

AD-4
Ct No.01
Jalpaiguri
21.05.2025
sp/ap

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

CRA 12 of 2021
Punima Roy
Versus
Khokon Roy & Ors.

Mr. Subhasish Misra,
Mr. Satyajit Paul,
Ms. Shreya Sarkar.

..for the appellant.

Mr. Aditi Shankar Chakraborty, Id. APP,
Mr. Sourav Ganguly.

..for the State.

1. The appeal is directed against a judgment and order dated 3rd October, 2020 passed by the learned Additional District & Sessions Judge, Fast Track Court, Coochbehar in Sessions Case No. 67 of 20174 and Sessions Trial No. 04(06) of 2018 under Sections 448/493/376(2)(n)/323/506 of the IPC.
2. The brief facts relevant to the case are that the appellant victim had a love affair with the accused no. 1. The victim is 24 years old. During the said period, the victim admitted that she had physical relations with the accused several times on the promise to marriage.

3. On 12th May, 2016, at about 6.30 p.m., the accused is stated to be entered the house of the victim and he allegedly committed rape on her. The family members of the house of the victim noticed the same and locked the door of the victim in which the accused and the victim were present. The accused escaped after piercing the bamboo made roof and called his brothers. The accused was a police constable.
4. The brothers of the accused entered the house of the victim, assaulted the family members of the victim and the victim herself and took away the accused no. 1. The brother of the victim thereafter lodged a complaint and the victim was sent for medical examination to a Government hospital at Coochbehar.
5. The medical examination of the accused revealed that her hymen was intact. It further appears from the evidence on record that pursuant to a local salishi (intervention by the village elders), the victim married the accused no. 1. The victim stayed and spent conjugal life with the accused no. 1 for a period of 2 months. She was thereafter driven out of the house and had to live with her brother.
6. Charge sheet was filed and the trial commenced.
7. PW-1 was the victim herself. She narrated the incident as indicated hereinabove.
8. PW-2, Lankeshor Roy, was the de facto complainant, who also narrated the incident as indicated hereinabove.

9. PW-3, Dinesh Roy, was another brother of the victim, who narrated the incident as indicated above.
10. PW-4, Shepi Roy, was the elder sister of the victim. She deposed that on the date of incident she saw the victim and the accused no. 1 embracing each other without clothes and were cohabitating. She then locked the door from outside. This evidence is contrary to the evidence of PW-1, the victim, that she shouted when the accused no. 1 tried to rape her.
11. PW-5, Rama Barman Roy, was a Police Constable, who accompanied the victim before the Magistrate to record her statement under Section 164 of the Code of Criminal Procedure.
12. PW-6, Kanika Singha, was another Police Constable, who accompanied the victim to Cooch Behar M.J.N Hospital for medical examination.
13. PW-7, Mojaffar Hossain, was a Law Clerk by profession, who was the scribe of the complaint.
14. PW-8, Sunity Das, was a lady ASI, who received the complaint from the de facto complainant and registered the FIR.
15. PW-9, Sanchita Chakraborty, was the Investigating Officer of the case.
16. PW-10, Bhaskar Jyoti Mani, was the Doctor, who performed the medical examination of the victim. As already stated above, he found the victim's hymen was intact and

that if there was partial intercourse, the hymen may still be intact. PW-10 stated in his cross-examination that there was no evidence of penetrative intercourse with the victim.

17. PW-11, Gouranga Roy Sarkar, was another Doctor, who examined the accused no.1 and found him capable of performing sexual intercourse.
18. PW-12, Partha Sarathi Deb, was the Marriage Registrar of Kotwali, Dinhata, Setai and Sitalkuchi Police Stations. He confirmed that the marriage between the victim and the accused no.1 was performed at the parental house of the bride and registered under Section 13 of the Special Marriage Act, 1954.
19. The accused persons were all examined under Section 313 of the Code of Criminal Procedure. Based on the evidence on records, the Trial Court found that the charge against the accused persons was not proved.
20. This Court has carefully considered the evidence on record and the statement of the Medical Officer (PW-10).
21. Firstly, the statement of the victim under Section 164 of the Code of Criminal Procedure and the complaint itself clearly indicates that the appellant had voluntarily engaged in physical semi sexual activity with the accused on the promise of marriage. The evidence of PW-4 clearly establishes that the appellant and the accused no.1 were in physical intimacy voluntarily in their room. Such intimacy

appears to have been carrying on for two years and admittedly the appellant and the accused no.1 had a love affair.

22. The evidence of the Medical Doctor, indicating that there was no penetrative intercourse on the victim, negates the application of 376 of the Indian Penal Code.
23. In any event, even assuming for the sake of argument that they might have been physical intimacy between the accused no.1 and the appellant, the same was voluntary and on the promise of marriage.
24. The victim is admittedly an adult and was 24 years of age at the time of incident.
25. It is now well-settled that an actual physical intercourse on the promise of marriage, does not attract the provision of Section 376 of the Code of Criminal Procedure.
26. In any event, the said incident on the date of occurrence i.e. on 12th May, 2016 becomes totally irrelevant since the appellant got married to the accused no.1 and lived together and cohabited with each other for a period of two months. Subsequent driving away of the appellant from the marital house gives rise to other offences under various other Statutes.
27. In the backdrop of the facts and circumstances, this Court is of the view that the impugned judgment and order dated 3rd October, 2020 passed by the learned Additional District

& Sessions Judge, Fast Track Court, Cooch Behar calls for no interference. The charges against the accused persons have not been proved and the accused persons have been rightly acquitted by the Trial Court.

28. In view of the above, C.R.A. No. 12 of 2021 fails and is hereby dismissed.
29. Let the name of the victim/appellant be redacted from the pleadings filed before this Court and that of the Trial Court.
30. Let the LCR be returned to the learned Trial Court below.
31. Let a copy of this order be communicated to the learned Trial Court below for information.
32. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)