sentenced to undergo rigorous imprisonment for a period of ten years and to pay of fine of Rs. 5,000/- and in default of payment of fine to undergo further imprisonment for six months under Section 376 of the Indian Penal Code. Both the sentences were directed to run concurrently.

3. The facts relevant for consideration of the instant criminal appeal, in brief, are as follows : -

(i) That on 17.04.2015, the wife of the present appellant, Smt. Jinamani Saikia, lodged an FIR before In-Charge of Rowriah Police Outpost under Jorhat Police Station, inter-alia, alleging that when she went to her maternal home, in her absence, her husband Pranjali Saikia (the present appellant) on 16.04.2015 at about 7.30 pm brought one girl (real name not disclosed and hereinafter refer to as 'victim') to his house with a promise to marry her and kept her inside his house.

(ii) It was also stated in the FIR that the first informant had two minor daughters and she had filed the FIR as her marital life may get affected by the conduct of the appellant. On receipt of the said FIR, the In-Charge of Rowriah Police Outpost made a GD Entry No. 370 dated 17.04.2015 and forwarded the said FIR to the Officer-In-Charge of Jorhat Police Station. The Officer-In-Charge of Jorhat Police Station on receipt of the said FIR registered Jorhat P. S. Case No. 809/2015 under Section 347/494 of the Indian Penal Code and initiated the investigation. Ultimately on completion of the investigation, the Investigating Officer laid the charge-sheet against the present appellant under Section 347/419/376 of the Indian Penal Code. During the course of investigation the appellant was arrested. However, later on during the course of trial, on 18.11.2016 the appellant was allowed to be released on bail and thereafter, the appellant faced the trial remaining on bail.

(iii) On 18.02.2017, learned Additional Sessions Judge, Jorhat, after perusing the materials on record and after considering the submission of learned counsel for both sides, framed charges under Section 417/493/376 of the Indian Penal Code against the present appellant and when the said charges were read over and explained to the present appellant he pleaded not guilty to the same and claimed to be tried. However, on completion of the trial, learned Trial Court convicted and sentenced the present appellant, by the judgment which is impugned in the instant appeal, in the manner as described in paragraph No.2 hereinabove.

(iv) The prosecution side examined as many as seven prosecution witnesses including the complainant. The victim was, however, only examined as Court witness as she was not a listed prosecution witness in the charge-sheet. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which he pleaded his innocence. However, he did not adduce any evidence in his defence.

4. Before considering the submissions made by the learned counsel for both sides, let me go through the evidence which is available on record.

5. PW-1 Smt. Champa Bora deposed that she knows the Complainant as well as the accused. Her house is situated at a distance of about two kilometers from the house of the accused. The Complainant is the wife of the accused. She is not aware of the incident which took place in the year 2015 and has not heard anything. Police did not interrogate her.

6. Prosecution side prayed for declaring the PW-1 as a hostile witness. The said

prayer was allowed by the Trial Court. In her cross-examination by the Prosecution side, the PW-1 had denied that she stated before police that on 16.4.2015, when she went to the house of the Complainant, the Complainant told that when she went to her parental house, the accused Shri Pranjal Saikia during absence of his wife, enticed another girl and kept her in his house. Thereafter, few of the members of Women organization including herself went to the house of the accused Shri Pranjal Saikia and when Smt. Jinamoni Saikia, wife of Pranjal Saikia pointed out, a girl came out from inside and upon enquiry came to know that her name was 'victim' and her house was at Dhekiajuli, Gojpuria and the girl was handed over to them. She denied that she deposed falsely on behalf of the accused person.

7. In her cross-examination by defence PW-1 stated that she has not deposed falsely on behalf of the accused.

8. PW-2 Smt. Suramal Saikia deposed that she knows the Complainant as well as the accused person. The 'Victim' is not known to her. She does not know anything about the incident. The cross-examination of PW-2 was declined by the defence.

9. PW-3 Smt. Jinamoni Saikia deposed that she is the Complainant of the instant case. The accused is her husband. About 6 to 7 years ago, the accused married her and they started their conjugal life. The incident took place about 4 to 5 years back. At the time of the incident, while she was at her parental home, her husband brought 'victim' to their house. Her husband had love affair with 'victim'. Pursuant to information received from village people, she returned from her parental house to her matrimonial house. When she came back, she found 'victim' at home and her husband was also present at home. Upon enquiry, the 'victim' told her that she had a love affair with her husband. She physically assaulted the 'victim' and handed her over to police station and lodged a case before the police station. She proved Exhibit-1 as the ejahar and Exhibit-1(1) as her signature thereupon. At the time of incident she had two daughters.

10. In her cross-examination PW-3 stated that she is not aware of the fact that the accused loved the 'victim'. On the day of the incident, the 'victim' had come to visit her house. She lodged the ejahar in the police station. The accused Shri Pranjal Saikia did not marry the 'victim'. She had also stated that at the time of her deposing before the Trial Court, she was living in a conjugal relationship with the accused.

11. PW-4 Smt. Moon Gogoi deposed that the Complainant is not known to her. The accused is known to her since the incident. The incident took place two years back. The 'victim' is her brother's daughter and at the time of the incident she appeared in her Higher Secondary final examination. On the day of the incident, the accused enticed her niece and eloped with her. Later, the accused made a call at her home and informed her about taking away the 'victim' and keeping her in his house. Thereafter, the family members of the accused came to their house to

establish matrimonial relationship. Thereafter, police informed her over phone that the 'victim' is in the police station and called her over. She, her brother Shri Robin Bora, members of Women organization went to the police station. They came to know that the accused was a married person with children and as such they took zimma of the 'victim' from the police station and brought her along with them. The 'victim' told her that she was not aware that the accused was a married man and that is why she accompanied him. At the time of incident, the 'victim' was eighteen years old.

12. In her cross-examination, PW-4 stated that she does not remember the day and the date of the incident. The day was of Rangali Bihu. No ejahar has been lodged from the side of their family. She did not go looking for the 'victim'. Even though the family members of the accused came to their house, the names of the said persons are not known to her. They introduced themselves as sent by the accused. She met the 'victim' in the police station. She did not state before the police that the accused phoned her and informed her that he took away the 'victim' and has kept her in his house. She denied that she did not state before the police that family members of the accused came to their house with a "xarai" to establish matrimonial relationship. She denied that she did not state before the police that police divulged to them that the accused was a married person with children and as such they brought the 'victim' with them. Champa Saikia, Pahari Saikia and Tarani Saikia went to police station. She denied the suggestion that the accused did not take way her niece by enticing her and she was deposing falsely before the Court. Her house is situated far away from the house of the accused.

13. PW-5 Shri Robin Bora deposed that he neither knows the accused person nor the Complainant. 'Victim' is his niece. He is aware that someone enticed his niece and took her away from home. Police station informed the family members that his niece is in police station and called them over. Accordingly, he and their family members arrived at the police station. They found his niece at the police station. They brought his niece along with them. He came to know from his niece that she was physically assaulted in the house of the accused person.

14. In his cross-examination PW-5 stated that the house of his brother and his house is located within the same boundary. He is not aware when the 'victim' left, with whom she left and if she had gone for visiting. No case was lodged by him or his brother when the 'victim' was found missing.

15. PW-6 Dr. Mamata Devi deposed that on 18.04.2015, she was working as Medical Officer on duty at JMCH, Jorhat, in the department of Forensic Medicine. On that day, she examined the 'victim', who was brought by WHG Amina Begum and relatives Moon Gogoi in connection with Jorhat P.S. case No. 809/15, U/S 347/494 of IPC. She examined her after taking her consent and on examination found the following:

"Case history: - According to the alleged victim she is in love affair with a boy

named Pranjal Saikia for 6 months. She eloped with the boy on 15.04.2015 and had sexual intercourse without any contraceptive measure. On 17.04.2015, she came to know that he is a married having two children. When his 1st wife came to his house and had beaten her, in the evening on 17.04.2015, she came to police station and on 18.04.2015, she was brought for medical examination.

Examination finding:-

Physical examination:

Height 145 cm. weight-37 kg.

Chest circumference- 75 cm. Abdominal girth-62 cm.

Teeth- 14/14 = total 28 Hairs:- Scalp-64 cm length, black in colour.

Auxiliary- 1-2 cm in length, black in colour. Pubic- 1-2 cm in length, black in colour.

Breast Hemispheric shape, soft in consistency, nipple and areola brown in colour.

Menstrual history-

Age at menarche- 11 years.

Cycle- regular duration 4.5 days. Date of LMP- 12.5.15.

Genital examination(female)

Genital organs,- well developed and healthy.

Perineum, healthy.

Vulva labia majora covers minora in litho position.

Hymen - old tear at 6 O' clock and 9 O' clock position. Hymenal orifice admits two fingers.

Vagina - Healthy.

Cervix - Healthy

Uterus- Not palpable.

Evidence of venereal diseases- Not detected at the time of examination.

Vaginal smears collected from 2 smears collected.

Wearing garments- evidence of struggle- stained wearing garments are not detected at the time of evidence.

Injuries on body- Not detected

Mental condition at the time of examination- no abnormality detected.

Intelligence and memory-average.

Co-operation and behavior-good, galt- normal.

Radiological report-

- 1) Epiphyses of proximal and distal ends of humerus have fused
- 2) Epiphyses of proximal and distal end of radius and ulna have fused.
- 3) Epiphyses of bilateral iliac crest have not fused.
- 4) Epiphyses of ischial tuberosity have not fused.

Laboratory examination report.

Vaginal smear examination for spermatozoa - No spermatozoa seen.

Opinion:-

- 1) As per Physical, dental and Radiological examination, her age is above 18(Eighteen) years and below 20(Twenty) years.
- 2) Evidence of injury or violence mark is not detected on her person.
- 3) Evidence of recent sexual intercourse is not detected on her person.
- 4) Evidence of pregnancy is not detected on her person." PW-6 exhibited the medical examination report of the Victim[X] as Exhibit-2 and Exhibit-2(1), 2(2), 2(3) and 2(4) as her signatures in the report.

16. The cross-examination of PW-6 was declined by the defence.

17. The 'victim' was not named as a prosecution witness in the charge-sheet filed by the police and hence she was examined as a Court Witness. CW-1/'victim' has deposed that she does not know the Complainant. She knew the accused since two months prior to the incident and there developed a love affair between the two. The accused took her to his house under the pretext of getting married to her and she stayed for one night in the house of the accused as husband and wife. She did not meet any other person when she arrived at the house of the accused. The next day, two small girls visited her room and the accused told her that the said two girls are his sister's daughter and since his sister expired, the two girls stay with him (accused) and they were looked after by the younger sister of the accused. The accused did not tell her that he is married, she established physical relationship with the accused under the impression that the accused was unmarried and that he will marry her. Thereafter, one neighbouring lady came to the house of the accused and asked her if she is aware that the accused person is a married man and informed her that his previous wife is staying in her paternal house after quarreling with the accused. The lady introduced herself as the paternal aunt of the accused. After half an hour, a number of women came to the house of the accused and abused her with slang words that the accused is a married person and physically assaulted her. The

'victim' conveyed to them that she was previously unaware that the accused is a married person and asked them to take her to the police station. Then the women took her to the police station along with the accused and they were accompanied by the wife of the accused. Thereafter, she was sent for medical examination from the police station and her statement was recorded in the Court. The 'victim' proved her statement recorded before the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 as Exhibit-3 is and Exhibit-3(1) to 3(3) as her signatures in the said statement. From there, she went to her house.

18. In her cross-examination CW-1/Victim stated that police interrogated her. She did not lodge any independent case against the accused for establishing sexual relationship with her without getting married to her. The house of the accused is situated at a distance from her house. There were no residential houses located near the house of the accused. The accused person did not accept her as his wife by putting vermilion in the parting of her hair. She denied the suggestion that she is deposing falsely that accused did not tell her that he is a married man and that after the death of elder sister of accused, her two daughters are residing with the accused and were looked after by his younger sister. She denied the suggestion that the accused did not bring her to his house and did not establish physical relationship with her promising to marry her. She denied the suggestion that she is deposing falsely that the next day the paternal aunt of the accused came to his house and told her that the accused is previously married. She denied that the accused did not bring her to his house and established physical relationship with her and that she is deposing falsely.

19. PW-7 Shri Pradip Chamua deposed that on 17.04.2015, he was posted at Rowriah Police Outpost as In-charge. On that day, he received an ejahar from Jinamoni Saikia which was registered vide G.D. entry No.370/15 dated 17.04.2015 and sent the ejahar to Jorhat P.S. for registration of a case under appropriate section of law. The ejahar was registered as Jorhat P.S. case No.809/2015 under Section 347/494 of Indian Penal Code. He was entrusted with the investigation of the case by Shri Prakash Nath, Officer in Charge of Jorhat Police Station. Exhibit-1(2) is the signature of Prakash Nath in Exhibit-1 in ejahar which is recognized by him. At the time of lodging the ejahar, the complainant Jinamoni Saikia was accompanied by the 'victim' and few other female persons. He recorded statement of the Complainant, Suramai Saikia and Champa Borah as well as that of the 'victim' in the police station. The 'victim' was sent for medical examination and thereafter she was sent to Jorhat Sadar P.S. On 18.04.2015, he visited the place of occurrence and prepared a rough sketch map. Exhibit-4 is the sketch map and Exhibi-4(1) is his signature. The accused was apprehended and brought to the police station and his statement was recorded. As the offence against the accused was bailable, he was allowed to go on bail. He collected the medical examination report of the 'victim'. The 'victim' was produced before the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure, 1973. After completion of

investigation, finding prima-facie material against the accused, he filed charge sheet against the accused u/s 347/419/376 IPC. Exhibit-5 is the charge-sheet and Exhibit-5(1) is his signature.

20. Ms. D. Saikia, learned Amicus Curie, representing the appellant, has submitted that the learned Trial Court has convicted the present appellant under Section 417/376 of the Indian Penal Code merely on the basis of uncorroborated testimony of the Court witness no. 1, who is also the victim/prosecutrix. Learned counsel for the petitioner has also submitted that the victim girl, had herself stated in her testimony that she was having a love affair with the present appellant. Though she had stated in her testimony that she was having a love affair with the appellant for last two months, however, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 as well as the statement which she gave before the doctor, that is PW-6, who examined her in Jorhat Medical College Hospital, when she was produced before her on 18.04.2015, she had stated that she was in love affair with the appellant for six months. Learned counsel for the appellant has submitted that the prosecution side has failed to prove that the victim consented to the sexual intercourse only because of the promise of the marriage by the present appellant, and not out of any natural love and attraction for the appellant.

21. She submits that though the CW1/'victim' has stated in her testimony that she established physical relationship with the appellant under the impression that the appellant was unmarried and that he will marry her. However, there is no evidence to show that the appellant also insisted her to establish physical relationship with him, only on the ground that he will marry the victim and therefore, it is submitted that the decision of having physical relationship with the appellant by the 'victim' girl was not induced by any misrepresentation made by the appellant, and the physical relationship happened between them, because of the carnal attraction towards each other, as they were having love affair for last six months before that incident.

22. Learned Amicus Curie has also submitted that though there is no bar that the conviction may be based on the sole testimony of the prosecutrix, but for that, the testimony of the prosecutrix should be of the kind which may be wholly reliable. However, in the instant case, as prosecutrix has given different versions during her statement made under section 164 of the Code of Criminal Procedure, 1973 as well as while deposing as the court witness during the trial, her testimony is not of a kind which may be wholly reliable and the learned Trial Court committed error in relying solely on the testimony of the prosecutrix for arriving at the finding of guilt of the present appellate. Learned Amicus Curie has also submitted that the daughters of the appellant were present in the house when the alleged offence had occurred and therefore, both the daughters were important witnesses and withholding the evidence of such witnesses by the prosecution should only raise a presumption against the prosecution's case.

23. Learned Amicus Curie has also submitted that in the instant case there was

neither any fraud nor any force on the part of the appellant in committing the physical relationship with the 'victim'. The 'victim' girl was major at the time when the alleged offence occurred and she entered into the physical relationship fully knowing the consequences without any inducement on the part of the appellant to enter into the physical relationship. Learned Amicus Curie has also submitted that unless the prosecution establishes beyond all reasonable doubt by adducing positive evidence that it was only and only on the basis of the promise to marry that the victim established physical relationship with the accused, the conviction of the present appellant under section 417/376 of the Indian Penal Code is not sustainable.

24. In support of her submissions, learned Amicus Curie has cited ruling of the Apex Court in "Dhruvaram Murlidhar Sonar Vs. State of. Maharashtra and Others" reported in "(2019) 18 SCC 191". She has also cited another ruling of the Apex Court in "Uday vs. State of Karnataka" reported in "(2003) 4 SCC 46.

25. In Dhruvaram Murlidhar Sonar Vs. State of. Maharashtra (Supra), the Apex Court has observed as follows:

16. Section 90 IPC defines "consent" known to be given under fear or misconception:

"90. Consent known to be given under fear or misconception.—A consent is not such a consent as is 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;"

17. Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

26. On the other hand, Ms. B. Bhuyan, learned senior counsel as well as learned Additional Public Prosecutor, has also submitted that as the materials on record show that the appellant had misrepresented himself as an unmarried person and thereafter, he brought the 'victim' to his own house and had physical relationship with her, though there is nothing to show that force was applied for having such physical relationship. However, she submits that the facts and circumstances show that the consent which was obtained for such physical relationship was on the basis of misrepresentation of facts by the appellant and therefore, the said consent given by the victim for physical relationship may not be regarded as a valid consent and it has been correctly held by the learned Trial Court that the

appellant had physical relationship with the victim without her valid consent.

27. It is further submitted by learned Additional Public Prosecutor that the appellant had deceived the victim by misrepresenting his marital status and thereby induced her to have physical relationship with him and therefore the learned Trial Court had correctly arrived at the finding of guilt of the present appellant under section 417 and section 376 of the Indian Penal Code and the finding of the learned Trial Court in the facts and circumstances of this case does not warrant any interference by this Court.

28. Learned Additional Public Prosecutor has cited a ruling of the Apex Court in "Maheshwar Tigga vs. The State of Jharkhand" reported in "(2020) 10 SCC 108". Learned Additional Public Prosecutor has also cited a ruling of the Apex Court in "Pramod Suryabhan Pawar Vs. The State of Maharashtra" reported in "(2019) 9 SCC 608", wherein it was observed as follows:

"12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In Dhruvaram Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)

"15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12)

"12. ... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

29. I have considered the submissions made by learned counsel for both sides and have perused the evidence on record meticulously. I have also gone through the rulings cited by the learned counsel for both sides.

30. It appears that learned Trial Court has relied mainly on the testimony of the victim/Court witness to arrive at the finding that the appellant had physical relationship with the victim by means of intentional inducement after giving false promise of marriage and thereby he committed the offence of cheating as well as

rape as defined in Section 417 and 376 of the Indian Penal Code.

31. However, if we peruse the testimony of the victim/Court witness, it appears that though the victim has stated in her deposition before the court during the trial that the accused, i.e. the present appellant took her to his house under the pretext of getting married to her, however, she has not categorically stated that he had physical relationship with her only on that pretext. Though she has stated in her deposition that she established physical relationship with the appellant under the impression that he (i.e. the present appellant) was unmarried and that he will marry her. However, if we carefully examine the said statement, it would appear that it was her impression only. There is no allegation that the appellant also, only for the purpose of having physical relationship with the 'victim', said to her that he would marry her and it is only on the basis of the said promise that the victim had established physical relationship with the appellant.

32. Thus, in the considered opinion of this Court, the evidence of the 'victim'/Court witness falls short of what is required to arrive at a finding that the appellant made false promise and thereby intentionally induced the victim only for the purpose of having physical relationship with her. No such accusation is there against the present appellant, rather the evidence is there to suggest that the appellant and the victim were having a love affair prior to the said incident.

33. It is also to be noted that though the sole testimony of a prosecutrix in a case of sexual offence like rape may be relied upon for arriving at the conclusion of guilt of the accused, however, for doing so the said testimony of such witness has to be of sterling quality. There should not be any doubt about the credibility or reliability of such a witness.

34. However, in the instant case, it appears that the victim has given different versions at different stages. She had, it appears from her testimony, tried to conceal certain facts from the court which is apparent from the fact that while deposing as Court Witness in the trial, she had stated that she was having love affair with the present appellant for two months only, however, in her statement made under section 164 of the Code of Criminal Procedure, 1973, she had stated that she was having love affair with the appellant for 6 months. Similarly, from the testimony of the PW-6, i.e., the doctor who examined the victim girl after the alleged incident and who took the history of the victim girl had mentioned in her report that the victim had reported to her that she was in love with the appellant for six months. There is no reason why the victim girl would depose falsely before the court as regards the duration of the period for which she was having a love affair with the appellant except the fact that she tried to highlight that she met the appellant very recently and therefore she believed whatever the appellant had stated to her, which does not appear to be true. The variance between the statements of the 'victim'/Court Witness at different stages of proceeding only makes her testimony unsafe for reliance unless same is corroborated in its particulars by the other evidence on record. Though the medical evidence, i.e, the evidence of PW-6 does not show any sign of recent

sexual intercourse on examination of the victim girl, however, even if we believe her testimony that she had sexual intercourse with the appellant, there is nothing to suggest that the appellant subjected her to force or any threat for having such physical relationship. There is evidence on record that both the appellant and the victim were major and were having a love affair. Though the victim had stated that the petitioner brought her to his home on a promise that he would marry her, however, there is no evidence on record to suggest that he indulged in physical relationship with the victim only on the basis of the said promise by the appellant and in absence of such an evidence, merely because of the statement of the victim that she had physical relationship with the appellant as she was under the impression that the appellant is an unmarried person and the appellant would marry her, it may not be proper to come to the conclusion that it is the appellant who had induced or misrepresented the victim girl only for the purpose of having physical relationship with her.

35. Under the above circumstances, this Court is of the considered opinion that it may not be safe to convict and sentence the appellant under section 417/376 of the Indian Penal Code merely on the basis of uncorroborated testimony of the victim/Court Witness.

36. For the reasons mentioned hereinabove, the conviction and sentence imposed on the present appellant by the impugned judgment is hereby set aside.

37. The appellant is set at liberty forthwith unless he is liable in connection with some other case.

38. Let the case record of Sessions Case No. 233/2016 along with connected files as well as a copy of the judgment be sent to the Court of learned Additional Sessions Judge, Jorhat as well as a copy of this judgment to the Central Jail, Jorhat.

39. This appeal is accordingly disposed of.